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Title 3—

The President

Proclamation 7631 of November 27, 2002

World AIDS Day, 2002

By the President of the United States of America

A Proclamation

The HIV/AIDS pandemic has taken the lives of more than 20 million people and is projected to take millions more. On World AIDS Day, countries around the world are united to support the individuals, families, and communities affected by this disease, and to renew our commitment to preventing the spread of HIV/AIDS, developing and delivering more effective treatments, and finding a cure.

To support our struggle against HIV/AIDS, we must call upon the compassion, energy, and generosity of all people. Through their service and dedication, faith-based and volunteer organizations are providing local and global communities with strategies to confront the HIV/AIDS pandemic. By responding to the needs of their neighbors, these organizations and individual citizens offer invaluable support and hope to countless people. These organizations also help overcome dangerous barriers to HIV prevention, care, and treatment such as the stigma and discrimination that often attaches to those suffering from HIV/AIDS. By raising awareness and promoting acceptance of people living with HIV/AIDS, we help improve the lives of millions of people around the world and demonstrate the compassion of our Nation.

My Administration remains strongly committed to supporting research that treats those living with HIV/AIDS, prevents the spread of this disease, and that can develop a cure. For this coming year, my Administration has requested $2.9 billion for research on vaccines and treatments to combat the disease. This is a significant increase over prior year funding for these efforts, and expresses my Administration's commitment to helping find a cure.

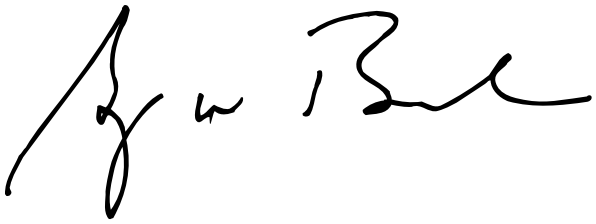
To help stop the global spread of AIDS we must prevent mothers from passing the HIV virus to their children. My Administration has committed $500 million to the new International Mother and Child HIV Prevention Initiative, which will focus on countries in Africa and the Caribbean where the problem is the most severe. This Initiative seeks to treat 1 million women annually and to reduce mother-to-child transmission of HIV/AIDS by 40 percent within 5 years. It also increases the availability of preventative care and drug treatment therapy, and seeks to improve critical healthcare delivery systems. The International Mother and Child Prevention Initiative will save thousands of lives, and assist our vital effort to overcome the global devastation of HIV/AIDS.

The United States intends to provide more than $1.3 billion in 2003 to international efforts to combat HIV/AIDS, a 30 percent increase over the prior year's commitment. I was very pleased to help launch the Global Fund to Fight HIV/AIDS, Tuberculosis, and Malaria together with U.N. Secretary-General Annan and Nigerian President Obasanjo. My Administration has since then pledged $500 million to the Global Fund, and we are committed to further support the Fund as it continues to demonstrate its success.

On World AIDS Day, I urge world leaders and citizens to join the efforts to combat HIV/AIDS. By working together, we can provide hope and comfort to all those affected by this devastating disease.

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 December 1, 2002, as World AIDS Day. I invite the Governors of the States and the Commonwealth of Puerto Rico, officials of other territories subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating HIV/AIDS. I encourage all Americans to participate in appropriate commemorative programs and ceremonies in houses of worship, workplaces, and other community centers to remember those who have lost their lives to this deadly disease and to comfort and support those living with and impacted by HIV/AIDS.

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



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Rules and Regulations

Federal Register

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

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NUCLEAR REGULATORY COMMISSION

10 CFR Chapter 1

RIN 3150–AF61

Electronic Maintenance and Submission of Information Revision, Withdrawal of Direct Final Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have amended its rules to clarify when and how licensees and other members of the public might use electronic means to communicate with the agency. The NRC is taking this action because it has received significant adverse comments on the rule. Those comments will now be considered as comments on the identical proposed rule that was published concurrently with the direct final rule. The agency will address those comments in a later final rule.

FOR FURTHER INFORMATION CONTACT: John A. Skoczlas, (301) 415–7186, *EIE@nrc.gov;* or Brenda J. Shelton, (301) 415–7233, *bjs1@nrc.gov.*

SUPPLEMENTARY INFORMATION: On September 6, 2002 (67 FR 57084), the NRC published a direct final rule in the **Federal Register** amending its regulations to clarify when and how the public might communicate with the agency through electronic media. Appended to the rule, for comment, was guidance on how to submit documents to the agency electronically. The direct final rule and the guidance were to have become effective on December 5, 2002. The NRC also concurrently published for comment an identical proposed rule on September 6, 2002 (67 FR 57120).

In the September 6, 2002, notice of the direct final rule, the NRC stated that if any significant adverse comments were received, a timely notice of withdrawal of the direct final rule would be published in the **Federal Register**, and no rule and guidance would take effect until the comments had been addressed and rule text revised if necessary.

The NRC received significant adverse comments on the rule; therefore, the NRC is withdrawing the direct final rule, and neither it nor the guidance that was appended to it will take effect on December 5, 2002. As stated in the September 6, 2002, notice of the direct final rule, the NRC will now treat the comments as comments on the companion proposed rule, and will address those comments in a later final rule. The NRC will not initiate a second comment period on the rule.

Dated at Rockville, Maryland this 27th day of November, 2002.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–30704 Filed 12–3–02; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–86–AD; Amendment 39–12972; AD 2002–24–07]

RIN 2120–AA64

Airworthiness Directives; Aerostar Aircraft Corporation Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Aerostar Aircraft Corporation (Aerostar) Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P). This AD requires you to replace Roto-Master and Rajay scavenge pumps with improved design Aerostar scavenge pumps. This AD is the result of failures of the existing Roto-Master and Rajay scavenge pumps found during regular maintenance inspections. The actions specified by this AD are intended to prevent in-flight failure of the oil scavenge pumps, which could result in loss of engine oil and possible loss of engine power.

DATES: This AD becomes effective on January 17, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 17, 2003.

ADDRESSES: You may get the service information referenced in this AD from Aerostar Aircraft Corporation, 10555 Airport Drive, Coeur d'Alene Airport, Hayden Lake, Idaho 83835–8742; telephone: (208) 762–0338; facsimile: (208) 762–8349. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–86–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055; telephone: (425) 687–4247; facsimile: (425) 687–4248.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received several reports of excessive internal pump wear found during normal maintenance inspections on Aerostar Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) airplanes. Analysis of these incidents reveals that inadequate retention of the existing left-hand (LH) oil scavenge pump rotor allows the rotor to machine its way through the LH end plate.

Also, through the buildup of the right-hand (RH) scavenge pump/hydraulic pump stack, axial migration of the RH pump rotor causes damage to the washers and seals. This then causes hydraulic and engine oil to be mixed along with metal shavings being released into the engine oil system.

For these reasons, the FAA determined that both the LH and RH scavenge pumps should be replaced.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in an in-flight failure of the oil scavenge pumps with consequent loss of engine oil and possible loss of engine power.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Aerostar Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 24, 2001 (66 FR 53741). The NPRM proposed to require you to replace the Roto-Master or Rajay scavenge pumps with Aerostar scavenge pumps.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: The Airworthiness Concerns Process Was Not Utilized for This Project

What Is the Commenter's Concern?

One commenter states that FAA did not use the Small Airplane Directorate Airworthiness Concerns Process for this subject. This process is the way the Small Airplane Directorate and industry work together to identify potential airworthiness concerns and share technical information prior to FAA's decision on how to proceed. We infer that the commenter wants the NPRM withdrawn because this process was not utilized.

What Is FAA's Response to the Concern?

The FAA concurs that the formal Small Airplane Directorate Airworthiness Concerns Process was not utilized. This subject originated before the formal implementation of this process. The FAA used all resources and made all reasonable efforts to obtain the necessary technical information and to coordinate this subject. Although we did not implement the formal process, we did utilize the basic concept.

While it is the Small Airplane Directorate's policy to use the Airworthiness Concerns Process, there is no regulation that mandates its use. If, at any time, we choose not to use this process, we still have the regulatory authority to issue an airwothiness directive.

No changes have been made to the final rule AD action as a result of this comment.

Comment Issue No. 2: No Supporting Data Exists; Provide Details of Failures

What Is the Commenter's Concern?

Several commenters state that FAA does not have sufficient data to justify the unsafe condition described in the NPRM. The commenters believe that we have not adequately documented the problem and request more details on the failures.

What Is FAA's Response to the Concern?

The FAA does not concur that the unsafe condition is not justified. As stated in the NPRM, ''the FAA has received several reports of excessive internal pump wear found during normal maintenance inspections on Aerostar Models 601, 601P, 602P, and 700P airplanes. Analysis of these incidents reveals that inadequate retention of the existing oil scavenge pump rotor allows the rotor to machine its way through the end plate.''

The following is additional information on these incidents:

—In January 1996, one of the affected airplanes experienced complete engine oil loss and an in-flight engine shutdown. Inspection of the engine revealed that the shaft of the LH oil scavenge pump had machined its way through the LH pump's end plate. The scavenge pump was replaced with a new unit, and a short time later an inspection of the new unit revealed that the shaft had once again started to bore through the LH end plate. The RH scavenge pump was then inspected and showed significant wear at the retaining ring and washer.

—Another affected airplane experienced two separate instances of complete engine oil loss and in-flight shutdown caused by the LH scavenge pump machining through the LH end plate. Inspections revealed numerous occurrences of broken retaining rings and washers and some reports of shafts boring through the LH end plates.

The FAA has determined that the information presented above justifies the AD action of replacing the scavenge pumps with pumps of improved design that are less susceptible to these failures.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 3: No Service Reports From RAJAY, the Original Equipment Manufacturer (OEM)

What Is the Commenter's Concern?

Several commenters point out that the OEM, RAJAY, has submitted no reports of the scavenge pumps boring through the LH end plates. The commenters state that if RAJAY does not have service data, then there is obviously not a safety issue. The commenters suggest that FAA withdraw the NPRM.

What Is FAA's Response to the Concern?

We do not concur. Aerostar, as the type certificate (TC) holder, has the regulatory responsibility to submit failures, malfunctions, and defects under 14 CFR 21.3. Aerostar obtains these parts from RAJAY and Roto-Master. However, RAJAY and Roto-Master are the parts suppliers and do not have the regulatory responsibility that Aerostar has. Because of these regulatory responsibilities, we have determined that the reports that Aerostar has submitted under 14 CFR 21.3 are valid and are not undermined by the absence of service information from RAJAY or Roto-Master.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 4: Why Are the Pumps Unsafe When Installed on Aerostar Airplanes and Not Unsafe When Installed on Other Type Design Airplanes

What Is the Commenter's Concern?

Several commenters state that these scavenge pumps are installed on numerous other type design airplanes. The commenters question why the scavenge pumps are only unsafe on the affected Aerostar airplanes and not on other type design airplanes. We infer that the commenters either want the NPRM withdrawn or expanded to include other type design airplanes.

What Is FAA's Response to the Concern?

The FAA does not concur that we should either withdraw the NPRM or include other type design airplanes. We have extensively searched our databases and only have reports on the scavenge pumps that are installed in the Aerostar Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) airplanes. We have determined that the condition is based on the design configuration of the pump installation in the Aerostar airplanes.

Currently, there is nothing restraining these scavenge pumps in the Aerostar airplane configuration. Engine vibration and other variables within the

installation allow the shafts of the LH oil scavenge pumps to bore through the LH end plates.

We will continue to monitor the continuing airworthiness of these scavenge pumps as installed on other type design airplanes, and we will take appropriate regulatory action, as necessary.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 5: This Is a Maintenance Issue and Is Not Justified as an AD

What Is the Commenter's Concern?

Several commenters state that properly maintained scavenge pumps do not have the failure problems that FAA defines. These commenters question why FAA is issuing this AD to punish those who have adequately maintained their airplanes. They further state that this is an incorrect use of an AD and request that FAA withdraw or give them an exemption from the AD.

What Is FAA's Response to the Concern?

We do not concur. The service history shows that the unsafe condition is a design problem and not a maintenance issue. As discussed earlier, the condition is based on the design configuration of the pump installation in the Aerostar airplanes. Currently, there is nothing restraining these scavenge pumps in the Aerostar airplane configuration. Engine vibration and other variables within the installation allow the shafts of the LH oil scavenge pumps to bore through the LH end plates. Based on the service history received on this subject, we have determined that this AD is justified.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 6: The Improved Design Pumps Are More Unsafe Than the Existing Pumps

What Is the Commenter's Concern?

Several commenters question whether the unsafe condition will be addressed through the installation of the improved design scavenge pumps. The commenters state that these improved design pumps are more unsafe than the scavenge pumps currently installed. No evidence or details were submitted to substantiate these claims. We infer that the commenters want the NPRM withdrawn.

What Is FAA's Response to the Concern?

We do not concur that the improved design scavenge pumps are more unsafe than the ones currently installed. We have received no reports of the unsafe condition occurring on these improved design scavenge pumps.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 7: Allow the Option of Repetitive Inspections or Mandatory Pump Replacement

What Is the Commenter's Concern?

Several commenters believe that FAA should provide the option to repetitively inspect the scavenge pumps for wear and only require mandatory replacement if wear is found. A few of these commenters suggest a repetitive inspection interval of 50 hours time-in-service (TIS).

What Is FAA's Response to the Concern?

The FAA does not concur. The only way to properly inspect the scavenge pump for wear is to remove the pump and disassemble it. Repetitively removing, disassembling, reassembling, and reinstalling the scavenge pumps presents a greater chance of damage to the scavenge pumps than replacing them. Also, the labor of repetitively removing and reinstalling (8 workhours at $60 an hour = $480 per installation) would eventually exceed the one-time replacement cost.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 8: Only Require Replacement of the LH Pump; RH Pump Replacement Is Not Necessary

What Is the Commenter's Concern?

One commenter states that the RH scavenge pump should not be replaced because it does not have an end plate, and it is the middle member of a ''stack'' that includes the airplane hydraulic pump. This commenter requests that FAA revise the proposed AD to reflect replacement of only the LH scavenge pump.

What Is FAA's Response to the Concern?

The FAA concurs that the RH scavenge pump does not have an end plate and that it is the middle member of a ''stack'' that includes the airplane hydraulic pump. However, through the buildup of the scavenge pump/hydraulic pump stack, axial migration of the pump rotor would cause damage to the washers and seals. This could cause the hydraulic oil and engine oil to be mixed along with metal shavings being released into the engine oil system. For these reasons, FAA has determined that both the LH and RH scavenge pumps should be replaced as proposed in the NPRM.

We are not changing the final rule AD action as a result of this comment.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

What Are the Differences Between the Service Bulletin and This AD?

Aerostar specifies (in the service information) replacing the scavenge pumps within the next 50 hours TIS or at the next annual inspection, whichever occurs first. We require that you replace the scavenge pumps within the next 50 hours TIS after the effective date of this AD. We cannot enforce a compliance time of ''at the next annual inspection.'' We believe that 50 hours TIS will give the owners/operators of the affected airplanes enough time to have the actions required by this AD done without compromising the safety of the airplanes. This will allow the owners/operators to work this replacement into regularly scheduled maintenance.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 650 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours for both the left and right engine scavenge pumps × $60 per hour = $480.	$4,750	$5,230	$5,230 × 650 = $3,399, 500

Flexibility Determination and Analysis

What Are the Requirements of the Regulatory Flexibility Act?

The Regulatory Flexibility Act of 1980 was enacted by Congress to assure that small entities are not unnecessarily or disproportionately burdened by government regulations. This Act establishes ''as principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that the rule will, the Agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

What Is FAA's Determination?

The FAA has determined that this AD could have a significant economic impact on a substantial number of small entities. However, we have determined that we should continue with this action in order to address the unsafe condition and ensure aviation safety.

You may obtain a copy of the complete Regulatory Flexibility Analysis (entitled ''Initial Regulatory Flexibility Analysis'') that was prepared for this AD from the Docket file at the location listed under the **ADDRESSES** section of this document.

Regulatory Impact

Does This AD Impact Various Entities?

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.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) could 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 final 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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under 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. FAA amends § 39.13 by adding a new AD to read as follows:

2002–24–07 Aerostar Aircraft Corporation: Amendment 39–12972; Docket No. 99–CE–86–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), and PA–60–700P (Aerostar 700P) airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent in-flight failure of the oil scavenge pumps, which could result in loss of engine oil and possible loss of engine power.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace any scavenge pump specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD with an Aerostar scavenge pump, part number 300110–001 or 300110–002 or FAA-approved equivalent part number. (i) Any Roto-Master scavenge pump, part number 101633–01 or 101633–02 or FAA-approved equivalent part number; and (ii) Any Rajay scavenge pump, part number RJ1025–1 or RJ1025–2 or FAA-approved equivalent part number.	Within the next 50 hours time-in-service after January 17, 2003 (the effective date of this AD), unless already accomplished.	Do this replacement following the INSTRUCTIONS paragraph of Aerostar Mandatory Service Bulletin SB600–131A, January 10, 1998, and the Aerostar Maintenance Manual.

Actions	Compliance	Procedures
(2) Do not install, on an affected airplane, any Roto-Master or Rajay scavenge pump specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this AD.	As of January 17, 2003 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Seattle Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Manager, Seattle ACO.

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

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Richard Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4065; telephone: (425) 227–2597; facsimile: (425) 227–1181.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Aerostar Aircraft Corporation Mandatory Service Bulletin SB600–131A, January 10, 1998. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Aerostar Aircraft Corporation, 10555 Airport Drive, Coeur d'Alene Airport, Hayden Lake, Idaho 83835–8742. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on January 17, 2003.

Issued in Kansas City, Missouri, on November 25, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30495 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 50

[Docket No. 020919216–2287–02]

RIN 0607–AA37

Bureau of the Census Geographically Updated Population Certification Program

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: Following the 1970 decennial census and every decennial census thereafter, the Bureau of the Census (Census Bureau) has provided the opportunity for county, local, and tribal governments to obtain certified population and housing unit counts for areas in which their boundaries have changed from those used to tabulate the results of the immediately preceding decennial census. These changes might occur either as the result of newly created governmental units (incorporations), additions to existing governmental units (annexations), the combination of two existing governmental units (merger), or other circumstances. These governmental units are established by law for the purpose of implementing specified general- or special-purpose governmental functions; the certification process is available to both.

Most governmental units have legally established boundaries and names and have officials (usually elected) who have the power to carry out legally prescribed functions, provide services for residents, and raise revenues. These are commonly referred to as general-purpose governmental units and typically include counties, boroughs, cities, towns, villages, townships, and federally recognized American Indian reservations. Special-purpose governmental units typically are limited to one function, such as school districts.

This update service was suspended on June 1, 1998, to accommodate the taking of the 2000 census. The Census Bureau developed this rule to reinstate the service through a centralized system for certifying population and housing counts and to establish a fee structure that accurately reflects the costs associated with this certification service. This service will be a permanent process, but one that will be temporarily suspended during future decennial censuses. Typically, the Census Bureau will suspend this service, and direct its resources to the decennial census, for a total of five years—the two years preceding the decennial census, the decennial census year, and the two years following it. The Census Bureau will issue notices in the **Federal Register** announcing when it suspends and, in turn, resumes, the service. The Census Bureau earlier issued a notice of proposed rulemaking and request for comments in the **Federal Register** on this subject (67 FR 62657; October 8, 2002).

EFFECTIVE DATE: January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Rodger V. Johnson, Population Division, U.S. Census Bureau, Room 2324, Federal Building 3, Washington, DC 20233, (301) 763–2419, by fax (301) 457–2481, or e-mail *(rodger.v.johnson@census.gov)*.

SUPPLEMENTARY INFORMATION:

Background

The Census Bureau first began to certify decennial census population counts for updated governmental unit boundaries in 1972 in response to the request of local governments to establish eligibility for participation in the General Revenue Sharing Program, authorized under Pub. L. 92–152. At that time, the Census Bureau established a fee-based program, enabling governmental units with annexations to obtain updated decennial census population counts that included the population living in annexed areas. The Census Bureau also received funding from the U.S. Department of the Treasury to make those determinations for larger annexations that met prescribed criteria and for newly formed general-purpose governmental units.

The General Revenue Sharing Program ended on September 30, 1986, but the certification program continued into 1988 with support from the Census Bureau. The program was suspended to accommodate the taking of the 1990 decennial census and resumed in 1992. The Census Bureau supported the program through fiscal year 1995 for cities with large annexations and through fiscal year 1996 for newly incorporated places. The program was continued on a fee-basis only until June 1, 1998, at which time it was suspended for the 2000 decennial census (*see* **Federal Register**, 63 FR 27706, May 20, 1998). At that time, it was stated that the program would resume in three years; however, resumption was delayed by continuing resource demands of the 2000 decennial census. In 2002, resumption of the program was announced as a proposed rulemaking (*see* **Federal Register**, 67 FR 62657; October 8, 2002) with a comment period running through November 7, 2002. No comments were received during this period.

Although there is no legal requirement that the Census Bureau provide this service, there is a demand by governmental units for Census 2000 population and housing counts certified to reflect boundary updates or the formation of new governmental units dated after January 1, 2000 (the legally effective date for boundaries used in tabulating Census 2000). Title 13, Section 8, allows the Census Bureau to continue this program by providing certain statistical materials (certified population and housing counts) upon payment of costs for the service. The Census Bureau is the sole provider of this service obtained through the processing of individual Census 2000 enumeration records protected by the confidentiality restrictions of Title 13, United States Code (U.S.C.).

A geographically updated population certification from the Census Bureau confirms that an official population count is an accurate retabulation of the Census 2000 population as configured for the new boundaries. A population certification may be needed for many reasons. For example, general-purpose governments may be required by state law to produce a Census Bureau population certification for funds disbursement from their respective states, or federally sponsored programs may require or honor a Census Bureau population certification for program eligibility. Special-purpose governmental units also may need official certification of census population and housing counts for other purposes.

The Census Bureau is reinstating a fee-based program that will use current geographic and demographic programs to support customer requests. The final fee structure reflects variations in resources needed to meet customer requirements for certifications of standard governmental units, as listed later in this notice (see paragraph (c) under section 50.60, ''Request for Certification''). To create a consistent process to meet the anticipated demand for the service, the Census Bureau amended Title 15, Code of Federal Regulations (CFR), Part 50 to:

- Add a new Section 50.60 containing the Census Bureau's certification process.
- Establish a consistent fee structure. The fees will depend on the degree of geographic processing tasks required to complete the certification request and on the urgency of the request. There are two types of fees, based upon whether the population certificate is generated through an annually scheduled geographic update process, or is expedited in order to meet customer needs. The annual and expedited certification fees further depend on whether or not additional geographic data must be acquired from the customer and reviewed, tracked, and processed. The lowest fee applies to customers whose geographic data have been collected as part of the annual geographic update process and whose schedules permit waiting until the annual processing has been completed. The highest fee applies to customers from whom additional geographic data must be acquired (over and above the normal annual process) and who also specify expedited processing.
- Require requests for certifications to contain information on Form BC–1869(EF), ''Request for Geographically Updated Official Population Certification.'' (See the Census Bureau's Web site, *www.census.gov/mso/www/certification*.)

Administrative Procedure and Regulatory Flexibility Act

A notice of final rulemaking is not required by Title 5, U.S.C., section 553, or any other law, for this rule of agency organization, procedure and practice that involves a matter relating to public property, loans, grants, benefits, or contracts. Accordingly, it is exempt from the notice and comment provisions of the Administrative Procedure Act under 5 U.S.C.(b)(A) and 5 U.S.C. 553(a)(2). Therefore, the analytical requirements of the Regulatory Flexibility Act are not applicable (5 U.S.C. 601, *et seq.*). As a result, a Regulatory Flexibility Analysis is not required and none has been prepared. However, this rule was published in the **Federal Register** as a proposed rule on October 8, 2002 (67 FR 62657), with an opportunity for public comment, because of the importance of the issues raised by this rulemaking.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications as that term is defined in Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), Title 44, U.S.C., Chapter 35, unless that collection of information displays a current Office of Management and Budget control number. This notice does not represent a collection of information and is not subject to the PRA's requirements. The form referenced in the rule, Form BC–1869(EF), will collect only information necessary to process a certification request. As such, it is not subject to the PRA's requirements (5 CFR 1320.3(h)(1)).

List of Subjects in 15 CFR Part 50

Census data, Geographic updates, Population census, Seals and insignia, Statistics.

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

1. The authority citation for 15 CFR part 50 is revised to read as follows:

Authority: 15 U.S.C. 1525–1527; and 13 U.S.C. 3 and 8.

2. Add § 50.60 to read as follows:

§ 50.60 Request for Certification

(a) *Certification Process.* Upon request, the Census Bureau certifies population and housing counts of standard governmental units to reflect boundary updates, including new incorporations, annexations, mergers, and so forth. The Census Bureau will produce a certificate, that is, a signed statement by a Census Bureau official attesting to the authenticity of the certified Census 2000 population and housing counts to reflect updates to the legal boundaries of governmental units after those in effect for Census 2000. This service will be a permanent

process, but one that will be temporarily suspended during future decennial censuses. Typically, the Census Bureau will suspend this service, and direct its resources to the decennial census, for a total of five years—the two years preceding the decennial census, the decennial census year, and the two years following it. The Census Bureau will issue notices in the **Federal Register** announcing when it suspends and, in turn, resumes, the service.

(1) The Census Bureau charges customers a preset fee for this service according to the amount of work involved in compiling the population and housing counts, as determined by the resources expended to meet customer requirements and the set cost of the product (one certificate). Certification fees may increase somewhat if the customer requests additional original certificates. Each additional certificate costs $35.00. Certification prices are shown in the following table:

DESCRIPTION AND ESTIMATED FEE

Standard governmental units	Estimated fee
Annual Certification	$693 to $1,799.
Expedited Certification	1,530 to 9,075.

(2) [Reserved]

(b) *Description of Certification Types.* The Census Bureau will process requests for population certificates for standard governmental units, in accordance with the Census Bureau's annual certification schedule or under an expedited certification arrangement. The boundaries for standard governmental units are regularly and customarily updated between decennial censuses by the Census Bureau's geographic support system. These governmental units include a variety of legally defined general- and special-purpose governmental units, including counties and statistically equivalent entities, minor civil divisions, incorporated places, consolidated cities, federally recognized American Indian reservations, and school districts. A complete list of entities is defined in paragraph (c) of this section.

(1) *Annual Certification.* Annual population and housing certification is available around October 1 of each calendar year to new or existing governmental units that report legal boundary updates in the Census Bureau's annual Boundary and Annexation Survey. In accordance with reporting requirements of this survey, the legally effective dates of the boundary updates may not be later than January 1 of the calendar year. These certifications are available through September of the following year.

(i) The annual certification service also is available to standard governmental units that are not in the Boundary and Annexation Survey of that year. Governmental units electing participation in this service must draft the legal boundary updates upon Census Bureau-supplied maps. The legally effective dates of the boundaries may not be later than January 1 of the calendar year. The Census Bureau must receive the census maps annotated with the legally certified boundaries and associated address ranges by April 1 of the same calendar year. The Census Bureau will determine that the legal boundary updates are acceptable by verifying that the information is complete, legible, and usable, and that the legal boundaries on the maps have been attested by the governmental unit as submitted in accordance with state law or tribal authority.

(ii) [Reserved]

(2) *Expedited Certification.* (i) Expedited certification will be available where the customer requests any of the following:

(A) Certification of boundary updates legally effective after January 1 of the current calendar year; or

(B) Certification of boundary updates reported to the Census Bureau after April 1 of the current calendar year; or

(C) Certification of boundary updates by the Census Bureau before October 1 of the current calendar year.

(ii) Governmental units electing participation in this service must draft the legal boundary updates upon Census Bureau-supplied maps. To allow sufficient processing time, the Census Bureau must receive acceptable census maps annotated with the legally certified boundaries and associated address ranges no later than three months before the date requested by the customer to receive the population certificate. The Census Bureau will determine that the legal boundary updates are acceptable by verifying that the information is complete, legible, and usable and that the legal boundaries on the maps have been attested as submitted in accordance with state law or tribal authority.

(c) *List of Standard Governmental Units.* The following is a list of the standard governmental units eligible for the Geographically Updated Population Certification Program:

(1) Federally recognized American Indian reservations and off-reservation trust land entities [tribal government]; this includes a reservation designated as a colony, community, Indian community, Indian village, pueblo, rancheria, reservation, reserve, and village.

(2) Counties and statistically equivalent entities, including the following: counties in 48 states; boroughs, municipalities, and census areas in Alaska [state official]; parishes in Louisiana; and municipios in Puerto Rico.

(3) Minor civil divisions as recognized in Census 2000 in the following 28 states: Arkansas, Connecticut, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, and Wisconsin.

(4) Incorporated places, including the following: boroughs in Connecticut, New Jersey, and Pennsylvania; cities in 49 states and the District of Columbia; cities, boroughs, and municipalities in Alaska; towns in 30 states (excluding towns in New England, New York, and Wisconsin, which are minor civil divisions); and villages in 20 states.

(5) Consolidated cities.

(6) School districts.

(d) *Non-Standard Certifications.* Certifications for population and housing counts of non-standard geographic areas or of individual census blocks are not currently available under this program but will be announced under a separate notice at a later date.

(e) *Submitting Certification Requests.* Submit requests for certifications on Form BC–1869(EF), Request for Geographically Updated Official Population Certification, to the Census Bureau by fax, (301) 457–4714, or by e-mail, *MSO.certify@census.gov.* Form BC–1869(EF) will be available on the Census Bureau's Web site at: *http://www.census.gov/mso/www/certification/.* A letter or e-mail communication requesting the service without Form BC–1869(EF) will be accepted only if it contains the information necessary to complete a Form BC–1869(EF).

Dated: November 27, 2002.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 02–30741 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM01–6–000; Order No. 892]

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Brownell; Assignment of Firm Capacity on Upstream Interstate Pipelines

November 21, 2002.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to remove Subpart H of Part 284 which requires interstate natural gas pipelines to assign to their firm shippers capacity the pipelines hold on other interstate pipelines. This requirement was a necessary part of the unbundling of interstate pipelines' gas sales from their gas transportation service required in Order No. 636. On December 14, 2000, the Commission announced a new policy under which it would no longer require pipelines to give up their capacity on other pipelines but would allow them to acquire and hold capacity on other pipelines without prior Commission approval. Since Subpart H no longer reflects the Commission policy with respect to pipelines' holding capacity on other pipelines, the Commission is removing the regulation.

EFFECTIVE DATE: Removal of these regulations becomes effective January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Cecilia Desmond, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8695.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is amending its regulations by removing subpart H of part 284 (18 CFR 284.241 and 284.242) which requires interstate natural gas pipelines to assign to their firm shippers capacity the pipelines hold on other interstate pipelines. The policies embedded in these regulations have been overtaken by subsequent policy developments, most particularly the Commission's December 14, 2000 announcement of a new policy allowing unbundled open access pipelines to acquire and hold capacity on other pipelines without prior Commission approval.[1] Subpart H was promulgated in Order No. 636[2] and was a necessary part of the unbundling of interstate gas sales from transportation. However, all natural gas companies have implemented Order No. 636 and the Commission now allows unbundled open access pipelines to acquire capacity on other pipelines as can any other shipper without seeking prior Commission approval. Since Subpart H is inconsistent with current Commission policy, the Commission is removing Subpart H from its regulations.

II. Discussion

2. In Order No. 636, the Commission required interstate gas pipelines to unbundle the sale of gas from the sale of transportation and to assign their upstream capacity to their firm shippers.[3] The Commission found that pipelines' access to upstream capacity needed to provide bundled gas sales gave them an undue competitive advantage over other gas merchants since the upstream capacity gave pipelines access to more gas suppliers. The Commission also found that a pipeline's holding upstream capacity inhibited the goal of a competitive national market because the downstream gas purchasers would not be able to access the production areas and gas merchants reached by the downstream pipeline through its upstream capacity.

3. The Commission adhered to that policy for several years during the individual pipelines' Order No. 636 restructuring proceedings. Then, in *Texas Eastern Transmission Corporation (Texas Eastern)*, the Commission determined that Order No. 636 did not create a *per se* rule precluding restructured pipelines from entering into contracts for transportation or storage capacity on other pipelines (offsystem capacity).[4] The Commission reasoned that pipelines had completed the unbundling of gas sales and transportation service required by Order No. 636 and that the market had become sufficiently competitive to allow pipelines to hold capacity on other pipelines. Therefore, the Commission said it would decide whether to allow pipelines to acquire offsystem capacity on a case-by-case basis.

4. Two pipelines appealed the *Texas Eastern* requirement for case-specific approval, claiming that it discriminated against pipelines because non-pipeline shippers could acquire capacity without prior approval.[5] They also argued that the Commission's blanket certificate and capacity release regulations, which require pipelines to make transportation services available on a nondiscriminatory basis under Commission-approved open access tariffs, were sufficient to control unduly sdiscriminatory or anticompetitive actions that might arise when a pipeline acquires offsystem capacity. The court agreed and remanded the case.

5. On December 14, 2000, the Commission issued its Order on Remand in the *Texas Eastern* proceeding. In that order, the Commission announced a new policy that unbundled open access pipelines will no longer be required to seek Commission approval before acquiring offsystem capacity, that existing safeguards provide the necessary protection against discriminatory and anticompetitive actions with respect to acquired offsystem capacity, and that pipelines will be at-risk for the costs of any such capacity. Before transporting gas for others on any acquired offsystem capacity, the Commission required a pipeline to seek a blanket waiver of the shipper-must-hold-title policy by amending its tariff to include a general statement that it will only transport for others on offsystem capacity pursuant to its existing open access tariff and rates.[6]

6. On April 10, 2002, the Commission issued a Notice of Proposed Rulemaking (NOPR)[7] proposing in this docket to amend the Commission's regulations by removing Subpart H of Part 284.[8] In the NOPR, the Commission noted that the natural gas marketplace has fundamentally changed since the issuance of Order No. 636. The Commission stated that, in the *Texas Eastern* series of orders, the Commission developed and modified its policy with respect to pipelines' acquiring capacity on other pipelines in light of these

[1] Texas Eastern Transmission Corp., 93 FERC ¶ 61,273 (2000); *reh'g denied*, 94 FERC ¶ 61,139; *reh'g denied*, 95 FERC ¶ 61,056 (2001).

[2] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats & Regs., Regulations Preambles, January 1991–June 1996 ¶ 30,939 (Apr. 8, 1992).

[3] The Commission allowed pipelines to retain upstream capacity for operational management and balancing purposes and no-notice transportation service.

[4] 74 FERC ¶ 61,074 (1996); 78 FERC ¶ 61,277 (1997); *order on remand*, 93 FERC ¶ 61,273 (2000); *reh'g denied*, 94 FERC ¶ 61,139; *reh'g denied*, 95 FERC ¶ 61,056 (2001).

[5] *See Colorado Interstate Gas Co.* v. *FERC*, 146 F.3d 889 (D.C. Cir. 1998).

[6] *See* Texas Eastern, 95 FERC ¶ 61,056 (2001).

[7] Assignment of Firm Capacity on Upstream Interstate Pipelines, 67 FR 19136 (Apr. 18, 2002), FERC Stats. & Regs. ¶ 32,549.

[8] The Commission received one comment in response to the NOPR from Williston Basin Interstate Pipeline Co. which supports the proposal to remove Subpart H of Part 284.

changes. Since the requirement to assign upstream capacity contained in § 284.242 was specific to the implementation of Order No. 636, all interstate pipelines had implemented Order No. 636, and the Commission now allows pipelines to acquire capacity on other pipelines as can any other shipper without seeking prior Commission approval, the Commission stated, Subpart H is no longer necessary.

7. However, as the Commission stated in the NOPR, the removal of the regulation will not modify the Commission's *Texas Eastern* policy under which the appropriateness of a pipeline's acquisitions of capacity on other pipelines is subject to review in a subsequent general section 4 rate proceeding or the Commission's requirement that the shipper must hold title to any gas being shipped through the acquired capacity.

III. Environmental Analysis

8. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[9] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[10] No environmental consideration is necessary in this instance since the final rule is clarifying, corrective, or procedural and affects transportation of natural gas that requires no construction of facilities.[11]

IV. Regulatory Flexibility Impact Statement

9. The Regulatory Flexibility Act of 1980 (RFA)[12] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if a rule would not have such an effect.[13]

10. The Commission does not believe that this rule removal would have such an impact on small entities. The removal of these regulations would have an impact only on interstate pipelines, which generally do not fall within the RFA's definition of small entity.[14] Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that the removal of the regulations will not have a significant economic impact on a substantial number of small entities.

V. Information Collection Statement

11. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[15] However, this final rule contains no information reporting requirements, and therefore is not subject to OMB approval.

VI. Document Availability

12. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

13. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

14. User assistance is available for FERRIS and the FERC's website during normal business hours. Please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

VII. Effective Date

15. This Final Rule will take effect January 3, 2003.

16. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a ''major rule'' as defined in Section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental Shelf, Natural gas, Reporting and recordkeeping requirements, Incorporation by reference.

By the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 1331–1356.

Subpart H—[Removed and Reserved].

2. In part 284, remove and reserve subpart H, consisting of §§ 284.241 and 284.242.

[FR Doc. 02–30706 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

[9] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[10] 18 CFR 380.4.

[11] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(27).

[12] 5 U.S.C. 601–612.

[13] 5 U.S.C. 605(b).

[14] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operations.

[15] 5 CFR Part 1320.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–145]

Drawbridge Operation Regulations; Atlantic Avenue Bridge (SR 806), Atlantic Intracoastal Waterway, Mile 1039.6, Delray Beach, Palm Beach County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Atlantic Avenue bridge (SR 806), across the Atlantic Intracoastal Waterway, mile 1039.6, Delray Beach, Palm Beach County, Florida. This deviation allows the bridge owner or operator to keep a single-leaf of the drawbridge in the closed position. A double-leaf opening is available if at least 12 hours notice is provided to the bridge tender. This deviation is necessary to facilitate repairs to the bridge.

DATES: This deviation is effective from 8 p.m. on December 9, 2002, until 11:59 p.m. on December 31, 2002.

ADDRESSES: Materials received from the public, as well as documents indicated

in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch at (305) 415–6744.

SUPPLEMENTARY INFORMATION: The existing regulations in 33 CFR 117.261(aa) governing the operation of the Atlantic Avenue bridge (SR 806), mile 1039.6, at Delray Beach, Florida, allow the draw to open on signal, except that, from November 1 through May 31 from 10 a.m. to 6 p.m., Monday through Friday, the draw need open only on the hour, and half hour. This bridge provides a horizontal clearance of 45 feet between the fender and the down span.

Quinn Construction requested on September 30, 2002, that the Coast Guard allow it to keep a single-leaf of the bridge in the closed position from 8 p.m. on December 9, 2002, until 11:59 p.m. on December 31, 2002, to facilitate repairs to the bridge spans.

The District Commander granted a deviation from the operating requirements listed in 33 CFR 117.261(aa) to allow Quinn Construction, representing the owner, to facilitate repairs to the bridge spans. Under this deviation, one leaf of the Atlantic Avenue bridge may remain in the closed position from 8 p.m. on December 9, 2002, until 11:59 p.m. on December 31, 2002. A double-leaf opening is available if 12 hours notice is provided to the bridge tender.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 25, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–30738 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–144]

Drawbridge Operation Regulations; Florida East Coast Railroad Bridge, St. Johns River, Jacksonville, Duval County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Florida East Coast Railroad bridge across the St. Johns River, mile 24.9, Jacksonville, Duval County, Florida. This deviation allows the bridge to remain in the closed position from 11 p.m. on December 1 until 5 p.m. on December 12, 2002, for the completion of emergency repairs.

DATES: This deviation is effective from 11 p.m. on December 1, 2002, until 5 p.m. on December 12, 2002.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The Florida East Coast Railroad Bridge across the St. Johns River, Jacksonville, Florida, is a single leaf bascule bridge with a vertical clearance of 9 feet above mean high water (MHW) measured at the fenders in the closed position and a horizontal clearance of 195 feet.

The current operating regulation in 33 CFR 117.325(c) requires that the bridge be constantly tended and have a mechanical override capability for the automated operation. A radiotelephone must be maintained at the bridge for the safety of navigation. The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass. When a train approaches, large signs on both the upstream and downstream sides of the bridge flash ''Bridge Coming Down,'' the lights go to flashing red, and siren signals sound. After an eight minute delay, the draw lowers and locks if there are no vessels under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied. After the train has cleared, the draw opens and the lights return to flashing green.

This deviation will facilitate repairs to the upper trunnion of the moveable span. The work will be performed on an around-the-clock basis from 11 p.m. on December 1, 2002, until 5 p.m. on December 12, 2002. During this period of work the span will remain in the closed position.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: November 25, 2002.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 02–30737 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175, 177, 179, 181, and 183

46 CFR Parts 2, 10, 15, 24, 25, 26, 30, 70, 90, 114, 169, 175, 188, and 199

[USCG–1999–5040]

RIN 2115–AF69

Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA)

AGENCY: Coast Guard, DOT.

ACTION: Final rule; announcement of enforcement date.

SUMMARY: The Coast Guard is announcing the approval of a collection-of-information requirement pertaining to the implementation of safety measures for uninspected passenger vessels over 100 gross tons, which carry 12 or fewer passengers for hire. The implementation allows owners, operators, and/or agents of those type vessels to submit an application for the issuance of a special permit to participate in a Marine Event of National Significance. It also allows the development of specific manning, structural fire protection, operating, and equipment requirements for a limited fleet of PVSA-exempted vessels.

DATES: 46 CFR 26.03–8 as published May 15, 2002 (67 FR 34756), is enforceable as of June 24, 2002.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call Michael A. Jendrossek, Office of Operating and Environmental Standards (G–MSO–2), Coast Guard, telephone 202–267–0836. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on May 15, 2002, at 67 FR 34756 was effective on June 14, 2002. This rule amends an existing Office of Management and Budget (OMB) approved collection, OMB Control Number 2115–0133, that expires on April 30, 2003. As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the OMB for its review of the Collection-of-information. OMB approved the change to this collection effective June 24, 2002, and the collection now expires on June 30, 2005.

Dated: October 17, 2002.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 02–30618 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1200

RIN 3095–AB12

Official Seals

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: The National Archives and Records Administration (NARA) is revising its regulations on the NARA official seals. The rule adds our criteria for approving and denying requests submitted by the public and other Federal agencies to use our official seals. It also requires more detailed facts in written requests and includes NARA's conditions for use if a request is approved. This part has been rewritten in plain language format and applies to the public and other Federal agencies.

EFFECTIVE DATE: January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301–837–2902 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the July 17, 2002, **Federal Register** (67 FR 46945) for a 60-day comment period. NARA did not receive any comments.

Information Collection Subject to the Paperwork Reduction Act

The information collection in § 1200.10, the written request, is subject to the Paperwork Reduction Act. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The control number for this information collection is 3095–0052.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1200

Seals and insignia.

For the reasons set forth in the preamble, NARA revises part 1200 of title 36, Code of Federal Regulations, to read as follows:

PART 1200—OFFICIAL SEALS

Subpart A—General

Sec.
1200.1 Definitions.

Subpart B—How are NARA's Official Seals Designed and Used?

1200.2 How is each NARA seal designed?
1200.4 How does NARA use its official seals?
1200.6 Who is authorized to apply the official seals on documents or other materials?

Subpart C—Procedures for the Public to Request and Use NARA Seals

1200.8 How do I request to use the official seals?
1200.10 What are NARA's criteria for approval?
1200.12 How does NARA notify me of the determination?
1200.14 What are NARA's conditions for the use of the official seals?

Subpart D—Penalties for Misuse of NARA Seals

1200.16 Will I be penalized for misusing the official seals?

Authority: 18 U.S.C. 506 and 1017; 44 U.S.C. 2104(e), 2116(b), 2302.

Subpart A—General

§ 1200.1 Definitions.

The following definitions apply to this part:

Embossing seal means a display of the form and content of the official seal made on a die so that the seal can be embossed on paper or other medium.

NARA means all organizational units of the National Archives and Records Administration.

Official seal means the original(s) of the seal showing the exact form and content.

Replica or reproduction means a copy of the official seal displaying the form and content.

Subpart B—How are NARA's Official Seals Designed and Used?

§ 1200.2 How is each NARA seal designed?

NARA's three official seals are illustrated in Figures 1, 2, and 30.

A description of each seal is as follows:

(a) *The National Archives and Records Administration seal.* The design is illustrated below in Figure 1 and described as follows:

(1) The seal is centered on a disc with a double-line border.

(2) The words ''NATIONAL ARCHIVES AND RECORDS ADMINISTRATION'' encircle the inside of the seal and the date 1985 is at the bottom center.

(3) A solid line rendition of a heraldic eagle displayed holding in its left talon 13 arrows, in its right talon a branch of olive, bearing on its breast a representation of the shield of the United States.

(4) Displayed above the eagle's head is a partially unrolled scroll inscribed with the words ''LITTERA SCRIPTA MANET'' one above the other.

Figure 1 – The National Archives and Records Administration Seal

(b) *National Archives seal.* The design is illustrated below and described as in paragraph (a) of this section. However, the words ''THE NATIONAL ARCHIVES OF THE UNITED STATES'' encircle the inside of the seal and the date 1934 is at the bottom center.

Figure 2 – The National Archives Seal

(c) *National Archives Trust Fund Board seal.* The design is illustrated below and described as in paragraph (a) of this section. However, the words ''NATIONAL ARCHIVES TRUST FUND BOARD'' encircle the inside of the seal and the date 1941 is at the bottom center.

Figure 3 – National Archives Trust Fund Board Seal

§ 1200.4 How does NARA use its official seals?

NARA uses its three official seals to authenticate various copies of documents and for informational purposes as follows:

(a) The National Archives and Records Administration seal, dated 1985, is used:

(1) For official business, *e.g.*, stationery;

(2) To authenticate copies of Federal records in NARA's temporary custody and copies of NARA operational records; and

(3) For informational purposes with NARA's prior approval (includes use by NARA employees, the public, and other Federal agencies).

(b) The National Archives seal, dated 1934, is used to authenticate copies of documents in NARA's permanent legal custody.

(c) The National Archives Trust Fund Board seal, dated 1941, is used for Trust Fund documents and publications.

§ 1200.6 Who is authorized to apply the official seals on documents or other materials?

The Archivist of the United States (and the Archivist's designee) is the only individual authorized to apply NARA official seals, embossing seals, and replicas and reproductions of seals to appropriate documents, authentications, and other material. NARA accepts requests to use the official seals and approves or denies them based on the criteria identified in § 1200.10.

Subpart C—Procedures for the Public To Request and Use NARA Seals

§ 1200.8 How do I request to use the official seals?

You may only use the official seals if NARA approves your written request. Follow the procedures in this section to request authorization.

(a) Prepare a written request explaining, in detail:

(1) The name of the individual/organization requesting use and how it is associated with NARA;

(2) Which of the three official seals you want to use and how or on what it is going to be displayed. Provide a sample of the document or other material on which the seal is intended to appear. Mark the sample in all places where the seal would be displayed;

(3) How the intended use of the official seal is connected to your work with NARA on an event or activity (example: requesting to use the official NARA seal on a program brochure, poster, or other publicity announcing a co-sponsored symposium or conference.); and

(4) The dates of the event or activity for which you intend to display the seal.

(b) You must submit the request at least six weeks before you intend to use it to the Archivist of the United States (N), 8601 Adelphi Rd., College Park, MD 20740–6001.

(c) The OMB control number 3095–0052 has been assigned to the information collection contained in this section.

§ 1200.10 What are NARA's criteria for approval?

NARA's criteria for approval are as follows:

(a) NARA must be participating in the event or activity by providing speakers, space, or other similar services (example: NARA co-sponsoring a symposium or conference).

(b) The seal is not going to be used on any article or in any manner that reflects unfavorably on NARA or endorses, either directly or by implication, commercial products or services, or a requestor's policies or activities.

§ 1200.12 How does NARA notify me of the determination?

NARA will notify you by mail of the final decision, usually within 3 weeks from the date we receive your request. If NARA approves your request, we will send you a camera-ready copy of the official seal along with an approval letter that will:

(a) Reference back to the submitted request (either through the date or another distinguishing characteristic) indicating approval of the specific use, as defined in the request; and

(b) Include NARA's conditions for use, which are identified in § 1200.14.

§ 1200.14 What are NARA's conditions for the use of the official seals?

If your request is approved, you must follow these conditions:

(a) Use the official seal only for the specific purpose for which approval was granted;

(b) Submit additional written requests for any uses other than the use granted in the approval letter;

(c) Do not delegate the approval to another individual(s) or organization without NARA's prior approval; and

(d) Do not change the official seals themselves. They must visually and

physically appear as illustrated in § 1200.2, with no alterations.

(e) Only use the official seal for the time period designated in the approval letter (example: for the duration of a conference or exhibit).

Subpart D—Penalties for Misuse of NARA Seals

§ 1200.16 Will I be penalized for misusing the official seals?

(a) If you falsely make, forge, counterfeit, mutilate, or alter official seals, replicas, reproductions or embossing seals, or knowingly use or possess with fraudulent intent any altered seal, you are subject to penalties under 18 U.S.C. 506.

(b) If you use the official seals, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part, you are subject to penalties under 18 U.S.C. 1017 and to other provisions of law as applicable.

Dated: November 26, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–30766 Filed 12–3–02; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0005; FRL–7279–5]

Pyrithiobac Sodium (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate); Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of pyrithiobac sodium (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate) in or on cotton, undelinted seed and cotton gin byproducts. DuPont Agricultural Products, Wilmington, DE requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: This regulation is effective December 4, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0005, must be received on or before February 3, 2003.

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–2002–0005 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Product Manager (PM) 25, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 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. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0005. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under 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_40/4 0cfr180_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*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of September 24, 1997 (62 FR 49979) (FRL–5745–8), 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 4F4391 by DuPont Agricultural Products, Wilmington, DE. This notice included a summary of the petition prepared by DuPont Agricultural Products, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.487 be amended by establishing a tolerance for residues of the herbicide pyrithiobac sodium, (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate), in or on cotton, undelinted seed at 0.02 parts per million (ppm) and cotton gin byproducts at 0.1 ppm. The Registrant subsequently amended the petition by

increasing the tolerance request for cotton gin byproducts to 0.15 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) of the 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 the 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 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 pyrithiobac sodium on cotton, undelinted seed at 0.02 ppm and cotton gin byproducts at 0.15 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 pyrithiobac sodium are discussed below. This discussion refers to the no observed effect level (NOEL) and the lowest observed effect level (LOEL) from the toxicity studies reviewed rather than the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) because the toxicity studies for pyrithiobac sodium were reviewed prior to adoption in 1998 of the NOAEL/LOAEL terminology by EPA's Office of Pesticide Programs (OPP) and its Health Effects Division (HED). At the time of the switch to the revised terminology, HED noted that the new terminology was unlikely to have any substantive effect on its hazard evaluations: ''In a practical sense, the terms NOEL and NOAEL have been used interchangeably in OPP. As a general rule, OPP would consider as appropriate for hazard identification and risk assessment only those effects which are adverse or potentially adverse. This inclusion of the term NOAEL should not change any of our hazard endpoints for regulation but add to the quality of the risk assessment.'' HED Standard Operating Procedure (SOP) 98.3

1. A rat acute oral study with a LD_{50} of 3,300 milligrams/kilogram (mg/kg) for males and a LD_{50} of 3,200 mg/kg for females.

2. A 90–day rat feeding study with a NOAEL of 50 parts per million (ppm) (3.25 mg/kg/day for males and 4.14 mg/kg/day for females) and a LOAEL of 500 ppm (31.8 mg/kg/day for males and 40.5 mg/kg/day for females based on decrease body weight gains and increased rate of hepatic beta-oxidation in males.

3. A 90–day mouse feeding study with a NOAEL of 500 ppm (83.1 mg/kg/day for males and 112 mg/kg/day for females) and a LOAEL of 1,500 ppm (263 mg/kg/day for males and 384 mg/kg/day for females) based on increased liver weight and an increased incidence of hepatocellular hypertrophy in males and decreased neutrophil count in females.

4. A 3–month dog feeding study with a NOAEL of 5,000 ppm (165 mg/kg/day) and a LOAEL of 20,000 ppm (626 mg/kg/day), based on decrease red blood cell count, hemoglobin, and hematocrit in females and increased liver weight in both sexes.

5. A 21–day rat dermal study with a Dermal Irritation NOAEL of 50 mg/kg/day and, a Dermal Irritation LOAEL of 500 mg/kg/day based on increased incidence of erythema and edema, and with a Systemic Dermal NOAEL of 500 mg/kg/day and a Systemic Dermal LOAEL of 1,200 mg/kg/day based on body weight gain inhibition.

6. A 90–day rat neurotoxicity screening battery with a Systemic NOAEL of 7,000 ppm (466 mg/kg/day for males and 588 mg/kg/day for females) and a Systemic LOAEL of 20,000 ppm (1,376 mg/kg/day for males and 1,609 mg/kg/day for females), based on deceased hind grip strength and increased foot spay in males, and a Neurotoxicity NOAEL of 20,000 ppm highest dose tested (HDT).

7. A 78–week dietary carcinogenicity study in mice with a NOAEL of 1,500 ppm 217 mg/kg/day (males) and 319 mg/kg/day (females) and a LOAEL of 5,000 ppm 745 mg/kg/day (males) and 1,101 mg/kg/day (females) based on decreased body weight gain in both sexes, treatment related increase in the incidence of foci/focus of hepatocellular alternation in males, and increased incidence of glomerulonephropathy (murine) in both sexes, and an increased incidence of infarct in the kidney and keratopathy of the eyes. There was evidence of carcinogenicity based on significant differences in the pair-wise comparisons of hepatocellular adenomas and combined adenoma/carcinoma in the 150 ppm and 1,500 ppm dose groups (but not at the high dose of 5,000 ppm) with the controls. The carcinogenic effects observed are discussed below.

8. A 23–month rat chronic toxicity/carcinogenicity study with a Systemic NOAEL of 1,500 ppm (58.7 mg/kg/day) for males and 5,000 ppm (278 mg/kg/day) for females, and with a Systemic LOAEL of 5,000 ppm (200 mg/kg/day) for males and 15,000 ppm (918 mg/kg/day) for females, based on deceased body weight, body weight gain and food efficiency for females, the increased incidence of eye lesions in both sexes, mild changes in hematology and urinalysis in both sexes, clinical signs suggestive of urinary tract dysfunction in males and females, increased incidence of focal cystic degeneration in the liver in males, increased rate of hepatic peroxisomal beta-oxidation in males and an increased incidence of inflammatory and degenerative lesions in the kidney in females. There was evidence of carcinogenicity based on significant dose-related increasing trend in kidney tubular combined adenoma/carcinoma in male rats and a significant dose related increasing trend in kidney tubular bilateral and/or unilateral adenomas in females. The carcinogenic effects observed are discussed further below.

9. A 1–year dog chronic toxicity study with a NOAEL of 5,000 ppm (143 mg/kg/day for males and 166 mg/kg/day for females) and a LOAEL of 20,000 ppm (580 mg/kg/day for males and 647 mg/kg/day for females) based on decreases in body weight gain, increase thyroid

and liver weights, and microscopic findings in the liver and kidneys.

10. A 2-generation reproduction study in rats with a NOAEL for maternal toxicity of 1,500 ppm (103 mg/kg/day) and a maternal LOAEL of 7,500 ppm (508 mg/kg/day), based on decreased body weight, body weight gain and food efficiency. The NOAEL for paternal toxicity is 1,500 ppm (86 mg/kg/day), while the LOAEL is 7,500 ppm (439 mg/kg/day), based on decreased body weight, body weight gain and food efficiency. The NOAEL for reproductive effects can be set at 7,500 ppm (508 mg/kg/day), the LOAEL at 20,000 ppm (1,551 mg/kg/day), based on decreased pup body weight. The NOAEL for effects on offspring is 7,500 ppm (508 mg/kg/day), and the LOAEL at 20,000 ppm (1,551 mg/kg/day), based on decreased pup body weight.

11. A 13–day dosing (gestation days 7–19) developmental toxicity study in rabbits with a maternal NOAEL of 300 mg/kg and a maternal LOAEL of 1,000 mg/kg based on deaths, decreased body weight gain and feed consumption, and an increase in early resorptions. There is developmental toxicity observed at 1,000 mg/kg based on decreased fetal body weights.

12. A 10–day dosing (gestation days 7–16) developmental toxicity study in rats wth a maternal NOAEL of 200 mg/kg and maternal LOAEL of 600 mg/kg due to increased incidence of peritoneal staining. The developmental NOAEL is 600 mg/kg and the developmental LOAEL is 1,800 mg/kg based on the increased incidence of skeletal variations.

13. No evidence of gene mutation was observed in a test for induction of forward mutations at the hypoxanthine guanine phophoribosyl transferase (HGPRT) locus in Chinese hamster ovary cells. No evidence was observed for inducing reverse gene mutation in two independent assays with *Salmonella typhimurium* with and without mammalian metabolic activation. Pyrithiobac sodium was negative for the induction of micronuclei in the bone marrow cells of mice, and negative for induction of unscheduled DNA synthesis in rat primary hepatocytes. Pyrithiobac sodium was positive for inducing chromosome aberrations assay in human lymphocytes.

14. A rat metabolism study showed that radio labeled pyrithiobac sodium is excreted in urine and feces with >90% being eliminated within 48 hours. A sex difference was observed in the excretion and biotransformation. Females excreted a greater amount of the radiolabel in the urine than males following all regimens, with a corresponding lower amount being eliminated in the feces compared to the males.

B. Toxicological Endpoints

The dose at which 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 LOAEL at which effects of concern are identified 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 intra species 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) = NOEL/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 pyrithiobac sodium used for human risk assessment is as follows:

1. *Acute toxicity*. EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from 1–day or single-event exposure.

2. *Short-term and intermediate-term toxicity*. EPA has concluded that available evidence does not indicate any evidence of significant toxicity from short-term and intermediate-term exposure.

3. *Chronic toxicity*. EPA has established the RfD for pyrithiobac sodium at 0.587 mg/kg/day. This RfD is based on the systemic NOAEL of 58.7 mg/kg/day for males in the rat chronic feeding study with a 100-fold safety factor to account for interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity*. EPA has concluded that the available data provide limited evidence of the carcinogenicity of pyrithiobac sodium in mice and rats and has classified pyrithiobac sodium as a Group C (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** of (September 24, 1986, 51 FR 33992) and recommended that for the purpose of risk characterization a low dose extrapolation model should be applied to the experimental animal tumor data for quantification for human risk (Q^{1*}). This decision was based on liver adenomas, carcinomas and combined adenoma/carcinomas in the male mouse and rare kidney tubular adenomas, carcinomas and combined adenoma/carcinomas in male rats. The unit risk, Q^{1*} (mg/kg/day)-1, of pyrithiobac sodium is 1.05 x 10–3 (mg/kg/day)-1 in human equivalents based on male kidney tumors.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. Permanent tolerances have been requested to replace the time limited tolerance in/on cottonseed 40 CFR 180.487 at 0.02 ppm, and a new tolerance for the residues of pyrithiobac sodium, in or on cotton gin byproducts at 0.1 ppm. The requested tolerance for cotton gin byproducts has been amended to 0.15 ppm based on the results of the submitted field residue trials, and cottonseed was changed to cotton, undelinted seed. Processing studies for cotton have shown that

pyrithiobac sodium does not concentrate in cottonseed processed food/feed commodities. No requested tolerances were necessary for meat, milk, and eggs because detectible residues are not expected in these commodities from this use on cotton. Risk assessments were conducted by EPA to assess dietary exposures from pyrithiobac sodium 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. EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from one-day or single-event exposure; therefore, an acute exposure assessment is not applicable.

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 Department of Argiculture (USDA) 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. EPA assumed that all commodities for which tolerances exist and all cotton food commodities had pyrithiobac sodium residues at the appropriate tolerance level.

iii. *Cancer*. The cancer exposure assessment relied upon the same data and assumptions as the chronic exposure assessment.

iv. *Anticipated residue and percent crop treated (PCT) information*. Tolerance level residues and treatment of 100% of the crop was assumed. Anticipated residues and PCT information was not used.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for pyrithiobac sodium 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 pyrithiobac sodium.

The Agency uses the GENEEC or the 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 (PC) area factor as an adjustment to account for the maximum PC 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 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 pyrithiobac sodium they are further discussed in the aggregate risk sections in Unit E.

Based on the GENEEC and SCI-GROW models the EECs of pyrithiobac sodium for chronic exposures are estimated to be 7.76 parts per billion (ppb) for surface water and 0.778 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).

Pyrithiobac sodium 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 pyrithiobac sodium 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, pyrithiobac sodium 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 pyrithiobac sodium 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).

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 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*. In a preliminary review, EPA concluded that data do not indicate that there is a significant potential for reproductive or developmental effects from pyrithiobac sodium as tested.

3. *Conclusion*. There is a complete toxicity data base for pyrithiobac sodium and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Pyrithiobac sodium has not been formally reviewed by the Agency regarding the need to retain the additional 10X safety factor for the protection of infants and children. Thus, despite the completeness of the database and the lack of any indication of significant potential for reproductive or developmental effects, EPA has retained the additional 10X safety factor until a full review can be completed. Retention of the additional safety factor yields a

cPAD for pyrithiobac sodium of 0.0587 mg/kg/day.

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 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, 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 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, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

Pyrithiobac sodium 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.

1. *Acute risk*. EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from acute exposures from the use of pyrithiobac sodium on cotton.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to pyrithiobac sodium from food and water will utilize less than 0.2% of the cPAD for the U.S. population, and less than 0.2% of the cPAD for children 1 to 6 years at greatest exposure to both food and water. There are no residential uses for pyrithiobac sodium that result in chronic residential exposure to pyrithiobac sodium. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Due to the low exposure for the U.S. population (less than 0.2%) and for children 1 to 6 years (less than 0.2%) for both food and water, the calculated DWLOC is approximately equal to the cPAD.

3. *Short-term risk*. EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from short-term exposures from the use of pyrithiobac sodium on cotton.

4. *Intermediate-term risk*. EPA has concluded that no endpoint exists to suggest any evidence of significant toxicity from intermediate-term exposures from the use of pyrithiobac sodium on cotton.

5. *Aggregate cancer risk for U.S. population*. Based on the upper bound potency factor (Q*1) of 1.05 x 10–3 (mg/kg/day)-1, the aggregate upper bound lifetime cancer risk from the use of pyrithiobac sodium on cotton from worst case estimates of residues in food and drinking water is 2.3 x 10–7.

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 pyrithiobac sodium residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology high performance liquid chromotography using ultra-violent detection (HPLC-UV) with column switching) is available to enforce the tolerance expression. The method may be requested from: Paul Golden, U.S. Environmental Protection Agency, Office of Pesticide Programs, BEAD, ACB, Environmental Science Center, 701 Mapes Road Fort Meade, MD 20755–5350; Telephone (410) 305–2960.

B. International Residue Limits

There are no established Codex maximum residue levels (MRLs) for pyrithiobac sodium on cottonseed. An established Mexican tolerance for pyrithiobac sodium on cottonseed is identical to the U.S. tolerance. Compatibility of tolerance levels is not an issue at this time.

C. Conditions

There are no conditions. Adequate residue data has been submitted to support the tolerances established in this **Federal Register** Notice.

V. Conclusion

Therefore, the tolerance is established for residues of pyrithiobac sodium, (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate), in or on cotton, undelinted seed at 0.02 ppm and cotton gin byproducts at 0.15 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–2002–0005 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 3, 2003.

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–2002–0005, 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 andIndian 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: November 8, 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 180.487 paragraph (a) is revised to read as follows:

§ 180.487 Pyrithiobac sodium; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide, pyrithiobac sodium, (sodium 2-chloro-6-[(4,6-dimethoxypyrimidin-2-yl)thio]benzoate), resulting from the application of the pesticide chemical in or on the following foods/feeds:

Commodity	Parts per million
Cotton gin byproducts	0.15
Cotton, undelinted seed	0.02

* * * * *

[FR Doc. 02–30472 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 112702C]

Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of U.S. fish quotas and an effort allocation.

SUMMARY: NMFS announces that fish quotas and an effort allocation are available for harvest by U.S. fishermen in the NAFO Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

DATES: All fish quotas and the effort allocation are effective January 1, 2003, through December 31, 2003. Expressions of interest regarding U.S. fish quota allocations for all species except 3L shrimp will be accepted throughout 2003. Expressions of interest regarding the U.S. 3L shrimp quota allocation and the 3M shrimp effort allocation will be accepted through January 3, 2004.

ADDRESSES: Expressions of interest regarding the U.S. effort allocation and quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries, at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301–713–2276, fax: 301–713–2313, e-mail: pat.moran@noaa.gov).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFCA) Permit is available from Jennifer L. Anderson at the NMFS Northeast Regional Office at One Blackburn Drive, Gloucester, Massachusetts 01930 (phone: 978–281–9226, fax: 978–281–9394, e-mail: jennifer.anderson@noaa.gov) and from NAFO on the World Wide Web at http://www.nafo.ca.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713–2276.

SUPPLEMENTARY INFORMATION:

Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 2002 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks and an effort allocation for one NAFO stock to be fished during 2003. The species, location, and allocation (in metric tons or effort) of these U.S. fishing opportunities are as follows:

(1) Redfish NAFO Division 3M 69 mt

(2) Squid NAFO Subareas 3 & 4 453 mt

(3) Shrimp NAFO Division 3L 67 mt

(4) Shrimp NAFO Division 3M 1 vessel/100 days

Additionally, U.S. vessels may fish any portion of the 7,500 mt TAC of oceanic redfish in NAFO Subarea 2 and Divisions 1F and 3K. This opportunity is available only to members of NAFO that are not members of the North East Atlantic Fisheries Commission, on a first-come, first-served basis. Allocations are also available to U.S.

fisherman in the ''Others'' category for: Division 3LNO yellowtail flounder (73 mt) and Division 3LMNO Greenland halibut (2,070 mt).

U.S. Fish Quota Allocations

Expressions of interest in all U.S. fish quota allocations and ''Others'' category allocations in NAFO will be considered from U.S. vessels in possession of a valid HSFCA permit, which is available from the NMFS Northeast Regional Office (see **ADDRESSES**). All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**). Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In addition, any available information on intended target species and time of fishing operations should be included. If necessary to ensure equitable access by U.S. vessel owners, NMFS may need to promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

Note that vessels issued valid HSFCA permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in 50 CFR parts 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization on board the vessel issued by the Regional Administrator;

(2) For the duration of the trip, the vessel fishes exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in § 648.23(b); and

(4) The vessel operator complies with the HSFCA permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

U.S. 3M Effort Allocation

Expressions of interest in harvesting the U.S. portion of the 2003 NAFO 3M shrimp effort allocation (1 vessel/100 days) will be considered from owners of U.S. vessels in possession of a valid HSFCA permit. All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**).

Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In the event that multiple expressions of interest are made by U.S. vessel owners, NMFS may need to promulgate regulations designed to choose one U.S. applicant from among expressions of interest.

NAFO Conservation and Management Measures

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence to all relevant minimum size, gear, bycatch, and other requirements. Further details regarding these requirements are available from the NMFS NortheastRegional Office, and can also be found in the current NAFO Conservation and Enforcement Measures on the Internet (see **ADDRESSES**).

Chartering Arrangements

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2003 NAFO 3L shrimp quota allocation and/or 3M shrimp effort allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties under chartering arrangements to fish the 2003 U.S. quota allocation for 3L shrimp and/or the effort allocation for 3M shrimp. Under NAFO rules in effect through 2003, a vessel registered to another NAFO Contracting Party may be chartered to fish the U.S. allocations provided that written consent for the charter is obtained from the vessel's flag state and the U.S. allocations are transferred to that flag state. Such a transfer must be adopted by NAFO Parties through a mail voting process.

A NAFO Contracting Party wishing to enter into a chartering arrangement with the U.S. must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures including, but not limited to, submission of the following reports to the NAFO Executive Secretary: provisional monthly catches within 30 days following the calender month in which the catches were made; provisional monthly fishing days in Division 3M within 30 days following the calender month in which the catches were made; provisional daily catches of shrimp taken from Division 3L; observer reports within 30 days following the completion of a fishing trip; and an annual statement of actions taken in order to comply with the NAFO Convention. Furthermore, the U.S. may also consider a Contracting Party's previous compliance with the NAFO incidental catch limits, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement.

Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Party under chartering arrangements should include information required by NAFO regarding the proposed chartering operation, including: the name, registration and flag of the intended vessel; a copy of the charter; the fishing opportunities granted; a letter of consent from the vessel's flag state; the date from which the vessel is authorized to commence fishing on these opportunities; and the duration of the charter (not to exceed 6 months). More details on NAFO requirements for chartering operations are available from NMFS (see **ADDRESSES**). In addition, expressions of interest for chartering operations should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the chartered vessel would actually take place; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that multiple expressions of interest are made by U.S. fishing interests proposing the use of chartering operations, the information submitted regarding benefits to the United States will be used in making a selection. In the event that applications by U.S. fishing interests proposing the use of chartering operations are considered, all applicants will be made aware of the allocation decision as soon as possible. Once the allocation has been awarded for use in a chartering operation, NMFS will immediately take appropriate steps to transfer the U.S. 3M shrimp effort allocation to the vessel (pending approval by NAFO).

After reviewing all requests for allocations submitted, NMFS may decide not to grant any allocations if it is determined that no requests meet the criteria described in this notice. All individuals/companies submitting expressions of interest to NMFS will be

contacted if an allocation has been awarded. Please note that if the U.S. portion of the 2003 NAFO 3L or 3M shrimp allocation is awarded to a U.S. vessel or a specified chartering operation, it may not be transferred without the express, written consent of NMFS.

Dated: November 27, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30754 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 112502A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Fall Commercial Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the fall portion of the annual commercial quota for red snapper will be reached on December 7, 2002. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective noon, local time, December 7, 2002, until noon, local time, on February 1, 2003.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone 727–570–5305, fax 727–570–5583, e-mail *Phil.Steele@noaa.gov.*

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2002. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.10 million lb (1.41 million kg)) available, and the second commencing at noon on October 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by filing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available fall commercial quota of 1.40 million lb (0.64 million kg) for red snapper will be reached when the fishery closes at noon on December 7, 2002. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on February 1, 2003. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, December 7, 2002.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The 2002 recreational red snapper season opened on April 21, 2002, and closed on October 31, 2002. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, December 7, 2002, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: November 27, 2002.

Bruce C. Morehead,

Acting Director, Office of Sustainavle Fisheries, National Marine Fisheries Service.

[FR Doc. 02–30751 Filed 11–29–02; 3:09 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 67, No. 233
Wednesday, December 4, 2002

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

Rules of NCUA Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observance of NCUA Board Meetings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed Rule, Interpretive Ruling and Policy Statement 02–4, Developing and Reviewing Government Regulations.

SUMMARY: This proposed rule, Interpretive Ruling and Policy Statement (IRPS) 02–4, amends the Regulatory Flexibility Act provisions of NCUA's IRPS 87–2. The Regulatory Flexibility Act generally requires federal agencies to prepare analyses to describe the impact of proposed and final rules on small entities. Since 1981, the NCUA has defined small entity in this context to mean those credit unions with less than one million dollars in assets. The proposed rule redefines small entity to mean those credit unions with less than ten million dollars in assets. In addition, the proposed rule amplifies a provision regarding NCUA's policy of reviewing all existing regulations every three years by stating that one-third of existing regulations will be reviewed each year and the public will receive notice of those regulations under review.

DATES: Comments must be received on or before February 3, 2003.

ADDRESSES: Send comments to Becky Baker, Secretary to the NCUA Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You may also fax comments to (703) 837–2914, or e-mail comments to *regcomments@ncua.gov.* Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Paul M. Peterson, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6555.

SUPPLEMENTARY INFORMATION:

Background

The Regulatory Flexibility Act (the Act) encourages federal agencies to use innovative administrative procedures in dealing with small entities that would otherwise be unnecessarily affected by federal regulations. 5 U.S.C. 601 *et seq.*; S. Rep. No. 96–878, at 1 (1980). The Act requires federal agencies to conduct a special analysis for each proposed rule that will have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605(b). The analysis must describe the impact of the proposed rule on small entities and include a description of any significant alternatives to the rule that minimize the impact. 5 U.S.C. 604.

The term ''small entities'' as used in the Act includes small businesses, small organizations, and small government jurisdictions. 5 U.S.C. 601(6). Credit unions, as not-for-profit associations, fall within the definition of ''organization.'' 5 U.S.C. 601(4). An agency that regulates small organizations may unilaterally establish its own definition of small organizations for purposes of the Act. *Id.* In 1981, the NCUA defined small credit union for purposes of the Act as any credit union having less than one million dollars in assets. NCUA IRPS 81–4, 46 FR 29248, June 1, 1981. IRPS 87–2 superseded IRPS 81–4, but continued the definition of small credit unions for purposes of the Act as those with less than one million dollars in assets. 52 FR 35231, 35232, September 8, 1987. IRPS 87–2 is incorporated by reference into NCUA's current rule governing the promulgation of regulations. 12 CFR 791.8(a).

The NCUA Board is opposed to placing unnecessary regulatory burdens on any credit union, regardless of size. Still, the Act requires particularly close analysis of the burden federal regulators, including NCUA, place on smaller entities. The Act's legislative history indicates that small entities need special consideration because they cannot absorb the impact of additional regulation as well as large entities. S. Rep. No. 96–878, at 4 (1980). Large entities are better able to withstand additional regulation for two reasons. First, large entities can spread the incremental cost of regulatory compliance over more units of output, or production, than smaller entities. Second, large entities can keep the incremental cost of compliance down because they are likely to employ internal staff with some compliance responsibilities. This internal staff may be able to absorb additional, incremental compliance burdens. Smaller entities, on the other hand, may have to hire additional staff or purchase expensive consulting services to handle any additional compliance burden. *Id.*

In light of this legislative history, the Board believes that NCUA's current definition of small credit union as one with less than one million dollars in assets, adopted in 1981, is now outdated. Today, some credit unions with significantly more than one million dollars in assets may not be able to maintain the staffing level of many 1981-era credit unions that had less than one million dollars in assets.[1]

The Board proposes to change the qualifying asset size for a small credit union from less than one million dollars in assets to less than ten million dollars in assets. The Board notes that today's credit unions with approximately one million dollars in assets average only 0.5 full-time and 1.2 part-time employees, indicating that there may be little or no staff time available for compliance issues. In contrast, federally insured credit unions with about ten million dollars in assets currently employ an average of 4.5 full-time employees and 1.3 part-time employees, which together constitute more than five full-time employee equivalents. Accordingly, a credit union with ten million dollars in assets employs on average about five times more staff than a credit union with one million dollars in assets employs. Part of this additional staffing may be available to perform compliance oversight and absorb incremental compliance burdens.

The proposed definition of small credit union is consistent with recent statutes and NCUA regulations providing regulatory compliance relief. For example, in 1998 Congress amended the Federal Credit Union Act (FCUA) to require that credit unions follow

[1] Due to inflation, the purchasing power of a dollar has decreased by almost half since 1981, and the cost of hiring staff has increased accordingly. It takes approximately $1.98 to purchase in 2002 what $1.00 purchased in 1981. Data obtained from Oregon State University, *www.orst.edu/Dept/pol-sci/fac/sahr/cv2002.pdf* (Sept. 10, 2002).

generally accepted accounting principles, but at the same time excused credit unions with less than ten million dollars in assets under a *de minimus* exception. 12 U.S.C. 1782(a)(6)(C)(i), (iii). Another 1998 amendment to the FCUA requires NCUA to provide ''small credit unions,'' defined as those under ten million dollars in assets, with special assistance in meeting prompt corrective action requirements. 12 U.S.C. 1790d(f)(2). Finally, NCUA regulations provide that federally insured credit unions with less than ten million dollars in assets may file a short form call report in the spring and fall. 12 CFR 741.6(a). The Board is not aware of any federal statute or any NCUA rule, regulation, or policy that defines small credit union in a manner that includes credit unions with more than ten million dollars in assets.

The Board also notes that by increasing the threshold from one million dollars in assets to ten million dollars in assets the percentage of federally insured credit unions considered to be small will return to a percentage much closer to the percentage captured by the size standard first adopted in 1981. In 1981, about 63% of all federally insured credit unions had assets of less than one million dollars and so were considered to be small. Today, due in part to credit union consolidation, only about 12% of all federally insured credit unions have assets of less than one million dollars. In contrast, credit unions with less than ten million dollars in assets currently constitute about 52% of all federally insured credit unions.

The Board proposes to add a provision in Section IV of IRPS 87–2 stating how NCUA carries out the policy of reviewing all existing regulations every three years. For several years, the Office of General Counsel has identified and reviewed one-third of existing regulations on a rolling schedule to ensure that all regulations are reviewed at least every three years. In addition, the Board believes in encouraging public participation in the review of regulations and proposes to amend IRPS 87–2 to provide for notice to the public of that portion of the regulations that are under review each year.

Request for Comment

The NCUA Board is interested in receiving comments on the proposed IRPS 02–4 amending IRPS 87–2.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic effect any regulation may have on a substantial number of small credit unions, currently meaning those under one million dollars in assets. The proposed regulation will change the definition of small credit union to increase the number of credit unions receiving the procedural benefits of the Regulatory Flexibility Act and will provide notice to the public and opportunity to comment on regulations under internal review. The NCUA Board has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a regulatory flexibility analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule, if adopted, 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. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

Paperwork Reduction Act

NCUA has determined that the proposed rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Lists of Subjects in 12 CFR Part 790

Organization and functions (Government agencies).

By the National Credit Union Administration Board on November 21, 2002.

Becky Baker,

Secretary of the Board.

Interpretative Ruling and Policy Statement 02–4, Developing and Reviewing Government Regulations

For the reasons stated above, IRPS 02–4 amends IRPS 87–2 (52 FR 35231, September 18, 1987) by revising the second sentence in Section II, paragraph 2., and adding a sentence to the end of Section IV to read as follows:

II. Procedures for the Development of Regulations

* * * * *

2. * * * Credit unions having less than ten million dollars in assets will be considered to be small entities. * * *

* * * * *

IV. Review of Existing Regulations. * * * To accomplish a review every three years of all regulations, the Office of General Counsel will maintain a rolling review schedule that identifies one-third of existing regulations for review each year and will provide notice to the public of that portion of the regulations under review each year so the public may have an opportunity to comment.

* * * * *

Conforming Amendment to NCUA Regulations, 12 CFR Part 791

For the reasons stated above, amend 12 CFR Part 791 as follows:

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

1. The authority for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

2. Amend § 791.8 by revising paragraph (a) to read as follows:

§ 791.8 Promulgation of NCUA Rules and Regulations.

(a) NCUA's procedures for developing regulations are governed by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and NCUA's policies for the promulgation of rules and regulations as set forth in its Interpretive Ruling and Policy Statement 87–2 as amended by Interpretive Ruling and Policy Statement 02–4.

* * * * *

[FR Doc. 02–30090 Filed 12–3–02; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–302–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R Series Airplanes (Collectively Called A300–600); Model A310 Series Airplanes; Model A319, A320, and A321 Series Airplanes; Model A330–301, –321, –322, –341, and –342 Series Airplanes; and Model A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (collectively called A300–600); Model A310 series airplanes; Model A319, A320, and A321 series airplanes; Model A330–301, –321, –322, –341, and –342 series airplanes; and Model A340 series airplanes. This proposal would require, among other actions, replacement of certain pitot probes with certain new pitot probes. This action is necessary to prevent loss or fluctuation of indicated airspeed, which could result in inadvertent excursions outside the normal flight envelope. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–302–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–302–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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

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–302–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–302–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes (collectively called A300–600); Model A310 series airplanes; Model A319, A320, and A321 series airplanes; Model A330–301, –321, –322, –341, and –342 series airplanes; and Model A340 series airplanes. The DGAC advises that operators have reported several cases of loss or fluctuation of indicated airspeed when flying through heavy precipitation or freezing weather conditions. The probable cause has been attributed to the presence of ice crystals and/or water exceeding the weather limits for which the pitot probes are currently certified. Loss or fluctuation of indicated airspeed, if not corrected, could result in inadvertent excursions outside the normal flight envelope.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–34–0166, dated March 30, 2001 (for Model A300 B2 and B4 series airplanes); Service Bulletin A300–34–6116, Revision 02, dated May 25, 2000 (for Model A300 B4–600, A300 B4–600R, or A300 F4–600R series airplanes); and Service Bulletin A310–34–2137, Revision 02, dated May 25, 2000 (for Model A310 series airplanes). These service bulletins describe procedures for replacement of the Sextant pitot probes from the forward fuselage panel between FR6 and FR7 with new BF Goodrich pitot probes (including O-rings, gaskets, and nuts). In lieu of this replacement, Airbus has issued Service Bulletin A300–34–6141, dated December 3, 2001 (for Model A300 B4–600R series airplanes); and Airbus Service Bulletin A310–34–2154, Revision 01, dated April 19, 2000 (for Model A310 series airplanes). These service bulletins describe procedures for replacement of the Sextant pitot probes from the forward fuselage panel between FR6 and FR7 with new, improved Sextant pitot probes (including O-rings, gaskets, and nuts).

Airbus also has issued Service Bulletin A300–34–069, Revision 05, dated April 8, 1982, as revised by A300 Service Bulletin Change Notice 5A, dated February 16, 1987 (for Model A300 B2 and A300 B4 series airplanes), which describes procedures for replacement of the Captain's, First Officer's, and standby Badin Crouzet pitot probes in zones 121 and 122 between STA881/FR6 and STA904FR7 with new Badin Crouzet pitot probes. The replacement includes replacing the O-rings, gaskets, and nuts; and modifying the electrical wiring and the equipment of the electrical wiring.

Airbus also has issued Service Bulletin A300–21–053, Revision 2, dated January 3, 1980 (for Model A300 B2 and A300 B4 series airplanes), which describes procedures for modifying the relay box of the automatic ground depressurization system. The modification includes installing blanking plates, a relay assembly, and placards; incorporating and attaching to existing bundles a new bundle with cable ties; and plugging unused holes of a certain relay.

Airbus also has issued Service Bulletin A300–32–052, dated November 15, 1976 (for Model A300 B2 and B4 series aiplanes), which describes procedures for cleaning, restoring paint coats, and applying Mystik tape 7355 to shock strut (barrel) of the main landing gear; and replacing the lower arm link with a new, reidentified lower arm lock link.

Airbus also has issued Service Bulletin A300–22–031, dated June 25, 1979 (for Model A300 B2 and A300 B4 series airplanes), which describes procedures for modification of the electronic racks, electrical wiring, and cable routing. The modification includes drilling and deburring structure, and plugging unused holes in connectors.

Airbus also has issued Service Bulletin A320–34–1127, dated April 24, 1997 (for Model A319, A320, and A321 series airplanes), which describes procedures for replacement of Thales (previously Sextant) pitot probes in zones 125, 9DA2, and 122 with new Thales pitot probes.

Airbus also has issued Service Bulletin A330–34–3038, dated November 19, 1996 (for Model A330–301, –321, –322, –341, and –342 series airplanes), which describes procedures for replacement of the Rosemount pitot probes in zones 121 and 122 with new BF Goodrich pitot probes. In lieu of this replacement for certain airplanes, Airbus also has issued Service Bulletin A330–34–3071, dated December 11, 1998 (for Model A330–301 series airplanes), which describes procedures for replacement of the Rosemount pitot probes in zones 121 and 122 with new Sextant pitot probes.

In addition, Airbus has issued Service Bulletin A340–34–4042, dated November 19, 1996 (for Model A340–211, –212, –213, –311, –312, and –313 series airplanes), which describes procedures for replacement of the Rosemount pitot probes in zones 121 and 122 with new BF Goodrich pitot probes. In lieu of this replacement for certain airplanes, Airbus also has issued Service Bulletin A340–34–4079, dated December 11, 1998 (for Model A340–211, –212, and –311 series airplanes), which describes procedures for replacement of the Rosemount pitot probes in zones 121 and 122 with new Sextant pitot probes.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2001–353(B), dated August 8, 2001; 2001–354(B), dated August 8, 2001; 2001–362(B), dated August 8, 2001; and 2001–265(B) R1, dated December 12, 2001; in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, 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.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletins described previously.

Cost Impact

The FAA estimates that 559 airplanes of U.S. registry would be affected by this proposed AD. The ''Table—Cost Figures'' shows the estimated cost impact for certain airplanes affected by this AD. The average labor rate is $60 per work hour. ''Table—Cost Figures'' is as follows:

TABLE—COST FIGURES

Model	U.S.-registered airplanes	Work hours (estimated)	Parts cost (estimated)	Total cost (estimated)
A300 B2 and A300 B4	24	(*)	Between $120 to $56,669 (depending on airplane configuration).	Between $300, and $78,329, per airplane (depending on airplane configuration).
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600).	83	3	$5,700	$488,040, or $5,880 per airplane.
A310	46	3	$5,700 or $5,856 (depending on airplane configuration).	$270,480 or $277,656; or $5,880 or $6,036 per airplane (depending on airplane configuration).
A319, A320, and A321	397	3	$6,000	$2,453,460, or $6,180 per airplane.
A330–301, –321, –322, –341, and –342.	9	3	$6,000 or $11,100 (depending on airplane configuration).	$55,620 or 101,520; or $6,180 or $11,280 per airplane (depending on airplane configuration).

*Between 3 and 631.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this 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.

Currently, there are no Airbus Model A340–211, –212, –213, –311, –312, and –313 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 3 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. The cost of required parts would be $6,000 or $11,100 (depending on airplane configuration). Based on these figures, the cost impact of this AD would be $6,180 or $11,280 per airplane (depending on airplane configuration).

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:

Airbus: Docket 2001–NM–302–AD.

Applicability: The series airplanes, certificated in any category, listed in Table—Applicability:

TABLE—APPLICABILITY

Model	Excluding airplanes modified per—	Excluding airplanes equipped with—
A300 B2 and A300 B4	Airbus Modification No. 12236 in service (reference Airbus Service Bulletin A300–34–0166, dated March 30, 2001, in service).	[Reserved].
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600).	Airbus Modification No. 11858 in production (reference Airbus Service Bulletin A300–34–6116, dated June 19, 1998; Revision 01, dated August 7, 1998; or Revision 02, dated May 25, 2000; in service); or Airbus Modification No. 12223 in service (reference Airbus Service Bulletin A300–34–6141, dated December 3, 2001, in service).	[Reserved].
A310	Airbus Modification No. 11858 in production (reference Airbus A310–34–2137, dated June 19, 1998; Revision 01, dated August 7, 1998; or Revision 02, dated May 25, 2000; in service); or Airbus Modification 12223 in service (reference Airbus A310–32–2154, dated January 13, 2000; or Revision 01, dated April 19, 2000; in service).	[Reserved].
A319, A320, and A321	Airbus Modification 25998 in production (reference Airbus Service Bulletin A320–34–1127, dated April 24, 1997, in service).	BF Goodrich (previously New Rosemount) pitot probes part number 0851HL per Airbus Modification No. 25578 (reference Airbus Service Bulletin A320–34–1170, dated April 12, 1979; Revision 01, dated March 14, 1980; Revision 02, dated April 10, 1980; Revision 03, dated March 23, 1981; Revision 04, dated October 1, 1981; or Revision 05, dated September 11, 2000.)
A330–301, –321, –322, –341, and –342.	Airbus Modification No. 44836 in production (reference Airbus Service Bulletin A330–34–3038, dated November 19, 1996, in service); or Airbus Modification No. 45638 in production (reference Airbus Service Bulletin A330–34–3071, dated December 11, 1998, in service).	[Reserved].

TABLE—APPLICABILITY—Continued

Model	Excluding airplanes modified per—	Excluding airplanes equipped with—
A340–211, –212, –213, –311, –312, and –313.	Airbus Modification 44836 in production (reference Airbus Service Bulletin A340–34–4042, dated November 19, 1996, in service); or Airbus Modification 45638 in production (reference Airbus Service Bulletin A340–34–4079, dated December 11, 1998; Revision 01, dated May 27, 1999; or Revision 02, dated October 6, 1999; in service).	[Reserved].

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) 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 loss or fluctuation of indicated airspeed, which could result in inadvertent excursions outside the normal flight envelope, accomplish the following:

For Model A300 B2 and A300 B4 Series Airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes: Replacement of Pitot Probes With New Pitot Probes

(a) Within 30 months after the effective date of this AD, do the action specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model A300 B2 and A300 B4 series airplanes; Model A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes; and Model A310 series airplanes: Replace the Sextant pitot probes from the forward fuselage panel between FR6 and FR7 with new BF Goodrich pitot probes (including O-rings, gaskets, and nuts), per Airbus Service Bulletin A300–34–0166, dated March 30, 2001 (for Model A300 B2 and B4 series airplanes); Airbus Service Bulletin A300–34–6116, Revision 02, dated May 25, 2000 (for Model A300 B4–600, A300 B4–600R, and A300 F4–600R series airplanes); or Airbus Service Bulletin A310–34–2137, Revision 02, dated May 25, 2000 (for Model A310 series airplanes); as applicable.

(2) For Model A300 B4–600R, A310–203, and A310–304 series airplanes: Replace the Sextant pitot probes from the forward fuselage panel between FR6 and FR7 with Sextant pitot probes (including O-rings, gaskets, and nuts), per Airbus Service Bulletin A300–34–6141, dated December 3, 2001 (for Model A300 B4–600R series airplanes); or Airbus Service Bulletin A310–34–2154, Revision 01, dated April 19, 2000 (for Model A310 series airplanes); as applicable.

For Model A300 B2 and A300 B4 Series Airplanes: Before or Concurrent Requirements

(b) For Model A300 B2 and A300 B4 series airplanes: Before or concurrently with the requirements of paragraphs (a)(1) of this AD, as applicable, replace the Captain's, First Officer's, and standby Badin Crouzet pitot probes in zones 121 and 122 between STA881/FR6 and STA904FR7 with new Badin Crouzet pitot probes (including replacement of O-rings, gaskets, and nuts; and modification of electrical wiring and equipment of electrical wiring); per Airbus Service Bulletin A300–34–069, Revision 05, dated April 8, 1982, as revised by A300 Service Bulletin Change Notice 5A, dated February 16, 1987.

(c) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 002, 004 through 028 inclusive, 030 through 051 inclusive: Before or concurrently with the requirements of paragraph (b) of this AD, modify the relay box of the automatic ground depression systems by doing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–21–053, Revision 2, dated January 3, 1980; per the service bulletin.

(d) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 002, 005 through 007 inclusive, 009 through 014 inclusive, 016, and 017: Before or concurrently with the requirements of paragraph (c) of this AD, do the actions specified in paragraphs (d)(1) and (d)(2) of this AD per Airbus Service Bulletin A300–32–052, dated November 15, 1976.

(1) Clean, restore paint coats, and apply mystik tape 7355 to shock strut (barrel) of the main landing gear.

(2) Replace the lower arm link with a new, reidentified lower arm lock link.

(e) For Model A300 B2 and A300 B4 series airplanes, manufacturer's serial numbers 005 through 007 inclusive, 009 through 012 inclusive: Before or concurrently with the requirements of paragraph (b) of this AD, modify the electronic racks, electrical wiring, and cable routing by accomplishing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A300–22–031, dated June 25, 1979, per the service bulletin.

For Model A319, A320, and A321 Series Airplanes: Replacement of Thales Pitot Probes

(f) For Model A319, A320, and A321 series airplanes: Within 24 months after the effective date of this AD: Replace the Thales (previously Sextant) pitot probes in zones 125, 9DA2, and 122 with new Thales pitot probes, per Airbus Service Bulletin A320–34–1127, dated April 24, 1997.

For Model A330–301, –321, –322, –341, and –342 Series Airplanes: Replacement of Rosemount Pitot Probes

(g) Within 30 months after the effective date of this AD, do the action specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model A330–301, –321, –322, –341, and –342 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new BF Goodrich pitot probes, per Airbus Service Bulletin A330–34–3038, dated November 19, 1996.

(2) For Model A330–301 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Sextant pitot probes, per Airbus Service Bulletin A330–34–3071, dated December 11, 1998.

For Model A340–211, –212, –213, –311, –312, and –313 Series Airplanes: Replace the Rosemount Pitot Probes

(h) Within 30 months after the effective date of this AD, do the actions specified in paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) For Model A340–211, –212, –213, –311, –312, and –313 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new BF Goodrich pitot probes, per Airbus Service Bulletin A340–34–4042, dated November 19, 1996.

(2) For Model A340–211, –212, and –311 series airplanes: Replace the Rosemount pitot probes in zones 121 and 122 with new Sextant pitot probes, per Airbus Service Bulletin A340–34–4079, dated December 11, 1998. This replacement must be done before or concurrently with the requirements of paragraph (h)(1) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

(j) 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.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001–353(B), dated August 8, 2001; 2001–354(B), dated August 8, 2001; 2001–362(B), dated August 8, 2001; and 2001–265(B) R1, dated December 12, 2001.

Issued in Renton, Washington, on November 25, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30654 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–50–AD]

RIN 2120–AA64

Airworthiness Directives; Lindstrand Balloons Ltd Fuel Hoses

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all aircraft (specifically balloons) that incorporate certain Lindstrand Balloons Ltd (Lindstrand) fuel hoses. This proposed AD would require you to inspect for certain batches of installed fuel hoses and repair any of these fuel hoses. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to detect and replace defective fuel hoses before they result in propane fuel leaks. Such propane fuel leaks could lead to a propane fuel fire.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before January 10, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–50–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2002–CE–50–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Lindstrand Balloons Ltd, Maesbury Road, Oswestry, Shropshire SY 10 8ZZ; telephone: +44 (0) 1691–671717; facsimile: +44 (0) 1691–671122. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4140; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the proposed rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2002–CE–50–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on aircraft (specifically balloons) that incorporate certain Lindstrand fuel hoses. The CAA reports six incidents of 3/8-inch bore fuel supply hoses, batch identification number FHL 38381 or FHL 40579, failing in service.

The typical failure observed is of liquid fuel escaping at any position along the length of the hose and through the pinpricking on the outer surface. The leakage observed varies from small bubbles, when leak detection fluid is used on the surface of the hose, to visible jets of liquid propane.

What are the consequences if the condition is not corrected? Such propane fuel leaks could lead to a propane fuel fire.

Is there service information that applies to this subject? Lindstrand has issued Service Bulletin No. 7, Issue 1, dated July 11, 2002.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting all fuel hoses, including burner supply hoses, basket manifolds, and refueling hoses to detect the installation of hose batch FHL 38381 or FHL 40579; and

—Obtaining replacement fuel hoses and replacement instructions.

What action did the CAA take? The CAA classified this service bulletin as mandatory and issued British AD Number 002–07–2002, dated July 12, 2002, in order to ensure the continued airworthiness of these balloons in the United Kingdom.

Was this in accordance with the bilateral airworthiness agreement? These aircraft models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on type design aircraft (specifically balloons on the U.S. Registry) that incorporate certain Lindstrand Balloons Ltd fuel hoses;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

Cost Impact

How many aircraft would this proposed AD impact? We estimate that this proposed AD affects 204 aircraft (specifically balloons) in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected aircraft? We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per aircraft	Total cost on U.S. operators
1 workhour × $60 per hour = $60.	Not applicable.	$60.	$60 × 204 = $12,240.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that may need such replacement:

Labor cost	Parts cost	Total cost per hose
1 workhour × $60 per hour = $60 per hose	Replacement hoses provided by manufacturer.	$60.

Regulatory Impact

Would this proposed AD impact various entities? 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 proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 has been placed 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, under 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. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

LINDSTRAND BALLOONS LTD: Docket No. 2002–CE–50–AD.

(a) *What airplanes are affected by this AD?* This AD affects any aircraft (specifically balloons), certificated in any category, that incorporate Lindstrand 3/8-inch bore hoses from either hose batches FHL 38381 or FHL 40579.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the aircraft identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and replace defective fuel hoses before they result in propane fuel leaks. Such propane fuel leaks could lead to a propane fuel fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect all ⅜-inch bore hoses used within the aircraft, including burner supply hoses, basket manifolds, and refueling goses to determine if the hose is from either defective hose batch FHL 38381 or FHL 40579.	Within 5 hours time-in-service after the effective date of this AD.	In accordance with Linstrand Balloons Ltd Service Bulletin No. 7, Issue 1, dated July 11, 2002.
(2) If any hose from the defective hose batch is found during the inspection: (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD. (ii) Incorporate this repair scheme.	Prior to further flight after the inspection in which the hose from the defective hose batch is found.	Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(3) Do not install Lindstrand ⅜-inch bore fuel hoses from either hose batch FHL 38381 or FHL 40579, unless repaired per paragraphs (d)(2)(i) and (d)(2)(ii) of this AD.	As of the effective date of this AD.	Not applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 1: This AD applies to each aircraft (specifically balloons) with a Lindstrand Balloons Ltd ⅜-inch fuel hose identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft (specifically balloons) that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4140; facsimile: (816) 329–4090.

(g) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Lindstrand Balloons Ltd, Maesbury Road, Oswestry, Shropshire SY 10 8ZZ; telephone: +44 (0) 1691–671717; facsimile: +44 (0) 1691–671122. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in British AD Number 002–07–2002, dated July 12, 2002.

Issued in Kansas City, Missouri, on November 26, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–30778 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC53

NASA Grant and Cooperative Agreement Handbook—Security Requirements for Unclassified Information Technology Resources

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to amend the NASA Grant and Cooperative Agreement Handbook to require recipients of grants and cooperative agreements to provide adequate security for all Agency information collected, processed, transmitted, stored, or disseminated through information technology. This would extend the coverage applicable to NASA contractors to recipients of grants and cooperative agreements.

DATES: Comments should be submitted on or before February 3, 2003.

ADDRESSES: Interested parties should submit written comments to Paul Brundage, NASA Headquarters, Office of Procurement, Analysis Division (Code HC), Washington, DC 20546. Comments may also be submitted by email to: *paul.brundage@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Paul Brundage, NASA Headquarters, Code HC, Washington, DC (202) 358–0481, e-mail: *paul.brundage@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Computer Security Act of 1987 and Appendix III of the Office of Management and Budget (OMB) Circular No. A–130, Security of Federal Automated Information Resources, require that adequate security be provided for all Agency information collected, processed, transmitted, stored, or disseminated. The NASA FAR Supplement (NFS) Part 1804 contains the requirement for all NASA contractors to comply with Federal and NASA policies in safeguarding unclassified NASA data held via information technology (IT). This change would establish comparable coverage for grants and cooperative agreements.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the changes will affect an insignificant number of grants and cooperative agreements.

C. Paperwork Reduction Act

An Office of Management and Budget (OMB) approval for data collection has previously been approved under OMB Control No. 2700–0098.

List of Subjects in 14 CFR Part 1260

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 14 CFR Part 1260 is proposed to be amended as follows:

1. The authority citation for 14 CFR 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*), and OMB Circular A–110.

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

2. Amend section 1260.50 by adding paragraph (f) to read as follows:

§ 1260.50 Special conditions.

* * * * *

(f) Security requirements for unclassified information technology resources. Under NASA grants and cooperative agreements, recipients normally do not collect, process, transmit, store, or disseminate unique Agency data of substantial value using information technology. However, if it is known that a grant or cooperative agreement will include such use of information technology, the NASA Grant Officer shall insert a provision substantially the same as § 1274.937. When such use of information technology is not originally anticipated in the performance of a grant, but it later becomes appropriate, the NASA Technical Officer shall immediately notify the NASA Grant Officer before such use of information technology occurs, and the NASA Grant Officer shall amend the grant to include a provision substantially the same as § 1274.937. NASA policies and procedures on security for automated information technology are prescribed in NPD 2810.1, Security of Information Technology, and in NPG 2810.1, Security of Information Technology.

[FR Doc. 02–30652 Filed 12–3–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 604

RIN 1205–AB33

Unemployment Compensation—Trust Fund Integrity Rule: Birth and Adoption Unemployment Compensation; Removal of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rule making (NPRM).

SUMMARY: The Department of Labor (Department or DOL) is proposing to remove the Birth and Adoption Unemployment Compensation (BAA–UC) regulations. Those regulations provide an experimental opportunity for states to provide, in the form of unemployment compensation (UC), partial wage replacement for parents taking approved leave or otherwise leaving employment while caring for their newborns or newly-adopted children.

DATES: DOL invites written comments on this proposal. Comments must be submitted by February 3, 2003.

ADDRESSES: Submit written comments to Cheryl Atkinson, Administrator, Office of Workforce Security, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC, 20210. E-mail: *trustfundintegrity@doleta.gov.*

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Office of Workforce Security, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4518, Washington, DC 20210. Telephone: (202) 693–3038 (voice) (this is not a toll-free number); 1–800–326–2577 (TDD); facsimile: (202) 693–2874; e-mail: *ghildebrand@doleta.gov.*

SUPPLEMENTARY INFORMATION: On June 13, 2000, the BAA–UC Final Rule was published in the **Federal Register** at 65 FR 37210 (June 13, 2000) and codified at 20 CFR Part 604. It implemented an experimental opportunity for state agencies responsible for administering the Federal-State UC program to provide partial wage replacement for parents taking approved leave, or otherwise leaving employment, following the birth or placement for adoption of a child. In qualifying for UC, the individual would not have to be able to or available for work, commonly known as the able and available (A&A) requirements, in the sense traditionally used by the Department. Instead, parents of newborns and newly-adopted children would be viewed as meeting the federal A&A requirements (as implemented in state law) under the premise that the parents' long-term attachment to the workforce would be strengthened and promoted by the payment of UC, which would provide some financial support to accompany the introduction of a new child into the family.

As we noted during the final rulemaking, the BAA–UC experiment was ''a reversal of our position taken in 1997,'' when the Department advised a state that UC could not be used in this manner. (65 FR 37212 (June 13, 2000).) The BAA–UC experiment was described as ''part of an evolving interpretation of the Federal A&A requirements that recognizes practical and economic realities.'' (*Id.*) Simply stated, the A&A requirements were interpreted in a new and different way that emphasized the individual's potential attachment to the workforce. BAA–UC was intended to test whether individuals would be more attached to the workforce, even if their current separation from the workforce was either a conscious decision on their part, or due to compelling personal and family reasons relating to the birth or adoption of a child. Significantly, since the Department made the BAA–UC experiment available in 2000, no state has elected to participate.

The Department has now reviewed the BAA–UC Final Rule as part of a Department-wide review of all regulations. This review was conducted in the context of a substantial downturn in the economy, resulting in substantially lower state unemployment fund balances than in 2000. The review was also conducted in the context of a legal challenge in federal district court that the BAA–UC rule was inconsistent with federal UC law. Although the case was dismissed on procedural grounds, *LPA, Inc.* v. *Chao,* 211 F.Supp. 2d 160 (D.D.C. 2002), it did cause the Department to scrutinize the underlying statutory authority for BAA–UC.

Upon completion of this review, our conclusion is that the BAA–UC experiment is poor policy and a misapplication of federal UC law relating to the A&A requirements. Therefore, we are proposing to remove the BAA–UC regulations. As will be discussed below, the UC program is designed to provide temporary wage replacement to individuals who are unemployed due to lack of suitable work. However, the intended recipients of BAA–UC generally do not meet this test as they have initiated their separation from the workforce and it is their personal situation, rather than the lack of available work, that has removed them from the labor market. Because the BAA–UC experiment is based on an assumption of increased *future* labor force attachment, the payment of BAA–UC will likely be made for periods where parents have completely suspended their labor force attachment. Indeed, in cases where the parent is on approved leave from a job, BAA–UC more closely resembles a paid-leave program than a UC program.

As noted above, to date no state has elected to participate in the BAA–UC experiment. Therefore, terminating the experiment will not result in any state withdrawing benefits it previously granted. The only effect of the removal of the regulations is that it reduces state flexibility since a state could no longer elect to use its unemployment fund to pay BAA–UC. The Department's position on the A&A requirements will revert to that in existence before publication of the BAA–UC rule. Thus, to be eligible for UC an individual must, among other things, demonstrate current labor force attachment by meeting the A&A requirements. Each state remains free to create a paid family leave-type program using state moneys from sources other than its unemployment fund. Indeed, as discussed below, one state has already done so.

Policy. The UC program is designed as wage insurance for individuals who are unemployed due to lack of suitable work. This would generally not be the case for parents who would avail themselves of BAA–UC. Such parents would be out of work because they both initiated their separation from the workforce and are currently unavailable for work; they would have effectively withdrawn from the labor market for a brief period. For those individuals who were taking approved leave when an employer is holding a job open for them, BAA–UC would be a payment for voluntarily taking time off work rather than payment due to lack of suitable work. As such, it would be paid leave, which was not envisioned in the design of the UC program.

We again note that no state has actually enacted BAA–UC legislation since being given DOL clearance to do so. While we recognize that declining unemployment fund balances may have some bearing on this, the fact that one state has enacted a broad paid leave program suggests that there may be other factors. California recently passed legislation (enacted Senate Bill 1661; Chapter No. 901) that contains features of BAA–UC, as well as many features beyond the scope of BAA–UC. Notably,

it authorizes payments to certain individuals who take time off from work to care for a sick or injured child, spouse, parent or domestic partner as well as for foster care placements of a new child. The California law does not use its unemployment fund as a funding source, but instead uses employee contributions to its Temporary Disability Insurance fund.

The restrictive nature of the BAA–UC rule, which limits the eligible population to parents taking leave or otherwise leaving employment to be with their newborns or newly-adopted children, would not have granted California the flexibility it desired. Similarly, the BAA–UC rule limits the types of eligibility conditions that may be imposed on individuals. Other flexibility issues may also exist. For example, we expressed concern with a state bill that appeared to be close to enactment because it appeared to be inconsistent with Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA). This bill would have made BAA–UC mandatory for all services performed in the state, except for services performed for certain governmental and nonprofit entities that could elect to participate. Since federal law requires that, with respect to these governmental and nonprofit services, UC must be paid ''in the same amount, on the same terms, and subject to the same conditions'' as UC payable on other services performed under state law, we advised the state that this legislation, if enacted, would be inconsistent with Section 3304(a)(6)(A) of the FUTA. In sum, it appears that the limited flexibility of the BAA–UC approach may not be conducive to state needs and, therefore, may have contributed to the lack of state enactments.

Finally, since the implementation of the BAA–UC Final Rule in 2000, many states have seen a drastic decline in their unemployment fund balances, and most states are below our recommended 1.00 average high-cost multiple. (The average high-cost multiple indicates how many years of benefits a state has available under a recessionary scenario. A rating of 1.00 indicates the state has one year's worth of benefits on hand. The Department recommends a 1.00 high-cost multiple as a reasonable margin of safety to ensure trust fund solvency in periods of high unemployment.) Recognizing that fund levels were dropping, the Administration supported Congress's enactment of legislation distributing $8 billion to states to assist in the payment of UC and for other purposes. (Section 209 of Public Law 107–147, March 9, 2002.) Indeed, but for this extraordinary infusion of funds, some states would have had to borrow money from the federal government to keep their unemployment funds solvent. While we recognize that some states still have adequate reserves, we are concerned that current fund balances would be even lower had states enacted the BAA–UC experiment. Indeed, one of the policy arguments made for using a state's unemployment fund for BAA–UC was the claim that states had ''surpluses'' in their unemployment funds, which funds could be made immediately available to implement a BAA–UC experiment. The sudden and rapid decline in fund balances undercuts this argument.

Legal. The Department and its predecessors (the Social Security Board and the Federal Security Agency) have interpreted and enforced federal A&A requirements since the inception of the federal-state UC program. Although no A&A requirements are explicitly stated in federal law, the Department and its predecessors interpreted four provisions of federal UC law, contained in the Social Security Act (SSA) and FUTA, as requiring that states condition the payment of UC upon a claimant being able to and available for work. Two of these provisions, at section 3304(a)(4), FUTA, and section 303(a)(5), SSA, limit withdrawals, with specific exceptions, from a state's unemployment fund to the payment of ''compensation.'' Section 3306(h), FUTA, defines ''compensation'' as ''cash benefits payable to individuals with respect to their unemployment.'' The A&A requirements provide a federal test of an individual's continuing ''unemployment.'' (The meaning of ''unemployment'' in this statutory framework is discussed below.) The other two provisions, found in section 3304(a)(1), FUTA, and section 303(a)(2), SSA, require that compensation ''be paid through public employment offices.'' The requirement that UC be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to both an individual's ability to work and availability for work. These A&A requirements serve, in effect, to limit UC eligibility.

The basis for the federal A&A requirements was summarized in a March 11, 1939, letter from the Chair of the Social Security Board to the Governor of California, concerning whether the state could make payments with respect to temporary disability from its unemployment fund:

> The entire legislative history [of the UC titles of the original SSA] including the Report to the President of the Committee on Economic Security, the report of the House Committee on Ways and Means, the report of the Senate Committee on Finance, and the Congressional debates all indicate, either expressly or by implication, the compensation contemplated under [these titles] is compensation to individuals who are able to work but are unemployed by reason of lack of work. Several provisions of those titles are meaningful only if applied to State laws for the payment of such compensation. For example, the requirement that compensation be paid through public employment offices, or the requirement that States make [certain information] available to agencies of the United States charged with the administration of public works or assistance through public employment, are obviously without reasonable basis if applied to payments to disabled individuals. Many of the standards contained [in the experience rating provisions] are similarly without reasonable basis if applied to a State law for the payment of disability compensation.
>
> For these reasons, the Board is of the opinion that the [UC titles of the SSA] are applicable solely to State laws for the payment of compensation to individuals who are *able to work and are unemployed by reason of lack of work.''* [Emphasis added.]

That involuntary unemployment due to lack of suitable work was the key test is supported by the Congressional Committee Reports:

> The essential idea in unemployment compensation* * * is the accumulation of reserves in time of employment from which partial compensation may be paid to workers who become unemployed and are unable to find work.* * * In normal times it will enable most workers who lose their jobs to tide themselves over, until they get back to their old work or find other employment without having to resort to relief.* * * [H. Rep. 615, 74th Cong. 1st Sess. 1935 Page 5.]
>
> The essential idea in unemployment compensation is the creation of reserves during periods of employment from which compensation is paid to workmen who lose their positions when employment slackens and who cannot find other work. Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed.* * * Payment of compensation is conditioned upon continued involuntary unemployment. Beneficiaries must accept suitable employment offered them or they lose their right to compensation. [S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 11.]
>
> * * * In normal times most workers will secure other employment before exhaustion of their benefit rights.* * * For the great bulk of industrial workers unemployment compensation will mean security during the period following unemployment while they are seeking another job, or are waiting to return to their old position. [Id. Page 12.]

As illustrated by the above, the Federal A&A requirements are placed on claimants to test whether the fact that they did not work for any week was

involuntary due to the *unavailability of work.* Since the BAA–UC experiment did not examine the Federal A&A requirements from this perspective, it permits the payment of UC to individuals for whom suitable work may exist, thus contradicting the basic purpose of the A&A requirements.

The legislative history quoted above indicates that eligibility for UC is not based on the individual's personal need, except to the extent that his/her ''need'' is created by lack of suitable work. (Note that this test looks only to whether the unemployment is due to lack of work for each given week of benefits claimed. That is, it does not require that states hold an individual ineligible based on the reason for separation from employment, except to the extent that the individual may have not been A&A for the particular week of the separation.) BAA–UC, however, extended eligibility for UC to parents based on considerations of compelling personal or family need regardless of whether there is a lack of work. While the idea of providing UC to parents or families experiencing birth or adoption may be admirable, it is not in keeping with the fundamental limitation of paying UC only to individuals who are unemployed due to lack of work.

The legislative history also establishes a link between the public works programs in existence in 1935 and the UC program that bears on the A&A requirements. As noted in the Social Security Board's contemporaneous interpretation, an SSA provision (section 303(a)(7)) requires that states make available to agencies of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and the government's employment status of UC recipients. This requirement is predicated upon the understanding that UC recipients must be out of work due to a lack of available work. It would make no sense to refer an individual, for whom work was available, to a public works program, which should be the employer of last resort. Senator Wagner, who introduced the SSA in the Senate, described the relationship between the proposed UC program and the government's public works programs (as well as public employment offices) as follows in the floor debate on the SSA:

> [unemployment insurance] is not designed to supplant, but rather to supplement the public-works projects which must absorb the bulk of persons who may be disinherited for long periods of time by private industry.* * * A provision in the present bill requires that the Federal tax rebate shall be used to encourage a close connection between State job-insurance laws and unemployment-exchange offices. This provision emphasizes the fact that the [monetary] relief of existent unemployment is but a subordinate phase of the main task of providing work for all who are strong and willing. [79 Cong. Rec. 9284 (June 14, 1934).]

Thus, Congress intended the UC system to be subordinate to the main task of getting people back to work, which is, as noted above, implemented through the A&A requirements. BAA–UC is not consistent with this goal since it encourages parents to refuse available work.

Finally, as noted in the Social Security Board's letter, experience rating standards are meaningless if the test of involuntary unemployment due to lack of work is not used. Experience rating was originally established to ensure an equitable distribution among employers of the cost of the system, and to encourage employers to stabilize their work forces. (''Credits'' will be provided ''in the form of lower contribution rates * * * to employers who have stabilized their employment.'' (S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 14.)) BAA–UC contradicts the intent of experience rating since it allows payments based on a worker's own actions without regard to an employer's attempt to stabilize employment by offering suitable work to its current and former employees. Indeed, if BAA–UC (and similar-type payments which might be allowed) is paid to individuals who are not A&A, the states' experience rating systems could be overwhelmed to the point where an employer's efforts to stabilize its workforce through its continuing willingness to employ the worker is ignored, thereby effectively nullifying one of the primary purposes of experience rating.

In the preamble to the BAA–UC Final Rule, we addressed four situations—illness, jury duty, approved training, and temporary layoffs—that affected individuals' ability ''to meet the stricter interpretations of the A&A requirements.'' (65 FR 37213 (June 13, 2000).) Although we also noted that ''none of these situations precisely parallels the payment of BAA–UC, they do operate on the same premises: that situations exist in which it is important to allow a flexible demonstration of availability and in which attachment to the workforce can be demonstrated, and indeed strengthened, without requiring a current demonstration of availability.'' (Id.) Upon re-examination, we note that, unlike the BAA–UC experiment, none of these situations permit a voluntary withdrawal from the workforce:

- *Illness.* The interpretation pertaining to illness applies only to individuals who initially meet the A&A requirements, but who then become ill *and* who do not refuse suitable work. Until work is refused, the unemployment is due to lack of work, which is what the A&A requirements are designed to test. The A&A requirements are preserved because the individual must initially demonstrate availability before the illness and must be held ineligible if s/he refuses suitable work offered.
- *Jury Duty.* The interpretation pertaining to jury duty applies only to individuals who initially meet the A&A requirements, but who are then called for jury duty. It is unreasonable for a state to compel jury service for previously eligible individuals and at the same time hold such individuals ineligible for complying. Indeed, attendance at jury duty may be taken as evidence that the individual would otherwise be available for work.
- *Approved training.* Approved training is limited to situations where the state determines that short-term training will improve an individual's job prospects. Attendance at such training is accepted as evidence of availability for work. Indeed, if the individual refuses training, or fails to attend training, the states will evaluate eligibility under their A&A provisions.
- *Temporary lay-offs.* An individual on temporary layoff must be available to work for the employer who laid-off the individual. While this requires an individual's availability for work with only one employer, it is nonetheless a test of whether the unemployment is due to lack of suitable work.

None of these precedents is consistent with BAA–UC. Unlike the illness exception, an offer of suitable work under BAA–UC may be refused with no effect on eligibility. Unlike the illness and jury duty exceptions, no initial establishment of A&A is required. Unlike jury duty, there is no governmental compulsion. Unlike approved training, BAA–UC does not address a situation where an individual is attempting to remedy his or her continuing unemployment; indeed BAA–UC addresses a situation where a parent is responsible for his or her separation from the workforce. Also, for approved training, the state must approve the training as increasing the individual's job prospects; no similar requirement exists for BAA–UC, with the result that increased attachment to the workforce for any one individual is highly speculative. Finally, unlike temporary lay-offs, there is no requirement that the individual be available for at least one job; indeed, an offer of suitable work may be refused

with no effect on eligibility. These precedents differ from BAA–UC in that they do not permit an individual to voluntarily remove him/herself from the labor market for a given week. BAA–UC, on the other hand, allows parents who have initiated their separation from the workforce and whose personal situation, rather than the lack of available work, that makes them unavailable for other employment.

In summary, A&A tests involuntary unemployment due to a continuing lack of suitable work. The legislative history amply supports this. The BAA–UC rule not only failed to recognize this, but is in fact contrary to the A&A requirement.

Executive Order 12866

This proposal to remove 20 CFR part 604 is a ''significant regulatory action'' within the meaning of section 3(f)(4) of Executive Order 12866 because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, this proposal was submitted to, and reviewed by, the Office of Management and Budget.

Before publication of the BAA–UC final rule (65 FR 37210 (June 13, 2000)), the Department prepared a Regulatory Impact Analysis, which estimated that the rule would result in costs ranging from zero to $196 million, depending upon the number of states enacting BAA–UC. Since publication of the BAA–UC final rule, no state enacted BAA–UC meaning that no benefits have been paid, nor administrative costs expended. Removing the BAA–UC rule would end the possibility that BAA–UC and its associated administrative costs will be paid out of state unemployment funds with the result that the estimated costs would not be incurred. Therefore, the removal of the rule would result in no costs or cost savings and potentially prevent costs from being incurred in the future. Because the Department expects the immediate economic impact of removing the rule to involve no costs, this regulatory action is unlikely to have an annual effect on the economy of $100 million or more and, consequently, is not ''economically significant'' within the meaning of Section 3(f)(1) of that Executive Order.

Finally, we have evaluated this regulatory action and find it consistent with the regulatory philosophy and principles set forth in Executive Order 12866. Though this action would remove authority for states to fund family leave from the state's unemployment fund, states would have flexibility to provide paid family leave from other funding sources. Further, because no state has enacted BAA–UC, no state would be adversely affected in a material way by having to dismantle such an experiment. Finally, this action removes a regulation and imposes no alternative regulatory requirements.

Paperwork Reduction Act

This regulatory action contains no information collection requirements.

Executive Order 13132

We have reviewed this proposal in accordance with Executive Order 13132 regarding federalism. That order requires agencies, when formulating and implementing policies that have federalism implications, to refrain from limiting state policy options, to consult with states before taking any action which would restrict states' policy options, and to take such action only where there is clear statutory or constitutional authority and the presence of a problem of national scope. Policies with federalism implications are those with 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.

Because this regulatory action would limit state policy options, by eliminating authority to pay for family leave out of unemployment funds, we will consult with organizations representing state elected officials at the Department of Labor in the upcoming weeks. We solicit comment on the federalism implications and the impact of this regulation on the relationship between the national government and the states.

Executive Order 13084

This regulatory action does not impose any regulatory requirements on Indian tribal governments and therefore does not impose substantial direct compliance costs on Indian tribal governments.

Executive Order 12988

This proposal has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The proposal, a mere one sentence, removes 20 CFR part 604. In its brevity, it is not likely to lead to litigation resulting from drafting errors or ambiguities.

Unfunded Mandates Reform Act of 1995

This proposal has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and does not include any unfunded federal mandate.

Regulatory Flexibility Act

This regulatory action will not have a significant economic impact on a substantial number of small entities. This action affects states and state agencies, which are not within the definition of ''small entity'' under 5 U.S.C. 601(6). Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Effect on Family Life

We certify that this regulatory action has been assessed in accordance with section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. We conclude that this action would not adversely affect the well-being of the nation's families. No state has enacted BAA–UC; consequently no families would experience a termination of BAA–UC benefits. Though this proposed rule would withdraw authorization for states to pay for such benefits from the state's unemployment fund, paid family leave could be provided from other state funding sources. This proposal would preserve the availability of state unemployment funds for times when workers, who may support families, are unemployed due to lack of work.

Congressional Review Act

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

Catalogue of Federal Domestic Assistance Number

20 CFR Part 604 is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

List of Subjects in 20 CFR Part 604

Unemployment compensation.

Signed at Washington, DC on November 25, 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Words of Issuance

For the reasons set forth in this preamble, Chapter V of Title 20, Code of Federal Regulations, is proposed to be amended by removing part 604.

[FR Doc. 02–30316 Filed 12–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–099]

RIN 2115–AE47

Drawbridge Operation Regulations; Miami Beach Channel and Indian Creek, Miami-Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the operation of the East 79th Street and the East Venetian Causeway bridges across Miami Beach Channel, and the 63rd Street bridge across Indian Creek, Miami-Dade County, Florida by allowing these bridges to remain closed during peak vehicular rush hour traffic. We anticipate that this proposed rule would reduce vehicle traffic congestion on Miami Beach during the rush hours while providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before February 3, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Ave, Room 406, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of (CGD07–02–099) and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Branch, 909 SE. 1st Ave Miami, FL 33131, telephone number 305–415–6744.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–02–099), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

A public meeting has not been scheduled. However, you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE. 1st Ave, Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Miami Beach has requested that the Coast Guard consider changing the existing regulations for the East 79th Street, East Venetian Causeway, and the 63rd Street bridges that lead into the City of Miami Beach because of the vehicle gridlock within the city each time the bridges are opened during rush hours. Based on the limited number of requested bridge openings during the proposed time window, the Coast Guard believes it can accommodate the request while still providing for the reasonable needs of navigation.

The East 79th Street, the East Venetian Causeway, and the 63rd Street bridges are located between Miami and Miami Beach. The current regulations in 33 CFR 117.5 require the East 79th Street and the 63rd Street bridges to open on signal. The current East Venetian Causeway bridge regulation in 33 CFR 117.269 requires this bridge to open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and from 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened. However, the draw must open at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m., if any vessels are waiting to pass. The draw must open on signal on Thanksgiving Day, Christmas Day, New Year's Day, and Washington's Birthday. The draw must open at any time for public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress.

We believe that this proposed rule would lessen vehicular traffic congestion during the workday rush hours. This proposed rule would modify the current regulation for the East Venetian Causeway bridge by requiring ''regularly scheduled cruise vessels'' to comply with the regulation's opening schedule by eliminating the language that currently excepts them from the existing rule. This proposed rule would modify the existing regulation of the East Venetian Causeway bridge by requiring the bridge to open on signal during all Federal holidays, not just the holidays enumerated in the rule. This proposed rule would also slightly modify the existing times when the East Venetian Causeway bridge need not open during the morning and evening rush hours, and would allow the East 79th Street and the 63rd Street bridges to remain closed from 7 a.m. to 8:59 a.m.; and from 4:10 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

Discussion of Proposed Rule

The Coast Guard proposes to modify the existing bridge operating regulations and create a permanent rule that would allow the East 79th Street and the East Venetian Causeway bridges across Miami Beach Channel, and the 63rd Street bridge across Indian Creek, to remain closed from 7 a.m. to 8:59 a.m.; and from 4:10 p.m. to 6 p.m., Monday through Friday, except Federal holidays. Public vessels of the United States, tugs with tows, and vessels in distress would be passed at anytime.

Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because there have been limited numbers of requests for openings during

these time periods and this proposed rule still provides for regular openings throughout the day.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, 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 proposed rule would not have a significant economic impact on a substantial number of small entities because there have been limited openings during these time periods and this proposed rule still provides for regular openings throughout the day.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.** We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call 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 proposed rule under that Order and 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 regulatory actions not specifically required by law. 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. Although this proposed 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 proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

Indian Tribal Governments

This proposed 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.

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Revise § 117.269 to read as follows:

§ 117.269 Biscayne Bay.

The East 79th Street and the East Venetian Causeway bridges across Miami Beach Channel, and the 63rd Street bridge across Indian Creek, need not open from 7 a.m. to 8:59 a.m.; and from 4:10 p.m. to 6 p.m., Monday through Friday, except Federal Holidays. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at anytime.

Dated: November 12, 2002.

James S. Carmichael,

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

[FR Doc. 02–30739 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 31

RIN 0991–AB17

Tax Refund Offset

AGENCY: Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS) proposes to amend its tax refund offset regulations to reflect (1) the tax refund offset provisions of the Deficit Reduction Act of 1984 as amended by the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720A, and (2) implementing regulations issued by the Department of the Treasury at 31 CFR 285.2. The proposed rule will amend the process by which HHS certifies and refers past-due debt to the Department of Treasury for tax refund offset to satisfy debt owed to the HHS.

DATES: Submit comments on or before February 3, 2003.

ADDRESSES: Send all comments concerning this proposed rule to: Katherine M. Drews, Deputy Associate General Counsel, Office of the General Counsel, General Law Division, Room 5362, 330 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Katherine M. Drews, 202–619–0150.

SUPPLEMENTARY INFORMATION:

Background

This proposed regulation implements the tax refund offset provisions of the Deficit Reduction Act of 1984 as amended by the Debt Collection Act of 1996 (DCIA), codified at 31 U.S.C. 3720A, and the implementing regulations issued by the Department of the Treasury at 31 CFR 285.2. Within this framework, a Federal agency owed a past-due debt must notify the Secretary of the Treasury of such debt for collection by tax refund offset in accordance with regulations promulgated by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury (Treasury), is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA. The Treasury Final Rule, as amended, is published at 31 CFR 285.2.

Basic Provisions

In accordance with the requirements of the DCIA and the implementing regulations issued by the Department of Treasury at 31 CER 285.2, the proposed regulation establishes the rules and procedures for certifying and referring a past-due debt to FMS for tax refund offset, correcting and updating referral information transmitted to FMS, and providing the debtor with written notice at least 60 days before the Department refers a debt to FMS. This written notice informs the debtor of the nature and amount of the debt, that the debt is past-due and legally enforceable, that the Department intends to enforce collection by referring the debt to the Department of Treasury for tax refund offset, and that the debtor has a right to inspect and copy Department records relating to the debt, enter into a repayment agreement, and request review and present evidence that all or part of the debt is not past-due or legally enforceable.

Rules and Procedures

Except for minor changes to make the provisions agency-specific, the proposed rule is substantially identical to the Treasury Final Rule. In accordance with the substantive and procedural requirements of the DCIA and the Treasury Final Rule, this proposed rule would establish HHS rules and procedures for:

1. Certifying and referring a past-due debt to FMS for tax refund offset.
2. Correcting and updating referral information transmitted to FMS.
3. Providing the debtor with written notice at least 60 days before referring a debt to FMS. This written notice must inform the debtor of the nature and amount of the debt, that the debt is past-due and legally enforceable, that the Department intends to enforce collection by referring the debt to the Department of Treasury for tax refund offset, and that the debtor has a right to inspect and copy Department records relating to the debt, enter into a repayment agreement, and request review and present evidence that all or part of the debt is not past-due or legally enforceable.

Economic Impact

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, *Regulatory Planning and Review*), as amended by Executive Order 13258 (February 2002, *Amending Executive Order 12866 on Regulatory Planning and Review*) and the Regulatory Flexibility Act (RFA) (September 19, 1980; Pub. L. 96–354), the Unfunded Mandated Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 (August 1999, Federalism).

Executive Order 12866 (the Order), as amended by Executive Order 13258, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize the benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in 1 year). We have determined that the proposed rule is consistent with the principles set forth in the Order, and we find that the proposed rule would not have an effect on the economy that exceeds $100 million in any one year. In addition, this rule is not a major rule as defined at U.S.C. 804(2). In accordance with the provisions of the Order, the rule was reviewed by the Office of Management and Budget.

It is hereby certified under the RFA that this proposed regulation, will not have a significant economic impact on a substantial number of small entities. This proposed rule applies only to individuals with past-due debts owed to the United States.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure of in any I year by State, local, or tribunal governments, in the aggregate, or by the private sector, of $100 million. As noted above, we find that the proposed rule would not have an effect of this magnitude on the economy.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed the proposed rule under the threshold criterial of Executive Order 13132, Federalism, and have determined that this proposed rule would not have substantial direct impact on States, or on the distribution of power and responsibilities among the various levels of government. As there are no Federalism implications, a Federalism impact statement is not required.

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, this proposed rule will impose no new reporting or record-keeping requirements on any member of the public.

List of Subjects in 45 CFR Part 31

Administrative practice and procedure, Taxes, Claims, and Debts.

For the reasons set forth in the preamble, 45 CFR Subtitle A Part 31 is proposed to be revised as follows:

PART 31—REFERRAL OF DEBT TO IRS FOR TAX REFUND OFFSET

Sec.
31.1 Purpose and scope.
31.2 Definitions.
31.3 General rule.
31.4 Certification and referral of debt.
31.5 Notice.
31.6 Review of Departmental records.
31.7 Review of a determination that a debt is past-due and legally enforceable.

Authority: 31 U.S.C. 3720A, 31 C.F.R. 285.2, E.O. 12866, E.O. 13258.

§ 31.1 Purpose and scope.

(a) *Purpose.* This part prescribes the Department's standards and procedures for submitting past-due, legally enforceable debts to the Department of the Treasury for collection by tax refund offset.

(b) *Authority.* These standards and procedures are authorized under tax refund offset provision of the Deficit Reduction Act of 1984, as amended by the Debt Collection Improvement Act of 1996, codified at 31 U.S.C. 3720A, and implementing regulations issued by the Department of the Treasury at 31 CFR 285.2.

(c) *Scope.* (1) This part applies to all Departmental Operating Divisions and Regional Offices that administer a program that gives rise to a past-due non-tax debt owed to the United States, and to all officers or employees of the Department authorized to collect such debt.

(2) Nothing in this part precludes the Department from pursuing other debt collection procedures, including administrative wage garnishment under part 32 of this title, to collect a debt that has been submitted to the Department of the Treasury under this part. The Department may use such debt collection procedures separately or in conjunction with the offset collection procedures of this part.

§ 31.2 Definitions.

In this part, unless the context otherwise requires:

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a claim.

Day means calendar day. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or a Federal legal holiday, in which case the next business day will be considered the last day of the period.

Debt or *claim* means an amount of money, funds, or other property determined by an appropriate official of the Federal government to be owed to the United States from any individual, entity, organization, association, partnership, corporation, or State or local government or subdivision, except another Federal agency.

Debtor means an individual, organization, association, partnership, corporation, or State or local government or subdivision indebted to the Government, or the person or entity with legal responsibility for assuming the debtor's obligation.

Department means the Department of Health and Human Services, and each of its Operating Divisions and regional offices.

Evidence of service means information retained by the Department indicating the nature of the document to which it pertains, the date of mailing of the document, and the address and name of the debtor to whom it is being sent. A copy of the dated and signed written notice of intent to offset provided to the debtor pursuant to this part may be considered evidence of service for purposes of this regulation. Evidence of service may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

FMS means the Financial Management Service, a bureau within the Department of the Treasury.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury. *Legally enforceable* means that there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action.

Operating division means each separate component within the Department of Health and Human Services, including, but not limited to, the Administration for Children and Families, the Administration on Aging, the Centers for Disease Control and Prevention, the Centers for Medicare & Medicaid Services, the Food and Drug Administration, the National Institutes of Health, and the Office of the Secretary.

Past-due debt means a debt which the debtor does not pay or otherwise resolve by the date specified in the initial demand for payment, or in an applicable written repayment agreement or other instrument, including a post-delinquency repayment agreement.

Secretary means the Secretary of the Department of Health and Human Services, or the Secretary's designee within any Operating Division or Regional Office.

Taxpayer identifying number means the identifying number described under section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109). For an individual, the taxpayer identifying number is the individual's social security number.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed to the United States by the payee(s) of a tax refund payment.

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402–3(a)(6)(i) for any liabilities for any tax on the part of the person who made the overpayment.

§ 31.3 General rule.

(a) Any past-due, legally enforceable debt of at least $25, or such other minimum amount as determined by the Secretary of the Treasury, shall be submitted to FMS for collection by tax refund offset.

(b) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted by the Department under this part. A match will occur when the taxpayer identification number and name of a payment certification record are the same as the taxpayer identifying number and name control of a debtor record. When a match occurs and all other requirements for tax refund offset have been met, FMS will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due legally enforceable debt. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

§ 31.4 Certification and referral of debt.

(a) *Certification.* The Secretary shall certify to FMS that:

(1) The debt is past-due and legally enforceable in the amount submitted and that the Department will ensure that collections are properly credited to the debt;

(2) Except in the case of a judgment debt or as otherwise allowed by law, the debt is referred within ten (10) years after the Department's right of action accrues;

(3) The Department has made reasonable efforts to obtain payment of the debt, and has:

(i) Submitted the debt to FMS for collection by offset and complied with the administrative offset provision of 31 U.S.C. 3716(a) and related regulations, to the extent that collection by administrative offset is not prohibited by statute;

(ii) Notified, or made a reasonable attempt to notify, the debtor that the debt is past-due, and unless paid within 60 days of the date of the notice, the debt may be referred to Treasury for tax refund offset. For purposes of this regulation, the Department has made a reasonable attempt to notify the debtor if the agency uses the current address information contained in the Department's records related to the debt. If address validation is desired or necessary, the Department may obtain information from the IRS pursuant to 26 U.S.C. 6103 (m)(2)(4) or (5).

(iii) Given the debtor at least 60 days to present evidence that all or part of the debt is not past due or not legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(iv) Provided the debtor with an opportunity to make a written agreement to repay the debt; and

(4) The debt is at least $25.

(b) *Referral.* (1) The Secretary shall submit past-due, legally enforceable debt information for tax refund offset in the time and manner prescribed by the Department of the Treasury.

(2) For each debt referred under this part, the Secretary will include the following information:

(i) The name and taxpayer identifying number, as defined in 26 U.S.C. 6109, of the debtor responsible for the debt;

(ii) The amount of such past-due and legally enforceable debt;

(iii) The date on which the debt became past-due; and

(iv) The designation of the Department referring the debt.

(c) *Correcting and updating referral.* (1) After referring a debt under this part, the Secretary shall promptly notify the Department of the Treasury if:

(i) An error was made with respect to information transmitted to the Department of Treasury;

(ii) The Department receives a payment or credits a payment to the account of a debtor referred for tax refund offset; or

(iii) The debt amount is otherwise incorrect.

(2) The Department shall provide the certification required under paragraph (a) of this section for any increases to amounts owed.

(d) *Rejection of certification.* If the Department of Treasury rejects a certification because it does not comply with the requirements of paragraph (a) this section, upon notification of the rejection and the reason(s) for rejection, the Secretary will resubmit the debt with a corrected certification.

§ 31.5 Notice.

(a) *Requirements.* If not previously included in the initial demand letter provided under § 30.11, at least 60 days before referring a debt for tax refund offset, the Secretary shall mail, by first class mail to the debtor's last known address, written notice informing the debtor of:

(1) The nature and amount of the debt;

(2) The determination that the debt is past-due and legally enforceable, and unless paid within 60 days after the date of the notice, the Secretary intends to enforce collection by referring the debt the Department of the Treasury for tax refund offset; and

(3) The debtor's rights to:

(i) Inspect and copy Department records relating to the debt;

(ii) Enter into written agreement to repay the amount of the debt;

(iii) Request review and present evidence that all or part of the debt is not past-due or not legally enforceable.

(b) The Secretary will retain evidence of service indicating the date of mailing of the notice. The notice may be retained electronically so long as the manner of retention is sufficient for evidentiary purposes.

§ 31.6 Review of Departmental records.

(a) To inspect or copy Departmental records relating to the debt, the debtor must send a written request to the address designated in the notice described in § 31.5. The request must be received by the Department within 60 days from the date of the notice.

(b) In response to a timely request as described in paragraph (a) of this section, the designated Department official shall notify the debtor of the location and time when the debtor may inspect and copy such records. If the debtor is unable to personally inspect such records as the result of geographical or other constraints, the Department will arrange to send copies of the records to the debtor.

§ 31.7 Review of a determination that a debt is past-due and legally enforceable.

(a) *Requesting a review.*

(1) If the debtor believes that all or part of the debt is not past-due or not legally enforceable, the debtor may request a review by the Department by sending a written request to the address provided in the notice. The written request must be received by the Department within 60 days from the date of the notice.

(2) The request for review must be signed by the debtor, state the amount disputed, and fully identify and explain the evidence that the debtor believes supports the debtor's position. The debtor must submit with the request any documents that the debtor wishes to be considered, or the debtor must state in the request that additional information will be submitted within the 60-day time period.

(3) Failure to timely request a review will be deemed an admission by the debtor that the debt is past-due and legally enforceable, and will result in a referral of the debt to the Department of the Treasury without further action.

(b) *Review.* Upon the timely submission of evidence by the debtor, the Department shall review the dispute and shall consider its records and any documentation and evidence submitted by the debtor. The Department shall make a determination based on the review of the written record, and shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(c) A debt that previously has been reviewed pursuant to this part, or that has been reduced to a judgment, will not be reconsidered under this part unless the evidence presented by the debtor disputes payments made or events occurring subsequent to the previous review or judgment.

Dated: August 23, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–30657 Filed 12–3–02; 8:45 am]

BILLING CODE 4150–26–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021120279–2279–01; I.D. 102302B]

RIN 0648–AN12

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council (Council). Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP, this proposed rule would establish an annual coastwide quota for black sea bass and eliminate a provision requiring certain vessels to cancel their Northeast Region Black Sea Bass Permits during a fishery closure if they intend to continue fishing for black sea bass south of Cape Hatteras. Finally, this proposed rule would require that vessels issued a Federal moratorium permit for summer flounder, scup, and black sea bass be subject to the presumption that any fish of these species on board were harvested from the exclusive economic zone (EEZ).

DATES: Comments must be received on or before 5 p.m., local time, on January 21, 2003. (Note: must end no later than the date of the close of the comment period on NOA for FMP)

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP.'' Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the FMP, Amendment 13, its Regulatory Impact Review (RIR) including the Initial Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 200 S. New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288, fax 978–281–9135, or email at Peter.Christopher@noaa.gov.

SUPPLEMENTARY INFORMATION: The purpose of Amendment 13 is to rectify problems in the black sea bass commercial fishery (specifically regarding the temporal and geographic distribution of landings and permit relinquishment requirements for certain vessels) and to consider management measures to minimize the adverse effects of fishing on essential fish habitat. Amendment 13 proposes a new quota program for the black sea bass commercial fishery and a change to the black sea bass permit requirements.

Black Sea Bass Management Measures

The black sea bass fishery is managed in Federal waters under the FMP and by the states through the Atlantic States Marine Fisheries Commission (ASMFC). Throughout the development of Amendment 13, the ASMFC was expected to consider and approve a state-by-state quota program. In August 2002, the ASMFC adopted state-by-state quota allocations for the states of Maine through North Carolina. Each state is required to establish management measures to ensure that its share of the quota is not exceeded.

With respect to the black sea bass fishery, the Council was concerned primarily with the quarterly quota program, which was causing a variety of problems in the fishery. Although the quarterly quota program was intended to ensure sustained landings of the species throughout each quarter, the last three quarters in 1999 and 2000 were closed early because the quotas were reached. Because some of the closures occurred early in the quarter, fishers in some states were not able to fish for black sea bass during the same time periods they had fished in the past. Upon reopening of the fishery in a subsequent quarter, market gluts and drops in prices occurred as high volumes of fish were landed. Further, the first quarter quotas in 1998 through 2000 were not harvested, indicating a problem in the overall allocation of the quota. Inequities in the quarterly quota program have arisen as higher amounts of landings have shifted to the north, leaving southern regions without the landings that may be needed to sustain the fishery in those regions. Finally, during a closure of the fishery, vessels in North Carolina with both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit are required to relinquish their Northeast Black Sea Bass Permits for 6 months if they want to continue to fish for black sea bass south of Cape Hatteras under their Snapper/Grouper Permits. The requirement to relinquish the permit for 6 months leaves these few vessels with no ability to fish for black sea bass north of Cape Hatteras when the fishery reopens in a subsequent quarter. The Council believed that this was inequitable and needed to be addressed in Amendment 13. The Council proceeded with Amendment 13, recognizing that any action it recommended would need to be compatible with the action taken by the ASMFC in order for management to be consistent and effective.

The Council considered several alternatives to the current quarterly coastwide quota program, including state-by-state and regional quotas, state-by-state quotas with a coastwide quota component, subregional quotas with a coastwide component, quota by permit category, and quotas by gear type. The program most compatible with ASMFC allocations would have been a state-by-state quota program; however, the Administrator, Northeast Region, NMFS (Regional Administrator) commented during the development of Amendment 13 that a state-by-state quota program implemented for Federal waters could not be monitored effectively (with current monitoring methods) due to the small amounts of fish some states could be allocated. The Regional Administrator urged the Council to select a quota program that would have sufficiently large allocation shares that they could be effectively monitored by NMFS, or to devise a monitoring system sufficient to monitor small quotas that could be implemented in conjunction with the state-by-state quota program.

The Council determined that it needed to select a quota program alternative that would meet the monitoring needs while remaining compatible with the state-by-state allocations adopted by the ASMFC. The Council selected an annual coastwide quota program that would facilitate ASMFC's state-by-state quota allocations. The Council determined that this was within the range of alternatives considered in the Draft Environmental Impact Statement (DEIS)

because the impacts would be essentially the same as state-by-state allocations. The Council believes that the harvest of the coastwide quota will be extended throughout the year due to the management programs implemented by each state under the ASMFC's management plan.

To implement Amendment 13, NMFS proposes to: (1) Establish an annual (calendar year) coastwide quota for the commercial black sea bass fishery to replace the current quarterly quota allocation system; and (2) eliminate the provision requiring vessels issued both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit to relinquish their Northeast Black Sea Bass Permits for 6 months if they want to continue to fish for black sea bass south of Cape Hatteras under their Snapper/Grouper Permits during a Federal black sea bass fishery closure.

In addition, NMFS proposes to revise the presumptions in 50 CFR 648.14(x) for summer flounder, scup, and black sea bass. During the review of this proposed rule, NMFS determined that § 648.14(x) erroneously omits the presumption that summer flounder, scup, and black sea bass on board were caught in the EEZ for vessels issued moratorium permits under the three fisheries covered by the FMP. Therefore, this proposed rule would add the presumption that all summer flounder, scup, and black sea bass possessed on board a vessel issued a Federal permit under 50 CFR 648.4 are deemed to have been harvested from the EEZ within the management unit for the particular species. This presumption, as it pertains to black sea bass, would not apply to vessels issued a Southeast Region Snapper/Grouper permit and a Northeast Black Sea Bass permit that are fishing for black sea bass south of Cape Hatteras during a black sea bass fishery closure, north of Cape Hatteras.

Classification

At this time, NMFS has not determined that Amendment 13 to the FMP, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and in the SUMMARY. While the IRFA prepared for this action by the Council does not follow NMFS' current ''Guidelines for Economic Analysis of Fishery Management Actions,'' the analysis for this action provides an adequate description of the impacts on small entities for the purposes of the Regulatory Flexibility Act. Nevertheless, NMFS invites the public to comment specifically on the adequacy of the analysis using these criteria.

The proposed measures, and the alternatives, for addressing inefficiencies and inequities in the black sea bass fishery could affect any commercial vessel holding an active Federal permit for black sea bass, as well as vessels that fish for black sea bass in state waters. Data from the Northeast permit application database show that 1,119 commercial vessels are currently permitted to fish for black sea bass in Federal waters. Of these vessels, the Council considered the economic impacts on 727 vessels that were active in the black sea bass fishery in 2000. The analysis further investigated impacts on vessels by home state and affected counties. All of the federally permitted vessels, and vessels using the identified gear types listed above, readily fall within the Small Business Administration's (SBA) definition of small business and the RFA's definition of ''small entity.'' Therefore, all alternatives and analyses associated with this proposed rule necessarily are alternatives and analyses applicable to impacts on small entities.

No additional recordkeeping and reporting requirements are included in this proposed rule.

Regulations implemented by the states under the ASMFC's Fishery Management Plan for black sea bass, which include state-by-state quota allocations, would overlap, but would not duplicate or conflict with the Federal coastwide quota program proposed in this action. NMFS is not aware of any other Federal rules that duplicate, overlap, or conflict with the proposed action. Any unavoidable adverse effects of the proposed action should be minimized due to the compatibility of the Federal coastwide annual quota program and the ASMFC's FMP.

Black Sea Bass Quota Alternatives

Under the proposed coastwide annual quota, the total number of vessels likely to be impacted by revenue losses of 5 percent or greater is expected to be similar to the number of vessels impacted under the state-by-state allocation alternative that is based on the best 5 landing years for each state during the period 1988 to 1997 (the alternative included in the FEIS that best resembles the ASMFC's state-by-state quota allocations). Relative to vessel revenues in 2000, the economic impacts for the 727 vessels participating in the black sea bass fishery range from expected revenue losses of less than 5 percent for a total of 137 vessels, to a loss in revenues of greater than or equal to 50 percent, for 12 vessels. An increase in revenue would be expected for 564 vessels. A total of 26 out of 727 vessels (3.6 percent) considered in the analysis would be expected to suffer losses in revenue of 5 percent or greater relative to 2000 revenues. In addition, impacts were examined relative to a vessel's home state as reported on the vessel's permit application. Vessels with revenue losses exceeding 5 percent are concentrated in Barnstable and Suffolk Counties, Massachusetts. The proposed action alternative may further discourage derby-style fishing because landings would be constrained to the landings allowed under each state's management program to comply with the ASMFC's state-by-state quota allocations. Distributing the landings throughout the year would reduce the likelihood of an initial market glut and thus lowered black sea bass prices. Seasonal closures would be less likely, eliminating the economic burdens on fishermen that would have little or no income during a fishery closure.

Several alternatives to the proposed coastwide annual quota (including the quarterly allocation, state-by-state allocation, and various allocations by fishery gear sector, permit category, or region) were considered in the FEIS for Amendment 13 to the FMP. Each of the alternatives was also broken into sub-alternatives based on historical black sea bass landings information from either 1988 through 1997, or 1993 through 1997. Further, the quota by permit category alternative was broken down into alternatives with two or three permit categories, and the state-by-state quota alternative contained two sub-alternatives using the best 5 years of landings from either 1980 through 1997, or 1988 through 1997. While the de minimus specification alternative is presented as a separate alternative in the FEIS and RIR, its impacts would be considered under the state-by-state quota program alternatives. The analysis concluded that none of these alternatives would minimize economic impacts on small entities relative to the proposed measures. NMFS is not aware

of any other alternative that would achieve this action's objectives and minimize economic impacts on small entities.

Other Black Sea Bass Commercial Fishery Management Alternatives

According to both the Northeast and Southeast Region databases, the proposed action to no longer require vessels issued both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit to relinquish their Northeast Region Black Sea Bass Permit during a fishery closure north of Cape Hatteras if they want to continue fishing for black sea bass south of Cape Hatteras under their Southeast Region Snapper Grouper Permit would affect five vessels. Because the action would allow vessels to continue fishing south of Cape Hatteras, it would have no negative impacts on the five affected vessels, or any other vessels that in the future may be affected by the proposed elimination of the restriction. In comparison, continuation of the status quo, or requiring vessels to relinquish their Northeast Region Black Sea Bass Permit during a closure, could contribute to revenue losses for vessels that would lose fishing time north of Cape Hatteras when the fishery re-opened. However, as noted, this would affect only 5 of the 727 vessels considered in the IRFA.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: November 29, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory ProgramsNational Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (b) is revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(b) Permit conditions. Any person who applies for a fishing permit under this section must agree, as a condition of the permit, that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ; and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species except tilefish managed under this part must comply with the more restrictive requirement. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the tilefish management unit for tilefish managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium, or a spiny dogfish, or bluefish, commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coast-wide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish limited access permit must agree not to land tilefish after NMFS has published a notification in the **Federal Register** stating that the quota for the tilefish limited access category under which a vessel is fishing has been harvested. Owners or operators fishing for surfclams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surfclam and ocean quahog requirement of this part differs from a surfclam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surfclams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surfclam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters.

* * * * *

3. In § 648.14, paragraphs (a)(96), (u)(3), (u)(11), (x)(3), (x)(6), and (x)(7) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(96) Purchase or otherwise receive for commercial purposes black sea bass landed for sale by a moratorium vessel in any state, or part thereof, north of 35°15.3' N. lat., after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

* * * * *

(u) * * *

(3) Land black sea bass for sale in any state, or part thereof, north of 35°15.3' N. lat. after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

* * * * *

(11) Possess black sea bass after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass, unless the vessel has been issued a Southeast Region Snapper/Grouper Permit and fishes for and possess black sea bass south of 35°15.3' N. lat.

* * * * *

(x) * * *

(3) Summer flounder. All summer flounder retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

* * * * *

(6) Scup. All scup retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

(7) Black sea bass. All black sea bass retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ, unless the vessel also has been issued a Southeast Region Snapper/Grouper permit and fishes for, retains, or possesses black sea bass south of 35°15.3' N. lat.

4. In § 648.140, paragraph (d)(4) is removed and paragraphs (b)(1), (b)(2), and (d) are revised to read as follows:

§ 648.140 Catch quotas and other restrictions.

* * * * *

(b) * * *

(1) A commercial quota allocated annually, set from a range of zero to the maximum allowed to achieve the specified target exploitation rate, set after the deduction for research quota.

(2) A commercial possession limit for all moratorium vessels may be set from a range of zero to the maximum allowed to assure that the annual coastwide quota is not exceeded, with the provision that these quantities be the maximum allowed to be landed within a 24–hour period (calendar day).

* * * * *

(d) *Distribution of annual quota.* (1) Beginning on [*insert effective date of the final rule*], a commercial annual coastwide quota will be allocated to the commercial black sea bass fishery.

(2) All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3' N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters will be counted against the quota by the state in which it is landed, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission. The Regional Administrator will determine the date on which the coastwide quota will have been harvested; beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3' N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the **Federal Register** advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3' N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission.

(3) Landings in excess of the annual coastwide quota will be deducted from the quota allocation for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30, and landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing the restoration.

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[FR Doc. 02–30756 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 233

Wednesday, December 4, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Forms FNS–806–A, Claim for Reimbursement (National School Lunch and School Breakfast Programs), and FNS–806–B, Claim for Reimbursement (Special Milk Program for Children)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the public to comment on the Food and Nutrition Service (FNS) use of forms FNS–806–A and FNS–806–B, Claims for Reimbursement. The forms are used to collect data to determine the amount of reimbursement school food authorities participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), and Special Milk Programs for Children (SMP) are eligible to receive.

DATES: Comments on this notice must be received by February 3, 2003, to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

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; (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 use of appropriate automated collection techniques or other forms of information technology.

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.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Hallberg at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: Forms FNS–806–A, Claim for Reimbursement (National School Lunch, and School Breakfast Programs), and FNS–806–B, Claim for Reimbursement (Special Milk Program).

OMB Numbers: 0584–0284.

Expiration Date: October 31, 2002.

Type of Request: Extension of a currently approved information collection.

Abstract: The NSLP, SBP and SMP claims for reimbursement forms, FNS–806–A and FNS–806–B, are used to collect meal and cost data from school food authorities whose participation in these programs are administered directly by FNS Regional Offices (Regional Office Administered Programs, or ROAP). In order to determine the amount of reimbursement for meals and milk served, the school food authorities are required to complete these forms. The completed forms are submitted to FNS Regional Offices where they are entered into a computerized payment system. The payment system computes earned reimbursement.

Earned reimbursement in the NSLP, SBP and SMP is based on performance that is measured as an assigned rate per meal or half pint of milk served, with cost comparisons for free milk and severe need breakfasts. To fulfill the earned reimbursement requirements set forth in NSLP, SBP and SMP regulations issued by the Secretary of Agriculture (7 CFR 210.8, 220.11,215.10), the meal and cost data must be collected on forms FNS–806–A and FNS–806–B. These forms are an intrinsic part of the accounting system being used currently by the subject programs to ensure proper reimbursement as well as to facilitate adequate recordkeeping.

This request is being made to extend the current information collection for an additional three years. Current methods are the only practical means of collecting this information considering the resources of form users.

The claims for reimbursement for the NSLP and SBP are on the FNS–806–A and the claims for SMP are on the FNS–806–B.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response.

Respondents: The respondents are school food authorities and facilities participating in the NSLP, SBP and SMP under the observation of the FNS ROAP.

Estimated Number of Respondents—Form 806–A: 209
Estimated Number of Responses per Respondent—Form 806–A: 10
Estimated Total Annual Responses—Form 806–A: 2090
Estimated Time per Response—Form 806–A: .5
Estimated Total Annual Burden—Form 806–A: *1045* hours
Estimated Number of Respondents—Form 806–B: 151
Estimated Number of Responses per Respondent—Form 806–B: 10
Estimated Total Annual Responses—Form 806–B: 1510
Estimated Time per Response—Form 806–B: .5
Estimated Total Annual Burden—Form 806–B: *755* hours
Total Annual Burden: Form 806–A and Form 806–B: 1045 + 755 = *1800* hours

Dated: November 26, 2002.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 02–30656 Filed 12–3–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and

217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after December 1, 2002. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Appeals and Litigation Group Leader; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3696.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review.

Regional Forester decisions in North Dakota: Bismarck Tribune.

Regional Forester decisions in South Dakota: Rapid City Journal.

Beaverhead/Deerlodge—Montana Standard.

Bitterroot—Ravalli Republic.

Clearwater—Lewiston Morning Tribune.

Custer—Billings Gazette (Montana). Rapid City Journal (South Dakota).

Dakota Prairie National Grasslands—Bismark Tribune (North and South Dakota).

Flathead—Daily Inter Lake.

Gallatin—Bozeman Chronicle.

Helena—Independent Record.

Idaho Panhandle—Spokesman Review.

Kootenai—Daily Inter Lake.

Lewis & Clark—Great Falls Tribune.

Lolo—Missoulian.

Nez Perce—Lewiston Morning Tribune.

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: November 25, 2002.

Kathleen A McAllister,

Deputy Regional Forester.

[FR Doc. 02–30687 Filed 12–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas and Lassen National Forests; California; Administrative Study 4202–02–01

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, Plumas and Lassen National Forests, in cooperation with the Pacific Southwest Research Station will prepare an Environmental Impact Statement (EIS) on a proposal to complete an administrative study on approximately 493,000 acres of National Forest System lands. The official title of the proposed administrative study is ''Fire and Fuels Management, Landscape Dynamics, and Fish and Wildlife Resources: Study Design for Integrated Research on the Plumas and Lassen National Forests.''

Direction to undertake this administrative study is in the Regional Forester's Record of Decision (January 12, 2001) for the Sierra Nevada Forest Plan Amendment. In his decision, the Regional Forester directed the Forest Service and the Pacific Southwest Research Station to cooperatively design and implement a study to examine the relationship between management-caused changes in vegetation and their effects on spotted owl habitat and spotted owl population dynamics. The Regional Forester also directed that this study include group selection provisions of the Herger-Feinstein Quincy Library Group pilot project.

To meet the Regional Forester's direction, the administrative study is designed to address four principal questions:

1. Are specific combinations of defensible fuel profile zones (DFPZs) and subsequent area fuel treatments effective in reducing the extent and severity of wildlands fires? What are practical considerations and costs of constructing, maintaining, and using (for fire suppression) alternative combinations of fuel treatments? Are hypothesized fire management gains from these fuel treatment combinations (in the form of reduced property and resource losses, increased resource benefits from wildland fires, and increased suppression efficiencies) commensurate with the costs and potential adverse ecological impacts of the treatments?

2. Is small group selection effective in promoting regeneration of shade-intolerant tree species; establishing desirable forest age, species, and size distributions at landscape scales; and providing sustainable levels of timber harvest?

3. How does the combination of DFPZs, area treatments, group selection, riparian protection standards, and species-specific protection measures—collectively defined as a management regime—affect landscape dynamics such as forest structure, composition, and succession at multiple scales of space and time?

4. How will key species, such as California spotted owls and their prey, respond to changes in vegetation composition, structure, and distribution induced by different forest management regimes? How is change manifested at the individual or local population level and larger population scales?

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing on or before February 3, 2003.

ADDRESSES: Send written comments to Forest Supervisor, Plumas National Forest, P.O. Box 11500, Quincy, CA 95971.

FOR FURTHER INFORMATION CONTACT: Anthony Matthews, Interdisciplinary Team Leader, Plumas National Forest, telephone (530) 283–5549.

SUPPLEMENTARY INFORMATION:

The Proposed Action

The proposed study encompasses eleven treatment units ranging in size from 45,000 to 79,000 acres (average size is 55,700 acres). The total area encompassed by the eleven treatment units is approximately 613,000 acres (493,000 acres of National Forest and 120,000 acres of other ownership). Two of the treatment units are located on the Lassen National Forest and nine on the Plumas National Forest.

The eleven treatment units (TUs) are divided into three treatment regimes (TRs) designed to reflect different levels of vegetative and fuels management and to create a range of forest conditions over the long term. TR–A proposes the least amount of activity and consists of 3 TUs (total of 191,000 acres); TR–B proposes the next highest amount and intensity of management activity and consists 4 TUs (total of 198,000 acres); and, TR–C proposes the greatest amount and intensity of management activity and consists of 4 TUs (total of 224,000 acres).

Specifically, TR–A includes approximately 13,854 acres of proposed defensible fuels profile zones (DFPZ) and 30,175 acres of strategically placed area treatments (SPLAT) designed to reduce fuel levels across the landscape. An estimated 11 miles of system road

and 18 miles of temporary road would be constructed. Group selection is not proposed within TR–A. All activities proposed within TR–A would comply with current forest plan direction as amended by the Sierra Nevada Forest Plan Amendment.

TR–B includes approximately 15,970 acres of DFPZ and 39,185 acres of SPLATs. In addition, TR–B includes approximately 3,833 acres of group selection designed as ½-acre to 2-acre openings. An estimated 37 miles of system road and 19 miles of temporary road would be constructed. TR–B also proposes approximately 23 miles of road to be decommissioned.

TR–C includes approximately 19,055 acres of DFPZ and 46,439 acres of SPLATs. In addition, TR–C includes approximately 7,945 acres of group selection designed as ½-acre to 2-acre openings. An estimated 42 miles of system road and 34 miles of temporary road would be constructed. TR–C also proposes approximately 15 miles of road to be decommissioned.

Both TR–B and TR–C include a project-specific, non-significant forest plan amendment for the proposed deviation from current diameter and canopy cover standards. These deviations are necessary to provide the contrast and minimum spread of effects between the various management regimes and to increase the chance of invoking a range of resource responses necessary to meet the research objectives.

The proposed DFPZs and SPLATs are designed to harvest trees up to 30 inches diameter-at-breast-height (DBH). Group selection within TR–B and TR–C proposes to harvest trees up to 32 inches DBH in seven treatment units and up to 34 inches DBH in one treatment unit. These diameters deviate from current, amended forest plan direction which allows for harvest of trees up to 12 inches (20 inches for operability) in old-forest emphasis areas and 20 inches in general forest areas.

TR–B and TR–C also deviate from the current, amended forest plan standard that governs canopy cover. Current direction for areas where existing canopy cover exceeds 50% is that it not be reduced below 50%; also, where existing canopy is between 40% and 50%, no reduction is allowed. Under TR–B and TR–C, canopy cover would be reduced to a level less than 50% within the DFPZs and SPLATs. However, canopy cover would not be reduced below 40% across the treated landscape.

Implementation is proposed to occur within a six-year period. Group selection and DFPZs would be implemented in the first three to four years with SPLATs implemented during the last 3 years. Monitoring of the effects of all activities would occur during each of the implementation years and beyond for an estimated 10 to 20-year period.

Decision To Be Made

The decision to be made is whether to: (1) implement the proposed action, including the project-specific, non-significant forest plan amendment; (2) meet the purpose and need for action through some other combinations of activities; or (3) take no action at this time.

Lead Agency And Responsible Officials

The USDA Forest Service is the lead agency for this proposal. Responsible officials are James M. Peña (Forest Supervisor, Plumas National Forest, P.O. Box 11500, Quincy, CA 95971) and Edward C. Cole (Forest Supervisor, Lassen National Forest, 2550 Riverside Drive, Susanville, CA 96130).

Tentative or Preliminary Issues and Possible Alternatives

Alternatives being considered at this time include: (1) The proposed Action and (2) No Action. Other alternatives may be developed based on significant issues identified during the scoping process for this EIS. All alternatives would be expected to respond to the specific purpose and need and research objectives of the proposed administrative study.

The scoping process for this analysis includes: (a) Identifying potential issues; (b) identifying issues to be analyzed in depth; (c) eliminating non-significant issues or those previously covered by a relevant environmental analysis; (d) exploring additional alternatives; and, (e) identifying potential environmental effects of the proposed action and alternatives. As part of the current scoping process, the Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed action.

Public participation is especially important at several points throughout the analysis. To facilitate public participation, information about the proposed action is listed in the Plumas National Forest and the Lassen National Forest Quarterly Schedule of Proposed Actions. An information packet will be mailed to all who have expressed interest in the proposed action. Notification of the public scoping period will be published in the Feather River Bulletin, Quincy, CA, the Sacramento Bee, Sacramento, CA, and the Lassen County Times, Susanville, CA.

Comments received during the scoping process should be in writing and should be specific to the proposed action. The comments should describe, as clearly and completely as possible, any issues the individual has with the proposal. An issue is defined as a point of discussion, debate, or dispute regarding the proposed action or its environmental effects.

Identification of Permits or Licenses Required

An Air Pollution Permit and a Smoke Management Plan are required by local agencies to implement the proposed action.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in March 2003. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the Federal Register. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for review and comment. It is very important that those interested in the management of the Plumas and Lassen National Forests participate at that time. The record of decision and final EIS are expected to be published in early June, 2003.

The Reviewer's Obligation To Comment

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage, but are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in the proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time

when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality Regulation of implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: November 27, 2002.

James M. Peña,

Forest Supervisor.

[FR Doc. 02–30689 Filed 12–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fresno County Resource Advisory Committee will meet in Clovis, California. The purpose of the meeting is to discuss and to recommend project proposals for FY2002 funds regarding the Secure Rural Schools and Community Self-Determination Act of 2000 (P.L. 106–393) for expenditure of Payments to States Fresno County Title II funds.

DATES: The will be held January 21, 2003, 6:30 pm to 9:30 pm.

ADDRESSES: 1600 Tollhouse Road, California. The meeting will be held at the Sierra National Forest, Forest Supervisor's office, 1600 Tollhouse Road, Clovis, California 93611–0532. Send written comments to Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, c/o Sierra National Forest, High Sierra Ranger District, 29688 Auberry Road, Prather, CA 93651 or electronically to *nfleenor@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Nancy Fleenor, Fresno County Resource Advisory Committee Coordinator, (559) 855–5355 ext. 3350.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Payments to States Fresno County title II project matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public sessions will be provided and individuals who made written requests by January 21, 2003 will have the opportunity to address the Committee at those sessions. Agenda items to be covered include: (1) Review and approve the December 17, 2002 meeting notes; (2) Discuss new business of the RAC if applicable; (3) Vote to recommend funds for FY2002 Title II Projects proposals received from the public and/or the RAC members; (4) Confirm the date, location and agenda of the next meeting; (6) Public comment.

Dated: Nobember 26, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02–30696 Filed 12–03–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Columbia County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Columbia County Resource Advisory Committee (RAC) will meet on December 9, 2002 in Dayton, Washington. 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, for Fiscal Year 2003 and outyears.

DATES: The meeting will be held on December 9, 2002 from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held at the Dayton Post Office located at 202 South 2nd Street, Dayton, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input will be solicited and individuals will have the opportunity to address the committee at that time.

Dated: November 26, 2002.

Monte Fujishin,

Designated Federal Official.

[FR Doc. 02–30748 Filed 12–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southeast Washington Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–4630, the Southeast Washington Resource Advisory Committee (RAC) will meet on January 8, 2003 in Clarkston, Washington. The purpose of the meeting is to discuss the selection of Title II projects under Pub. L. 106–393, HR. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act, for Fiscal Year 2003 and outyears.

DATES: The meeting will be held on January 8, 2003 from 6 p.m. to 8 p.m.

ADDRESSES: The meeting will be held in the conference room of Bennett Lumber Company located at 1951 Wilma Drive, Clarkston, Washington.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, USDA, Umatilla National Forest, Pomeroy Ranger District, 71 West Main Street, Pomeroy, WA 99347. Phone: (509) 843–1891.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public input will be solicited and individuals will have the opportunity to address the committee at that time.

Dated: November 26, 2002.

Monte Fujishin,

Designated Federal Official.

[FR Doc. 02–30749 Filed 12–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RBS's) intention to request an extension for a currently approved information collection in support of the program for the 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative.

DATES: Comments on this notice must be received by February 3, 2003 to be considered.

FOR FURTHER INFORMATION CONTACT: Mr. Edgar L. Lewis, Program Manager, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4221, 1400 Independence Avenue SW., Washington, DC 20250–3252. Telephone: (202) 690–3407, E-mail: *edgar.lewis@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative.

OMB Number: 0570–0041.

Expiration Date of Approval: January 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The purpose of the 1890 Land Grant Institutions Rural Entrepreneurial Program Outreach Initiative is to develop programs that will develop future entrepreneurs and businesses in rural America in those communities that have the most economic need. These programs must provide sustainable development that is in keeping with the needs of the community and are designed to help overcome current identified economic problems. Proposals in both traditional and nontraditional business enterprises are encouraged. The initiative seeks to create a working partnership through cooperative agreements between 1890 Institutions and RBS, to develop programs to assist future entrepreneurs and businesses.

Estimate of Burden: Public reporting burden for this collection is estimated to average 15 minutes to 15 hours per response.

Respondents: Only 1890 Land Grant Institutions of Higher Education and Tuskegee University.

Estimated Number of Respondents: 18.

Estimated Number of Responses per Respondent: 17.

Estimated Number of Responses: 297.

Estimated Total Annual Burden on Respondents: 762 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden to collect the required information, including the validity of the strategy 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. Comments on the paperwork burden may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 27, 2002.

John Rosso,

Administrator, , Rural Business-Cooperative Service.

[FR Doc. 02–30744 Filed 12–3–02; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty new shipper review.

SUMMARY: On July 31, 2002, the Department of Commerce published the preliminary results of its new shipper reviews of fresh garlic from the People's Republic of China. On October 28, 2002, we published the rescission of the new shipper review of Shandong Heze International Trade and Developing Company and notice of the postponement of our final results of review for Jinan Yipin Corporation, Ltd. The period of review is November 1, 2000, through October 31, 2001. We gave interested parties an opportunity to comment on our preliminary results. Based on the comments we received from the interested parties, we have made changes in the margin calculation for Jinan Yipin Corporation, Ltd., for the final results of review. The respondent's final weighted-average dumping margin is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Mark Ross, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047 or (202) 482–4794, respectively.

The 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 by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the provisions codified at 19 CFR part 351 (April 2001).

Background

On July 15 and 16, 2002, the Department conducted a U.S. sales verification of Jinan Yipin Corporation Ltd.'s (Jinan Yipin's) U.S. affiliate, American Yipin Produce Company (American Yipin). See Memorandum to the file titled ''U.S. Market Verification of the Response of Jinan Yipin Corporation, Ltd., to the Questionnaire of the New Shipper Review (11/01/00–10/31/01) of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China,'' dated October 11, 2002.

We published in the **Federal Register** the preliminary results of the new shipper review on July 31, 2002. *See Fresh Garlic from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review and Intent to Rescind in Part,* 67 FR 49669 (July 31, 2002) (*Preliminary Results*).

On August 14, 2002, the Department toured fresh garlic production operations in Coalinga, California. See Memorandum to the file titled ''Tour of U.S. Production Operations,'' dated September 10, 2002.

On August 20, 2002, the petitioners and the respondent submitted additional surrogate-value data and on August 30, 2002, the petitioners submitted updated surrogate-value data.

On September 19 and 20, 2002, the Department conducted a Factors of Production (FOP) data verification of Jinan Yipin. See Memorandum to the file titled ''*Verification Report for Jinan Yipin Corporation, Ltd.*,'' dated October 16, 2002.

On October 24, 2002, the petitioners and Jinan Yipin submitted their case briefs, and on October 29, 2002, the petitioners and Jinan Yipin submitted rebuttal briefs. On November 6, 2002, we held a hearing in this review.

The Department has conducted this review in accordance with section 751 of the Act.

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

Separate Rates

In our *Preliminary Results*, we found that Jinan Yipin had met the criteria for the application of a separate antidumping duty rate. We have not received any information since the *Preliminary Results* which would warrant reconsideration of our separate-rate determination with respect to Jinan Yipin. Therefore, we continue to find that Jinan Yipin should be assigned an individual dumping margin. For a complete discussion of the Department's determination that the respondent is entitled to a separate rate, see the *Preliminary Results*, 67 FR at 49669.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the Issues and Decision Memorandum (Decision Memo) from Susan Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in the briefs 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 Memo can be accessed directly on the Web at *http://www.ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on the use of additional publicly available information and the comments we received from the interested parties, we have made changes in our calculation of the weighted-average dumping margin for Jinan Yipin.

For the final results, we calculated average surrogate percentages for factory overhead, selling, general, and administrative expenses, and profit using the 2000–2001 financial reports of Agro Dutch Foods Ltd., Flex Foods Ltd., and Himalya International Ltd. *See* Decision Memo at Comment 5. We also deducted a line item from the financial statements to avoid double-counting. We incorporated the pre-verification corrections as presented at the start of both the U.S. sales and factor-of-production verifications. We deducted a portion of building depreciation from the factory overhead equal to the portion of the lease agreement pertinent to bartered garlic sprouts. We valued garlic seed with information for garlic from two varieties of Indian garlic (*i.e.*, Yamuna Safed and Agrifound Parvati). We valued electricity with information for agricultural electricity rates published by the *Teri Energy Data Directory and Yearbook 1999/2000.* We removed packing materials and packing labor from the calculation of direct materials. We treated water as a variable overhead expense rather than a direct material.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondent for use in our final results. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Final Results of Review

The weighted-average dumping margin for subject merchandise manufactured and exported by Jinan Yipin for the period November 1, 2000, through October 31, 2001 is 0.00 percent.

Assessment Rates

The Department will determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the import-specific assessment rate is zero.

Cash-Deposit Requirements

Bonding is no longer permitted to fulfill security requirements for shipments from Jinan Yipin of fresh garlic from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of new shipper review. The following cash-deposit requirements will be effective upon publication of the final results of this new shipper review for all shipments of subject merchandise entered or withdrawn from warehouse for consumption on or after the publication date as provided for by section 751(a)(2)(C) of the Act: (1) For subject merchandise manufactured (*i.e.*, grown) and exported by Jinan Yipin, no cash deposit is required; (2) for subject merchandise exported by Jinan Yipin but not manufactured (*i.e.*, grown) by Jinan Yipin, the cash-deposit rate will be the PRC countrywide rate; (3) for all other PRC exporters, which have not been found to be entitled to a separate rate, the cash-deposit rate will be the PRC countrywide rate, which is 376.67 percent; (4) for all non-PRC exporters of subject merchandise, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final

results of the next administrative review.

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: November 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30771 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–877]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Lawn and Garden Steel Fence Posts From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Salim Bhabhrawala or Christopher Smith at (202) 482–1784 or (202) 482–1442, respectively; AD/CVD Enforcement, Office 5, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2002).

Preliminary Determination

We preliminarily determine that lawn and garden steel fence posts (fence posts) from the People's Republic of China (PRC) are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the ''Suspension of Liquidation'' section of this notice.

Case History

This investigation was initiated on May 21, 2002.[1] *See Initiation of Antidumping Duty Investigation: Lawn and Garden Steel Fence Posts from the People's Republic of China,* 67 FR 37388 (May 29, 2002) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

On June 17, 2002, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of fence post imports from the PRC. *See Lawn and Garden Steel Fence Posts from the People's Republic of China,* 67 FR 42581 (June 24, 2002).

On July 29, 2002, the Department issued its antidumping questionnaire[2] to the PRC Bureau of Fair Trade for Imports and Exports (BOFT), through the Embassy of the PRC in Washington, D.C. The Department requested that BOFT send the questionnaire to the companies who manufacture and export fence posts to the United States, as well as manufacturers who produce fence posts for companies who were engaged in exporting subject merchandise to the United States during the period of investigation (POI). In addition, we sent the questionnaire to BaoSteel Group International Trade Corporation (BaoSteel), Hebei Metals and Minerals Import and Export Corporation (Hebei), and China Nanyang Import & Export Corporation (Nanyang), which had contacted us through counsel. Only BaoSteel, Hebei, and Nanyang responded to the Department's questionnaire. The Department issued supplemental questionnaires to BaoSteel, Hebei, and Nanyang, where appropriate.

On August 26, 2002, the petitioner requested a postponement of the preliminary determination in this investigation. On September 10, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until November 27, 2002. *See Notice of Postponement of Preliminary Antidumping Duty Determination: Lawn and Garden Steel Fence Posts from the People's Republic of China,* 67 FR 57384 (September 10, 2002).

On August 27, 2002, we invited interested parties to provide comments on the surrogate country selection and publicly available information for valuing the factors of production. We received comments from BaoSteel on October 29, 2002, Hebei and Nanyang on September 18, 2002, and October 10, 2002, and from the petitioner on September 30, 2002, and October 23, 2002.

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On November 1, 2002, BaoSteel requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. On November 5, 2002, Hebei and Nanyang made the same request. All three respondents included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. In accordance with section 351.210(e) of the Department's regulations, because we have made an affirmative preliminary determination, the requesting parties account for a significant proportion of exports of the subject merchandise, and no compelling reasons exist to deny the request, we

[1] The petitioner in this investigation is the Steel City Corporation.

[2] Section of A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under this investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the factors of production of the merchandise under investigation. Section E requests information on further manufacturing.

have postponed the final determination until not later than 135 days after the date of the publication of the preliminary determination, and are extending the provisional measures accordingly.

Period of Investigation

The POI is October 1, 2001, through March 31, 2002. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, May, 2002). *See* 19 CFR 351.204(b)(1).

Scope of Investigation

For purposes of this investigation, the products covered include all lawn and garden fence posts produced in the PRC, regardless of form, shape, or size. The fence posts included within the scope of this investigation weigh up to 1 pound per foot and are made of steel and/or any other metal. Imports of these products are classified under the following categories: fence posts, studded with corrugations, knobs, studs, notches or similar protrusions with or without anchor posts. These posts are normally ''U'' shaped or ''hat'' shaped or any other similar shape excluding round or square tubing or pipes.

These posts are normally made in two different classes, light and heavy duty. Light duty lawn and garden fence posts are normally made of 14 gauge steel (0.068 inches–0.082 inches thick), 1.75 inches wide, in 3, 4, 5, or 6 foot lengths. These posts normally weigh approximately 0.45 pounds per foot and are packaged in mini-bundles of 10 posts and master bundles of 400 posts. Heavy duty lawn and garden steel fence posts are normally made of 13 gauge steel (0.082 inches–0.095 inches thick), 3 inches wide, in 5, 6, 7, and 8 foot lengths. Heavy duty posts normally weigh approximately 0.90 pounds per foot and are packaged in mini-bundles of 5 and master bundles of 200. Both light duty and heavy duty posts are included within the scope of the investigation.

Imports of these products are classified under the following Harmonized Tariff Schedules of the United States (HTSUS) subheading: 7326.90.85.35. Fence posts classified under subheading 7308.90 are also included within the scope of the investigation if the fence posts are made of steel and/or metal.

Specifically excluded from the scope are ''tee'' posts, farm posts, and sign posts, provided that the posts weigh over 1 pound per foot.[3] Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the written description of the merchandise under investigation is dispositive.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy (NME) country in all its past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China,* 67 FR 36570, 36571 (May 24, 2002); and *Notice of Final Determination of Sales at Less Than Fair Value Certain: Folding Metal Tables and Chairs from the People's Republic of China,* 67 FR 20090 (April 24, 2002). In accordance with section 771(18)(C) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked. No party to this investigation has sought revocation of the NME status of the PRC. Therefore, pursuant to section 771(18)(C) of the Act, the Department will continue to treat the PRC as an NME country.

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value (NV) on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section, below.

Separate Rates

In an NME proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR 19026, 19027 (April 30, 1996). BaoSteel, Hebei, and Nanyang have provided the requested company-specific separate rates information and have indicated that there is no element of government ownership or control over their operations. We have considered whether BaoSteel, Hebei, and Nanyang are eligible for a separate rate as discussed below.

The Department's separate-rates test is not concerned, in general, with macroeconomic/border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. Rather, the test focuses on controls over the export-related investment, pricing, and output decision-making process at the individual firm level. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine,* 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 62 FR 61276, 61279 (November 17, 1997); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey From the People's Republic of China,* 60 FR 14725, 14726–27 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. *See Silicon Carbide* and the *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

BaoSteel, Hebei, and Nanyang have placed on the record a number of documents to demonstrate the absence of *de jure* control, including their business licenses, and the ''Company Law of the People's Republic of China'' of December 29, 1993. Other than

[3] Tee posts are made by rolling red hot steel into a ''T'' shape. These posts do not have tabs or holes to help secure fencing to them and have primarily farm and industrial uses.

limiting BaoSteel's, Hebei's, and Nanyang's operations to the activities referenced in the license, we noted no restrictive stipulations associated with the license. In addition, in previous cases, the Department has analyzed the ''Company Law of the People's Republic of China'' and found that it establishes an absence of *de jure* control. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China,* 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination. Therefore, based on the foregoing, we have preliminarily found an absence of *de jure* control.

B. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

With regard to the issue of *de facto* control, BaoSteel, Hebei, and Nanyang have reported the following: (1) There is no government participation in setting export prices; (2) their managers have authority to bind sales contracts; (3) they do not have to notify any government authorities of their management selection, and (4) there are no restrictions on the use of their export revenue and they are responsible for financing their own losses. Additionally, BaoSteel's, Hebei's, and Nanyang's questionnaire responses do not suggest that pricing is coordinated among exporters. Furthermore, our analysis of BaoSteel's, Hebei's, and Nanyang's questionnaire responses reveals no other information indicating governmental control of export activities. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* government control over BaoSteel's, Hebei's, and Nanyang's export functions. Consequently, we preliminarily determine that BaoSteel, Hebei, and Nanyang have met the criteria for the application of separate rates. Since BaoSteel, Hebei, and Nanyang are the only responding producers/exporters, we preliminarily determine, as facts available, that all other non-responsive producers/exporters have not met the criteria for application of separate rates.

The PRC-Wide Rate

In all NME cases, the Department makes a rebuttable presumption that all exporters located in the NME country comprise a single exporter under common government control, the ''NME entity.'' Although the Department provided all PRC exporters of the subject merchandise, including BaoSteel, Hebei, Nanyang, and BOFT, through the Embassy of the PRC in Washington, D.C., with the opportunity to respond to its questionnaire, only BaoSteel, Hebei, and Nanyang submitted responses thereto. However, our review of U.S. import statistics reveals that there are other PRC companies, in addition to BaoSteel, Hebei, and Nanyang, that exported fence posts to the United States during the POI. Because these exporters did not submit a response to the Department's questionnaire, and thus did not demonstrate their entitlement to a separate rate, we have implemented the Department's rebuttable presumption that these exporters constitute a single enterprise under common control by the PRC government, and we are applying adverse facts available to determine the single antidumping duty rate, the PRC-wide rate, applicable to all other PRC exporters comprising this single enterprise. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706, 25707 (May 3, 2000).

Use of Facts Otherwise Available

Section 776(a)(2) 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) of the Act, facts otherwise available in reaching the applicable determination. As explained above, some exporters of the subject merchandise failed to respond to the Department's request for information. The failure of these exporters to respond significantly impedes this proceeding. Thus, pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have based the PRC-wide rate on total facts available.

In applying facts otherwise available, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action (SAA) accompanying the URAA,* H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, ''affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *See Antidumping Countervailing Duties; Final Rule,* 62 FR 27296, 27340 (May 19, 1997). In this case, the complete failure of these exporters to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act. However, section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Independent sources may include published price lists, official import statistics and Customs data, and information obtained from interested parties during the particular investigation or review. *See* SAA at 870 and 19 CFR 351.308(d). ''Corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996)

For our preliminary determination, as adverse facts available, we have used as the PRC-wide rate, the highest recalculated dumping margin from the petition (see below). In the petition, the petitioner based export price (EP) on the actual prices of fence posts, which were produced in the PRC, offered by a U.S. importer.[4] For the NV calculation, the petitioner based the factors of production, as defined by section 773(c)(3) of the Act (raw materials, labor, energy, and representative capital costs) on the quantities of inputs used by the petitioner.

With regard to the EP calculation in the petition, the petitioner obtained price quotes offered by a U.S. importer who sold subject merchandise. We corroborated the petitioners' price quotations with data submitted by BaoSteel, Hebei, and Nanyang in its questionnaire responses. The price quotations fell within the range of export prices reported by the respondents in this proceeding and are therefore reliable and relevant. Therefore, we find that the U.S. price used in the petition margin calculation is sufficiently corroborated.

To corroborate the petitioners' NV calculations, we compared the petitioner's factor consumption data to that data on the record of this investigation. As discussed in a separate memorandum to the file, we found that the factors' consumption data in the petition were corroborated. *See* the Memorandum to the File Regarding Corroboration of the Petition Data for the PRC-Wide Entity (Corroboration Memo), dated November 27, 2002.

The surrogate values for the factors of production in the petition were based on publicly available information for comparable inputs in India. Where significant differences exist between surrogate values used in the petition and those used in deriving the calculated margins in this preliminary determination, we replaced the values used in the petition and revised the NV calculation accordingly. Therefore, we find that the surrogate values used to calculate the PRC-wide rate are sufficiently corroborated.

Because all elements of NV have been corroborated, we consider this revised NV to be reasonable and of probative value. As a result of this recalculation, the PRC-wide rate is, for the preliminary determination, 32.73 percent. *See* Corroboration Memo; *see also* the May 14, 2002, and May 21, 2002, supplements to the petition. For the final determination, the Department will consider all information on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin.

Fair Value Comparisons

To determine whether BaoSteel's, Hebei's, and Nanyang's sales of fence posts to customers in the United States were made at LTFV, we compared EP to NV, calculated using our NME methodology, as described in the ''Export Price'' and ''Normal Value'' sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs.

Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(a) of the Act, we used EP for BaoSteel, Hebei, and Nanyang because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated.

BaoSteel

We calculated EP for BaoSteel based on packed F.O.B. prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included domestic inland freight and brokerage and handling charges. Because transportation for all sales was provided by a NME company, we based movement expenses associated with these sales on surrogate values. *See* the Factors of Production Valuation Memorandum dated November 27, 2002 (FOP Memo), on file in the Central Records Unit (CRU) located in B–099 of the main Department of Commerce building.

Hebei

We calculated EP from Hebei based on packed F.O.B. prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included domestic inland freight and brokerage and handling charges for all sales. For certain sales, international freight and marine insurance expenses have also been deducted. Because transportation for all sales was provided by a NME company, we based movement expenses associated with these sales on surrogate values. *See* the FOP Memo.

Nanyang

We calculated EP for Nanyang based on packed F.O.B. prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included domestic inland freight and brokerage and handling charges. Because transportation for all sales was provided by a NME company, we based movement expenses associated with these sales on surrogate values. See the FOP Memo.

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires that the Department value the NME producer's factors of production, to the extent possible, on the prices or costs of factors of production in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The Department's Office of Policy initially identified five countries that are at a level of economic development comparable to the PRC in terms of per capita GNP and the national distribution of labor. Those countries are India, Pakistan, Indonesia, Sri Lanka and the Philippines (see the memorandum from Jeffrey May to Gary Taverman dated August 15, 2002, on file in the CRU). According to the available information based on the *United Nations Trade Statistics,* of the five economically comparable countries, we have found that India was the only significant producer of comparable merchandise during the POI, including merchandise under HTSUS subheadings 7308.90 and 7326.90, which include steel pipes, tubes, plates, rods, pillars, and columns. In addition, for most factors of production, India has quantifiable, contemporaneous, and publicly available data. Therefore, for purposes of the preliminary determination, we have selected India as the surrogate country. We have preliminarily calculated NV by applying Indian values to BaoSteel's, Hebei's, and Nanyang's factors of production.

[4] In calculating export price, the petitioner adjusted for importer/distributor mark-up, unloading & handling fees, foreign brokerage & handling, foreign inland freight, repacking costs, U.S. inland freight, ocean freight, and U.S. Customs duties & fees.

2. Factors of Production

In their questionnaire responses, BaoSteel, Hebei, and Nanyang reported factors of production for the manufacturers of the subject merchandise during the POI. The factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. See section 773(c)(3) of the Act. To calculate NV, we multiplied the reported quantities by publicly available surrogate per-unit values from India.

In accordance with 19 CFR 351.408(c)(1) of the Department's regulations, we will normally use publicly available information to value factors of production. However, the Department's regulations also provide that where a producer sources an input from a market economy and pays for it in market-economy currency, the Department normally will use the actual price paid for the input in the market economy to calculate the factors-based NV. *See Shakeproof Assembly Components Division of Illinois Tool Works* v. *United States,* 268 F. 3d 1376, 1381–83 (Fed. Cir. 2001). Respondent BaoSteel reported that some of its inputs were sourced from market economies and paid for in a market-economy currency. *See* the FOP Memo for a listing of these inputs.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. For those values not contemporaneous with the POI, we adjusted the values to account for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics.* As appropriate, we included freight costs in input prices to make them delivered prices. Specifically, we added to the surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic input supplier to the factory processing subject merchandise or the distance from the nearest seaport to the relevant factory. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

We valued material inputs and packing materials (including steel coil, steel anchors, hot-rolled steel strip, pre-treated chemicals, acid washes, powder coating, wood pallets, steel screws, steel banding, rivets, blocks, plastic strips, plastic sheets, cardboard/corrugated paper, labels, plastic ties, and plastic twine) using publicly available 2001 Indian import statistics from the appropriate Indian Trade Classification categories, based on the Harmonized Commodity Description and Coding System (HS), published by the *Monthly Statistics of the Foreign Trade of India. Volume II: Imports* (*Indian Import Statistics*).

For energy, we valued coal using *Indian Import Statistics.* We calculated our surrogate value for electricity based on electricity rate data from the *Energy Data Directory and Yearbook* (2000/2001) published by Tata Energy Research Institute. We calculated a simple average of the rates for the ''industrial'' category listed for 18 Indian states or electricity boards. This method was used in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part,* 67 FR 68990 (November 14, 2002).

We valued labor using the latest regression-based wage rate for China found on Import Administration's Web page (*http://ia.ita.doc.gov/wages/*) as described in 19 CFR 351.408(c)(3).

As noted above, respondent BaoSteel sourced certain raw material inputs from market-economy suppliers and paid for them in market-economy currencies. Specifically, BaoSteel sourced hot-rolled steel strip and powder coating from market-economy suppliers. For this preliminary determination, the Department has used the market-economy prices for the inputs listed above, in accordance with 19 CFR 351.408(c)(1). We added to the weighted-average price for each input the Indian surrogate value for transporting the input to the factory, where appropriate (*i.e.*, where the sales terms for the market-economy inputs were not delivered to the factory).

To value foreign inland truck freight costs, we relied upon per-kilometer price quotes used by the Department in the *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China,* 67 FR 10892 (March 11, 2002), multiplied by an inflator to make the value contemporaneous with the POI. We valued brokerage and handling using the rates in effect in India, for these expenses, which were reported in the public version of the questionnaire response placed on the record in *Certain Stainless Steel Wire Rod From India: Final Results of Administrative and New Shipper Review,* 64 FR 856 (January 6, 1999), multiplied by an inflator to make the values contemporaneous with the POI.

To value factory overhead, selling, general and administrative expenses (SG&A) and profit, we used the audited financial statements for the year ended March 31, 2001, from an Indian producer of circular welded steel pipe, Surya Roshni (Surya). *See* FOP Memo for the calculation of these ratios from Surya's financial statements. As noted above, section 773(c)(4) of the Act requires that the Department value the NME producer's factors of production, to the extent possible, based on the prices or costs of factors of production in one or more market economy countries that are significant producers of comparable merchandise. The Department was unable to locate publicly available financial statements for an Indian fence post producer, and therefore, we looked for a producer of comparable merchandise. The production of fence posts and circular welded steel pipe have similar production processes and material inputs, in that the production of these products use steel sheets or strips in coil form as the major input, and the respective products inceptively use the process of roll forming to create the desired shape of the steel. *See* the *U.S. International Trade Commission Preliminary Determination of Lawn and Garden Steel Fence Posts from China* at I–7 (June 2002, Publication 3521) and the *U.S. International Trade Commission Final Determination of Circular Welded Non-Alloy Steel Pipe from China* at I–5 (July 2002, Publication 3523).

The petitioner argued that the Department should use the ''1999–2000 combined income, value of production, expenditure and appropriation account'' for a sample of 1,914 public limited companies in India that were reported in the June 2001 *Reserve Bank of India Bulletin,* as previously used in *Potassium Permanganate from the PRC: Preliminary Results of Antidumping New Shipper Review,* 67 FR 303 (January 3, 2001). While we recognize that the Department has used the *Reserve Bank of India Bulletin* in past cases, in the current case, we have access to the publicly available financial statements of a producer of comparable merchandise. Therefore, we find it is more appropriate to use the financial statements of Surya, which are the best information for a producer of comparable merchandise, rather than the *Reserve Bank of India Bulletin,* which calculates factory overhead, SG&A, and profit from an index that does not reflect the experience of a comparable industry.

For a complete analysis of surrogate values used in the preliminary determination, *see* the FOP Memo.

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

We are directing Customs to suspend liquidation of all entries of fence posts from the PRC, with the exception of merchandise produced by Hangzhou Hongyuan Sporting Goods Company, Ltd. and exported by Shanghai BaoSteel Group International Trade Corporation, that are entered that are entered, or withdrawn from warehouse, for consumption on or after the date on which this notice is published in the **Federal Register**. In addition, we are instructing Customs to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following percentage weighted-average margins exist for the POI:

Manufacturer/exporter	Weighted-average margin (percent)
Shanghai BaoSteel Group International Trade Corporation	0.00
Hebei Metals and Minerals Imports and Export Corporation	16.53
China Nanyang Import & Export Corporation	14.69
PRC-Wide Rate	32.73

The PRC-wide rate applies to all entries of the subject merchandise except for entries from BaoSteel, Hebei, and Nanyang.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose the calculations performed in the preliminary determination to interested parties within five days of the date of publication of this notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the final determination in this proceeding is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of fence posts from the PRC are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 351.301(c)(3)(i), interested parties may submit publicly available information to value the factors of production for purposes of the final determination within 40 days after the date of publication of this preliminary determination. Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than one week after issuance of the verification reports. Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). The Department will make its final determination no later than 135 days after the date of publication of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: November 27, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30770 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–847]

Persulfates from the People's Republic of China: Extension of Time Limit for Final Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of Time Limit for Final Results of Antidumping Duty Admininistrative Review.

EFFECTIVE DATE: December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Michael Strollo at (202) 482–0629, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230.

SUPPLEMENTARY INFORMATION: On August 20, 2001, the Department published a notice of initiation of administrative review of the antidumping duty order on persulfates from the People's Republic of China. On August 6, 2002, the Department published a notice of preliminary results of antidumping duty administrative review and notice of partial rescission. The period of review is July 1, 2000 through June 30, 2001. The review covers one exporter of the subject merchandise to the United States.

In accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a final determination in an administrative review of an antidumping duty order within 120 days after the day on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final determination of an administrative review to 180 days. Due to the complexity of the surrogate value issues raised in the case briefs, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with section 751 (a)(3)(A) of the Act, we have fully

extended the deadline for the final results of this administrative review until February 2, 2003.

Dated: November 27, 2002.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–30768 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of 2000–2001 Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of 2000–2001 administrative review.

SUMMARY: On November 7, 2002, the Department of Commerce announced the final results of the administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China for the period June 1, 2000, through May 31, 2001. These final results were published in the Federal Register on November 14, 2002. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part*, 67 FR 68990 (November 14, 2002).

On November 12, 2002, both Zhejiang Machinery Import & Export Corp. and the petitioner, the Timken Company, filed allegations of ministerial errors. Based on our review of the comments received from all parties regarding potential ministerial errors, we have made a change to the margin calculation of respondent Zhejiang Machinery Import & Export Corp. The final weighted-average dumping margin for this company is listed below in the section entitled ''Amended Final Results.''

EFFECTIVE DATE: December 4, 2002.

FOR FURTHER INFORMATION CONTACT: Melani Miller, S. Anthony Grasso, or Andrew Smith, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0116, (202) 482–3853, and (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2002, the Department of Commerce (''the Department'') published the final results in this administrative review. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2000–2001 Administrative Review, Partial Rescission of Review, and Determination to Revoke Order, in Part*, 67 FR 68990 (November 14, 2002) (''*Final Results*''). The period of review is June 1, 2000, through May 31, 2001.

On November 12, 2002, ministerial error allegations were submitted by respondent Zhejiang Machinery Import & Export Corp. (''ZMC'') and the petitioner.

Scope of Review

Merchandise covered by this review includes tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China (''PRC''); flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is currently classifiable under the *Harmonized Tariff Schedule* of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Amended Final Results

After analyzing the ministerial error comments submitted by the above-noted parties in this review, we have determined, in accordance with section 771(h) of the Tariff Act of 1930, as amended, and 19 CFR 351.224, that we made a ministerial error in the margin calculation for ZMC. Specifically, we inadvertently failed to correct a mis-labeled control number reported by ZMC that we stated in the *Final Results* we intended to change. For a detailed discussion of the ministerial error allegations and the Department's analysis, *see* November 27, 2002 memorandum from team to Susan H. Kuhbach entitled *Ministerial Error Allegations*, which is on file in the Department's Central Records Unit located in the main Commerce building in Room B-099.

Therefore, we are amending the *Final Results* to reflect the correction of the above-noted ministerial error for ZMC. Based on this revision, we determine that the following dumping margins exist for the period June 1, 2000, through May 31, 2001:

Exporter/manufacturer	Revised weighted-average margin percentage
China National Machinery Import & Export Corporation	0.71
Wanxiang Group Corporation	0.00
Tianshui Hailin Import and Export Corporation and Hailin Bearing Factory	0.00
Luoyang Bearing Corporation (Group)	0.06 (*de minimis*)
Zhejiang Machinery Import & Export Corp.	0.53
PRC-wide rate	33.18

Assessment Rates

Absent an injunction from the U.S. Court of International Trade, the Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of these amended final results of review.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: November 27, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–30769 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112702E]

Proposed Information Collection; Comment Request; Coral Reefs - Economic Valuation Study

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 3, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dr. Vernon R. Leeworthy, NOS/Special Projects, 1305 East West Highway, SSMC 4, 9th Floor, Silver Spring, MD 20910 (or via the Internet at *Bob.Leeworthy@noaa.gov).*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this data collection is to provide information on the value of Hawaii's coral reef habitats to specific segments of the U.S. population. The study will measure total economic values for Hawaii's coral reefs. This effort is designed to provide defensible information for both resource managers and damage assessments on the value of coral reef habitats and alternative management actions. The project is designed as a phased three-year effort to ensure effective use of all the available information. This effort will involve development of extensive knowledge about how reef habitats are perceived, implication of alternative management actions, designing original survey instruments, interviewing of a large number of respondents (1500–2000), conducting formal statistical analysis of the data, and developing a decision support system for use by resource managers. For total economic value, a nationally-oriented survey will be conducted using stated preferences methods.

II. Method of Collection

Up to 48 one-on-one cognitive interviews will be conducted. In addition, one pretest of the full survey instrument will be tested for a response of up to 150 usable observations. The final survey instrument will be administered to a sample of up to 2000 people.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,198.

Estimated Time Per Response: 2 hours for an interview; 30 minutes for a pretest; and 30 minutes for a final survey.

Estimated Total Annual Burden Hours: 1,369.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 27, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30752 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–JE–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112702D]

Proposed Information Collection; Comment Request; Designation of Fishery Management Council Members and Application for Reinstatement of State Authority

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before February 3, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Richard Surdi, 1315 East-West Highway, room 13142, Silver Spring, MD 20910, phone 301–713–2337.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended in l996, provides for the nomination for members of Fishery Management Councils by state governors and Indian treaty tribes, for the designation of a principal state fishery official who will perform duties under the Magnuson-Stevens Act, and for a request by a state for reinstatement of state authority over a managed fishery. Nominees for council membership must provide the governor or tribe with background documentation, which is then submitted to NOAA with the nomination. The information submitted with these actions will be used to ensure that the requirements of the Magnuson-Stevens Act are being met.

II. Method of Collection

State governors and Indian treaty tribes submit written nominations to the Secretary of Commerce, together with recommendations and statements of candidate qualifications. Designations of state officials and requests for reinstatement of state authority are also made in writing in response to regulations. No forms are used.

III. Data

OMB Number: 0648–0314.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal government.

Estimated Number of Respondents: 54.

Estimated Time Per Response: 1 hour to designate a principal state fishery official(s); 80 hours for a nomination for a Council appointment; 16 hours for background documentation from nominees; and 2 hours for a request to reinstate state authority.

Estimated Total Annual Burden Hours: 4,543.

Estimated Total Annual Cost to Public: $3,052.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 27, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–30753 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Millennium Pipeline Company From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration (NOAA) Department of Commerce (Commerce).

ACTION: Reopening public comment period.

SUMMARY: This notice reopens the period for the public to comment on the administrative appeal filed with the Department of Commerce by the Millennium Pipeline Company (Consistency Appeal of Millennium Pipeline Company, L.P.).

DATES: Public comments on the appeal must be received by January 8, 2003.

ADDRESSES: Comments may be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record will be available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services.

FOR ADDITIONAL INFORMATION CONTACT: Branden Blum, Senior Counselor, Office of the General Counsel for Ocean Services, via e-mail at *gcos.inquiries@noaa.gov,* or at (301) 713–2967, extension 186.

SUPPLEMENTARY INFORMATION: The Millennium Pipeline Company filed an administrative appeal with the Department of Commerce, pursuant to the Coastal Zone Management Act of 1972, as amended, asking that the Secretary of Commerce override the State of New York's objection to Millennium's proposed natural gas pipeline. The pipeline would extend from the Canadian border in Lake Erie and cross the Hudson River, affecting the natural resources or land and water uses of New York's coastal zone.

On September 9, 2002, NOAA published a notice in the **Federal Register** inviting the public to comment on any of the issues that the Secretary may consider in deciding the appeal. The deadline for submitting comments was December 2, 2002.

NOAA has been requested to provide additional time to allow for adequate comment on the issues raised within the appeal. The State of New York submitted its brief and supporting materials on October 16, 2002; additional materials and briefs were submitted by three amici on October 23, 2002. In response to the public requests, and in recognition of the complex issues and information reflected in these and other filings, NOAA is reopening the public comment period and will accept comments through January 8, 2003. Comments received after the end of the initial comment period on December 2, 2002, but before publication of this notice will be considered to be timely filed.

Written comments may be submitted by e-mail to *millennium.comments@noaa.gov* or forwarded via mail to the Office of the General Counsel for Ocean Services. Comments must be received by January 8, 2003. Comments will be made available to the parties; they are also expected to be posted on the Department of Commerce Web site at *http://www.ogc.doc.gov/czma.htm.*

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: November 26, 2002.

James R. Walpole,

General Counsel.

[FR Doc. 02–30743 Filed 12–03–02; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112702A]

Marine Mammals; File No. 473–1433

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Janice Straley, Assistant Professor of Marine Biology, University of Southeast Alaska, 1332 Seward Avenue, Sitka, Alaska 99835–9498, has been issued an amendment to scientific research Permit No. 473–1433–02.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NOAA Fisheries, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski, Lynne Barre or Trevor Spradlin, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 473–1433–02, originally issued on February 23, 2001 (66 FR 11274), has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

The permit holder requested authorization to extend Permit No. 473–1433–02 for an additional 12 months. The new expiration date for the permit is November 30, 2003, and the permit number has been changed to No. 473–1433–03 to reflect that the permit has been amended.

Dated: November 29, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–30755 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Fastener Quality Act Insignia Recordal Process

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 3, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308–7400; or by electronic mail at *susan.brown@uspto.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Lynne Beresford, Deputy Commissioner for Trademark Examination Policy, Office of the Commissioner for Trademarks, USPTO, Washington, DC 20231; by telephone at (703) 306–3109; or by electronic mail at *lynne.beresford@uspto.gov*.

SUPPLEMENTARY INFORMATION

I. Abstract

Under Section 5 of the Fastener Quality Act (FQA), 15 U.S.C. 5401 *et seq.* (as amended by Pub. L. 104–113, Pub. L. 105–234, and Pub. L. 106–34), certain industrial fasteners are required to bear an insignia identifying the manufacturer. The manufacturer must record this insignia with the USPTO. The procedures for the recordal of insignias under the FQA are set forth in 15 CFR 280.300 *et seq.*

This information collection was previously approved by the Office of Management and Budget (OMB) in February 2000 in conjunction with a proposed rule implementing the changes contained in the FQA Amendments that were enacted on June 8, 1999 (Pub. L. 106–34). The final rule notice entitled ''Procedures for Implementation of the Fastener Quality Act'' was published in the **Federal Register** on June 28, 2000 (Vol. 65, No. 125). Under the current rules of practice, only manufacturers of certain fasteners are required to record insignias. Previously, private label distributors were also required to record fastener insignias. The purpose of this collection is to ensure that a fastener can be traced to its manufacturer.

It is mandatory for manufacturers of fasteners covered by the FQA to submit an application to the USPTO for recordal of an insignia on the Fastener Insignia Register. The insignia may be either a unique alphanumeric designation that the USPTO will issue upon request, or a trademark that is either (1) registered at the USPTO or (2) the subject of an application to obtain a registration. Upon successful application for recordal of a fastener insignia, the USPTO will issue a Certificate of Recordal, which must be renewed every five years. If ownership of a recorded alphanumeric designation is assigned to another entity, the designation becomes ''inactive'' and the new owner must submit an application in order to reactivate the designation within six months of the date of assignment. If the recordal is based on a trademark application or registration that is assigned to a new owner, the recordal becomes ''inactive'' and cannot be reactivated. Instead, the new owner of the trademark application or registration must apply for a new recordal.

This information collection includes one form, the Application for Recordal of Insignia under the Fastener Quality Act (PTO–1611), which provides manufacturers with a convenient way to submit a request for the recordal of a fastener insignia or to renew or reactivate an existing Certificate of Recordal. Use of form PTO–1611 is not mandatory, and applicants may instead prepare requests for recordal using their own format. In November 2001, OMB approved a change worksheet submitted by the USPTO that reduced the burden for this information collection due to the USPTO receiving fewer Applications for Recordal of Insignia under the Fastener Quality Act than previously estimated.

The USPTO uses the information in this collection to maintain the Fastener Insignia Register, which is open to public inspection. The Fastener Insignia Register may be downloaded from the USPTO web site, and printed copies may be purchased from the USPTO.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO.

III. Data

OMB Number: 0651–0028.

Form Number(s): PTO–1611.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 150 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 10 minutes (0.17 hours) to gather the necessary information, prepare the form, and submit the request for recordal or renewal of a fastener insignia to the USPTO.

Estimated Total Annual Respondent Burden Hours: 26 hours per year.

Estimated Total Annual Respondent Cost Burden: $780 per year. The USPTO expects that the information in this collection will be prepared by paraprofessionals at an estimated rate of $30 per hour. Therefore, the USPTO estimates that the respondent cost burden for this collection will be $780 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Application for Recordal or Renewal of Insignia Under the Fastener Quality Act.	10 minutes	150	26
Total		150	26

Estimated Total Annual Non-hour Respondent Cost Burden: $3,474. There are no capital start-up costs or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees. Customers may also incur postage costs when submitting the Application for Recordal of Insignia Under the Fastener Quality Act to the USPTO by mail.

Under 37 CFR 2.7, the filing fee for a recordal of fastener insignia, a renewal of an insignia recordal, or the surcharge for a late renewal is $20. If a manufacturer submits a renewal after the expiration date but within six months of that date, then the manufacturer must pay the $20 renewal fee as well as a $20 late renewal surcharge, for a total fee of $40 for a late renewal. The USPTO estimates that approximately 20 of the 150 responses per year will be late renewals that incur the surcharge. Therefore, the total filing costs for this collection will be $3,400 per year for applications for recordal of fastener insignia, renewals, and late renewals.

The public may submit the information for this collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that the average first-class postage cost for a mailed submission will be 49 cents, for a total postage cost of $74 per year.

The total non-hour respondent cost burden for this collection in the form of filing fees and postage costs is $3,474 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 27, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 02–30746 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Rules for Patent Maintenance Fees.

Form Number(s): PTO/SB/45/47/65/66.

Agency Approval Number: 0651–0016.

Type of Request: Revision of a currently approved collection.

Burden: 30,495 hours annually.

Number of Respondents: 348,110 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to 8 hours to gather the necessary information, prepare the form or petition, and submit the completed request. The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to submit the Electronic Maintenance Fee Form.

Needs and Uses: In order to keep utility patents in force, patentees must pay maintenance fees at 3½, 7½, and 11½ years after the date of grant. The public uses this collection to submit a patent maintenance fee payment, to file a petition to accept an unavoidably or unintentionally delayed maintenance fee payment, to file a petition to request acceptance of a maintenance fee payment that was submitted prior to patent expiration but refused by the USPTO, and to designate or change an address to be used for fee-related correspondence with the USPTO. The USPTO uses the information collected from the public to process and record maintenance fee payments, to consider petitions regarding delayed maintenance fee payments or payments that were refused by the USPTO, and to send fee-related correspondence to the correct address.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, and the Federal government.

Frequency: On occasion and 3 times at 4-year intervals following the grant of the patent.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, by phone at (703) 308–7400, or by e-mail at *susan.brown@uspto.gov.*

Written comments and recommendations for the proposed information collection should be sent on or before January 3, 2003, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: November 27, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 02–30747 Filed 12–3–02; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

ACTION: Notice of meeting and expert panel.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Monday, December 16—Tuesday, December 17, 2002.

TIME: Monday, December 16, 2002: Expert panels—8 a.m.–11:45 a.m., 2 p.m.–3:45 p.m., Tuesday, December 17, 2002: Commission meeting–8:30 a.m.–12:30 p.m.

ADDRESSES: The Commission panels and meeting will be held in New York City, New York, at the Marriott Marquis, 1535 Broadway, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Leslie Sanchez, Executive Director, or Adam Chavarria, Associate Director, White House Initiative on Educational Excellence for Hispanic Americans, 400 Maryland Ave., SW., Washington, DC 20202, (202) 401–1411.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 13230 dated October 12, 2001. The Commission is established to provide advice to the Secretary of Education (Secretary) and issue reports to the President concerning: (a) The progress of Hispanic Americans in closing the academic achievement gap and attaining the goals established by the President's No Child Left Behind Act of 2002; (b) the development, monitoring, and coordination of Federal efforts to promote high-quality education for Hispanic Americans; (c) ways to increase parental, State and local, private sector, and community involvement in improving education; and (d) ways to maximize the effectiveness of Federal education initiatives within the Hispanics community.

Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Adam Chavarria at (202) 401–1411 by no later than December 12, 2002. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. An opportunity for public comment is available on Monday, December 16, 2002, from 4 p.m.–5 p.m. Those members of the public interested in submitting written comments in lieu of attendance may do so at the address indicated above before Friday, December 13, 2002.

Records are kept of all Commission proceedings, and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanic Americans from the hours of 9 a.m. to 5 p.m.

Dated: November 26, 2002.

William Hansen,

Deputy Secretary, U.S. Department of Education.

[FR Doc. 02–30661 Filed 12–3–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–063]

ANR Pipeline Company; Notice of Negotiated Rate Filing

November 26, 2002.

Take notice that on November 19, 2002, ANR Pipeline Company (ANR) tendered for filing a service agreement with NG Energy Trading, L.L.C. ANR requests that this agreement be substituted for another agreement that ANR erroneously filed in response to a July 3, 2001 order pertaining to a related negotiated rate agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30732 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–98–000]

CenterPoint Energy—Mississippi River Transmission Corp.; Notice of Proposed Changes in FERC Tariff

November 26, 2002.

Take notice that on November 22, 2002, CenterPoint Energy—Mississippi Transmission Corporation (MTT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective on December 31, 2002:

First Revised Sheet No. 254

MTT states that the purpose of this filing is to comply with the Commission's October 31, 2002 ''Order on Remand'' issued in Docket No. RM98–10–011.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30730 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–99–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 26, 2002.

Take notice that on November 22, 2002, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective on December 31, 2002:

Second Revised Sheet No. 459

CEGT states that the purpose of this filing is to comply with the Commission's October 31, 2002 ''Order on Remand'' issued in Docket No. RM98–10–011.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30731 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–92–000]

Chandeleur Pipe Line Company; Notice of Tariff Filing

November 26, 2002.

Take notice that on November 21, 2002, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed below to become effective December 1, 2002:

First Revised Sheet No. 6A
Fourth Revised Sheet No. 43

Chandeleur asserts that the purpose of this filing is to comply with the Commission's directives in Docket No. RM98–10–011, issued October 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30724 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–34–001]

Eastern Shore Natural Gas Company; Notice of Compliance Filing

November 26, 2002.

Take notice that on November 21, 2002, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of December 1, 2002:

Ninth Revised Sheet No. 4
Eighth Revised Sheet No. 5
Eighth Revised Sheet No. 6

Eastern Shore states such revised tariff sheets have been filed in accordance with the Stipulation and Agreement (S & A) approved by the Commission on October 10, 2002 (101 FERC ¶ 61,011, 2002), in the above-referenced docket.

Eastern Shore states that Article V, Paragraph 8 of the above-referenced S&A specifies that within 15 days after the date upon which the Commission's order approving the Stipulation becomes final, Eastern Shore shall file with the Commission revised rate tariff sheets reflecting the cost of service settlement base rates to be effective as of the first day of the month following the date of the Commission's order. The Commission's order became final on November 12, 2002.

Eastern Shore states that copies of its filing has been mailed to affected

customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30718 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065]

El Dorado Irrigation District, California; Notice of Public Meetings

November 26, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El Dorado, Alpine, and Amador counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and Federal agencies, and several non-governmental agencies are working collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. Meetings will be held as follows:

December 9: Joint Meeting of Aquatics/Hydrology, Recreation, and Terrestrial Workgroups—9:00am—4:00pm;

December 10: Aquatics/Hydrology Workgroup—9 am—4 pm; and

December 11: Recreation Workgroup—9 am—4 pm.

We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

All meetings will be held in the El Dorado Board of Directors Meeting Room, located at EID Headquarters, 2890 Mosquito Road, Placerville, California.

For further information, please contact Elizabeth Molloy at (202) 502–8771 or John Mudre at (202) 502–8902.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30713 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–90–000]

Enbridge Pipelines (KPC); Notice of Refund Report

November 26, 2002.

Take notice that on November 21, 2002, Enbridge Pipelines (KPC) tendered for filing an Excess Interruptible Revenue Refund Report.

KPC states that the report is made pursuant to section 24.5 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1. KPC has requested a waiver of the crediting provisions of section 24.5 in order to credit the amount otherwise refundable against the current balance of receivables from Kansas Gas Service, the only customer being charged KPC's maximum rate.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before December 3, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30722 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–103–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 27, 2002.

Take notice that on November 25, 2002, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 454; Original Sheet No. 534A; and Fifth Revised Sheet No. 535; to become effective January 1, 2003.

FGT states that the purpose of this filing, which is made in accordance with section 154.201 of the Commission's Regulations, is to make limited revisions to the forms of Service Agreements for Rate Schedules FTS–1 and Rate Schedule FTS–2 to conform to the provisions of agreements FGT has executed in connection with its recent pipeline expansions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance

with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30720 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–94–000]

Florida Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

November 26, 2002.

Take notice that on November 22, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 2003: Fifty-Sixth Revised Sheet No. 8A, Forty-Eighth Revised Sheet No. 8A.01, Forty-Eighth Revised Sheet No. 8A.02, Sixth Revised Sheet No. 8A.04, Fifty-First Revised Sheet No. 8B, Forty-Fourth Revised Sheet No. 8B.01.

FGT states that it is filing the above referenced tariff sheets pursuant to the Gas Research Institute's (GRI) Year 2003 Research, Development and Demonstration Program and 2003–2007 Five-Year Plan as approved by the Federal Energy Regulatory Commission Order issued September 19, 2002 in Docket No. RP02–354. For the year of 2003, the funding mechanism includes the approved GRI demand charges of 5.0 cents per MMBtu per month (.16¢ per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors exceeding 50%, 3.10 cents per MMBtu per month (.10¢ per MMBtu stated on a daily basis underlying FGT's reservation charges) to be applicable to firm shippers with load factors of 50% or less and a volumetric charge of 0.40 cents per MMBtu to be applicable to all non-discounted interruptible rates and to the usage portion of two-part rates. In addition, the 2003 funding mechanism includes a volumetric charge of 0.60 cents per MMBtu to be applicable to all one-part small customer rates. This funding mechanism provides for a decrease in GRI charges as compared to the currently effective 2002 GRI charges.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30726 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6032]

Niagara Mohawk Power Corporation and Fourth Branch Associates (Mechanicville); Notice of Technical Conference

November 26, 2002.

On August 12, 2002, the Commission issued an order accepting surrender of the license for the Mechanicville Project No. 6032.[1] The order required Niagara Mohawk Power Corporation to submit plans and schedules for, among other things, complying with the Commission's regulations concerning dam safety (18 CFR part 12) and for recording historic resources associated with the project prior to the effective date of surrender.

On Monday, December 16, 2002, at 9 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, Commission staff will hold a conference to discuss technical issues related to compliance with the dam safety regulations and to consult with respect to protection of historic resources in the context of the powerhouse stabilization measures. Parties to the proceeding and all interested persons will be permitted to attend.

Any meeting attendee wishing to propose or support an alternative to the Niagara Mohawk Power Corporation's powerhouse stabilization proposal should be prepared to: (1) Present its alternative at the meeting, including technical details such as a detailed description, an implementation schedule to accomplish the powerhouse stabilization by August 2003, and an engineering cost estimate; and (2) answer implementation and feasibility questions regarding its proposal.

Any party or interested person who is planning to attend the conference should notify Commission staff before 4:30 p.m., Wednesday, December 11, 2002. Please notify Ellen Armbruster, Office of Energy Projects, Rm 6H–07, in writing, or by calling at 202–502–8330. If any local, state or federal authorized agency representative is unable to attend but wishes to participate by teleconferencing, please so indicate.

[1] 99 FERC ¶ 61,227 (2002), reh'g denied, 100 FERC ¶ 61,185 (2002), request for reconsideration pending.

Teleconferencing details will be provided later.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30716 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG03–1–000]

Northern Natural Gas Company; Notice of Filing

November 27, 2002.

On October 10, 2002, Northern Natural Gas Company filed its revised standards of conduct under part 161 of the Commission's regulations, 18 CFR part 161.

Northern Natural Gas Company states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. (18 CFR 385.211 or 385.214) All such motions to intervene or protest should be filed on or before December 12, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to assess the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30710 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. CP03–13–000]

Northwest Pipeline Corporation; Notice of Application

November 27, 2002.

Take notice that on November 20, 2002, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, filed in Docket No. CP03–13–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for permission and approval to abandon pipeline and appurtenant facilities in Clackamas County, Oregon, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Northwest proposes to abandon approximately 1.4 miles of existing 16-inch pipeline on its Camas to Eugene Lateral located in Clackamas County, Oregon. It is stated that the pipeline segment proposed for abandonment, located in the Clackamas River bed, that has become exposed due to high water flows in the river and that the exposed pipe is a navigation hazard to those utilizing the river for recreational activities and must be removed for safety reasons. It is asserted that the pipeline segment would be abandoned partially by removal (approximately 5,860 feet) and partially in place (approximately 1,270 feet of pipeline that is located at a sufficient depth that removal is not warranted). Northwest explains that the pipeline segment is not needed for Northwest's existing design and operations because the nearby 20-inch high pressure loop pipeline accommodates all existing service requirements in the area. It is further explained that the 20-inch loop pipeline was installed at a significantly deeper depth and at a location determined to be more hydrologically stable than the 16-inch pipeline. The cost of the proposed abandonment is estimated at $1.4 million. Northwest proposes to complete the abandonment by September 2003.

Any questions concerning this application may be directed to Gary Kotter, Manager, Certificates and Tariffs, at (801) 584–7117, Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 18, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents

filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30707 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–121–002]

Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company; Notice of Filing

November 27, 2002.

Take notice that on November 12, 2002, PJM Interconnection, L.L.C. (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission) an explanation regarding the justness and reasonableness of its tariff provision requiring the inclusion of certain interruptible loads in the calculation of the annual peak demand for purposes of billing network access charges.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 9, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30709 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–4–001]

Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

November 26, 2002.

Take notice that on November 20, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing various statements, schedules and information regarding transportation fuel usage and retention.

Panhandle states that the filing is in compliance with the Commission's October 31, 2002, order accepting and suspending tariff sheets subject to refund and conditions and further review, reported at 101 FERC ¶ 61, 124.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30721 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–95–000]

PG&E Gas Transmission, Northwest Corp.; Notice of Tariff Filing

November 26, 2002.

Take notice that on November 22, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Second Revised Sheet No. 6, to be effective January 1, 2003.

GTN indicates that the purpose of this filing is to comply with Paragraph 37 of the General Terms and Conditions of its Tariff, ''Adjustment for Fuel, Line Loss and Other Unaccounted For Gas Percentages.'' Pursuant to this paragraph, GTN's fuel and line loss surcharge percentage will change from −0.0002% per Dth per pipeline-mile to 0.0000% per Dth per pipeline-mile for the six-month period beginning January 1, 2003. Also included, as required by Paragraph 37, are workpapers showing the derivation of the current fuel and line loss percentages in effect for each month of the six-month period ending October 2002.

GTN further states that a copy of this filing has been served on its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30727 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–96–000]

PG&E Gas Transmission, Northwest Corp.; Notice of Tariff Filing

November 26, 2002.

Take notice that on November 22, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Third Revised Sheet No. 4, First Revised Sheet No. 5, and First Revised Sheet No. 12, with an effective date of January 1, 2003.

GTN states that these tariff sheets establish GTN's Gas Research Institute (''GRI'') surcharge for calendar year 2003.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30728 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–16–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

November 27, 2002.

Take notice that on November 22, 2002, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP03–16–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point for service to DSM Chemicals North America, Inc. (DSM) under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Southern requests authorization to construct and operate certain measurement and appurtenant facilities in order to provide transportation service to DSM at the DSM Chemicals Plant in Richmond County, Georgia. Southern proposes to construct the facilities, consisting of one 6-inch turbine meter and tie-in piping, electric custody transfer equipment, dual 6-inch taps and other appurtenant facilities, on its 16-inch South Main and South Main Loop Lines in Richmond County, Georgia. Southern estimates the average annual volumes for delivery to DSM at 9 Bcf, and estimates the daily average at 24,658 Mcf, with a maximum of 31,200 Mcf per day. Southern proposes to provide transportation service to DSM under Southern's Rate Schedules FT and IT pursuant to existing service agreements. The cost of the facilities is estimated at $299,200, and it is stated that DSM will reimburse Southern for the cost of constructing and installing the proposed facilities.

Any questions regarding the application may be directed to Ernest Bates, Counsel, at (205) 325–7115.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30708 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–93–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

November 26, 2002.

Take notice that on November 18, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a report reflecting the flow through of refunds received from National Fuel Gas Supply Corp.

On November 18, 2002, in accordance with section 4 of its Rate Schedules SS–2 and LSS, Transco states that it refunded to its SS–2 customers $7,092.81 and its LSS customers $3,224.03 resulting from the refund of National Fuel Gas Supply Corp. The refund covers the period from January 1998 to June 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before December 3, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30725 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–97–000]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Changes in FERC Gas Tariff

November 26, 2002.

Take notice that on November 22, 2002, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing. Such tariff sheets are proposed to be effective January 1, 2003.

Transco states that the purpose of the instant filing is to reflect the 2003 GRI surcharges approved by the Commission's Order issued on September 19, 2002, in Docket No. RP02–354–000. Also, in accordance with GRI's 1993 settlement, Transco has calculated the firm transportation service load factors on the actual volumes transported during the 12 month period October 2001 through September 2002.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30729 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–91–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 26, 2002.

Take notice that on November 21, 2002, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2003:

One Hundred Twenty-Seventh Revised Sheet No. 5
Thirty-Second Revised Sheet No. 5A
Twenty-Fourth Revised Sheet No. 5A.02
Twenty-Fourth Revised Sheet No. 5A.03
Twenty-Ninth Revised Sheet No. 5B

Transwestern states that the purpose of this filing is to set forth the approved 2003 Gas Research Institute (GRI) surcharges for the 2003 calendar year to be effective January 1, 2003, in accordance with the Commission's Order approving The Gas Research Institute's Year 2003 Research, Development and Demonstration Program and 2002–2006 Five-Year Plan issued on September 19, 2001, in Docket No. RP01–434–000.

Transwestern states that: (1) High-Load factor firm shippers under Transwestern's Rate Schedules FTS–1, EFBH, FTS–3 and LFT (*i.e.*, FTS–1, EFBH, FTS–3 and LFT shippers with a load factor greater than 50%) will be assessed a GRI demand surcharge of $0.0500 per Dth/month ($0.0016 per Dth/day); (2) Low-load factor firm shippers under Transwestern's Rate Schedules FTS–1, EFBH, FTS–3 and LFT (*i.e.*, FTS–1, EFBH, FTS–3 and LFT shippers with a load factor less than or equal to 50%) will be assessed a GRI demand surcharge of $0.0310 per Dth/month ($0.0010 per Dth/day); (3) Firm shippers under Transwestern's FTS–2 Rate Schedule will be assessed a GRI volumetric surcharge of $0.0060 per Dth; and (4) Firm shippers under Transwestern's FTS–01, EFBH, FTS–3 and LFT Rate Schedules and interruptible shippers under Transwestern's ITS–1 Rate Schedule

will be assessed a GRI commodity surcharge of $0.0040 per Dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30723 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–102–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

November 27, 2002.

Take notice that on November 25, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets to become effective January 1, 2003:

Second Revised Volume No. 1

Forty-Eighth Revised Sheet No. 15
Forty-Eighth Revised Sheet No. 16
Forty-Sixth Revised Sheet No. 18

Original Volume No. 2

Ninety-First Revised Sheet No. 11B

Williston Basin states the proposed tariff sheets are being filed to incorporate the Gas Technology Institute (GTI) General Research, Development and Demonstration Funding Unit Adjustment Provision for 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30719 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 401–027, Michigan]

Indiana Michigan Power Company; Notice of Availability of Environmental Assessment

November 26, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) has reviewed the application for a new license for the Mottville Hydroelectric Project, located on the St. Joseph's River in Mottville Township in St. Joseph County, Michigan, and has prepared an Environmental Assessment (EA) for the project. The project does not use or occupy any Federal facilities or lands. In this EA, the staff has analyzed the potential environmental effects of the existing project and has concluded that licensing the project, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. This EA may also be viewed on the Web at *http://www.ferc.gov*. Using the 'FERRIS' link, enter the docket number excluding the last three digits in the document field to access the document. For assistance, please contact FERC Online Support at *ferconline@ferc.gov*, call toll free (866)208–3676, or TTY (202) 502–8659.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix 'Mottville Project No. 401–027' to all comments. For further information, please contact Lee Emery at (202) 502–8379 or e-mail at *lee.emery@ferc.gov*.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30714 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 27, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Change Project Boundary.

b. *Project No:* 1835–222.

c. *Date Filed:* September 3, 2002.

d. *Applicant:* Nebraska Public Power District (NPPD).

e. *Name of Project:* North Platte\Keystone Diversion Dam Project.

f. *Location:* The project is located on the North Platte and South Platte Rivers, in Keith and Lincoln Counties, Nebraska. The area proposed to be deleted from the project boundary lies entirely within Lincoln County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* John Shadle, Nebraska Public Power District, P.O. Box 499, Columbus, NE 68601–0499, (402) 564–8561.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Eric Gross at (202) 502–6213, or e-mail address: *eric.gross@ferc.gov*.

j. *Deadline for filing comments and or motions:* December 27, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–1835–222) on any comments or motions filed.

k. *Description of Request:* NPPD is proposing to remove approximately 33.67 acres of land from the project boundary. The land will be transferred to the Nebraska Department of Roads (NDOR) to accommodate a realignment of Highway 25 right-of-way near NPPD's Sutherland Reservoir. The land is not needed for project purposes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30712 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4914]

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

November 27, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 4914.

c. *Date Filed:* November 20, 2002.

d. *Applicant:* International Paper Company.

e. *Name of Project:* Nicolet Mill Dam Project.

f. *Location:* At the U.S. Army Corps of Engineers' DePere Dam, on the Fox River, in the City of DePere, Brown County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C.791(a)–825(r).

h. *Applicant Contacts:* Licensee Contact: Thomas Piette, International Paper Company, 200 Main Avenue, De Pere, WI 54115, (920) 336–4211.

i. *FERC Contact:* Peter Leitzke, (202) 502–6059 or *peter.leitzke@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* December 27, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–4914–010) on any documents filed.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the

Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site*http://www.ferc.gov*under the ''e-Filing'' link.

m. This application is not ready for environmental analysis at this time.

n. The existing Nicolet Mill Dam Project consists of the following existing facilities: (1) A 13.6 foot-high, 400-foot-long diversion structure attached to the westerly end of the U.S. Army Corps of Engineers' DePere Dam; (2) intake works consisting of 28 gates screened with steel racks; (3) a powerhouse containing two generating units with a total installed capacity of 1,080 kW; and (4) other appurtenances.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Wisconsin State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter: January 2003.

Issue Scoping Document for comments: March 2003.

Notice of Application is Ready for Environmental Analysis: June 2003.

Notice of the availability of the EA: October 2003.

Ready for Commission's decision on the application: December 2003.

Unless substantial comments are received in response to the EA, staff intends to prepare a single EA in this case. If substantial comments are received in response to the EA, a final EA will be prepared with the following modifications to the schedule.

Notice of the availability of the final EA: February 2004.

Ready for Commission's decision on the application: March 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30715 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

November 27, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications recently received in the Office of the Secretary. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt

	Docket No.	Date filed	Presenter or Requester
1.	Project No. 1927–008	11–20–02	USDA Forest Service
2.	CP02–296–000	11–20–02	Gini R. Cooper
3.	Project No. 2726–000	11–20–02	Mark Druss
4.	Project No. 2726–000	11–20–02	Susan Pengilly Neitzel
5.	Project No. 2726–000	11–20–02	L. Lewis Wardle
6.	CP01–415–000	11–20–02	Medha Kochhar
7.	Project Nos. 2576–022	11–20–02	John T. Gangemi and 2597–019
8.	CP02–396–000	11–20–02	Becky Coleman
9.	Project No. 2726–000	11–26–02	Susan Pengilly Neitzel

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30717 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12087–001]

White River Falls Energy Associates, Inc.; Notice of Surrender of Preliminary Permit

November 27, 2002.

Take notice that White River Falls Energy Associates, Inc., permittee for the proposed White River Falls Project, has requested that its preliminary permit be terminated. The permit was issued on February 6, 2002, and would have expired on January 31, 2005. The project would have been located on the White River in Wasco County, Oregon.

The permittee filed the request on September 9, 2002, and the preliminary permit for Project No. 12087 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–30711 Filed 12–3–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0321; FRL–7417–7]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 0595.08/OMB Control No. 2070–0055; Notice of Pesticide Registration by States To Meet a Special Local Need Under FIFRA Section 24(c)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (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: Notice of Pesticide Registration by States to Meet a Special Local Need Under FIFRA Section 24(c); EPA ICR No. 0595.08; OMB Control No. 2070–0055. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before January 3, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 12, 2001 (66 FR 64249). EPA received one comment on this ICR during the 60-day comment period, and that comment is addressed in the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPP–2002–0321 (formerly Docket Control No. OPP–00753), which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov*, or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0321; and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

ICR Title: Notice of Pesticide Registration by States to Meet a Special Local Need (SLN) Under FIFRA Section 24(c) (EPA ICR 0595.08, OMB Control No. 2070–0055).

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on November 30, 2002. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This data collection program is designed to provide the Environmental Protection Agency (EPA, the Agency) with the necessary data to review approval of State-issued pesticide registrations. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 24(c) authorizes the States to register additional uses of federally registered pesticides for distribution and use within the State to meet a special local need (SLN). A State-issued registration under FIFRA section 24(c) is deemed a Federal registration for the purposes of the pesticide's use within the State's boundaries. A State must notify EPA, in writing, of any

action it takes, *i.e.*, issues, amends, or revokes, a State registration. The Agency has 90 days to disapprove the registration. In such cases, the State is responsible for notifying the affected registrant.

Burden Statement: According to the Paperwork Reduction Act (PRA), ''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. The Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: State and territorial governments (the 50 states plus Washington, DC, Puerto Rico, the U.S. Virgin Islands, Guam and the islands of the Pacific Territory, and American Samoa).

Estimated total number of potential respondents: 60.

Frequency of response: As needed.

Estimated total/average number of responses for each respondent: 5–6.

Estimated total annual burden hours: 18,200.

Estimated total annual burden costs: $1,585,150.

Changes in the ICR Since the Last Approval: The Agency revised its burden estimates for both States and applicants based on information received during the public comment period and in consultation with respondents. The average applicant response burden decreased by 29 hours while the average State response burden increased by 11.5 hours, resulting in a net decrease in burden for the activities associated with this ICR. EPA estimates that the overall respondent burden has decreased from 24,604 hours to 18,200 hours, a decrease in burden of 6,404 hours. These changes are described in detail in the ICR.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: November 22, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–30758 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0320; FRL–7417–6]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 0161.09/OMB No. 2070–0027; Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (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: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides; OMB No. 2070–0027; EPA No. 0161.09. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before January 3, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *vogel.nancy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 12, 2001 (66 FR 64246). EPA received no comments on this ICR during the 60-day comment period.

EPA has established a public docket for this ICR under Docket ID No. OPP–2002–0320 (formerly Docket Control No. OPP–00751), which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov*, or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0320; and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise

restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http;//www.epa.gov./edocket*.

ICR Title: Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides (OMB NO. 2070–0027; EPA No. 0161.09)

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on November 30, 2002. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This information collection program is designed to enable the Environmental Protection Agency (EPA) to provide notice to foreign purchasers of unregistered pesticides exported from the United States that the pesticide product cannot be sold in the United States. Section 17(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires an exporter of any pesticide not registered under FIFRA section 3 or sold under FIFRA section 6(a)(1) to obtain a signed statement from the foreign purchaser acknowledging that the purchaser is aware that the pesticide is not registered for use in, and cannot be sold in, the United States. A copy of this statement must be transmitted to an appropriate official of the government in the importing country. The purpose of the purchaser acknowledgment statement requirement is to notify the government of the importing country that a pesticide judged hazardous to human health or the environment, or for which no such hazard assessment has been made, will be imported into that country. This information is submitted in the form of annual or per-shipment statements to the EPA, which maintains original records and transmits copies thereof to appropriate government officials of the countries which are importing the pesticide.

Burden Statement: The annual ''respondent'' burden for this ICR is estimated to be 24,753 hours. According to the Paperwork Reduction Act (PRA), ''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. The Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: Individuals or entities engaged in activities related to the registration of a pesticide product.

Estimated total number of potential respondents: 2,500.

Frequency of response: Annual or per-shipment.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 24,753.

Estimated total annual burden costs: $1,902,400.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: November 22, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–30759 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7417–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NSPS for Beverage Can Surface Coating

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: Title: NSPS for Beverage Can Surface Coating—40 CFR part 60, subpart WW, OMB Control Number 2060–0001, expiration date January 31, 2003. 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 January 3, 2003.

ADDRESSES: Send comments, referencing EPA ICR Number 0663.08 and OMB Control Number 2060–0001, to the following addresses: Susan Auby, United States Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to the 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: For a copy of the ICR, contact Susan Auby at (202) 566–1672 or by e-mail to *auby.susan@epa.gov* or download from the Internet at: *http://www.epa.gov/icr*, and refer to EPA ICR Number 0663.08. For technical questions about the ICR, contact Steven Hoover at (202) 564–7007, or by e-mail to: *hoover.steven@epa.gov.*

SUPPLEMENTARY INFORMATION:

Title: NSPS for Beverage Can Surface Coating—40 CFR part 60, subpart WW, OMB Control Number 2060–0001, EPA ICR Number 0663.08, expiration date January 31, 2003. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Surface Coating of Beverage Cans were proposed on November 26, 1980, and promulgated on August 25, 1983. These standards apply to each beverage can surface coating operation in which organic coatings are applied (exterior base coat operations, over varnish coating operations, and inside spray coating operations) that commenced construction, modification or reconstruction after November 26, 1980. Approximately 46 sources are currently subject to the standard, and it is estimated that 2 sources per year will

become subject to the standard during this time period. Volatile Organic Compounds (VOCs) are the pollutants regulated under this subpart, and this information is being collected to assure compliance with 40 CFR part 60, subpart WW.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

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 2 years following the date of such measurements, maintenance reports, and records. The estimated total cost of this ICR will be $1,085,853 over the next three years (including labor hours, operating & maintenance costs, and start up costs; $361,951 × 3 years). All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

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 June 20, 2002. Comments were not received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38 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 respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of beverage can surface coating facilities.

Estimated Number of Respondents: 48.

Frequency of Response: semiannual for all, every other year for excess emission report.

Estimated Total Annual Hour Burden: 4642.

Estimated Total Annualized Capital, O&M Cost Burden: $96,800.

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 addresses listed above. Please refer to EPA ICR Number 0663.08 and OMB Control Number 2060–0001 in any correspondence.

Dated: November 18, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–30760 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0004; FRL–7417–4]

Agency Information Collection Activities: Submission of EPA ICR No. 1704.06 (OMB No. 2070–0143) to OMB for Review and Approval; Comment Request; Toxic Chemical Release Reporting; Alternate Threshold for Low Annual Reportable Amounts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this notice announces that the following continuing Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the procedures described in 5 CFR 1320.12: Alternate Threshold for Low Annual Reportable Amounts, Toxic Chemical Release Reporting (EPA ICR No. 1704.06, OMB No. 2070–0143). The ICR, which is described below, describes the nature of the information collection and its estimated burden and cost; where appropriate, it includes the actual data collection instrument.

The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on January 31, 2003. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on July 1, 2002 (67 FR 44197). A **Federal Register** correction notice, correcting the address for submission of comments in person, was issued on July 15, 2002 (67 FR 46503). EPA received a number of comments on this ICR during the comment period, which have been addressed. The comments and EPA's responses are included in an attachment to the ICR Supporting Statement that is being submitted to OMB with this ICR renewal request, and will be made available in the docket for OEI–2002–0004 and on the EPA TRI Web site at *www.epa.gov/tri.*

DATES: Additional comments may be submitted on or before January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Judith Kendall, TRI Program Division, Office of Environmental Information, Mailcode 2844, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0750; e-mail address: *kendall.judith@epa.gov;* fax number: (202)566–0741.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR 1704.06; OMB Control No. 2070–0143.

Current Expiration Date: Current OMB approval expires on January 31, 2003.

EPA has established a public docket for this ICR under Docket ID No. OEI–2002–0004, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically.

Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2844, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Title: Toxic Chemical Release Reporting, Alternate Threshold for Low Annual Reportable Amounts, Recordkeeping, Supplier Notification and Petitions under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Background: EPCRA section 313 requires certain facilities manufacturing, processing, or otherwise using certain toxic chemicals in excess of specified threshold quantities to report their environmental releases and other waste management quantities of such chemicals annually. Each such facility must file a separate report for each such chemical.

EPA has established an alternate threshold for those facilities with low amounts of a listed toxic chemical in wastes. A facility that otherwise exceeds the current reporting thresholds, but estimates that the total amount of the chemical in waste does not exceed 500 pounds per year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during the reporting year, can take advantage of reporting under the alternate threshold option for that chemical for that reporting year.

Each qualifying facility that chooses to apply the revised threshold must file the Form A Certification Statement (EPA Form 9350–2) to certify that they are not required to file a Form R (EPA Form 9350–1). In submitting the Form A Certification Statement, the facility certifies that the sum of the amount of the EPCRA section 313 chemical in wastes did not exceed 500 pounds for the reporting year, and that the chemical was manufactured, processed, or otherwise used in an amount not exceeding 1 million pounds during the reporting year. Use of the Form A Certification Statement represents a substantial savings to respondents, both in burden hours and in labor costs.

The Form A Certification Statement provides communities with information that the chemical is being manufactured, processed or otherwise used at facilities. Additionally, the Form A Certification Statement provides compliance monitoring and enforcement programs and other interested parties with a means to track chemical management activities and verify overall compliance with the rule. Responses to this collection of information are mandatory (see 40 CFR part 372) and facilities subject to reporting must submit either a Form A Certification Statement or a Form R, as appropriate.

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.

Burden Statement: Under the PRA, ''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. For this collection, it 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.

The annual public burden for this collection of information, which is approved under OMB Control No. 2070–0143, is estimated to average 13.7 hours for a facility that certifies one chemical per Form A Certification Statement. Responding to this information collection requires (1) determining whether a listed toxic chemical is eligible for certification under the alternate threshold, and (2) completing the Form A Certification Statement. The burden of determining eligibility for certification and associated recordkeeping is estimated to average 12.3 hours for each chemical that is certified. The burden of completing the Form A Certification Statement is estimated to average 1.4 hours, regardless of the number of chemicals being certified. The total burden per response is the combination of these two, and will vary depending on the number of listed toxic chemicals being certified.

The ICR supporting statement provides a detailed explanation of the burden estimates that are summarized in this notice. The following is a summary of the estimates taken from the ICR supporting statement:

Estimated No. of Respondents: 5,451 respondents.

Frequency of Responses: Annual.

Estimated Total Annual Burden Hours: 172,313 burden hours.

Estimated Total Annual Burden Costs: $7.57 million.

Changes in the Burden Estimates: The estimated burden described above differs from what is currently in OMB's inventory for alternate threshold reporting: 14,793 responses (chemicals) and 644,761 burden hours. The burden estimated in this supporting statement differs from OMB's inventory as a result of adjustments to estimates of the number of responses (from 14,793 responses (chemicals) to 5,121 responses (Form A Certification Statements)), changes to subsequent year unit reporting burden estimates (from 30.2 to 9.2 burden hours per chemical certified on a Form A Certification Statement), and an adjustment for use of TRI–ME for those forms completed using TRI–ME. These changes are described in greater detail in the supporting statement for this ICR, available in the public version of the official record.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review

and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: November 22, 2002.

Oscar Morales,

Director, Collection Strategies Division, Office of Environmental Information.

[FR Doc. 02–30761 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2002–0003; FRL–7417–3]

Agency Information Collection Activities; Submission of EPA ICR No. 1363.12 (OMB No. 2070–0093) to OMB for Review and Approval; Comment Request; Toxic Chemical Release Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) (EPA ICR No. 1363.12; OMB Control No. 2070–0093) for the Toxics Release Inventory (TRI) Form R has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is summarized below, describes the nature of the information collection and its estimated burden and cost, and it includes the actual data collection instrument where appropriate.

The Agency is requesting that OMB renew for three years the existing approval for this ICR, which is scheduled to expire on January 31, 2003. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on July 1, 2002 (67 FR 44213). A **Federal Register** correction notice, correcting the address for submission of comments in person, was issued on July 15, 2002 (67 FR 46502). EPA received a number of comments on this ICR during the comment period, and EPA has developed responses to those comments. The comments and EPA's responses are included in an attachment to the ICR Supporting Statement that is being submitted to OMB with this ICR renewal request, and will be made available in the docket for OEI–2002–0003 and on the EPA TRI Web site at *http://www.epa.gov/tri*.

DATES: Additional comments may be submitted on or before January 3, 2003.

FOR FURTHER INFORMATION CONTACT: Judith Kendall, TRI Program Division, Office of Environmental Information, Mailcode 2844, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202)566–0750; e-mail address: *kendall.judith@epa.gov;* fax number: (202)566–0741.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR 1363.12; OMB Control No. 2070–0093.

Current Expiration Date: Current OMB approval expires on January 31, 2003.

EPA has established a public docket for this ICR under Docket ID No. OEI–2002–0003, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 2844, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is those public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Toxic Chemical Release Reporting, Recordkeeping, Supplier Notification and Petitions under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

Background: EPCRA section 313 requires owners and operators of certain facilities that manufacture, process, or otherwise use any of the more than 650 listed toxic chemicals and chemical categories in excess of applicable threshold quantities to report annually to the Environmental Protection Agency and to the states in which such facilities are located on their environmental releases and other waste management quantities of such chemicals. In addition, section 6607 of the Pollution Prevention Act (PPA) requires that facilities provide information on the quantities of the toxic chemicals in waste streams and the efforts made to reduce or eliminate those quantities.

Annual reporting of toxic chemical releases and other waste management information under EPCRA section 313 provides citizens with a more complete picture of the total disposition of chemicals in their communities and helps focus industries' attention on pollution prevention and source reduction opportunities. EPA believes that the public has a right to know about the disposition of chemicals within communities and the management of such chemicals by facilities in industries subject to EPCRA section 313 reporting. This reporting has been successful in providing communities with important information regarding

the disposition of toxic chemicals and other waste management information of toxic chemicals from manufacturing facilities in their areas.

EPA collects, processes, and makes available to the public all of the information collected. The information gathered under these authorities is stored in a database maintained at EPA and is available through the Internet. This information, commonly known as the Toxics Release Inventory (TRI), is used extensively by both EPA and the public sector. Program offices within EPA use TRI data, along with other sources of data, to establish priorities, evaluate potential exposure scenarios, and undertake enforcement activities. Environmental and public interest groups use the data in studies and reports, making the public more aware of releases of chemicals in their communities.

Comprehensive publicly-available data about releases, transfers, and other waste management activities of toxic chemicals at the community level are generally not available, other than under the reporting requirements of EPCRA section 313. Permit data are often difficult to obtain, are not cross-media and present only a limited perspective on a facility's overall performance. With TRI data, and the real gains in understanding it has produced, communities and governments know what toxic chemicals are released, transferred, or otherwise managed as a waste in their area by industrial facilities. In addition, industries have an additional tool for evaluating efficiency and progress on their pollution prevention goals.

Responses to the collection of information are mandatory (see 40 CFR part 372). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

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.

Burden Statement: Under the PRA, ''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. For this collection, it 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.

The ICR supporting statement provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 19.5 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are owners or operators of certain facilities that manufacture, process, or otherwise use certain specified toxic chemicals and chemical categories and are required to report annually on the environmental releases and transfers of waste management activities for such chemicals.

Estimated total number of potential responses: 88,117.

Frequency of response: Annual.

Estimated total annual burden hours: 2,477,952.

Estimated total annual burden costs: $107.4 million.

Changes in Burden Estimates: As a result of OMB's March 7, 2002 approval of an information correction worksheet, OMB's inventory reflects 145,972 responses and 9,612,104 hours for this information collection. This ICR supporting statement is for 88,117 responses and 2,477,952 hours. The reduction in burden of approximately 7.1 million hours is the result of five adjustments.

The first adjustment is to the number of responses. The estimate of 145,972 responses in the existing OMB approval incorporated predicted reporting increases from economic analyses for several final rules. In all cases, these predictions have overestimated actual reporting levels, resulting in a cumulative overestimate of the number of responses. For example, the 1997 program change for industry expansion estimated 39,033 responses would be submitted, but only 12,567 responses were actually submitted. Likewise, the 1999 program change for PBT chemical thresholds estimated 19,990 responses would be submitted, but only about 6,600 responses per year were actually submitted. The number of responses in this ICR supporting statement have been adjusted to accurately reflect actual subsequent year reporting levels, with the exception of predicted additional responses from the rule lowering reporting thresholds for lead and lead compounds. The prediction of 9,813 additional reports for lead and lead compounds may prove to be an overestimate, as with EPA predictions for past rules. Adjusting the number of responses to accurately reflect actual subsequent year reporting levels (where available) results in a decrease of 59,617 responses from subsequent year filers and approximately 3.1 million burden hours (at 52.1 hours per response).

The second adjustment is to the unit burden hours. EPA has adjusted the estimate of unit burden hours for Form R completion in subsequent years from 47.1 hours to 14.5 hours based on responses from actual TRI reporting facilities. The adjustment to unit burden hours does not affect the number of responses, but reduces total burden by approximately 2.8 million burden hours (using the number of subsequent year responses for this ICR).

The third adjustment relates to first-year reporting burden. In previous ICRs, the renewal period has coincided with programmatic changes in one or more years. Previous ICRs have been based on annualized estimates of burden (including time for rule familiarization and higher first year reporting burdens for facilities affected by programmatic changes). Since there are no final rules pending at this time, this ICR renewal does not require annualized burden estimates that account for first-year reporting burden by facilities affected by programmatic changes. However, the ICR does account for a baseline level of first-time filers that are new to TRI reporting each year. This accounts for a reduction of about 900,000 burden hours.

The fourth adjustment relates to the adoption of TRI–ME, an automated reporting software package. EPA has reduced the burden estimates related to Form R Completion and Recordkeeping/Submission by 25 percent for the reports filed using TRI–ME. On an annualized basis, an estimated 60 percent of reports are expected to be filed using TRI–ME over the three years of the ICR. This results in a reduction of approximately 270,000 hours.

The fifth adjustment relates to the number of petitions. In previous ICRs, EPA has estimated 11 petitions per year. Since the actual number has been 1 to 2 per year, this ICR renewal has reduced the expected number of petitions to 5. This adjustment has a very minor impact on total burden.

The sum of these adjustments is a decrease of 57,855 responses and 7,134,152 burden hours from the current approved total. According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: November 22, 2002.

Oscar Morales,

Director, Collection Strategies Division, Office of Environmental Information.

[FR Doc. 02–30762 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0250; FRL–7274–7]

Fenarimol; Availability of the Risk Assessments on FQPA Tolerance Reassessment Progress and Tolerance Reassessment Decision (TRED)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's tolerance reassessment decision and related documents for fenarimol including the *Fenarimol Overview*, *Fenarimol Summary*, *Fenarimol Decision Document (TRED)*, and supporting risk assessment documents. EPA has reassessed the 42 tolerances, or legal limits, for residues of fenarimol in or on raw agricultural commodities. These tolerances are now considered safe under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: Comments on the tolerance reassessment decision or on the human health effects risk assessment for fenarimol, identified by docket ID number OPP–2002–0250, must be received by EPA on or before January 3, 2003. In the absence of substantive comments, the tolerance reassessment decision will be considered final.

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–2002–0250 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8589; e-mail address: myers.tom@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, but will be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides. The Agency has not attempted to describe all the persons or entities who may be interested in or affected by this action. If you have questions in this regard, 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/.

You can obtain copies of the TRED and related documents discussed in this notice on EPA's website at http://www.epa.gov/pesticides/reregistration/status.htm. Information on pesticide reregistration and tolerance reassessment, including the purpose and status of Agency programs to complete Reregistration Eligibility Decisions (REDs), Interim REDs, and tolerance reassessment decisions (TREDs), is available at http://www.epa.gov/pesticides/reregistration. General information is available on the Office of Pesticide Programs' home page, http://www.epa.gov/pesticides/.

2. *In person*. The Agency has established an official record for this action under docket ID numbers OPP–2002–0250. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0250 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special 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–2002–0250. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that

you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
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. What Action is the Agency Taking?

EPA has reassessed the risks associated with current food uses of the pesticide fenarimol, reassessed 42 existing tolerances, and reached a tolerance reassessment and risk management decision. The Agency is issuing for comment the resulting report on FQPA tolerance reassessment progress, including the *Fenarimol Overview*, *Fenarimol Summary*, *Fenarimol Decision Document (TRED)*, and supporting risk assessment documents.

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 established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the tolerances and exemptions included in this notice. EPA approved registration of products containing fenarimol as an active ingredient prior to the 1996 enactment of the Food and Quality Protection Act; therefore, while no reregistration decision is required at present, risks from non-occupational exposure to fenarimol through food, drinking water, and residential uses must be reassessed. The Agency has evaluated the dietary risk associated with fenarimol and has determined that there is a reasonable certainty, with appropriate mitigation, that no harm to any population subgroup will result from aggregate exposure to fenarimol when considering dietary exposure and all other non-occupational sources of pesticide exposure for which there is reliable information. Residential post-application exposure was of concern for children and infants from fenarimol products applied in residential settings. To mitigate this risk, the registrant has agreed to remove the residential uses from their labels until they conduct a special developmental toxicity study that will assess possible effects of fenarimol on the adult and juvenile rat hormonal systems. Once these data are submitted and reviewed, the Agency will make a determination regarding the reinstatement of the residential uses. For chronic drinking water risk from surface water, potential (average) estimated environmental concentrations (EECs) of fenarimol (84 parts per billion (ppb)) exceeds the chronic drinking water level of comparison (DWLOC) for all populations.

The 84 ppb value includes all residential uses and the golf course use of fenarimol. However, with the residential uses removed from the label, a correction factor of 0.31 can be applied to the 84 ppb surface water number to account for the use of fenarimol only on tees, greens, and fairways on golf courses. This would reduce the chronic EEC to 26 ppb. Infants and children, the most sensitive population subgroups would still exceed the chronic DWLOC of 20. However, the chronic EECs were estimated using Tier I modeling and only slightly exceed the DWLOC. Additional data are being required that will provide important information on the mobility of fenarimol and its degradates. These studies will help to refine the chronic surface water, ground water, and drinking water risk assessments. The Agency has reassessed all 42 tolerances for fenarimol and can make a FQPA safety determination. In addition, available residue chemistry data support the establishment of a 0.02 part per million (ppm) permanent tolerance for fenarimol residues in filberts under 40 CFR 180.421 (a). The Agency has sufficient residue data for reassessing the tolerances for fenarimol. The chronic dietary exposure assessment for fenarimol is highly refined using anticipated residues based on 1996–1999 Food and Drug Administration (FDA) monitoring data for apples, bananas, cherries, grapes, and pears. Field trial residue data were used for pecans and filberts. Percent crop treated information and processing factors, where available, were used in the assessment. There were no U.S. Department of Agriculture Pesticide Data Program monitoring data available for fenarimol. Residues of fenarimol *per se* were non-detectable (below the method limit of detection (LOD)) in all 1996–1999 FDA monitoring samples of apples, bananas, grapes, and pears (a total of more than 3,000 samples). Out of 214 cherry samples, three had detectable residues. Residues of fenarimol *per se* were non-detectable <LOD in/on all but one pecan nut meat sample from seven trials. There were no detectable residues in filbert samples from four field trials. Chronic dietary risks from exposure do not exceed the Agency's level of concern.

EPA works with affected parties to reach the tolerance reassessment decisions. The Agency therefore is issuing the fenarimol decision as a final decision with a public comment period. All comments received during the public comment period will be carefully considered by the Agency. If any comment significantly affects the Agency's decision, EPA will publish an amendment to the decision in the **Federal Register**. In the absence of substantive comments, the tolerance reassessment decisions reflected here will be considered final.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: November 15, 2002.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–30471 Filed 12–3–02 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0293; FRL–7278–9]

Pesticide Product; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Rosemary Biancardi, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8145; e-mail address: *biancardi.rosemary@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 entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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 this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. 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 Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0293. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket 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 20460–0001. 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 Rd., Springfield, VA 22161.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.''

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Did EPA Approve the Application?

The Agency approved the applications after considering all required data on risks associated with the proposed use of ''dipotassium phosphate,'' ''dipotassium phosphonate,'' ''sucrose octanoate esters [(α-D-glucopyranosyl, β-D-fructofuranosyl-octanoate), mono-, di- and triesters of sucrose octanoate],'' ''sodium carbonate peroxyhydrate,'' and ''rust *Puccinia thlaspeos* strain woad,'' 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 ''dipotassium phosphate,'' ''dipotassium phosphonate,'' ''sucrose octanoate esters [(α-D-glucopyranosyl, β-D-fructofuranosyl-octanoate), mono-, di- and triesters of sucrose octanoate],'' ''sodium carbonate peroxyhydrate,'' and ''rust *Puccinia thlaspeos* strain woad'' when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Applications

1. EPA issued a notice, published in the **Federal Register** of May 10, 2000, (65 FR 30112) (FRL–6556–6), which announced that Foliar Nutrient, Inc., 320 First Ave., Cairo, GA 31728 had submitted an application to register the pesticide product, Lexx-A-Phos Fungicide, (EPA File Symbol 72499–R), containing 22.67% dipotassium phosphate and (the registered active ingredient) 20.40% dipotassium phosphonate. This product was not previously registered.

The application was approved on September 16, 2002, as Lexx-A-Phos Fungicide (EPA Registration Number 72499–1. The technical grade of the active will be used for incorporation into the end-use product Lexx-A-Phos Fungicide, which is intended to control certain fungal diseases in woody ornamentals, turfgrasses and non-bearing fruits and nut tree crops. This use is classified as a terrestrial non-food application. (D. Benmhend)

2. EPA issued a notice, published in the **Federal Register** of August 11, 1999 (64 FR 43701) (FRL–6095–2), which announced that AVA Chemical Ventures, L.L.C., 80 Rochester Avenue, Suite 214, Portsmouth, NH 03801, had submitted applications to register the pesticide products, Avachem Sucrose Octanoate Manufacturing Use Product [63%], a manufacturing-use product for formulation into biological insecticide

end-use products (EPA File Symbol 70950–R), and Sucrose Octanoate [32.1%], a biological insecticide end-use product (EPA File Symbol 70950–E), containing sucrose octanoate (C_8 fatty acid mono-, di- and triesters of sucrose octanoate and sucrose dioctanoate) (α-D-glucopyranoside, β-D-fructofuranosyl, monooctanoate and dioctanoate), which has since been designated by the Agency as sucrose octanoate esters [(α-D-glucopyranosyl, β-D-fructofuranosyl-octanoate), mono-, di- and triesters of sucrose octanoate]. These products were not previously registered.

The applications were approved on September 16, 2002, as Avachem Sucrose Octanoate Manufacturing Use Product (EPA Registration Number 70950–1) for formulating into biochemical insecticide/miticide end-use products and Avachem Sucrose Octanoate [40.0%] (EPA Registration Number 70950–2) for use as a biochemical insecticide/miticide end-use product. (D. Greenway)

3. EPA also issued a notice, published in the **Federal Register** of August 11, 1999 (64 FR 43701) (FRL–6095–2), which announced that BioSafe Systems, 80 Commerce St., Glastonbury, CT 06033, had submitted an application to register the pesticide product, TerraCare Granular, Algaecide, Fungicide (EPA File Symbol 70299–G), containing the active ingredient sodium percarbonate at 40% redesignated as sodium carbonate peroxyhydrate. This product was not previously registered.

The application was approved on September 20, 2002, as TerraCyte™ (EPA Registration Number 70299–3) for use as an algaecide and fungicide on ornamental plants and turf. (A. Ball)

4. EPA issued a notice, published in the **Federal Register** of March 8, 2002 (67 FR 10717) (FRL–6824–3), which announced that Greenville Farms, 6189 N. 1200 E., Logan, Utah 84341, had submitted an application to register the pesticide product, Woad Warrior, a herbicide (EPA File Symbol 73417–R), containing *Puccinia thlaspeos* ''strain woad'' on rust-infected pieces of dyer's woad at 100% and at least 7.6×10^9 teliospores/pound of woad warrior. This product was not previously registered.

The application was approved on June 26, 2002, as Woad Warrior containing the rust *Puccinia thlaspeos* ''strain woad'' as the active ingredient. (EPA Registration Number 73417–1) for controlling dyer's woad, an invasive weed rapidly spreading in several Western states. (B. Mandula)

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: November 20, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–30602 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7417–2]

Generic Assessment Endpoints for Ecological Risk Assessments (External Review Draft); Notice of Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 60-day public comment period for the draft document titled Generic Assessment Endpoints for Ecological Risk Assessments prepared by the Agency's Risk Assessment Forum (RAF). The document is intended to assist EPA during the process of ecological risk assessment in selecting assessment endpoints, which are valued ecological entities and attributes to be protected. EPA will consider the public comment submissions in revising the document.

DATES: The 60-day public comment period begins December 4, 2002, and ends February 3, 2003. Comments must be provided by February 3, 2003.

ADDRESSES: The draft is available via the Internet on the EPA Risk Assessment Forum's home page at *http://www.epa.gov/ncea/raf* under the What's New and External Review Drafts menus. Comments may be submitted electronically, by mail, or in person, as described in the instructions under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, please contact Scott Schwenk, U.S. EPA, Office of Research and Development, National Center for Environmental Assessment (8601D), 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: 202–564–6667; fax: 202–565–0062; e-mail: *schwenk.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Submission of Comments

Electronic comments are preferred and may be sent by e-mail to: *risk.forum@epa.gov.* Alternatively, comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, NW., 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050. In the case of paper comments, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Please note that all comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

II. Background

Ecological risk assessment is a process for evaluating the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors. A critical early step in conducting an ecological risk assessment is to select assessment endpoints. Assessment endpoints represent valued ecological entities, and their attributes, upon which risk-management actions are focused. Selecting assessment endpoints is often challenging because of the diversity of species, ecological communities, and ecological functions from which those involved in risk assessment can choose and because of statutory ambiguity regarding what is to be protected. The purpose of the RAF document is to assist EPA risk assessors by providing a set of generic ecological assessment endpoints that can be considered and adapted for use in specific ecological risk assessments, building on existing EPA guidance and experience. The document is not prescriptive, but rather is intended to be a useful starting point that is flexible enough to be applied to many different types of ecological risk assessments. The document is undergoing peer review concurrent with the public comment period described in this notice.

Dated: November 12, 2002.

George W. Alapas,

Director, National Center for Environmental Assessment.

[FR Doc. 02–30763 Filed 12–3–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–02–46–C (Auction No. 46); DA 02–1871]

Auction of License in the 1670–1675 MHz Band Auction Scheduled for April 30, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of licenses in the 1670–1675 MHz band scheduled for April 30, 2003 (Auction No. 46). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 46 is scheduled to begin on April 30, 2003.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: Francis Gutierrez, Legal Branch, or Lyle Ishida, Auctions Operations Branch, at (202) 418–0660; Lisa Stover, Auctions Operations Branch, at (717) 338–2888, *Media Contact*: Lauren Kravetz at (202) 418–7944, *Public Safety & Private Wireless Division*: Keith Fickner or Brian Marenco, Policy and Rules Branch, at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 46 Procedures Public Notice* released on August 5, 2002. The complete text of the *Auction No. 46 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 46 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

I. General Information

A. Introduction

1. By the *Auction No. 46 Procedures Public Notice*, the Wireless Telecommunications Bureau (''Bureau'') announces the procedures and minimum opening bids for the upcoming auction of one nationwide license in the 1670–1675 MHz band scheduled for April 30, 2003 (Auction No. 46).

2. In accordance with the Balanced Budget Act of 1997, the Bureau released a public notice on May 24, 2002 seeking comment on reserve prices or minimum opening bids and the procedures to be used in Auction No. 46. The Bureau received two comments and one reply comment in response to the *Auction No. 46 Comment Public Notice*, 67 FR 43118 (June 26, 2002). The Bureau subsequently released a second public notice on July 15, 2002, revising the license inventory, auction start date, and seeking comment on revisions to proposed auction procedures. The Bureau received one comment in response to the *Auction No. 46 Further Comment Public Notice*, 67 FR 49022 (July 29, 2002).

3. On August 5, 2002, the Bureau released the *Auction No. 46 Procedures Public Notice* that announced the procedures and minimum opening bids for the auction of one nationwide license in the 1670–1675 MHz band, scheduled to begin on October 30, 2002.

4. On September 13, 2002, the Bureau released a public notice seeking comment on a request for postponement of Auction No. 46 filed by ArrayComm, Inc. *Auction No. 46 Public Notice Seeking Comment on Postponement*, 67 FR 61104 (September 27, 2002).

5. On September 25, 2002, the Bureau released a public notice, which announced that based on the record of comments it received, Auction No. 46 is postponed until April 23, 2003. *Auction No. 46 Postponement Public Notice*, 67 FR 63095 (October 10, 2002).

i. Background of Proceeding

6. On May 24, 2002, the Commission released the *Service Rules Report & Order*, which adopted service rules to govern the licensing of 27 MHz of electromagnetic spectrum reallocated for non-Government use, including the 1670–1675 MHz band. In the *Service Rules Report & Order*, 67 FR 41847, (June 20, 2002), the Commission, among other things, established competitive bidding procedures for the 1670–1675 MHz band; decided to assign, on a nationwide basis, one license for a 5-megahertz block of contiguous unpaired spectrum in the 1670–1675 MHz band; and determined that all operations in the 1670–1675 MHz band will be generally regulated under the framework of the Commission's Part 27 technical, licensing, and operating rules. The Commission also explained that a non-government licensee in the 1670–1675 MHz band must comply with the provisions of § 1.924(g) of the Commission's rules to minimize harmful interference to Geostationary Operations Environmental Satellite (GOES) earth stations receiving in the band 1670–1675 MHz. The GOES earth stations are located at Wallops Island, Virginia; Fairbanks, Alaska; and Greenbelt, Maryland.

ii. Licenses To Be Auctioned

7. One nationwide license consisting of a 5-megahertz block of contiguous unpaired spectrum in the 1670–1675 MHz band will be available in Auction No. 46.

B. Rules and Disclaimers

i. Relevant Authority

8. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 1670–1675 MHz band contained in title 47, part 27 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, ''Terms'') contained in the *Auction No. 46 Procedures Public Notice, Auction No. 46 Comment Public Notice, Auction No. 46 Further Comment Public Notice, Auction No. 46 Public Notice Seeking Comment on Postponement, Auction No. 46 Postponement Public Notice*, and the *Part 1 Fifth Report and Order* 65 FR 52401 (August 29, 2000) (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures).

9. Auction participants bidding on the license in the 1670–1675 MHz spectrum band should also be familiar with the *Service Rules Report and Order*.

10. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions*. Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554 or may be purchased from the

Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. When ordering documents from Qualex, please provide the appropriate FCC number (for example, FCC 02–152 for the *Service Rules Report and Order*).

ii. Prohibition of Collusion

11. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Because bidders in Auction No. 46 will be competing for the same license, they are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

12. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. Applicants may enter into bidding agreements before filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to § 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c).

13. In addition, § 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, §§ 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

14. A summary listing of documents from the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 46 Procedures Public Notice*.

iii. Due Diligence

15. Potential bidders are reminded that the 1670–1675 MHz band is being allocated for mixed use. The Commission made clear that a geographic area licensee operating in the reallocated band must protect Federal Government operations, either indefinitely or for a given period of time. These requirements may affect the ability of the geographic licensee to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license area.

16. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 46.

17. Accordingly, the 1670–1675 MHz licensee must protect indefinitely the Command and Data Acquisitions stations used to communicate with the GOES earth stations that are located at Wallops Island, Virginia; Fairbanks, Alaska; and Greenbelt, Maryland. The 1670–1675 MHz licensee must also comply with the Quiet Zone requirements of § 1.924 of the Commission's Rules.

18. Before planning to construct and operate a new or modified station within 100 kilometers of the Wallops Island, Virginia and Fairbanks, Alaska stations or within 65 kilometers of the Greenbelt, Maryland station, the 1670–1675 MHz licensee must notify the National Oceanic and Atmospheric Administration (NOAA) of the proposed operation. NOAA's GOES coordination web page, at *http://www.osd.noaa.gov/radio/frequency/htm*, provides the technical parameters of the earth stations and the point-of-contact notification information. Additionally, the licensee must file an application with the Commission requesting authority to operate the new or modified station. This application should be filed through the Commission's Universal Licensing System. The application should state the date that notification to NOAA was made. After the Commission receives an application, NOAA has 20 days to comment or object to the proposed new or modified station. If NOAA objects during the 20-day period, the Commission will take whatever action is deemed appropriate. In the absence of an objection by NOAA, the Commission will grant the application if it is otherwise acceptable.

19. Potential bidders for ''near the border'' licenses must protect stations in Canada and Mexico from harmful interference. This will permit licensees to maximize their operations depending on the spectrum use, terrain, and other factors at the border areas, while still protecting operations across the border. However, operations in the 1670–1675 MHz band may be subject to future agreements with Canada and Mexico and therefore may be subject to further modification.

20. The Commission makes no representations or guarantees regarding the accuracy or completeness of the information concerning Federal Government incumbents that appears in the *Auction No. 46 Procedures Public Notice* or third party documents. Potential bidders who have questions regarding Federal Government use of the 1670–1675 MHz band may contact Gerald F. Hurt, Chief, Spectrum Engineering and Analysis Division, National Telecommunications and Information Administration, Room 6725, 1401 Constitution Ave., NW., Washington, DC, 20230, at (202) 482–4107, via fax at (202) 482–4595, or at *ghurt@ntia.doc.gov*.

21. Potential bidders also should be aware that certain applications, petitions for rulemaking, requests for special temporary authority (''STA''), waiver requests, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent Federal entities. In addition, certain judicial proceedings that may relate to particular applicants or the license available in Auction No. 46 may be commenced, or may be pending, or may be the subject to further review. Resolution of these matters could have an impact on the availability of spectrum in Auction No. 46. Some of these matters (whether

before the Commission or the courts) may not be resolved by the time of the auction.

iv. Bidder Alerts

22. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

23. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due diligence before proceeding, as they would with any new business venture.

24. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 46 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

25. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 46 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

v. National Environmental Policy Act (''NEPA'') Requirements

26. The licensee must comply with the Commission's rules regarding the National Environmental Policy Act (''NEPA''). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility. The Commission's NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

i. Auction Date

27. The auction will begin on Wednesday, April 30, 2003. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on the license.

ii. Auction Title

28. Auction No. 46—1670–1675 MHz Band

iii. Bidding Methodology

29. The bidding methodology for Auction No. 46 will be multiple round, ascending auction. An ascending multiple round auction is the same as a simultaneous multiple round auction, but with only one license available for bid. The Commission will conduct this auction over the Internet. Telephonic bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

30. Listed are important dates associated with Auction No. 46:

Auction Seminar: September 18, 2002
Short-Form Application (FCC Form 175) Filing Window Opens: March 18, 2003
Short-Form Application (FCC Form 175) Deadline: March 25, 2003; 6 p.m. ET
Upfront Payments Deadline: April 11, 2003; 6 p.m. ET
Mock Auction: April 25, 2003
Auction Begins: April 30, 2003

v. Requirements for Participation

31. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, March 25, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, April 11, 2003.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

32. The following is a list of general contact information relating to Auction No. 46.

General Auction Information

(General Auction Questions, Seminar Registration): FCC Auctions Hotline, (888) 225–5322, Press Option #2 or direct (717) 338–2888. Hours of service: 8 a.m.–5:30 p.m. ET.

Auction Legal Information

(Auction Rules, Policies, Regulations): Auctions and Industry Analysis Division, Legal Branch (202) 418–0660.

Licensing Information

(Rules, Policies, Regulations, Licensing Issues, Due Diligence, Incumbency Issues): Public Safety & Private Wireless Division, (202) 418–0680.

Technical Support

Electronic Filing, Automated Auction System): FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY). Hours of service: Monday through Friday 8 a.m. to 6 p.m. ET.

Payment Information

(Wire Transfers, Refunds): FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax).

Telephonic Bidding: Will be furnished only to qualified bidders.

FCC Copy Contractor: Qualex International.

Additional Copies of Commission Documents: Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 863–2893, (202) 863–2898 (Fax) and *qualexint@aol.com (E-mail).*

Press information: Meribeth McCarrick (202) 418–0654,

FCC Forms: (800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area) and *http://www.fcc.gov/formpage.html.*

FCC Internet Sites: http://www.fcc.gov, http://wireless.fcc.gov/ auctions and *http://wireless.fcc.gov/uls.*

II. Short-Form (FCC Form 175) Application Requirements

33. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D of the *Auction No. 46 Procedures Public Notice.* The short-form application seeks the applicant's name and address, legal classification, status, small or very small business bidding credit eligibility, identification of the license sought, the authorized bidders and contact persons. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license and, as discussed in section II.D (Provisions Regarding Defaulters and Former Defaulters) of the *Auction No. 46 Procedures Public Notice,* that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency.

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

34. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing FCC Form 175, applicants will be required to file an ''Exhibit A'' providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

35. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the license being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, or bidding strategies. If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its applications and may not continue discussions with applicants after the deadline. Where applicants have entered into consortia or joint bidding arrangements, applicants must submit an ''Exhibit B'' to the FCC Form 175.

36. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

37. Bidding credits will be available to small and very small businesses, or consortia, thereof, as defined in 47 CFR 27.906, for the 1670–1675 MHz band. A bidding credit represents the amount by which the bidder's winning bid is discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests:

- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years (''very small business'') receives a 25 percent discount on its winning bid;
- A bidder with attributed average annual gross revenues of not more than $40 million for the preceding three years (''small business'') receives a 15 percent discount on its winning bid;

Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

ii. Tribal Land Bidding Credit

38. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* part V.D. of the *Auction No. 46 Procedures Public Notice.*

iii. Applicability of Part 1 Attribution Rules

39. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order*, in which the Commission, *inter alia*, adopted a ''controlling interest'' standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding. Part 1 rules that supersede inconsistent service-specific rules will control in Auction No. 46. *Accordingly, the ''controlling interest'' standard as set forth in the Part 1 rules will be in effect for Auction No. 46.*

40. *Control.* The term ''control'' includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

Attribution for small and very small business eligibility. In determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

41. A consortium of small or very small businesses is a ''conglomerate organization formed as a joint venture between or among mutually independent business firms,'' each of which individually must satisfy the definition of small and very small business in §§ 1.2110(f), 27.906 of the Commission's rules. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. Although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

42. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small or very small businesses (or consortia of small or very small businesses) for this auction.

43. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

44. *Small or very small business eligibility (Exhibit C).* Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, separately and in the aggregate, the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small or very small businesses, this information must be provided for each consortium member.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

45. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, for each of its controlling interests and affiliates, and for each affiliate of its controlling interests, as defined by § 1.2110 of the Commission's rules. Applicants must include this statement as Exhibit D of the FCC Form 175. Prospective bidders are reminded that the statement must be made under penalty of perjury and, further, submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

46. ''Former defaulters''—*i.e.*, applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-tax delinquencies—are eligible to bid in Auction No. 46, provided that they are otherwise qualified. However, as discussed in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Installment Payments

47. Installment payment plans will not be available in Auction No. 46.

F. Other Information (FCC Form 175 Exhibits E and F)

48. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of ''designated entities'' in its auctions. Applicants wishing to submit additional information may do so on Exhibit F (Miscellaneous Information) to the FCC Form 175.

G. Minor Modifications to Short-Form Applications (FCC Form 175)

49. After the short-form filing deadline (March 25, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change the certifying official, change control of the applicant, or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction46@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 46. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

50. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Francis Gutierrez of the Auctions and Industry Analysis Division at (202) 418–0660.

H. Maintaining Current Information in Short-Form Applications (FCC Form 175)

51. Applicants have an obligation under 47 CFR 1.65 to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

II. Pre-Auction Procedures

A. Auction Seminar

52. On Wednesday, September 18, 2002, the FCC sponsored a free seminar for Auction No. 46 at the Federal Communications Commission, located at 445 12th Street, SW., Washington, DC. The seminar provided attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the 1670–1675 MHz band and auction rules. The seminar also provided an opportunity for prospective bidders to ask questions of FCC staff.

B. Short-Form Application (FCC Form 175)—Due March 25, 2003

53. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on March 25, 2003. Late applications will not be accepted.

54. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* Part III.D of the *Auction No. 46 Procedures Public Notice*.

i. Electronic Filing

55. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on March 18, 2003, until 6 p.m. ET on March 25, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on March 25, 2003.

56. Applicants must press the ''SUBMIT Application'' button on the ''Submission'' page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 46 Procedures Public Notice*. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service Monday through Friday, from 8:00 AM to 6:00 PM ET. In order to provide better service to the public, *all calls to the hotline are recorded*.

57. Applicants can also contact Technical Support via e-mail. To obtain the address, click the Support tab on the Form 175 Homepage.

ii. Completion of the FCC Form 175

58. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 46 Procedures Public Notice*. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D of the *Auction No. 46 Procedures Public Notice* provide information on the required attachments and appropriate formats.

iii. Electronic Review of FCC Form 175

59. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

Note: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications. There is no fee for accessing this system. See Attachment C of the *Auction No. 46 Procedures Public Notice* for details on accessing the review system.

C. Application Processing and Minor Corrections

60. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

61. As described more fully in the Commission's rules, after the March 25, 2003, short-form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due April 11, 2003

62. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on April 11, 2003.

63. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 46 go to a lockbox number different from the lockboxes used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the April 11, 2003, deadline will result in dismissal of the application and disqualification from participation in the auction.

i. Making Auction Payments by Wire Transfer

64. Wire transfer payments must be received by 6 p.m. ET on April 11, 2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BENEFICIARY: FCC/Account # 910–0180
OBI Field: (Skip one space between each information item)
''AUCTIONPAY''
FCC REGISTRATION NUMBER (FRN): (same as FCC Form 159, block 11 and/or 21)
PAYMENT TYPE CODE (same as FCC Form 159, block 24A: A46U)
FCC CODE 1 (same as FCC Form 159, block 28A: ''46'')
PAYOR NAME (same as FCC Form 159, block 2)
LOCKBOX NO. # 358420

Note: The BNF and Lockbox number are specific to the upfront payments for this

auction; do not use BNF or Lockbox numbers from previous auctions.

65. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 46.'' Bidders should confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

ii. FCC Form 159

66. A completed FCC Remittance Advice Form (FCC Form 159, Revised 2/00) must be faxed to Mellon Bank in order to accompany each upfront payment. Proper completion of FCC Form 159 (Revised 2/00) is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 46 Procedures Public Notice*. An electronic version of the FCC Form 159 is available after filing the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

iii. Amount of Upfront Payment

67. In the *Part 1 Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that ''former defaulters,'' *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-''former defaulters.'' For purposes of this calculation, the ''applicant'' includes the applicant itself, its affiliates, its controlling interests, and affiliates of its controlling interests, as defined by § 1.2110 of the Commission's rules (as amended in the *Part 1 Fifth Report and Order*).

68. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed translating bidders' upfront payments to bidding units to define a bidder's maximum eligibility. In order to bid on the license, otherwise qualified bidders must have an eligibility level that meets the number of bidding units assigned to that license. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on the license or else the applicant will not be eligible to participate in the auction.

69. In the *Auction No. 46 Comment Public Notice*, the Bureau proposed an upfront payment of $12,628,000 for the nationwide 1670–1675 MHz license using the following formula: $0.01 * MHz * License Area Population with a minimum of $1,000.

ArrayComm and AeroAstro submitted comments regarding the Bureau's proposed formula for calculating the upfront payment for Auction No. 46. ArrayComm supports the Bureau's proposed upfront payment because it is appropriate given the nationwide scope of the license. AeroAstro, on the other hand, suggests that the proposed upfront payment is excessively high and may reduce potential participation and competition in the auction. AeroAstro recommends that the Commission reduce the upfront payment by a factor of ten, resulting in an upfront payment of $1,262,800.

70. The Bureau adopts its upfront payment as proposed. Given the nationwide scope of the 1670–1675 MHz license, the Bureau believes that the proposed upfront payment, as validated by the comments of ArrayComm, is appropriate.

71. The specific upfront payments and bidding units for the nationwide 1670–1675 MHz license is set forth in Attachment A of the *Auction No. 46 Procedures Public Notice.*

72. Former defaulters should calculate their upfront payment by multiplying the number of bidding units by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

iv. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

73. The Commission will use wire transfers for all Auction No. 46 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Tim Dates or Gail Glasser, at (202) 418–2843 by April 11, 2003. All refunds will be returned to the payor of record as identified on the FCC Form 159 unless the payor submits written authorization instructing otherwise. For additional information, please call (202) 418–1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
FCC Registration Number (FRN)
Taxpayer Identification Number
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in Part V.F. of the *Auction No. 46 Procedures Public Notice.*

E. Auction Registration

74. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on the license.

75. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) required to place bids and the other containing the SecurID cards. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

76. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, April 23, 2003, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

77. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing in person at the FCC Auction Headquarters located at 445 12th St., SW., Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Electronic Bidding

78. The Commission will conduct this auction over the Internet. Telephonic

bidding will also be available. As a contingency, the FCC Wide Area Network, which requires access to a 900 number telephone service, will be available as well. Qualified bidders are permitted to bid telephonically or electronically, *i.e.*, over the Internet or the FCC's Wide Area Network at $2.30 per minute. In either case, each authorized bidder must have its own Remote Security Access SecurID card, which the FCC will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID cards, while applicants with two or three authorized bidders will be issued three cards. For security purposes, the SecurID cards and the FCC Automated Auction System User Manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that each SecurID card is tailored to a specific auction, therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 46. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number. Each applicant should indicate its bidding preference'electronic or telephonic'on the FCC Form 175.

79. Please note that the SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

80. All qualified bidders will be eligible to participate in a mock auction on Friday, April 25, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

81. The first round of bidding for Auction No. 46 will begin on Wednesday, April 30, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Ascending Multiple Round Auction

82. In the *Auction No. 46 Comment Public Notice,* the Bureau proposed to award all licenses in Auction No. 46 in a single, simultaneous multiple round auction. The Bureau received one comment on this issue. ArrayComm agrees with the Bureau's proposal stating that the simultaneous multiple round structure is most likely to result in efficient bidding, thereby awarding the license to the party with the greatest ability to bring innovative services to consumers. An ''ascending multiple round auction'' is the same as a simultaneous multiple round auction, but with only one license available for bid. The Bureau concludes that it is operationally feasible and appropriate to auction the license in the 1670–1675 MHz band through a single, ascending multiple round auction. Unless otherwise announced, bids will be accepted on the license in each round of the auction.

ii. Maximum Eligibility and Activity Rules

83. In the *Auction No. 46 Comment Public Notice,* the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

84. For Auction No. 46, the Bureau will adopt its proposal that the amount of upfront payment submitted by a bidder would determine the eligibility (in bidding units) for participation in Auction No. 46. Bidders are reminded that the upfront payment is a refundable deposit made by each bidder to determine and establish eligibility to bid on the license. The upfront payment does not affect the total dollars a bidder may bid on the license.

85. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction. In the *Auction No. 46 Further Comment Public Notice,* because only one license will be available for auction, the Bureau proposed a single stage auction with each bidder required to be active on one hundred (100) percent of its bidding eligibility in each round.

86. Only one commenter addressed the Bureau's revised proposal. ArrayCom states that monitoring the bidding activity of only one license makes the evaluation and bidding process of necessity more straightforward for participants. Therefore, in order to ensure that the auction closes within a reasonable period of time, the Bureau adopts its proposal with the following activity requirements: a bidder must either place a valid bid and/or be the standing high bidder during each round of the auction rather than wait until the end before participating. Bidders are required to be active on 100 percent of their maximum eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, thus eliminating the bidder from the auction.

iii. Activity Rule Waivers and Reducing Eligibility

87. In the *Auction No. 46 Further Comment Public Notice,* the Bureau proposed that each bidder in the auction would be provided two activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. ArrayComm agreed with the Bureau's proposal that two waivers would be appropriate in light of the auction's narrowed scope.

88. Based upon the Bureau's experience in previous auctions, it adopts its proposal that each bidder be provided two activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. The Bureau is satisfied that its practice of providing two waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

89. The Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required. If there are no activity rule waivers available, the bidder's eligibility will be reduced, eliminating them from the auction

90. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver triggered during a round in

which there are no new valid bids will not keep the auction open.

Note: Once a proactive waiver is placed during a round, that waiver cannot be unsubmitted.

iv. Auction Stopping Rules

91. For Auction No. 46, the Bureau proposed to employ a simultaneous stopping rule approach. The Bureau also sought comment on a modified version of the stopping rule. The modified version of the stopping rule would close the auction after the first round in which no bidder submits a proactive waiver or a new bid on the license when it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on the license for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

92. The Bureau further proposed retaining the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either use an activity rule waiver (if it has any left) or lose bidding eligibility, thus eliminating the bidder from the auction.

93. In addition, the Bureau proposed to reserve the right to declare that the auction will end after a designated number of additional rounds (''special stopping rule''). The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or adjusting the amount of the minimum bid increments for the license.

94. The Bureau received no comments concerning the auction stopping rules and therefore, it adopts the proposals. Auction No. 46 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. These stopping rules are most appropriate for Auction No. 46, because the Bureau's experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation.

v. Auction Delay, Suspension, or Cancellation

95. In the *Auction No. 46 Comment Public Notice,* the Bureau proposed that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding.

96. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Bureau adopts its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. Exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

97. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will also be included in the public notice referenced herein.

98. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Reserve Price or Minimum Opening Bid

99. *Background.* The Communications Act, as amended, calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau should consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

100. In the *Auction No. 46 Comment Public Notice,* the Bureau proposed to establish minimum opening bids for Auction No. 46. Specifically, for Auction No. 46, the Bureau proposed a minimum opening bid of $12,628,000 for the nationwide license using the following formula: $0.01 * MHz * License Area Population with a minimum of $1,000.

In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price. ArrayComm and AeroAstro submitted comments regarding the Bureau's proposed formula for calculating minimum opening bids for Auction No. 46. ArrayComm supports the Bureau's proposed minimum opening bid, stating that it will ensure a successful outcome overall for the auction. AeroAstro, on the other hand, suggests that the multi-million dollar minimum opening bid for the license in the 1670–1675 MHz Band is an artificially high barrier to entry and may defeat the purpose of the auction by eliminating bidders. AeroAstro proposes the following formula for calculating minimum opening bids for the nationwide license: $ 0.002 * MHz * License Area Population.

101. The Bureau adopts its minimum opening bid as proposed. The Bureau believes that the minimum opening bid, as adopted, is appropriate.

102. The specific minimum opening bid for the license is set forth in Attachment A of the *Auction No. 46 Procedures Public Notice.*

iii. Minimum Accepted Bids and Bid Increments

103. In the *Auction No. 46 Comment Public Notice,* the Bureau proposed to use a smoothing methodology to calculate minimum acceptable bids. The Bureau further proposed to retain the discretion to change the minimum acceptable bids and bid increments if circumstances so dictate.

104. ArrayComm suggests that because the license inventory for Auction No. 46 is reduced to one license, a smaller bid increment is more appropriate. It notes that while higher bid increments can maintain the pace of large-scale auctions, they are not necessary under a single-license auction event such as Auction No. 46. ArrayComm further asserts that a reduced minimum bid increment may, in fact, increase auction efficiency in this scenario.

105. The Bureau adopts its proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment F of the *Auction No. 46 Procedures Public Notice.*

106. Upon consideration of ArrayComm's comments, the weighting factor will be set at 0.5, the minimum percentage increment at 0.05 (5 percent), and the maximum at 0.2 (20 percent). Because only a single license is available in Auction No. 46, it is appropriate to set the minimum bid increment at 5 percent. The Bureau reiterates that it retains the discretion to change the minimum acceptable bids and bid increments if it determines that circumstance so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment, for Auction No. 46 if circumstances warrant.

iv. High Bid

107. At the end of each bidding round, the Automated Auction System determines the standing high bid for the license based on the gross dollar amounts of the bids received.

108. In the case of tied high bids, a random number generator will be used to determine the standing high bid. A random number will be assigned to each bid. The tie bid having the highest random number will become the standing high bid.

v. Bidding

109. During a bidding round, a bidder may submit a bid (subject to its eligibility) as well as remove a bid placed in the same bidding round. If a bidder submits multiple bids for the license in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with the license for which the bidder has removed its bid do not count towards the bidder's activity at the close of the round.

110. All bidding will take place remotely either through the Automated Auction System or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, five to ten minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 46.

111. The Automated Auction System requires each bidder to be logged in during the bidding round using the bidder identification number provided in the registration materials, and the generated SecurID code. Bidders are strongly encouraged to print bid confirmations after they submit their bid.

112. In each round, eligible bidders will be able to place a bid on the license in any of nine different amounts. The Automated Auction System interface will list the nine acceptable bid amounts in a drop-down box. Bidders may use the drop-down box to select from among the nine acceptable bid amounts.

113. Once there is a standing high bid on the license, the Automated Auction System will calculate a minimum acceptable bid for the following round. The difference between the minimum acceptable bid and the standing high bid will define the *bid increment.* The nine acceptable bid amounts consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

114. Until a bid has been placed on the license, the minimum acceptable bid for that license will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the minimum percentage increment, rounded, and the minimum opening bid. Therefore, when the minimum percentage increment equals 0.05, the first additional bid amount will be approximately five percent higher than the minimum opening bid; the second, ten percent; the third, fifteen percent; etc.

115. See Attachment F of the *Auction No. 46 Procedures Public Notice* for more detail on the calculation of the various bid amounts.

vi. Bid Removal and Bid Withdrawal

116. In the *Auction No. 46 Comment Public Notice,* the Bureau proposed bid removal and bid withdrawal rules. The Bureau however revised its proposal concerning withdrawals in the *Auction No. 46 Further Comment Public Notice.* It proposed that bidders would not be permitted to withdraw bids in any round since Auction No. 46 had been limited to a single license. No commenters disagreed with the Bureau's proposal. Therefore, the Bureau will adopt its proposal and will not permit bidders to withdraw bids in any rounds during the auction.

117. Procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By using the ''remove bid'' function in the bidding system, a bidder may effectively ''unsubmit'' a bid placed within that round. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is subsequently removed does not count toward the bidder's activity requirement. Once a round closes, a bidder may no longer remove a bid.

vii. Round Results

118. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids placed, current high bid, new minimum accepted bid, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports

reflecting bidders' identities and bidder identification numbers for Auction No. 46 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

viii. Auction Announcements

119. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the Automated Auction System.

ix. Maintaining the Accuracy of FCC Form 175 Information

120. As noted in Part II.G. of the Auction No. 46 Procedures Public Notice, after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: *auction46@fcc.gov.* The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 46. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Francis Gutierrez of the Auctions and Industry Analysis Division at (202) 418–0660.

I. Post-Auction Procedures

A. Down Payments

121. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bid and bidder.

122. Within ten business days after release of the auction closing notice, the winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bid (actual bid less any applicable small or very small business bidding credit). *See* 47 CFR 1.2107(b).

B. Auction Discount Voucher

123. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher (''ADV'') in the amount of $125,273,878.00. This ADV may be used by Qualcomm or its transferee, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003, subject to terms and conditions set forth in the Commission's Order. Qualcomm transferred $10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35 and the transferee used its portion of the ADV to pay a portion of one of its winning bids in Auction No. 35. The remaining portion of Qualcomm's ADV could be used to adjust winning bids in another FCC auction, including Auction No. 46.

C. Long-Form Application

124. Within ten business days after release of the auction closing notice, the winning bidder must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for the license won through Auction No. 46. A winning bidder that is a small or very small business must include an exhibit demonstrating their eligibility for the bidding credit. See 47 CFR 1.2112(b). Further filing instructions will be provided to the auction winner at the close of the auction.

D. Tribal Land Bidding Credit

125. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

126. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit after winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

127. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's web site by going to *http://wireless.fcc.gov/auctions* and clicking on *Tribal Land Credits.*

E. Default and Disqualification

128. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

F. Refund of Remaining Upfront Payment Balance

129. All applicants that submitted upfront payments but were not winning bidders for the license in Auction No. 46 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payor of record, as identified on the FCC Form 159, unless the payor submits written authorization instructing otherwise.

130. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, and have no remaining bidding eligibility, must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC

Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

131. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Tim Dates or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 02–30701 Filed 12–3–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1442–DR]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama, (FEMA–1442–DR), dated November 14, 2002, and related determinations.

EFFECTIVE DATE: November 19, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 14, 2002:

Henry and Winston Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30697 Filed 12–3–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1441–DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee, (FEMA–1441–DR), dated November 13, 2002, and related determinations.

EFFECTIVE DATE: November 18, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 13, 2002:

Anderson, Bedford, Carroll, Coffee, Crockett, Cumberland, Gibson, Madison, Marshall, Morgan, Scott, and Tipton for Public Assistance (already designated for Individual Assistance).

Meigs, Roane, Van Buren, and Warren Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30698 Filed 12–3–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1439–DR]

Texas; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas, (FEMA–1439–DR), dated November 5, 2002, and related determinations.

EFFECTIVE DATE: November 20, 2002.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *Magda.Ruiz@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of November 5, 2002:

Jim Wells County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–30699 Filed 12–3–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection: Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC intends to conduct a survey of consumers to advance its understanding of the incidence of consumer fraud and allow it to better serve people who experience it. Before gathering this information, the FTC is seeking public comments on its proposed consumer research. Comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA).

DATES: Comments must be submitted on or before February 3, 2003.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to *consumersurvey@ftc.gov* as prescribed below. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned ''Consumer Fraud Survey—FTC File No. P014412.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Nat Wood, Assistant Director, Officer of Consumer and Business Education, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3407; e-mail *consumersurvey@ftc.gov.*

SUPPLEMENTARY INFORMATION: The FTC invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The FTC will submit the proposed information collection requirements to OMB for review, as required by the PRA (44 U.S.C. Chapter 35, as amended).

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *consumersurvey@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR section 4.9(b)(6)(ii).

1. Description of the Collection of Information and Proposed Use

The FTC proposes to survey approximately 3,000 consumers in order to gather specific information on the incidence of consumer fraud in the general population. This information will be collected on a voluntary basis, and the identities of the consumers will remain confidential. The FTC has contracted with a consumer research firm to identify consumers and conduct the survey. The results will assist the FTC in determining whether the type and frequency of consumer frauds collected in its Consumer Sentinel database of fraud complaints representatively reflect the incidence of consumer fraud in the general population and will inform the FTC about how best to combat consumer fraud.

2. Estimated Hours Burden

The FTC will pretest the survey on approximately 100 respondents to ensure that all questions are easily understood. This pretest will take approximately 15 minutes per person and 25 hours as a whole (100 respondents × 15 minutes each). Answering the consumer survey will require approximately 15 minutes per respondent and 750 hours as a whole (3,000 respondents × 15 minutes each). Thus, cumulative total hours attributable to the consumer research will approximate 775 hours.

3. Estimated Cost Burden

The cost per respondent should be negligible. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

Attachment B

FTC NATIONAL SURVEY

FINAL DRAFT October 4, 2002

Project #
Public Opinion Strategies
Alexandria, Virginia

Hello, I'm _____ of _____, a national research firm. We're talking with people around the country today, and would like to ask you a few questions on a confidential basis. We are not calling to sell anything nor will this call result in any future sales calls. We are simply speaking to people for research purposes only.

A. First, are you at least 18 years of age or older?

1 . YES **(CONTINUE TO QUESTION 1)**

IF NO THEN ASK: May I please speak to someone in your household who is 18 years of age or older?

(REPEAT QUESTION A WITH NEW RESPONDENT)

The first few questions are about some experiences you personally might have as a consumer...

1. Have you, yourself, received a telemarketing phone call in the past year?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

Now, please tell me whether, yes or no, you have done any of the following in the past YEAR.

In the past YEAR have you...**(RANDOMIZE AND INSERT Q2-Q6 STATEMENTS)**

YES	NO	(DO NOT READ) DK/REF
1	2	3

(IF YES, ASK:) And how many such (purchases/contributions) would you estimate that you have made in the last year? **(RECORD EXACT NUMBER)**

(IF Q1:1, ASK Q2)

2. Purchased something in response to a telemarketing call from a company with whom you have not previously done business

(IF Q1:1, ASK Q3)

3. Contributed to a charity in response to a telemarketing call, to which you have not previously donated

4. Purchased something from an internet web site

5. Placed an order for a product by phone, internet, or mail after seeing a television advertisement or infomercial

6. Placed an order for a product by phone, internet, or mail after receiving an unsolicited piece of mail from a company with whom you have not previously done business

7. And, whether or not you purchase products and services via the Internet or the World Wide Web, how concerned are you about the security of sending your credit card number over the Internet or the World Wide Web **(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)** — very concerned, somewhat concerned, not very concerned, or not concerned at all?

1 VERY CONCERNED
2 SOMEWHAT CONCERNED
3 NOT VERY CONCERNED
4 NOT CONCERNED AT ALL
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(ASK SAMPLE A)

8a. In general, thinking about how your close friends or family would be most likely to describe the way you deal with people you do NOT know, would they be more likely to describe you as being... **(ROTATE PUNCHES 1-2)**

1 Trusting and Friendly
...or...
2 Cautious and Suspicious
3 BOTH **(DO NOT READ)**
4 NEITHER **(DO NOT READ)**
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(ASK SAMPLE B)

8b. In general, thinking about how your close friends or family would be most likely to describe the way you deal with salespeople, would they be more likely to describe you as being... **(ROTATE PUNCHES 1-2)**

1 Trusting and Friendly
...or...
2 Cautious and Suspicious
3 BOTH **(DO NOT READ)**
4 NEITHER **(DO NOT READ)**
5 DON'T KNOW/REFUSED **(DO NOT READ)**

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9. Now, thinking about YOUR experiences as a consumer, was there ever a time you felt you were the subject of a consumer fraud?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q9:1, ASK)

10. When was the last time this happened? **(DO NOT READ LIST, OPEN-END PRE-CODE)**

1 During the past year
2 One to two years ago
3 Two to three years ago
4 Three to five years ago
5 More than five years ago
6 DON'T KNOW/REFUSED

(IF Q10:1, ASK)
(ASK 1/4 OF SAMPLE)

11. Can you BRIEFLY tell me what kind of fraud it was? And can you tell me anything else you can think of that is important about that experience?

RECORD RESPONSE VERBATIM

(ASK SAMPLE A ONLY)

12. Now if you learned there was a federal government web site or a toll free number that provides consumers with information on how to recognize and avoid fraudulent or deceptive offers and how to avoid becoming a victim of identity theft...How likely would you be to visit this web site or call the toll free number? Would you be...**(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)...**

1 VERY LIKELY
2 SOMEWHAT LIKELY
3 NOT TOO LIKELY
4 NOT LIKELY AT ALL

...to visit this website or call the toll free number?

5 DON'T KNOW/REFUSED **(DO NOT READ)**

(ASK SAMPLE B ONLY)

Now if you learned there was a federal government web site or a toll-free number where you could file a complaint about a fraud or identity theft...How likely would you be to visit this web site or call the toll-free number to file a complaint if you were a...**(ROTATE)**

Would you be **(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)** — Very Likely, Somewhat Likely, Not too Likely, or Not at all Likely to visit this web site or call the toll-free number to file a complaint?

	VERY LIKELY 1	**SMWT LIKELY 2**	**NOT TOO LIKELY 3**	**NOT AT ALL LIKELY 4**	**(DNR) DK/REF 5**
13. Victim of consumer fraud?					
14. Victim of identity theft?					

Now we would like to ask you about some types of fraud that happen to consumers. Since there are a lot of ways in which a consumer might be cheated or be a victim of fraud, I am going to read you descriptions of some ways in which consumers are sometimes cheated or become victims of fraud. Please tell me which of these things, if any, have happened to YOU in the past YEAR.

(RANDOMIZE AS BLOCKS: Q15-Q19, Q20-Q28B, Q29-Q35, AND Q36-Q40)

A. In the past YEAR, have you paid money to anyone who promised or guaranteed...**(RANDOMIZE)**

B. **(IF YES, ASK:)** How many times has this happened to you in the past year?

HAPPENED			NUMBER OF TIMES				(DNR)
YES	**NO**	**DK/REF (DNR)**	**Once**	**Twice**	**Three**	**Four +**	**Don't Know/Ref**
1	**2**	**3**	**1**	**2**	**3**	**4**	**5**

15. To remove negative, but true, information from your credit record, but failed to get the information removed

16. To provide information to help you create a new identity or new credit record

17. To provide insurance to protect you against the unauthorized use of your credit cards

18. To provide you with a credit card or loan, other than a mortgage loan, but required you pay a fee before receiving the credit card or loan
(IF Q18A:1, ASK Q19 AFTER Q18B BUT BEFORE CONTINUING WITH REST OF SERIES)

(IF Q18A:1, ASK)

(IF Q18B:2-5, READ:) Thinking now about the most recent time this happened to you...

19. Did you actually receive the promised loan or credit card?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(RANDOMIZE AS BLOCKS: Q15-Q19, Q20-Q28B, Q29-Q35, AND Q36-Q40)

20. In the past year, have you been billed for a product or service which you did not agree to purchase or were you billed for an amount that was substantially more than you expected to pay?

1 YES
2 NO **(SKIP TO Q27)**
3 DON'T KNOW/REFUSED **(DO NOT READ)(SKIP TO Q27)**

(IF Q20:1, ASK Q21A-Q24B:)

A. Did you have this experience while purchasing...**(RANDOMIZE Q21A-Q23A)**

B: **(IF YES, ASK:)** How many times has this happened to you in the past year?

HAPPENED			NUMBER OF TIMES				(DNR)
YES	**NO**	**DK/REF (DNR)**	**Once**	**Twice**	**Three**	**Four +**	**Don't Know/Ref**
1	**2**	**3**	**1**	**2**	**3**	**4**	**5**

21. Internet-related services, such as internet access or a web-site **(IF Q21A:1 ASK Q27 & Q27B AFTER Q21B BUT BEFORE CONTINUING WITH REST OF SERIES)**

22. Information services, such as adult entertainment, gambling or psychic services either delivered over the telephone through 900 pay-per-call services or via the internet **(IF Q22A:1 ASK Q27 & Q27B AFTER Q22B BUT BEFORE CONTINUING WITH REST OF SERIES)**

23. A publication or membership in a club that the seller told you would allow you to purchase something for a lower price than is generally available
(IF Q23A:1, ASK Q25-Q27b AFTER Q23B BUT BEFORE CONTINUING WITH REST OF SERIES)

(ALWAYS ASK LAST)
24. Some other product or service

(IF Q24A:1, ASK:)
(IF Q24B:2-5 READ:) Thinking now about the most recent time this happened to you...

24c. What was the product or service?

RECORD VERBATIM RESPONSES

(IF Q23A:1, ASK)
(IF Q23B:2-5, READ) Thinking now about the most recent time this happened to you...

25. Did the membership or the information in the publication enable you to purchase something for a lower price as you had been promised?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q23A:1, ASK)
26. And what kinds of products were you supposed to be able to purchase at a reduced price? **(DO NOT READ)(OPEN-END PRE-CODE)**

1 Automobiles that had been seized by the government or had been repossessed.
2 Houses where the owner had fallen behind on their mortgage payments and the mortgage holder had foreclosed
3 Travel services
4 Medical goods and services, such as dental care, eye care, or prescription drugs
5 Entertainment, such as restaurant meals or movie tickets
6 General Merchandise, like food or household products
7 OTHER **(SPECIFY)** _____
8 Don't know/refused

(IF Q21A:1, Q22A:1, 23A:1 OR Q24A:1, ASK)
(IF Q21B:2-5 OR Q22B:2-5, READ:) Thinking now about the most recent time this happened to you...

27. Did you try to get the seller to give you a refund or otherwise make an adjustment?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q27:1, ASK)
27b. And was the seller willing to provide a refund, or otherwise make an adjustment that satisfied you?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

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28. And in the past year, has your long distance telephone service been switched to another company without your knowledge or consent?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q28:1, ASK:)

28b. How many times has this happened to you in the past year?

1 ONCE
2 TWICE
3 THREE TIMES
4 FOUR OR MORE TIMES
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(RANDOMIZE AS BLOCKS: Q15-Q19, Q20-Q28B, Q29-Q35, AND Q36-Q40)

A. In the past year, have you paid anyone...**(RANDOMIZE)**

B. **(IF YES, ASK:)** How many times has this happened to you in the past year?

HAPPENED			NUMBER OF TIMES				(DNR)
YES	**NO**	**DK/REF (DNR)**	**Once**	**Twice**	**Three**	**Four +**	**Don't Know/Ref**
1	**2**	**3**	**1**	**2**	**3**	**4**	**5**

29. For an opportunity to operate your own business, such as a work-at-home plan, a business opportunity or a franchise?
(IF Q29A:1, ASK Q31-Q34 AFTER Q29B BUT BEFORE CONTINUING WITH REST OF SERIES)

30. Who promised that you would obtain a job at the U.S. Postal Service or another branch of state or federal government?
(IF Q30A:1, ASK Q35, AFTER Q30B BUT BEFORE CONTINUING WITH SERIES)

(IF Q29A:1, ASK)
(IF Q29B:2-5, READ:) Thinking now about the most recent time this happened to you...

31. Were you led to believe that most of the money you earned from this business would be from recruiting others to join the business, rather than from the sale of products?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q29A:1, ASK)
32. And was the business to be operated out of your home?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q29A:1, ASK)

33. Were you led to believe that you would earn a certain amount of income or profit from this business?

(IF YES ASK:) Did you earn at least roughly as much money as you had been led to expect?

1 YES - No earnings promises were made
2 YES - Promised level of earnings was realized
3 YES - Promised level of earnings was NOT realized
4 NO
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q29A:1, ASK)

34. Were you promised help in locating customers who would use your services or allow you to sell your products from their premises?

(IF YES ASK:) Did you obtain the promised assistance?

1 YES - No assistance was promised
2 YES - Promised assistance was provided
3 YES - Promised assistance was NOT provided
4 NO
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q31:1, Q33:3 OR Q34:3, ASK:)

34b. And how many months ago did you purchase this business?

_____ **RECORD NUMBER OF MONTHS**

(IF Q30A:1, ASK)
(IF Q30B:2-5, READ:) Thinking now about the most recent time this happened to you...

35. Did you get the job that was promised?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(RANDOMIZE AS BLOCKS: Q15-Q19, Q20-Q28B, Q29-Q35, AND Q36-Q40)

36. In the past year, has anyone told you that you had won a prize or been selected to receive an award such as money, a free vacation, or other product or service?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q36:1, ASK:)

37. Were you told that you had to pay something, purchase a good or service, or attend a sales presentation in order to receive your prize or award?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q37:1, ASK:)

38. Did you make the required payment or purchase or did you attend the required sales presentation?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q38:1, ASK:)

38b. How many times has this happened to you in the past year?

1 ONCE
2 TWICE
3 THREE TIMES
4 FOUR OR MORE TIMES
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q38:1, ASK)

(IF Q38B:2-5, READ:) Thinking now about the most recent time this happened to you...

39. Did you ever receive the prize or award?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q39:1, ASK)

40. And was the prize or award essentially what had been described to you?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(ROTATE AS A BLOCK Q41-Q44 WITH Q45-Q49)

41. Other than the things we have already discussed, in the past year have you purchased something which you paid for but NEVER received?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q41:1, ASK:)

41b. How many times has this happened to you in the past year?

1 ONCE
2 TWICE
3 THREE TIMES
4 FOUR OR MORE TIMES
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q41:1, ASK)

(IF Q41B:2-5, READ:) Thinking now about the most recent time this happened to you...

42. Did you try to get the seller to give you a refund or otherwise make an adjustment?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q42:1, ASK)

43. And was the seller willing to provide a refund or otherwise make an adjustment that satisfied you?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IFQ41:1, ASK)

44. What was the item that you purchased? **(DO NOT READ LIST (OPEN-END PRE-CODE)**

1 Business opportunities / franchises / distributorships / work-at-home plans
2 Buyers clubs
3 Cameras (including digital cameras and camcorders)
4 CDs / video tapes / DVDs
5 Computers: equipment or software
6 Health care products and services
7 Information such as psychic or adult entertainment services delivered over the internet
8 Internet access services
9 Internet web site design / advertising on the internet
10 Investments
11 Magazines
12 Office supplies
13 Pay-per-call and information services such as adult entertainment, gambling or psychic services delivered over the telephone or internet
14 Real estate (including timeshares)
15 Travel services / vacations
16 Other **(SPECIFY)** _____
17 DON'T KNOW/REFUSED

(ROTATE AS A BLOCK Q41-Q44 WITH Q45-Q49)

45. Other than the things we have already discussed, in the past year have you purchased something where the item you received turned out to be of substantially lower quality than what was originally represented to you?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q45:1, ASK:)
45b. How many times has this happened to you in the past year?

1 ONCE
2 TWICE
3 THREE TIMES
4 FOUR OR MORE TIMES
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q45:1, ASK)
(IF Q45B:2-5, READ:) Thinking now about the most recent time this happened to you...
46. Did you try to return the item or seek to get the seller to make some other kind of an adjustment?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q46:1, ASK)
47. And was the seller willing to take the item back or otherwise make an adjustment that satisfied you?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q45:1, ASK)

48. What was the item that you purchased? **(DO NOT READ LIST) (OPEN-END PRE-CODE)**

1 Business opportunities / franchises / distributorships / work-at-home plans
2 Buyers clubs
3 Cameras (including digital cameras and camcorders)
4 CDs / video tapes / DVDs
5 Computers: equipment or software
6 Health care products and services
7 Information such as psychic or adult entertainment services delivered over the internet
8 Internet access services
9 Internet web site design / advertising on the internet
10 Investments
11 Magazines
12 Office supplies
13 Pay-per-call and information services such as adult entertainment, gambling or psychic services delivered over the telephone or internet
14 Real estate (including timeshares)
15 Travel services / vacations
16 Other **(SPECIFY)** _____
17 DON'T KNOW/REFUSED

(IF Q48:1-16, ASK)

49. Could you please briefly describe how the item differed from what you expected?

RECORD RESPONSE VERBATIM

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50. In the past year, has anyone misused your credit card or credit card number that had either been lost or stolen and placed charges on your account?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

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51. And other than the misuse of your credit card we just discussed, in the past year, have you been the victim of Identity Theft. That is, has anyone used your personal information without your permission, to obtain credit in your name, to run up debts in your name or otherwise commit fraud or theft?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

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52. Now, we've been talking about some SPECIFIC ways in which you might have been cheated or defrauded in the last year. Now I'd like to know if there were any other occasions in the past year that you felt a person or company cheated you out of money or property?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q52:1, ASK:)
52b. How many times has this happened to you in the past year?

1 ONCE
2 TWICE
3 THREE TIMES
4 FOUR OR MORE TIMES
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q52:1, ASK)
(IF Q52B:2-5, READ:) Thinking now about the most recent time this happened to you...
53. Can you briefly tell me what happened? And can you tell me anything else you can think of that is important about that experience?

RECORD RESPONSE VERBATIM

GENERAL FOLLOW-UP QUESTIONS (Q54-Q62) WILL EITHER BE ASKED AFTER EACH INSTANCE OF FRAUD REPORTED BY A RESPONDENT IN Q15-Q49 OR WILL BE ASKED FOR A MAXIMUM OF THREE INSTANCES OF FRAUD REPORTED BY A RESPONDENT IN Q15-Q49. THIS WILL BE DETERMINED BY A PRE-TEST SURVEY.

(IF Q15:1, Q16:1, Q17:1, Q18:1, Q21:1, Q22:1, Q23:1, Q24:1, Q28:1, Q31:1, Q33:3, Q34:3, Q35:2, Q39:2, Q40:2, Q43:2, Q47:2, ASK:)

54. How did you first learn about [Insert language describing the product or service involved in the fraud]? **(RANDOMIZE)**

1 through an internet auction site
2 from an internet web site, other than an auction site
3 from an unsolicited email
4 from a television advertisement or infomercial
5 from a mail advertisement or solicitation, including from a catalog
6 from a telemarketer
7 from a store you visited
8 from someone who came to your home
9 other **(SPECIFY)** _____
10 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q54:4-5, ASK)

55. And how did you purchase this product **(RANDOMIZE)**?

1 VISITED A STORE
2 ORDERED ON THE TELEPHONE
3 MAILED IN AN ORDER
4 ORDERED FROM INTERNET SITE
5 OTHER **(SPECIFY)** _____
6 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q15:1, Q16:1, Q17:1, Q18:1, Q21:1, Q22:1, Q23:1, Q24:1, Q28:1, Q31:1, Q33:3, Q34:3, Q35:2, Q39:2, Q40:2, Q43:2, Q47:2, ASK:)

56. How much money did you pay or lose as a result of the person or company who defrauded you?

PAID _____**(RECORD EXACT AMOUNT, 9999999 FOR DK/REF)**
LOST _____**(RECORD EXACT AMOUNT, 9999999 FOR DK/REF)**

(IF PAID MONEY ON Q56, ASK)

57. And how did you pay for this transaction?

1 Credit Card
2 Cash
3 Check
4 On-line payment system like PayPal,
5 Seller took money directly from my checking account
6 Charged to my telephone bill
7 Other **SPECIFY)** _____
8 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q15:1, Q16:1, Q17:1, Q18:1, Q21:1, Q22:1, Q23:1, Q24:1, Q28:1, Q31:1, Q33:3, Q34:3, Q35:2, Q39:2, Q40:2, Q43:2, Q47:2, ASK:)

58. What actions, if any, did you take in attempting to resolve this incident?**(DO NOT READ, OPEN-END PRE-CODE) (PROBE FOR MULTIPLE RESPONSES by following up with "Anything else?")**

1 Did nothing
2 Asked for a refund or replacement
3 Stopped payment or refused to pay
4 Stopped buying from the company
5 Consulted a lawyer or other professional
6 Complained to family or friends / told family or friends not to buy from the seller
7 Complained to salesperson, manager or owner of the company that sold the product
8 Complained to the product manufacturer
9 Complained to the Better Business Bureau
10 Complained to a bank
11 Complained to a credit card company
12 Complained to a local consumer agency
13 Complained to the local police department
14 Complained to the Department of Motor Vehicles
15 Complained to a local consumer help line
16 Complained to the state Attorney General or state consumer agency
17 Complained to the FTC
18 Complained to another federal agency (specify)
19 Other **(SPECIFY)** _____
20 DON'T KNOW/REFUSED

(IF Q58:1-6, 19-20 ONLY, ASK)

59. And, did you report your experience to anyone?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF Q59:1, ASK)

60. To whom did you report your experience?
(DO NOT READ OPEN-END PRE-CODE) (PROBE FOR MULTIPLE RESPONSES by following up with "Anything else?")

1 Family or friends / tell family or friends not to buy from the seller
2 Salesperson, manager or owner of the company that sold the product
3 The product manufacturer
4 The Better Business Bureau
5 A bank
6 A credit card company
7 A local consumer agency
8 The local police department
9 The Department of Motor Vehicles
10 A local consumer help line
11 The state Attorney General or state consumer agency
12 The FTC
13 Another federal agency **(SPECIFY)** _____
14 Other **(SPECIFY)** _____
15 DON'T KNOW/REFUSED

(IF Q58:7-18 OR Q60:2-14, ASK)

61. How satisfied were you with the result of your report of your experience with **(INSERT FIRST PUNCH FROM Q58 OR Q60)**?...**(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)** — Very Satisfied, Somewhat Satisfied, Not Too Satisfied, or Not at all satisfied?

1 VERY SATISFIED
2 SOMEWHAT SATISFIED
3 NOT TOO SATISFIED
4 NOT AT ALL SATISFIED
5 DON'T KNOW/REFUSED **(DO NOT READ)**

(IF MORE THAN ONE PUNCH ON Q58:7-18 OR Q60:2-14, ASK)

62. How satisfied were you with the result of your report of your experience with **(INSERT SECOND PUNCH FROM Q58 OR Q60)**?...**(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)** — Very Satisfied, Somewhat Satisfied, Not Too Satisfied, or Not at all satisfied?

1 VERY SATISFIED
2 SOMEWHAT SATISFIED
3 NOT TOO SATISFIED
4 NOT AT ALL SATISFIED
5 DON'T KNOW/REFUSED **(DO NOT READ)**

Changing Topics and thinking some more about you...

63. Do you ever go online to access the Internet or World Wide Web?

1 YES
2 NO

(IF Q63:1, ASK)

64. How many hours EACH WEEK would you say you spend on the Internet either at work OR at home ?

RECORD EXACT NUMBER OF HOURS, ENTER 999 FOR DK/REF

And for statistical purposes only...

65. In what year were you born?

_____ _____ _____ _____ **(9999 = DK/REFUSED)**

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66. Are you married, widowed, separated, divorced or have you never been married?

1 MARRIED
2 WIDOWED
3 SEPARATED
4 DIVORCED
5 NEVER BEEN MARRIED **(DO NOT READ)**
6 NOT SURE/REFUSED **(DO NOT READ)**

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67. And what was the last grade you completed in school? **(DO NOT READ CATEGORIES)**

1 SOME GRADE SCHOOL (1-8)
2 SOME HIGH SCHOOL (9-11)
3 GRADUATED HIGH SCHOOL (completed 9-12)
4 TECHNICAL OR VOCATIONAL SCHOOL (12)
5 SOME COLLEGE (13-15)
6 GRADUATED COLLEGE (16)
7 GRADUATE/PROFESSIONAL SCHOOL (16+)

8 REFUSED **(DO NOT READ)**

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68. Are you or is anyone in your household a military veteran?

(IF YES, ASK:) And is that you or someone else?

1 YES, SELF
2 YES, OTHER
3 YES, BOTH
4 NO
5 REFUSED/DON'T KNOW **(DO NOT READ)**

---

69. Is English the primary language spoken in your home, or do you generally speak another language at home? **(IF NOT ENGLISH, ASK**: What other language do you generally speak?)

1 PRIMARILY ENGLISH
2 PRIMARILY SPANISH
3 OTHER **(SPECIFY)** _____
4 DO NOT KNOW/REFUSED **(DO NOT READ)**

---

70. And for statistical purposes only...is your total annual HOUSEHOLD income greater or less than $60,000 dollars?

(IF LESS THAN $60,000, ASK:) Is it...
(ROTATE FROM TOP TO BOTTOM/BOTTOM TO TOP)
1 UNDER $20,000
2 BETWEEN $20,000 - $40,000
3 OVER $40,000

(IF GREATER THAN $60,000, ASK:) Is it...
(ROTATE FROM TOP TO BOTTOM/BOTTOM TO TOP)
4 UNDER $80,000
5 BETWEEN $80,000 - $100,000
6 OVER $100,000

7 REFUSED **(DO NOT READ)**

---

71. Thinking ahead to three years from now, how do you think your income will compare to your income today? Do you think it will be **(ROTATE TOP TO BOTTOM, BOTTOM TO TOP)**...?

1 MUCH LOWER
2 SLIGHTLY LOWER
3 ABOUT THE SAME
4 SLIGHTLY HIGHER
5 MUCH HIGHER
6 DON'T KNOW/REFUSED **(DO NOT READ)**

---

72. And thinking for a moment about your personal debt on which you currently make interest payments. I am talking about your debts you partially pay-off each month for things like mortgages, credit cards, personal loans or car loans. Would you say the amount of debt you currently have is...**(DO NOT ROTATE)**

1 More than you can handle financially
2 About as much as you can handle financially
...or...
3 You could handle more debt than you currently have
4 Do not have any personal debt **(DO NOT READ)**
5 DON'T KNOW/REFUSED **(DO NOT READ)**

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73. Do you personally own any stock market investments, such as stocks, bonds, mutual funds, or have a retirement account, such as a 401K (FOUR-O-ONE-K) or other pension plan?

1 YES
2 NO
3 DON'T KNOW/REFUSED **(DO NOT READ)**

---

74. What would be your estimate of the total value of your household's savings and investments. By savings and investments I mean things such as savings and money market accounts, stocks, bonds, mutual funds, government securities, CDs, bank accounts, IRAs, Keoghs, (KEY OHS) 401Ks (FOUR-O-ONE KS) and 403bs (FOUR-O-THREE-BEES). Please do NOT include in your answer any real estate investments or company-sponsored pension plans that are fully funded by your employer. Would you say that your total investments are **(READ LIST)**

1 Less than $25,000
2 Between $25,000 and $50,000
3 Between $50,000 and $100,000
4 More than $100,000

5 DON'T KNOW **(DO NOT READ)**
6 REFUSED **(DO NOT READ)**

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75. And other than being an American, what is your main racial or ethnic heritage? Is it... **(READ LIST SLOWLY BEFORE ACCEPTING ANSWER, THEN ACCEPT ONE RESPONSE ONLY.)**

1 CAUCASIAN OR WHITE
2 AFRICAN-AMERICAN OR BLACK
3 HISPANIC-AMERICAN OR LATINO
4 ASIAN-AMERICAN
5 NATIVE AMERICAN
6 OTHER **(DO NOT READ) (IF PUNCH, ASK:)** Now I realize you just said your main ethnic or racial heritage doesn't fall into any of the categories I just mentioned...but if you had to choose JUST ONE of these categories, which ONE would you choose?
7 REFUSED **(DO NOT READ)**

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76. GENDER **(BY OBSERVATION, BUT ASK EVERYONE)** Are you employed outside of the home, are you a homemaker, or are you retired?

1 MALE/EMPLOYED
2 MALE/HOMEMAKER
3 MALE/RETIRED
4 MALE/NOT IN LABOR FORCE
5 MALE/REFUSED

6 FEMALE/EMPLOYED
7 FEMALE/HOMEMAKER
8 FEMALE/RETIRED
9 FEMALE/NOT IN LABOR FORCE
10 FEMALE/REFUSED

[FR Doc. 02–30653 Filed 12–3–02; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Availability of Medical Reserve Corps—A Guide for Local Leaders

AGENCY: Department of Health and Human Services; Office of the Secretary, Office of Public Health and Science, Office of the Surgeon General.

ACTION: Notice of availability.

SUMMARY: The Department of Health and Human Services is announcing the availability of a guidance document entitled Medical Reserve Corps—A Guide for Local Leaders. This guidance document is intended to assist communities in the establishment of local citizen volunteer Medical Reserve Corps (MRC) units under the umbrella of the Citizen Corps, USA Freedom Corps.

Medical Reserve Corps—A Guide for Local Leaders provides background on the Citizen Corps and Medical Reserve Corps, helpful information on how to plan the establishment of a local citizen volunteer MRC unit, volunteer standards, managing a local MRC unit, education and training resources, legal considerations, and other related federal programs.

ADDRESSES: Electronic versions of the guide may be accessed, downloaded, and printed at the following worldwide Web site: *http://www.medicalreservecorps.gov.* A printed, single copy may be obtained by submitting a written request for: Medical Reserve Corps—A Guide for Local Leaders to the Office of the Surgeon General, Room 18–66, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your request.

FOR FURTHER INFORMATION CONTACT: MRC Staff, Office of the Surgeon General, 5600 Fishers Lane, Room 18–66, Rockville, MD 20857, 301–443–4000.

SUPPLEMENTARY INFORMATION: During his 2002 State of the Union address, President Bush called on all Americans to volunteer at least two years of their lives—the equivalent of 4,000 hours—to serve others. President Bush created the USA Freedom Corps to help Americans answer his call to service and to foster an American culture of service, citizenship, and responsibility.

The Medical Reserve Corps is a component of the Citizen Corps, USA Freedom Corps. The medical Reserve Corps is envisioned as a nationwide

network of community-based, citizen volunteer MRC units. These units will be locally activated and directed in times of emergency to provide essential added capacity within the community, especially during the first hours of the emergency before outside assistance may arrive. Additionally, these volunteers will undertake activities to address pressing public health needs in communities throughout the year.

Dated: November 25, 2002.

Eve E. Slater,

Assistant Secretary for Health.

[FR Doc. 02–30658 Filed 12–3–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–189]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from July 2002 through September 2002. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on July 25, 2002 [67 FR 48660]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 1825, Century Blvd, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between July 1, 2002 and September 30, 2002, public health assessments were issued for the sites listed below:

NPL Sites

Alaska

Naval Air Facility, ADAK (a/k/a ADAK Naval Air Station) (PB2003–100146)

Connecticut

Broad Brook Mill (a/k/a Millbrook Condominium Site) (PB2002–106763)

Florida

Nocatee Hull Creosote (PB2002–107943)

Georgia

Tri-State Steel Company Incorporated (PB2002–105396)

Idaho

Poles, Incorporation Wood Treatment Facility (PB2003–100506)

Illinois

Sand Park (a/k/a Browning-Ferris Industry, Incorporated) (PB2002–105385)

Kansas

Sunflower Army Ammunition Plant (PB2002–104687)

Kentucky

Paducah Gaseous Diffusion Plant (USDOE) (PB2002–107319)

Louisiana

Mallard Bay Landing Bulk Plant (PB2002–108311)

Maine

Central Maine Disposal Landfill (a/k/a Central Maine Disposal Corporation) (PB2002–107944)

Massachusetts

Atlas Tack Site (a/k/a Atlas Tack Corporation) (PB2002–101491)

Minnesota

Joslyn Manufacturing and Supply Company (PB2003–100145)

New Jersey

Middlesex Sampling Plant (USDOE) (PB2002–107244)
Puchack Well Field (PB2002–106764)

New York

Garden City Park Industrial Area (GCPIA) (a/k/a Fulton Avenue) (PB2002–108031)

North Carolina

Barber Orchard (PB2002–106074)
Carolina Solite Corporation (a/k/a Carolina Solite Corporation/ Aquadale) (PB2002–100417)
Davis Park Road TCE (PB2002–106373)
Diamond Head Oil Refinery (PB2003–100153)

Pennsylvania

Naval Support Activity, Mechanicsburg (a/k/a Navy Ships Parts Control Center and Naval Inventory Control Point) (PB2002–106762)
Willow Grove Naval Air and Air Reserve Station (a/k/a Naval Air Station Joint Reserve Base and Air Force Reserve Station) (PB2002–107263)

Texas

Palmer Barge Line (PB2002–107243)

Non NPL Petitioned Sites

None

Dated: November 27, 2002.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–30688 Filed 12–3–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities: Proposed Collection; Comment Request; Second National Outcome Measures Surveys of Older Americans Act (OAA) Clients

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA), Department of Health and Human Services, provides an opportunity for comment on the following proposal for the collection of information in compliance with the Paperwork Reduction Act (PRA; Pub. L. 96–511): Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Second National Outcome Measures Surveys of Older Americans Act (OAA) Clients, and Coordinated Survey of State and Area Agencies on Aging.

DATES: Submit written or electronic comments on the collection of information by February 3, 2003.

ADDRESSES: Submit electronic comments on the collection of information to: *David.Bunoski@aoa.gov.*

Submit written comments on the collection of information to: Office of Planning and Evaluation, Administration on Aging, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: David Bunoski, Administration on Aging, Washington, DC 20201 telephone: (202) 357–3514.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Type of Request: New information collection.

Use: Consumer assessment data will be collected in this second set of surveys to initiate national program outcome assessment consistent with the requirements of the Government Performance and Results Act and the Older Americans Act.

Frequency: One-time.

Respondents: Elderly individuals who have received selected services under Title III of the Older Americans Act and state and area agencies on aging.

Estimated Number of Responses: 5,000 for consumer surveys; 700 for agency surveys.

Total Estimated Burden Hours: 4,000 for consumer surveys; 2,100 for agency surveys.

Additional Information or Comments: The Administration on Aging plans to submit to the Office of Management and Budget for approval the Second National Outcome Measures Surveys of Older Americans Act (OAA) Clients, pursuant to requirements set forth by congressional statute. Through a contract with Westat, Inc., AoA will draw samples of individuals served through Area Agencies on Aging across the country for the purpose of obtaining OAA program service assessments from these individuals. The surveys will utilize information collection instruments and methods developed and tested by experts in the field of gerontology and by State and local entities that administer OAA programs. The surveys will include assessments from among the following service categories: nutrition, transportation, caregiver support, home-care, and information and assistance. AoA is also supporting the efforts of four states to obtain valid statewide data compatible with the national data.

AoA is also proposing for Westat, Inc., to conduct a survey of all state and area agencies on aging to collect information about how those agencies operate the programs for which they are responsible. We will be asking specifically about coordination between social services and health services; organizational and administrative arrangements; coordination of services at the state and local level; and coordination of, and expenditure levels among, different funding sources administered by the agencies.

Date: November 29, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–30740 Filed 12–3–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–209 and CMS–R–245]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an Administration initiative. We cannot reasonably comply

with the normal clearance procedures because of the potential for public harm.

CMS is requesting OMB review and approval of this collection by December 6, 2002, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by December 5, 2002. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Reducing regulatory burden is one of the overarching goals of this Administration. Secretary Thompson convened an Advisory Committee on Regulatory Reform earlier this year to help guide HHS' broader efforts to streamline unnecessarily burdensome or inefficient regulations that interfere with the quality of health care. CMS worked with the recommendations from Secretary Thompson's Advisory Committee on Regulatory Reform to draft proposed changes to the OASIS. The Secretary announced these changes earlier and reported the reduced burden OASIS would be in place by December 16, 2002.

CMS is proposing immediate modifications to the OASIS instrument that will result in reduction of burden for providers that will have the effect of freeing home health nurses and therapists from paperwork so they can focus on patient care. To reduce the burden, we need to make significant adjustments as quickly as possible. Our rollout date is December 9, 2002, to become effective a week later on December 16, 2002. CMS is working closely with the HHA industry to accomplish this initiative. The revisions we are proposing in this Paperwork Reduction Act (PRA) package were also published in the **Federal Register** on August 30, 2002 (67 FR 55850). We have responded to the dozen comments from the **Federal Register** notice.

(1) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs; Use and Reporting OASIS Data as Part of the CoPs for HHAs and Supporting Regulations in 42 CFR 484.11 and 484.20; *Form No.:* CMS–R–209 (OMB # 0938–0761); *Use:* HHAs are required to report data from the OASIS as a condition of participation. Specifically, the above named regulations sections provide guidelines for HHAs for the electronic transmission of the OASIS data as well as responsibilities of the State agency or OASIS contractor in collecting and transmitting this information to HCFA. These requirements are necessary to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs, and to establish a prospective payment system for HHAs; *Frequency:* Reporting/monthly; *Affected Public:* Business or other-for-profit, Federal government, State, local or tribal government, not-for-profit institutions; *Number of Respondents:* 6,900; *Total Annual Responses:* 85,200; *Total Annual Hours:* 838,408.

(2) *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare and Medicaid Programs Use of the OASIS as Part of the CoPs for HHAs and Supporting Regulations in Part 484 of 42 CFR; *Form No.:* CMS–R–245 (OMB # 0938–0760); *Use:* This regulation requires HHAs to use a standard core assessment data set, the OASIS, to collect information and to evaluate adult non-maternity patients. In addition, data from the OASIS will be used for purposes of case mix adjusting patients under home health PPS and will facilitate the production of necessary case mix information at relevant time points in the patient's home heath stay. Modifications have been made to currently approved OASIS forms to allow for the preservation of masking of personally identifiable information for the non-Medicare/non-Medicaid individuals; *Frequency:* Recordkeeping/upon patient assessment; *Affected Public:* Business or other-for-profit, Federal government, State, local or tribal government, not-for-profit institutions; *Number of Respondents:* 7,100; *Total Annual Responses:* 9,510,900; *Total Annual Hours:* 8,013,013.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by December 5, 2002:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Brenda Aguilar, CMS Desk Officer.

Dated: November 27, 2002.

Julie E. Brown,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 02–30786 Filed 12–3–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Buprenorphine Waiver Program—Baseline Physician Survey—(New)—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies (DPT), is evaluating a program that permits office-based physicians to obtain Waivers from the requirements of the Narcotic Addict Treatment Act of 1974 (21 U.S.C. 823 (g)). Under the Drug Addiction Treatment Act of 2000 (21 U.S.C 823 (g)(2)), the Waiver Program permits qualifying physicians to prescribe and dispense buprenorphine, a schedule III narcotic drug recently approved by the FDA for the treatment of opiate addiction. Furthermore, the Drug Abuse Treatment Act specifies that the Secretary of the Department of Health and Human Services make a determination of whether: (1) Treatments provided under the Waiver Program have been effective forms of maintenance treatment and detoxification treatment in clinical settings; (2) the Waiver Program has significantly increased (relative to the beginning of such period) the availability of maintenance treatment and detoxification treatment; and, (3) the Waiver Program has adverse consequences for the public health. In addition to the objectives above, the Evaluation of the Buprenorphine Waiver Program will examine other related objectives, including: (1) Describing the impact of the Waiver-based treatment on the existing treatment system; (2) providing information useful to guide and refine the processing/monitoring system being developed and maintained by CSAT/DPT; and (3) providing baseline data to inform future research and policy concerning the medicalization and mainstreaming of addiction treatment.

The evaluation by DPT of the Buprenorphine Waiver Program will be accomplished using three survey efforts. The first of these, in the first year of the evaluation, is a mail survey of addiction physicians from the American Society of Addiction Medicine (ASAM) and/or the American Academy of Addiction Psychiatry (AAAP). Some of these specialists will be prescribing and distributing buprenorphine, while others not prescribing buprenorphine may or may not provide referrals or ancillary services to patients receiving buprenorphine treatment. The survey will provide early data about the availability, effectiveness, and public health consequences associated with the Waiver Program. Specifically, the survey will assess early perceptions of physicians specializing in addiction medicine of whether buprenorphine as prescribed and distributed under the Waiver Program is a useful tool in the treatment of substance abuse, and whether there are any negative consequences associated with it. The survey will also assess whether there are early indications of limitations to the availability of the medication, related to factors such as geographic location, type of medical practice, patient population, or ability to pay.

Results from this survey will influence the focus and content of two additional proposed surveys to be fielded later in 2003. A second survey will focus on the clinical practice and perceived effectiveness of buprenorphine among physicians who are actively prescribing the medication. A third survey of patients who have received buprenorphine will assess its effectiveness and availability from the patients' point of view. A separate **Federal Register** notice will be published for these surveys.

The estimated response burden for the first survey of physicians over a period of one year is summarized below.

Addiction physicians	Number of respondents	Number of responses/ respondent	Total number of responses	Hrs./response	Total hour burden
Physician survey	1,000	1	1,000	.5	500 hrs.

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 26, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–30684 Filed 12–3–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Results of the Twelfth Regular Meeting; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: With this notice we announce a public meeting to discuss the results of the twelfth regular meeting of the Conference of the Parties (COP12) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

DATES: The public meeting will be held on December 13, 2002, from 9:30 a.m. to 12 noon.

ADDRESSES:

Public Meeting

The public meeting will be held in the Sidney Yates Auditorium of the Department of the Interior, 18th and C Streets, NW., Washington, DC.

Available Information

Information concerning the results of COP12 is available on the web site of the CITES Secretariat (*http://www.cites.org/eng/cop/index.shtml*), or upon request from the Division of Management Authority (*see* **FOR FURTHER INFORMATION CONTACT**, below), or via our COP12 web site (*http://international.fws.gov/cop12/cop12.html*).

FOR FURTHER INFORMATION CONTACT: Peter O. Thomas, Ph.D., Chief, Division of Management Authority, U.S. Fish and Wildlife Service, telephone: 703/358–2093, fax: 703/358–2280, e-mail: *cites@fws.gov;* or Robert R. Gabel, Chief, Division of Scientific Authority, telephone: 703/358–1708, fax: 703/358–2276, e-mail: *scientificauthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international treaty designed to monitor and regulate international trade in certain animal and plant species which are, or may become, threatened with extinction, and are listed in Appendices to the treaty. Currently 160 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the

Parties (COP), which review its implementation, make provisions enabling the CITES Secretariat (in Switzerland) to carry out its functions, consider amending the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose and vote on amendments to Appendices I and II, resolutions, decisions, and agenda items for consideration by the Conference of the Parties. CITES COP12 was held in Santiago, Chile, from November 3 to 15, 2002.

This is the seventh in a series of **Federal Register** notices concerning U.S. participation in CITES COP12. We published our first such **Federal Register** notice on June 12, 2001 (66 FR 31686), and with it we requested information and recommendations on potential species amendments for the United States to consider proposing at COP12. Information on that **Federal Register** notice, and on species amendment proposals, is available from the Division of Scientific Authority (*see* **ADDRESSES**, above). We published our second such **Federal Register** notice on July 25, 2001 (66 FR 38739), and with it we requested information and recommendations on potential resolutions, decisions, and agenda items for the United States to submit for consideration at COP12. You may obtain information on that **Federal Register** notice, and on proposed resolutions, proposed decisions, and agenda items, from the Division of Management Authority (*see* **ADDRESSES**, above). We published our third such **Federal Register** notice on March 27, 2002 (67 FR 14728), and with it we announced a public meeting to discuss potential species amendment proposals, proposed resolutions, proposed decisions, and agenda items that the United States was considering submitting for consideration at COP12. With that notice, we also provided information on how non-governmental organizations based in the United States could attend COP12 as observers. You may obtain information on that **Federal Register** notice from the Division of Management Authority (*see* **ADDRESSES**, above). We published our fourth such **Federal Register** notice on April 18, 2002 (67 FR 19207), and with it we listed potential proposed resolutions, proposed decisions, agenda items, and proposed amendments to the CITES Appendices that the United States was considering submitting for consideration at COP12, and invited your comments on these potential proposals. You may obtain information on that **Federal Register** notice from the Division of Management Authority (for information pertaining to proposed resolutions, proposed decisions, and agenda items) or the Division of Scientific Authority (for information pertaining to proposed amendments to the Appendices) (*see* **ADDRESSES**, above). We published our fifth such **Federal Register** notice on August 20, 2002 (67 FR 53962), and with it we announced a public meeting on September 10, 2002, to discuss tentative negotiating positions of the United States for COP12 proposals and other agenda items. You may obtain information on that **Federal Register** notice from the Division of Management Authority (*see* **ADDRESSES**, above). We published our sixth such **Federal Register** notice on October 31, 2002 (67 FR 66463), in order to provide the agenda for COP12, announce our final tentative negotiating positions, and extend the comment period for providing information and input to the United States in the development of these positions. You may obtain information on that **Federal Register** notice from the Division of Management Authority (*see* **ADDRESSES**, above).

This series of **Federal Register** notices and public meetings provided the public with an opportunity to participate in the development of tentative U.S. negotiating positions for COP12.

On June 6, 2002, the United States submitted to the CITES Secretariat, for consideration at COP12, its proposed resolutions, proposed decisions, agenda items, and proposed amendments to the CITES Appendices. These documents are available from our web site at: *http://international.fws.gov/cop12/ussubmission.html.* You may locate our regulations governing this public process in 50 CFR 23.31 through 23.39.

Announcement of Public Meeting

The United States participated in COP12, and by this notice we announce a public meeting to discuss the results of that meeting. The public meeting will be held on December 13, 2002, from 9:30 a.m. to 12 noon in the Sidney Yates Auditorium of the Department of the Interior at 18th and C Streets, NW., Washington, DC. We recommend that you enter the Department of the Interior building via the C Street entrance. Directions to the meeting can be obtained by contacting the Division of Management Authority (*see* **FOR FURTHER INFORMATION CONTACT**, above). Please note that the auditorium is accessible to the handicapped. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Division of Management Authority as soon as possible.

Author: This notice was prepared by Bruce Weissgold, Division of Management Authority, U.S. Fish and Wildlife Service.

Authority: The authority for this notice is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 27, 2002.

Marshall P. Jones Jr.,

Deputy Director.

[FR Doc. 02–30700 Filed 12–3–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–1020–PG; G 03–0035]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Vale District.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will meet in the Lewis and Clark conference room at the Holiday Inn, Ontario, OR 97641, 541–573–3370 from 8 a.m. to 5 p.m., Mountain Time (MT), on Monday, February 24, 2003. On Tuesday, February 25, 2003 there will be a tour of the National Historic Oregon Trail Interpretative Center in Baker City, OR.

The meeting topics that may be discussed by the Council include a discussion of issues within southeast Oregon related to North Lake Recreation Plan, Birch Creek Management Plan, Wildland Fire Board, OHV, Wood River Project, Wild Horse & Burro, Rangeland Assessment, Federal officials' updates, and other matters as may reasonably come before the Council. The entire meeting is open to the public. Information to be distributed to the Council members is requested in written format 10 days prior to the Council meeting. Public comment is scheduled for 11:15 a.m. to 11:45 a.m., Mountain Time (MT), on Monday, February 24, 2003. For the tour scheduled for Tuesday, February 25, 2003, please contact the BLM office listed below for exact times as the date approaches.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SEORAC may be obtained from Peggy Diegan, Management Assistant/Webmaster, Vale District Office, 100 Oregon Street, Vale, OR 97918 (541) 473–3144, or *Peggy_Diegan@or.blm.gov* and/or from the following Web site: *http://www.or.blm.gov/SEOR-RAC.*

Dated: November 26, 2002.

David R. Henderson,

District Manager.

[FR Doc. 02–30776 Filed 12–3–02; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–0777–PH–252Z]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management(BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on January 16, 2003, at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado beginning at 9:15 a.m. The public comment period will begin at approximately 9:30 a.m. and the meeting will adjourn at approximately 4 p.m.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Front Range Center, Colorado. Planned agenda topics include: Manager reports, Update on Gold Belt Travel Management Plan, Overview of the Fuels Management Program, Management of Ecosystems Training.

All meetings are open to the public. The public can make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Councils consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management (BLM), Attn: Ken Smith, 3170 East Main Street, Canon City, Colorado 81212. Phone (719)269–8500.

Dated: November 27, 2002.

Roy L. Masinton,

Front Range Center Manager.

[FR Doc. 02–30777 Filed 12–3–02; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

Public Input on Improving Agency Procedures

AGENCY: International Trade Commission.

ACTION: Notice and solicitation of written comments

SUMMARY: The United States International Trade Commission invites public input on specific ways in which it could improve its conduct of antidumping and countervailing duty (CVD) injury investigations.

DATES: Written comments are invited to be filed no later than March 4, 2003.

ADDRESSES: A signed original and 14 copies of each set of comments, along with a cover letter, should be submitted to Marilyn R. Abbott, Secretary, United States International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. Hand-delivered comments must be delivered to the prescribed room during the Commission's official business hours (8:45 a.m. to 5:15 p.m.) in order to be deemed filed on the day they are delivered.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott (202–205–2799), Secretary, U.S. International Trade Commission. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission also may be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: The Commission is an independent federal agency that is charged, *inter alia,* with conducting import injury investigations under the antidumping and CVD statutes. *See* title VII of the Tariff Act of 1930 (19 U.S.C. 1671 *et seq.*). In these investigations, the Commission determines whether a U.S. industry is materially injured, or threatened with material injury, by reason of imports of merchandise that the U.S. Department of Commerce has found to be subsidized or sold at less than fair value. The statutes also provide for a Commission review, after five years, of the continued need for each antidumping or CVD order to prevent or remedy material injury to the relevant U.S. industry.

In the course of an investigation, the Commission, *inter alia:* (1) Collects data from interested parties (such as domestic and foreign producers, U.S. importers, and purchasers) via written questionnaires and other means; (2) produces a staff report summarizing information collected concerning such indicators as imports, production, shipments, employment, profits and losses, and prices; (3) holds a public hearing (except in preliminary or expedited proceedings); and (4) produces a written opinion explaining the Commission's conclusions on factual and legal issues. The Commission's rules of procedure related to these import injury investigations are set out in the relevant portions of 19 CFR parts 201 and 207.

The Commission is committed to carrying out its mandate in an effective and efficient manner. As part of this commitment, the Commission endeavors to be responsive to the needs of those who avail themselves of the trade laws, those from whom the Commission collects information in its investigations, and the public.

To this end, the Commission is seeking input from the public, including persons and entities that appear before the agency, on ways the Commission can improve its methods of conducting its original antidumping and CVD investigations and its five-year reviews of outstanding antidumping and CVD orders. The Commission is interested in comments concerning all aspects of its investigations and reviews; in particular, questionnaires, hearings, staff reports, schedules and opinions.

With respect to questionnaires, commenters may wish to address whether particular standard questions or requests could be eliminated, reformulated, or streamlined, in order to obtain more relevant information or reduce the burden on those responding to questionnaires. In addition, commenters may wish to comment on electronic filing issues, including electronic questionnaires. With respect to hearings, commenters may wish to address whether a different manner of organizing presentations or commissioner questioning of witnesses would be more effective at clarifying salient issues or adducing relevant information. With respect to staff reports, commenters may wish to address whether the reports could be reorganized or whether certain parts may be made more concise in order to best present the key information collected in the investigation. With

respect to schedules, commenters may wish to address whether the schedule could be modified, particularly in final phases of investigations or full five-year reviews, in order to ease the burden on parties, to permit additional briefing in order to clarify salient issues, or to add to the time available after the Commission's hearing. With respect to opinions, commenters may wish to address the organization, format, and content of opinions. The above items are provided as examples only, and are not intended to limit the topics that may be addressed in the comments. Commenters should indicate whether their comments pertain to original investigations, five-year reviews, or both. Comments should be limited to issues of form and procedure and, to the extent possible, should avoid discussion of the substance of particular determinations.

The Commission anticipates that it will hold a public hearing concerning the topics raised in comments submitted pursuant to this notice, although the need for and procedures of a hearing will depend on the comments submitted. The Commission would publish notice of a hearing in the **Federal Register**, and post notice on the Commission's Web site.

Sample questionnaires for original investigations and five-year reviews can be found at *http://info.usitc.gov/oinv/invest/oinvinvest.nsf*, and *http://info.usitc.gov/oinv/sunset.nsf*, respectively. Copies of the generic report outline for both original investigations and five-year reviews are available upon request. Comments must comply with Commission rule 19 CFR 201.8(a)–(d).

This notice is issued pursuant to 19 U.S.C. 1335 and the Commission's Strategic Plan for fiscal years 2001–2006.

Issued: November 27, 2002.

By Order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 02–30655 Filed 12–3–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 27, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or E-Mail: *King_Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA).

Title: OSHA Strategic Partnership Program for Worker Safety and Health.

Type of Review: Extension of a currently approved collection.

OMB Number: 1218–0244.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; and State, local, or tribal government.

Type of Response: Reporting.

Frequency: On occasion and annually.

Number of Respondents: 4,410.

Annual Responses: 4,410.

Average Response Time: 11 hours.

Annual Burden Hours: 49,254.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: OSHA requires employers participating in the strategic Partnership Program to assess their impact on worker safety and health. An OSHA Strategic Partnership aspires to have a measurable, positive impact on workplace safety and health that goes beyond what has historically been achievable only through traditional enforcement methods.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–30659 Filed 12–3–02; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

November 27, 2002.

The Department of Labor (DOL) has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by December 23, 2002. Attached is a copy of the proposed application procedures for the National Emergency Grants for Trade Health Insurance Assistance. A copy of this ICR, with applicable supporting documentation and application procedures, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 or e-mail: *king-darrin@dol.gov*.

Comments and questions about the ICR listed below should be forwarded by December 20, 2002 to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Room 10235, Washington, DC 20503. The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; andminimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Employment and Training Administration (ETA).

Title: Workforce Investment Act: National Emergency Grants for Trade Health Insurance Assistance-Application and Reporting Procedures.

OMB Number: 1205–0NEW.

Affected Public: State, Local, or Tribal Government.

Reference	Number of respondents*	Frequency	Annual responses*	Average time per response	Total annual burden hours*
Narrative Summary	50	On occasion	50	1.0 hour	50.0
ETA 9103	50	On occasion	50	90 minutes	75.0
ETA 9105	50	On occasion	50	30 minutes	25.0
ETA 9106	50	On occasion	50	1.0 hour	50.0
Reports: ETA 9104	50	Quarterly	200	30 minutes	100.0
Grant Modifications	40	On occasion	40	30 minutes	20.0
Total			440		320

*Actual number will vary, because the information collection is required to obtain a benefit.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: The Department of Labor/Employment and Training Administration announces proposed application and reporting procedures for states to enable them to access funds in order to implement Trade Health Insurance Assistance National Emergency Grant (NEG) programs. Trade Health Insurance Assistance NEG funds provide specialized assistance, including health insurance coverage, to trade-impacted workers and other individuals eligible under the Trade Adjustment Assistance Reform Act of 2002.

Ira L. Mills,

Departmental Clearance Officer.

Attachment—Workforce Investment Act: Application Procedures for Trade Health Insurance Assistance National Emergency Grants

Overview

This application package provides information and procedures by which states can apply for newly authorized National Emergency Grant (NEG) funds to provide health insurance assistance and related support services to certain eligible individuals. It consists of the following eight parts and two appendices:

- Part I provides background regarding the purpose and use of National Emergency Grant (NEG) funds to provide health insurance assistance for eligible individuals under the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107–210);
- Part II describes key policies regarding eligible individuals for assistance, allowable uses of grant funds, eligible entities for grant awards, and coordination;
- Part III identifies the policies governing administrative and project design requirements on Health Insurance Assistance NEGs;
- Part IV provides an overview of the application submission requirements for Health Insurance Assistance NEG projects;
- Part V identifies the elements in the application review process including the criteria that will be used to determine the appropriateness of the request for funds;
- Part VI describes alternative approaches to grant funding and the requirements associated with partial funding requests and actions;
- Part VII describes the follow-up planning, oversight and reporting requirements for awarded grants;
- Part VIII describes the grant modification process.

Appendix A contains copies of the required grant application forms. States are not required to submit these forms until OMB approval has been obtained. The forms are in an electronic format for ease of completion and timeliness of submission by the applicant. The Department seeks to establish a process that provides both timely submission of applications for funding, in relation to worker eligibility for assistance, and timely processing of such applications. The electronic formats have been developed to facilitate accomplishment of this objective.

Appendix B contains a directory of Regional Office contacts.

A companion piece to this document, Training and Employment Guidance Letter (TEGL) 10–02, was issued on October 10, 2002. It provides information and procedures by which states may apply for newly authorized NEG system-building funds to develop and implement the infrastructure needed to make the health insurance assistance authorized in the Trade Act of 2002 available.

Applications for NEG funds to provide the assistance described in this notice may be submitted at any time. The maximum allowable project performance period is defined by the months remaining in the Program Year in which the grant award is made plus the subsequent two Program Years. The ProgramYear for these projects is the twelve month period July 1–June 30. USDOL/ETA expects that the project performance period in any NEG application will reflect a time efficient approach to returning eligible individuals to appropriate employment consistent with the performance goals that apply to NEG projects.

The application procedures, application review process, and project oversight and reporting requirements described in this notice are issued under the WIA regulations at 20 CFR 671.125.

Applications may be filed electronically using the website *http://testetareports.doleta.gov*. To submit an application electronically, applicants will need to use a PIN # that has been assigned to them by USDOL. A PIN # can be obtained by contacting the appropriate Regional Office. Alternatively, applications may be mailed or hand-delivered to: Office of Grants and Contracts Management, Division of Federal Assistance, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210; Attention: E. Fred Tello, Grant Officer. Applications may also be FAXed to the attention of Mr. Tello at (202) 693–2879. Applicants submitting by mail should be aware that mail delivery in the Washington, D.C. area may be delayed due to decontamination procedures. For non-electronic applications, a copy of the application should be concurrently submitted (via e-mail, mail, or FAX) to

the appropriate Regional Administrator of USDOL/ETA.

For further information you may contact Shirley M. Smith, Administrator, Office of National Response at (202) 693–3501. (This is not a toll-free number.) A user's guide on preparing and submitting an application electronically, and technical assistance on application requirements are available from Regional Offices of ETA and from the Office of National Response, Employment and Training Administration, U.S. Department of Labor, Room N–5426, 200 Constitution Avenue, NW., Washington DC 20210.

Part I: Background

The Trade Adjustment Assistance Reform Act of 2002 (Pub. L. 107–210), (the Act) was signed by the President on August 6, 2002. Title I of the Act amends the Trade Act of 1974 to consolidate the prior TAA and NAFTA–TAA programs into one comprehensive program of assistance. The Act expands the eligibility for TAA to additional groups of workers and enhances the assistance available under the program. Title II of the Act amends the Internal Revenue Code of 1986 and the Workforce Investment Act of 1998 (WIA) to establish new mechanisms by which certain TAA participants, as well as eligible Pension Benefit Guaranty Corporation (PBGC) pension recipients, can receive assistance in covering the cost of health insurance.

The primary mechanism for such assistance is a federal tax credit to be administered by the Internal Revenue Service. The tax credit is equal to 65% of the amount paid by an eligible individual for coverage of the individual and certain family members under qualified health insurance. The tax credit is applicable to qualified health insurance coverage costs paid by eligible individuals beginning December 2002, and the credit is to be made available on an advance payment basis by August 1, 2003. The provisions related to this tax credit are contained in Sections 201 and 202 of the Act.

The Act also establishes an additional mechanism, which is intended to be used as a bridge to when eligible individuals can receive the tax credit on an advance basis, by authorizing the use of NEG funds under the WIA to assist in paying the cost of qualified health insurance coverage for eligible individuals. These provisions are contained in section 203 of the Act, which establishes a new section 173(g) of WIA.

Section 203 of the Act identifies the specific groups of individuals who are eligible to receive the health insurance coverage assistance and the types of health insurance coverage programs that can qualify for this assistance. They are described in more detail in Part II of this document.

The approach to Health Insurance Assistance NEG grant awards will be based on quick turnaround initial funding actions where the following can be demonstrated:

- The individuals to receive assistance with grant funds are currently eligible to receive such assistance;
- The costs of heath insurance coverage assistance, processing payments to providers, and other allowable services are reasonable.

USDOL/ETA is committed to making a decision to approve or disapprove all submitted applications within 15 working days from receipt of a complete application. However, because of the variation between initial planning assumptions and subsequent implementation that has historically characterized NEGs, most applications for Trade Act Health Insurance coverage assistance will be partially funded at the outset. Approximately 90 days following grant award, a site review will be conducted to assess implementation status. This review will help verify the full amount of NEG funding needed.

Part II: Policies Governing the Award and Use of NEG Funds

A. Eligible Individuals for Assistance

In general, individuals eligible for health insurance coverage assistance under the Trade Adjustment Assistance Reform Act are:

—''An eligible TAA recipient'' which is defined as an individual who is receiving a trade readjustment allowance (TRA) under the TAA program, or would be eligible for TRA except that he/she has not yet exhausted Unemployment Insurance benefits;

—''An eligible alternative TAA recipient'' which is defined as an individual who is receiving benefits under a demonstration program of alternative trade adjustment assistance for older workers under section 246 of the Trade Act of 1974 (as amended by the Act), although it should be noted that the demonstration program does not commence until August 6, 2003; or

—''An eligible PBGC pension recipient'' which is defined as an individual who is 55 years of age or older and is receiving a pension benefit paid in whole or part by the Pension Benefit Guaranty Corporation (PBGC).

Coverage may also be provided for the spouse and dependents of an eligible individual where such persons are not otherwise covered by health insurance. Dependents are limited under the law to those persons who are allowable dependent deductions on the eligible individual's tax return.

B. Allowable Uses and Limitations on the Use of NEG Funds

In general, NEG funds provided under section 173(g) may be used to provide assistance and support services to eligible individuals, including qualifying health insurance coverage, transportation, childcare, dependent care and income assistance. For both health insurance coverage and income support assistance, the assistance cannot supplant other federal, state, or local assistance for which the individual is eligible.

In order to promote consistency with, and a transition to, the advance payment tax credit and to conserve NEG resources in a manner that will allow broad participation by the states and eligible individuals, these NEG funds may be used to pay no more than 65% of the amount paid by an eligible individual for qualified health insurance coverage of the eligible individual and qualifying family members. This is the same level of assistance provided under the tax credit mechanisms and is intended to fulfill the objective of this NEG of providing a bridge to the advance payment tax credit mechanism.

In addition, the Department would generally expect the assistance provided under the NEG would be for prospective coverage, that is for payments for coverage for months after the individual has been determined eligible for assistance under the NEG. In extraordinary cases, as demonstrated by the applicant, the Department would consider the use of NEG funds to pay reimbursement for qualified health insurance coverage premium payments that were made for coverage on or after September 1, 2002. However, to qualify for such reimbursement, the individual would have to be determined to have met the eligibility requirements at the time such prior premiums were paid.

C. Qualified Health Insurance Coverage

In general, NEG funds can be used to pay for the following types of health insurance coverage assistance:

(1) Coverage under a COBRA continuation provision.

(2) Coverage under a state-based continuation provision.

(3) Coverage through a qualified state high risk pool.

(4) Coverage under a program offered to state employees.

(5) Coverage under a state-based health insurance program comparable to a program for state employees.

(6) Coverage through an arrangement between a state and

—A group health plan
—An issuer of healthcare coverage
—An administrator, or
—An employer

(7) Coverage offered through a state arrangement with a private sector healthcare coverage purchasing pool.

(8) Coverage under a state-operated health plan that does not receive any Federal financial participation.

(9) Coverage under a group health plan that is available through the employment of the eligible individual's spouse.

(10) Coverage under individual health insurance in which the eligible individual was enrolled during the entire 30 day period preceding the date of separation by which the individual became eligible for TAA assistance.

The health insurance coverage mechanisms described under items (2) through (8) will only qualify for assistance under an NEG if the state elects to establish and/or use those mechanisms and the coverage meets certain requirements. Those requirements are contained in the new section 173(f)(2)(B)(i) of WIA, and require that under such coverage a ''qualifying individual'' is (1) guaranteed enrollment; (2) no pre-existing conditions are imposed; (3) the premium charged is nondiscriminatory (*i.e.*, a qualifying individual is not charged a greater amount than a similarly situated individual who is not a qualifying individual); and (4) the benefits are the same or substantially similar to similarly situated individuals who are not qualifying individuals. The term ''qualifying individual'' is defined in the new section 173(f)(2)(B)(ii) of WIA, and means an individual who is eligible for assistance under the NEG and who, as of the date the individual seeks to enroll in one of these elected coverage mechanisms, had an aggregate period of creditable health insurance coverage (as defined in section 9801(c) of the IRC) of three months or longer. The individual also must not have other specified coverage or be imprisoned.

States must decide whether to elect to include all, some, or none of the coverage mechanisms described in items (2) through (8). States are encouraged to give consideration to these optional coverage mechanisms and evaluate their appropriateness in light of the particular circumstances in the state. The elected coverage mechanisms must be identified in the NEG application. The coverage mechanisms described in items (1), (9), and (10) qualify for assistance under the NEG without election by the state.

D. Eligible Entities for Grant Awards

In order to ensure coordination with the state system-building grants described in TEGL 10–02, eligible applicants for Health Insurance Assistance projects under this notice are limited to states.

The award of these grants will be expedited where the application for the NEG funds is submitted by the grant recipient under the current NEG Master Agreement between the Department and the State. This is not intended to limit the State regarding the participation in, or administration of, activities carried out under the NEG by other entities, including appropriate State agencies. For example, through subgrants or the interagency transfer of NEG funds, the Governor may decide to have other agencies provide aspects of the health insurance coverage assistance. However, the use of the currently designated grant recipient as the applicant ensures that the procedures necessary to facilitate the award of funds are in place.

E. Coordination

The Department strongly encourages efforts by the State to coordinate the provision of assistance under this NEG with the activities of appropriate State agencies, such as the State insurance commission, the State health licensing and regulatory board or entity, and other departments or entities involved in the provision of health insurance coverage.

Part III: Administrative and Project Design Requirements

1. General

Grantee organizations, administrative entities and service providers are subject to the WIA law, regulations, grant application instructions, the terms and conditions of the grant and any subsequent modifications, and to all other applicable Federal laws (including provisions in Federal appropriations law). Since eligible applicants are limited to states, Health Insurance Assistance NEG grantees will be subject to all administrative system requirements that apply to the use of WIA formula funds for dislocated workers, except as otherwise provided in these instructions.

2. Cost Limitations

Administrative cost limitations apply to all NEG grant awards. Cost limitations shall apply to actual expenditures.

Although administrative cost limits on NEG projects are subject to negotiation with the Grant Officer, in general, a ten percent (10%) limit will apply. Any request for a higher limit will have to be clearly and fully justified in terms of unusual project operating circumstances. Applicants should recognize that any such request will have to be negotiated with the Grant Officer and will delay the timing of the funding action.

Any costs associated with administering a system of health insurance coverage payments must be separately identified in the application budget and justified in the narrative.

3. Indirect Costs

If an indirect cost rate is applied in calculating administrative costs, the applicant must include information from the most recent approval document that identifies the approved indirect cost rate and base, the cognizant approval agency, and the date of the approval. Generally, indirect costs will only be approved at the grantee level.

4. Allowable Activities and Services

For Health Insurance Assistance projects, funds may be used for the services described in WIA section 173(g).

5. Project Design and Service Operations

Provision of services, in addition to health insurance coverage assistance, should be consistent with similar services provided under WIA including established policies and procedures of the state and local area(s) in which the project is to operate.

Part IV: Application Submission Requirements

In order to be considered for funding, a Health Insurance Assistance NEG application will need to include the following information:

a. Completed and signed *SF 424–Application for Federal Assistance.* This form is the required application for federal funds. Where the electronic submission option is used, the authorized signatory of the applicant will be issued a unique Personal Identification Number (PIN). The entry of this PIN on the SF 424 will constitute authorized signature.

b. *Project Synopsis (ETA 9106).* This form summarizes key aspects of the proposed project such as project type, planned number of participants, and contact information. It also includes identification of the types of health insurance coverage options that will be available to project participants.

c. *Employer Data (ETA 9105).* This form provides information on the TAA petition and certification through which individuals are eligible for assistance.

d. *Planning Form (ETA 9103).* This form provides cumulative quarterly estimates on project scope (*e.g.*, number of participants, exits), design (*e.g.*, mix of services), and budget (*e.g.*, costs by type of activity, administrative costs).

e. *Narrative Statement.* A narrative explanation must be provided in cases where one or more of the following are reflected in the project plan:

—Indirect costs are included in the budget, which requires identifying the following: cognizant approval agency, approved cost rate and base, and date of approval.

—''Other'' costs are included in the budget, which requires identifying the specific cost items and amounts.

—Administrative costs related to processing payments for qualified healthcare coverage and/or income support are included in the budget, which requires explaining how the administrative cost estimate was derived (*i.e.*, based on number of check payments and check processing costs).

In addition, the application must include a narrative description of coordination activities and arrangements among appropriate state agencies. The applicant is free to include narrative explanations of other special factors, but the narrative should not exceed five pages.

A copy of forms that can be used to submit one or more the above requirements is provided in Attachment A.

Part V: Application Review Process

To be considered for funding, a Health Insurance Assistance NEG Project application must demonstrate that the proposed project meets the purpose of and is consistent with the Act and Regulations and provides all of the information required by these guidelines. Applications that are not completely in accordance with the requirements or do not contain all required submission forms will not be considered as submitted and will not be evaluated for funding until all required information and documentation is provided. Complete applications will be evaluated for responsiveness to the criteria identified in this part.

1. *Eligibility:* To ensure that NEG funds are only awarded where there is a verifiable group that is both eligible and in need of assistance.

a. TAA certifications and/or other appropriate documentation to demonstrate eligibility is either provided in the application or can be accessed from other sources in DOL/ETA.

2. *Reasonableness of Proposed Services and Costs:* To ensure that NEG projects are designed and operated in accordance with the federal requirements and the state and local policies that apply to trade adjustment assistance programs in the proposed project area.

a. The indirect costs are justified by identifying: (1) The approved indirect cost rate and base; (2) the cognizant approval agency; (3) the date of the approval.

b. ''Other'' expenditures that are included in the budget are identified and justified in the narrative.

c. Total administrative costs, exclusive of health insurance premium processing costs, are within the cost limitation, OR are explained and justified.

d. The basis for administrative costs to process health insurance premium payments is justified.

Part VI: Funding Approaches

Applications for NEG funds can be funded in whole or in part. Full or partial funding can be at the applicant's request or at the Secretary's discretion. In order to ensure the effective use of NEG resources, in general these requests, when approved, will be funded partially. Where the grant award reflects a partial funding action, the grantee will be required to submit, at a later date, supplemental information to request the balance of funds. This information will be specified in the grant award letter but will include, at a minimum, current information on actual participant levels, performance outcomes, and expenditures.

Part VII: Post-Grant Award Requirements

A. Followup Planning Requirements

Recipients of a NEG will be required to develop a more complete project operational plan as followup to the grant award. This plan should be completed within 90 days of grant award and be available for review at the office of the grant recipient. The information in this plan will be used to verify the need for the full amount of requested funds and the feasibility of the planned levels of performance based on actual project implementation experience. The content of the plan will vary by type of project but, in general, will need to address factors such as participant enrollments, needs of participants for specific services, implementation schedules, project operator agreements and budgets, and project management structure.

B. Project Oversight

In addition to the 90 day review of the Project Operational Plan, each project will be reviewed at the project midpoint. The purpose of this review will be to verify core compliance factors such as participant eligibility and adequate financial management, and to assess the effectiveness of participant service policies and processes in achieving project performance goals.

C. Project Performance Reporting

Each grant recipient will be required to submit to the Grant Officer a Quarterly Report (ETA 9104) on actual performance to-date. The report will include the same factors as the Planning Form in the grant document. A copy of this form is included in Appendix A.

Part VII: Grant Modifications

Grant modifications will be required in the following circumstances:

—When end-of-project performance is expected to vary by more than 10% from the approved plan regarding: Total participants, participants to be enrolled in training, or expenditures for retraining;

—To increase the number of participants receiving health insurance premium assistance and/or the amount of expenditures for health insurance premium assistance;

—To increase the approved amounts of administrative costs;

—To change the performance period for the project;

—When actual end-of-project expenditures will be less than the amount of awarded funds.

Grant modifications must be submitted to the Grant Officer. They may be submitted in writing or electronically.

Grant modifications will not be accepted within 90 days prior to the scheduled expiration date of the project.

Where there is a need to increase the amount of approved funding and/or to expand the target group to include additional layoffs, these will have to submitted as a new request for funds.

Appendix A—e-Application and Reporting Forms

A. Application for Federal Assistance Form (SF 424)

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED November 27, 2002	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application: ☐ Construction ☐ Non-Construction

Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of 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 BY STATE FOR REVIEW

17. IS THE APPLICANT 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. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

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:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and 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 the 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 Government's 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 any 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.)

B.

OMB Approval No. 1205-XXXX
Expiration date: xx/xx/xx

Project Synopsis Form

State of ___	Amount of Funding Request $_____	Amount Approved by DOL $_____
Project Name:		
Project Type: __Regular __Disaster __ Trade Dual Enrollment __ Trade Act Health Insurance		
Eligible Event: __Closure __Mass Layoff __Community Impact Layoffs __ Disaster		
Application Type: __Full __Partial (reason: _____)		
State-based Qualified Health Insurance Coverage Programs Selected by State __Continuation Provision __High-Risk Pool __State Employees __State Employee-Comparable __Joint State-Private Nonpool __Joint State-Private Pool __Nonfederally Financed		
Applicant Contact Person:		
Street Address 1:		
Street Address 2:		
City: _____ State: ___ Zip Code: _____		
Telephone:		
FAX:		
Email:		
Planned Number of Participants: _____	Planned Entered Employment Rate: _____%	
Planned Cost per Participant: $_____	Planned Wage Replacement Rate: _____%	
% of Planned Participants Receiving NRPs: _____%		
Counties included in Project Service Area:		
Requested Funds Needed because:		
Project Operator Listing		

ETA 9106
(November 2002)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-XXXX. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at one hour.
Send comments regarding this burden or any other aspect of this collection, including suggestions for reducing the burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington, D.C. 20210
(Paperwork Reduction Project 1205-XXXX).

C.

OMB Approval No. 1205-XXXX
Expiration date: xx/xx/xx

Employer Data Form

Company/Industry	Location of Facility	Notification Issued?	Date of Notification	Layoff Date(s)	Number of Affected Workers
		__WARN __Public Announcement by Employer __Other(specify) __None			__ Check if Closure

Company/Industry	Date(s) of Rapid Response Actions	# of Workers Contacted	TAA Petition	Labor Organization Representation
(should be same as above)	Contact with Employer: _____ Contact with Workers: _____ __None		Date Filed: _____ __Number of Workers Covered __Not applicable	

Type of Business	

ETA 9105
(November 2002)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-XXXX. NOTE: Persons are not required to respond to this collection of information unless it displays a valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 30 minutes.
Send comments regarding this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington, D.C. 20210.
(Paperwork Reduction Project 1205-XXXX).

D.

OMB Approval No. 1205-XXXX
Expiration date: xx/xx/xx

Planning Form

All quarterly entries are CUMULATIVE over all previous quarters.

PERFORMANCE FACTOR	PROGRAM YEAR QUARTER							
IMPLEMENTATION SCHEDULE								
TOTAL PARTICIPANTS								
Receiving Support Services								
Rec. Health Insurance Premium Payments								
Exits								
Entering Employment at Exit								
EXPENDITURE SCHEDULE								
TOTAL EXPENDI-TURES								
Support Services								
Other								
Health Insurance Premiums								
Total Admin. excl. Health Insurance Premiums								
- Indirect								
Health Insurance Premium Admin.								

ETA 9103
(November 2002)

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-XXXX. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 90 minutes.
Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U.S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210.
(Paperwork Reduction Project 1205-XXXX).

E.

OMB Approval No. 1205-XXXX
Expiration date: xx/xx/xx

Quarterly Report Form

Grantee:
Project:
Performance Period Covered by this Report: _____ through _____

PERFORMANCE FACTOR	TRADE ACT HEALTH INSURANCE
TOTAL PARTICIPANTS	
Enrolled in Core Services	
Enrolled in Intensive Services	
Enrolled in Trng.	
Receiving Support Services	
Rec. Needs-Related Payments	
Employed in Temp. Disaster Relief Asst.	
Rec. Health Insurance Premium Payments	
Exits	
Entering Employment at Exit	
TOTAL EXPENDITURES: STATE/GRANTEE LEVEL	
NRPs	
Support Services	
Health Insurance Premiums	
Other	
Total Admin., excl. NRPs/Health Insurance Premiums	
- Indirect	
NRP Admin.	
Health Insurance Premium Admin.	
TOTAL EXPENDITURES: LOCAL/ PROJECT OPERATOR LEVEL	
Participant Wages	
Participant FBs	
Core Services	
Intensive Services	
Training	
Support Services	
NRPs	
Other	
Total Admin. excl. NRPs	
- Indirect	
NRP Admin.	
TOTAL EXPENDITURES: STATE AND LOCAL	

The reporting requirements are approved by OMB according to the Paperwork Reduction Act of 1995 under OMB approval No. 1205-XXXX. NOTE: Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (PL: 107-210). Public reporting burden for this collection of information is estimated at 30 minutes.
Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing this burden to the U. S. Department of Labor, Office of National Response, Room N-5422, Washington D.C. 20210.
(Paperwork Reduction Project1205-XXXX).

ETA 9104
(November 2002)

Appendix B – Directory of Regional Offices of USDOL/ETA

REGION 1 – BOSTON

Joseph F. Stoltz
Acting Regional Administrator
U.S. Department of Labor/ETA
JFK Federal Building
Room E-350
Boston, MA 02203
(617)565-3630
FAX: 617-565-1027

REGION 1 – NEW YORK

Patrick Rowe
Acting Regional Administrator
U.S. Department of Labor/ETA
201 Varick Street, Room 755
New York, NY 10014
(212)337-2139
FAX: 212-337-2144

REGION 2 – PHILADELPHIA

Lenita Jacobs-Simmons
Regional Administrator
U.S. Department of Labor/ETA
The Curtis Center
170 S. Independence Mall West
Suite 825 East
Philadelphia, PA 19106-3315
(215)861-5205
FAX: 215-861-5260

REGION 3 – ATLANTA

Anna Goddard
Regional Administrator
U.S. Department of Labor/ETA
Atlanta Federal Center
Room 6M12
61 Forsyth Street, SW
Atlanta, GA 30303
(404)562-2092
FAX: 404-562-2149

REGION 4 – DALLAS/DENVER

Joseph C. Juarez
Regional Administrator
U.S. Department of Labor/ETA
Federal Building, Room 317
525 Griffin Street
Dallas, TX 75202
(214)767-8263
FAX: 214-767-5113

REGION 5 – CHICAGO/KANSAS CITY

Byron Zuidema
Regional Administrator
U.S. Department of Labor/ETA
230 S. Dearborn Street
Room 628
Chicago, IL
(312)353-0313
FAX: 312-353-4474

REGION 6 – SAN FRANCISCO/SEATTLE

Armando Quiroz
Regional Administrator
U.S. Department of Labor/ETA
71 Stevenson Street, Room 830
PO Box 193767
San Francisco, CA 94119-3767
(415)975-4610
FAX: 415-975-4612

[FR Doc. 02–30660 Filed 12–3–02; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2002–52; Exemption Application No. D–10986, et al.]

Grant of Individual Exemptions; Bank of America (BofA)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Bank of America (BofA), Located in Bethesda, MD

[Prohibited Transaction Exemption 2002–52; Exemption Application No. D–10986].

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the granting to BofA by the Westbrook Realbrook Real Estate Fund III, L.P. (LP), Delaware Limited Partnership, of a first, exclusive, and prior security interest in the capital commitments, reserve amounts, and capital contributions (Capital Contributions), whether now owned or after-acquired, of certain employee benefit plans (Plans) investing in the LP; (2) the collateral assignment and pledge by the LP to BofA of its security interest in each Plan's limited partnership interest, whether now owned or after-acquired; (3) the granting by the LP of a first, exclusive, and prior security interest in a borrower collateral account to which all Capital Contributions will be deposited when paid; (4) the granting to BofA by Westbrook Real Estate Partners Management III, L.L.C., a Delaware limited liability company and the general partner of the LP (the General Partner), of its right to make calls for cash contributions (Drawdowns) under the Amended and Restated Agreement of Limited Partnership of Westbrook Real Estate Fund III, L.P., dated as of June 10, 1998, where BofA is the representative of certain lender (the Lenders) that will fund a so-called ''credit facility'' providing credit to the LP, and the Lenders are parties in interest with respect to the Plans; and (5) the execution of a partner agreement and estoppel (Estoppel) under the Plans agree to honor the Drawdowns; provided that (i) the grants, assignments, and Estoppels are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (ii) the decisions on behalf of each Plan to invest in the LP and to execute such Estoppels in favor of BofA, for the benefit of each Lender, are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BofA; (iii) with respect to Plans that may invest in the LP in the future, such Plans will have assets of not less than $100 million [1] and not more than 5% of the assets of such Plan will be invested in the LP; and (iv) the General Partner is unrelated to any Plan and any Lender.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 23, 2002, at 67 FR 59558.

Effective Date: This exemption is effective July 30, 1998.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

A. Raimondo Inc. Pension Plan (the Plan), Located in Greensburg, PA

[Prohibited Transaction Exemption 2002–53; Exemption Application No. D–11085]

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code,[2] by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective May 1, 2002, to (1) the past and continued leasing (the Lease) of certain improved real property (the Property) by the Plan to A. Raimondo Inc. (the Employer), a party in interest with respect to the Plan; and (2) the exercise, by the Employer, of options to renew the Lease, for two additional terms.

This exemption is subject to the following conditions:

(a) The terms and conditions of the Lease have been, and continue to be, no less favorable to the Plan than those obtainable by the Plan under similar circumstances when negotiated at arm's length with unrelated third parties.

(b) The Plan has been, and continues to be, represented for all purposes under the Lease, and during each renewal

[1] In the case of multiple plans maintained by a single employer or a single group of employers treated as a single employer under sections 414(b), 414(c), 414(m), and 414(o) of the Code, the assets of which are invested on a commingled basis (*e.g.*, through a master trust), this $100 million threshold will be applied to the aggregate assets of all such plans.

[2] For purposes of this exemption, references to provisions of title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

term, by a qualified, independent fiduciary.

(c) The Plan's independent fiduciary has negotiated, reviewed, and approved the terms and conditions of the Lease and the options to renew the Lease on behalf of the Plan and has determined that the transactions are appropriate investments for the Plan and are in the best interests of the Plan and its participants and beneficiaries.

(d) The rent paid to the Plan under the Lease, and during each renewal term, is no less than the fair market rental value of the Property, as established by a qualified, independent appraiser.

(e) The rent is adjusted annually to reflect changes in the Consumer Price Index (the CPI) and the Property is re-appraised at least every three years by a qualified, independent appraiser who is selected by the independent fiduciary to determine the appropriate fair market rental value (but in no event is the rental rate less than that established for the preceding rental term).

(f) The Lease is triple net, requiring all expenses for maintenance, taxes, utilities and insurance to be paid by the Employer, as lessee.

(g) The Plan's independent fiduciary has monitored, and continues to monitor, compliance with the terms of the Lease throughout the duration of the Lease and each renewal term, and is responsible for legally enforcing the payment of the rent and the proper performance of all other obligations of the Employer under the terms of the Lease.

(h) The Plan's independent fiduciary expressly approves any renewal of the Lease beyond the initial term.

(i) At all times throughout the duration of the Lease and each renewal term, the fair market value of the Property has not exceeded, and does not exceed, 25 percent of the value of the total assets of the Plan.

Effective Date: This exemption is effective as of May 1, 2002.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 23, 2002, at 67 FR 59562.

Written Comments

The Department received one written comment with respect to the proposed exemption and no requests for a public hearing. The comment was submitted by the Employer and confirmed by Mr. Lawrence Walter, the Plan's independent fiduciary. The comment is intended to clarify two issues raised in the Summary of Facts and Representations (the Summary) of the proposed exemption. These issues are discussed below.

1. *Impact of Adjacent Real Estate on the Property's Value.* Representation 3 of the Summary states, in part, that the Property is not located in close proximity to other real estate that is owned by the Employer and/or its principles. The Employer explains that although certain of its principals do own a parcel of residential real property that is adjacent to a corner of the Property, it does not believe such ownership impacts on the merits of the transactions involving the Lease. Because the Property is zoned for commercial use and the adjacent property is zoned solely for residential use, the Employer indicates that the two properties cannot be combined or used for the same purpose, and therefore, the ownership of the adjacent residential property by certain of its principals does not affect the value of the Property.

In response to this comment, Mr. Walter has confirmed the representations made by the Employer. Mr. Walter also concurs that no additional value is attributable to the Property by reason of the ownership of contiguous residential property by certain of the Employer's principals.

2. *Excess Rental Value of the Property and Potential Code Violations.* Representation 6 of the Summary states, in part, that an independent appraisal report dated July 16, 2001 (the 2001 Appraisal), placed the monthly fair market rental value of the Property at $3,500. Representation 5 of the Summary further states, in part, that the Employer is currently paying the Plan $4,500 per month in rent. The Employer indicates that these facts suggest that the rent paid to the Plan exceeds the fair rental value of the Property, and that such excess amount might be treated as an additional contribution to the Plan.[3] In this regard, the Employer notes that Mr. Walter has been in communication with Mr. H. Kenneth Gehr, the independent appraiser, throughout the exemption application period and that based upon his experience in the real estate industry, Mr. Walter concluded that a slightly higher rental value was justified. Therefore, Mr. Walter set the current monthly rent at $4,500 rather than the $3,800 amount calculated by Mr. Gehr in the 2001 Appraisal.[4]

In addition, the Employer states that Mr. Walter was selected to serve as the Plan's independent fiduciary because he is a Licensed Public Accountant and Certified Financial Planner who does substantial work involving the real estate industry. Moreover, the Employer explains that Mr. Walter's determination of the Property's fair market value is not only entitled to weight, but, in light of his ongoing responsibility as the Plan's independent fiduciary, he is the final arbiter of fair market value to the Plan. Based upon Mr. Walter's determination of the fair market rental value of the Property, the Employer is of the belief that the Plan should not be viewed as receiving excess rental value for the Property that would cause violations of the Code.

In response to this comment, Mr. Walter again confirms the representations made by the Employer. In addition, Mr. Walter concurs that the Plan should not be viewed as receiving an amount that is in excess of the fair market rental value of the Property that would violate the Code.

On the basis of the Employer's comment letter and Mr. Walter's confirmation and agreement with the statements contained therein, the Department notes the foregoing clarifications to the Summary. The Department also notes that the valuation date for the 2001 Appraisal is July 16, 2001, instead of July 31, 2001.

For further information regarding the Employer's comment, Mr. Walter's confirmation statement, and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11085) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Pension and Welfare Benefits Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

[3] The Department notes that the Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and, therefore, must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

[4] In an appraisal report dated August 20, 2002, which was subsequent to the effective date of the Lease, Mr. Gehr updated the 2002 Appraisal. As of August 16, 2002, Mr. Gehr placed the fair market value of the Property at $258,700 and its fair market rental value at $4,200 monthly or $50,400 annually.

Under the terms of the former exemption that was issued to the Employer (Prohibited Transaction Exemption 87–63, 52 FR 24078, June 26, 1987) and the new exemption, the appraisal is only required to be updated once every three years. However, under both exemptions, the annual rent is to be adjusted by the independent fiduciary to reflect changes in the CPI.

Accordingly, after giving full consideration to the entire record, including the written comment and the confirmation statement, the Department has decided to grant the exemption

For Further Information Contact: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

J. Penner Corporation Profit, Sharing Plan (the Plan), Located in Doylestown, PA

[Prohibited Transaction Exemption 2002–54; Exemption Application No. D–11099].

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[5] shall not apply to (1) the sale (the Sale) of certain improved real property (the Property) by Thomas G. Frazier and Carol G. Frazier (the Fraziers) to their respective participant-directed individual investment accounts in the Plan (together, the Frazier Accounts); and (2) the simultaneous lease (the Lease) of the Property by the Frazier Accounts to J. Penner Corporation (the Corporation), the Plan sponsor and a party in interest with respect to the Plan.

This exemption is subject to the following conditions:

(a) The terms and conditions of the transactions are not less favorable to the Frazier Accounts than those which the Frazier Accounts would receive in an arm's length transaction with an unrelated party.

(b) The Sale is a one-time transaction for cash.

(c) The acquisition price that is paid by the Frazier Accounts for proportionate interests in the Property is not more than the fair market value of the Property as determined by a qualified, independent, appraiser on the date of the Sale.

(d) The value of the proportionate interests in the Property that are acquired by each of the Frazier Accounts does not exceed 25% of each of the Frazier Accounts' assets at the time of the Sale nor throughout the duration of the Lease.

(e) The Frazier Accounts do not pay any real estate fees, commissions or other expenses with respect to the transactions.

(f) The rental amount under the Lease is no less than the fair market rental value of the Property, as determined by a qualified, independent appraiser on the date the Lease is entered into by the parties.

(g) The Lease is a triple net lease under which the Corporation, as lessee, pays, in addition to the base rent, all normal operating expenses of the Property, including taxes, insurance, maintenance, repairs and utilities.

(h) The Frazier indemnify and hold the Plan and the Frazier Accounts harmless from any liability arising from the Sale, including, but not limited to, hazardous material found on the Property, violation of zoning, land use regulations or restrictions, and violations of Federal, State or local environmental regulations or laws.

(i) The Sale is effected and the Lease comments only upon completion of the following transactions, which shall occur no later than sixty days after the granting of the final exemption: (1) The Fraziers and the Bucks County Industrial Development Corporation (BCIDC) fulfill all of their obligations to the Pennsylvania Industrial Development Authority; (2) the Fraziers pay off their debt obligation to BCIDC in accordance with the terms of an installment sale agreement and reacquire legal title to the Property; and (3) the lease agreement between the Fraziers and the Corporation is terminated.

For a more complete statement of the fats and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 8, 2002, at 67 FR 62824.

For Further Information Contact: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person form certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory of administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 27th day of November, 2002.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–30564 Filed 12–3–02; 8:45 am]

BILLING CODE 4510–29–M

[5] For purposes of this exemption, references to provisions of title I of the Act, unless otherwise, specified, refer also to corresponding provisions of the Code.

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by January 3, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant, Permit Application No. 2003–016:* William Gilmore, Environmental Manager, Raytheon Polar Services Company, 7400 South Tucson Way, M.S. 29, Centennial, CO 80112–3938.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Area. The applicant proposes to enter the Antarctic Specially Protected Area at Cape Crozier (ASPA #124) to perform an Environmental Field Camp Audit. The audit will include documentation of the camp footprint, as well as compliance with waste and Environmental, Health and Safety Protocols. These audits are part of a sustained and coherent monitoring program to form a reliable basis for sound environmental management decisions and possible improvements. Data obtained from the monitoring program will be used to document baseline conditions, verify operational impact, and monitor activities undertaken to recover from accidental impacts to the environment. The applicant plans to visit the site for no more than 3–4 hours. Access to the site will be via helicopter.

Location: Cape Crozier, Ross Island (ASPA #124).

Dates: January 2, 2003 to February 15, 2003.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 02–30772 Filed 12–3–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide and Standard Review Plan Chapter; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to a regulatory guide and its conforming standard review plan chapter. The Regulatory Guide Series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' provides guidance acceptable to the NRC staff on the use of probabilistic risk assessment (PRA) findings and risk insights in support of licensee requests for changes to a nuclear power plant's licensing basis.

Revision 1 of Standard Review Plan Chapter 19, ''Use of Probabilistic Risk Assessment in Plant-Specific, Risk-Informed Decisionmaking: General Guidance,'' identifies the roles and responsibilities within the NRC that participate in risk-informed reviews of licensees' proposals for changes to the licensing basis of nuclear power plants.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides and standard review plan chapters are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* in NRC's Electronic Reading Room under Regulatory Guides and in the ADAMS System at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov.* Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 15th day of November 2002.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 02–30705 Filed 12–3–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–25836; File No. 812–12890]

Allstate Life Insurance Company, *et al.*; Notice of Application

November 27, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application for an order of exemption pursuant to Section 17(b) of the Investment Company Act of 1940 (the ''Act'') from Section 17(a) of the Act.

Applicants: Allstate Life Insurance Company (''Allstate''), Allstate Financial Advisers Separate Account I (''Allstate Separate Account I''), Northbrook Life Insurance Company (''Northbrook''), Northbrook Variable Annuity Account (''Northbrook VA''), and Northbrook Variable Annuity Account II (''Northbrook VA II,'' together with the Northbrook VA, the ''Northbrook Separate Accounts'').

Summary of Application: Applicants seek an order of exemption to the extent necessary to permit a transfer of assets and assumption of liabilities of Northbrook VA and Northbrook VA II by Allstate Separate Account I.

Filing Date: The application was filed on October 7, 2002 and amended and restated on November 26, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 23, 2002, and must be accompanied by proof of service, on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a

hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, Charles Smith, Esq., Assistant Counsel, Allstate Life Insurance Company, 3100 Sanders Road, Northbrook, Illinois 60062; with a copy to Richard T. Choi, Esq., Foley & Lardner, 3000 K Street, NW, Suite 500, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, 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 amended and restated application; the complete amended and restated application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. Allstate is a stock life insurance company organized under the laws of the State of Illinois in 1957. Allstate's home office is located at 3100 Sanders Road, Northbrook, Illinois 60062. Allstate is licensed to operate in the District of Columbia, Puerto Rico, and all states except New York. Allstate is a wholly owned subsidiary of Allstate Insurance Company, a stock property-liability insurance company incorporated under the laws of Illinois. All of the outstanding capital stock of Allstate Insurance Company is owned by The Allstate Corporation.

2. Allstate established Allstate Separate Account I as a separate account pursuant to Illinois law. Allstate Separate Account I is a ''separate account,'' as defined by Section 2(a)(37) of the Act, and is registered with the Commission pursuant to the Act as a unit investment trust.

3. Certain variable annuity contracts sponsored by Allstate and issued through Allstate Separate Account I (''Allstate contracts'') are registered with the Commission pursuant to the Securities Act of 1933 (the ''Securities Act'').

4. Allstate Separate Account I is divided into 59 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of an open-end, diversified management investment company registered under the Act (the ''Funds'').

5. Northbrook is a stock life insurance company organized under the laws of the State of Arizona in 1998. Previously, from 1978 to 1998, Northbrook was organized under the laws of the State of Illinois. Northbrook's headquarters are located at 3100 Sanders Road, Northbrook, Illinois, 60062. Northbrook is a direct, wholly owned subsidiary of Allstate. Northbrook is currently licensed to operate in the District of Columbia, Puerto Rico, and all states except New York. Northbrook and Allstate entered into a reinsurance agreement effective December 31, 1987. Under the reinsurance agreement, Allstate reinsures all of Northbrook's liabilities under its annuity and life insurance contracts.

6. Northbrook established the Northbrook Separate Accounts as separate accounts pursuant to Illinois law, and the Northbrook Separate Accounts are currently subject to Arizona law following Northbrook's redomestication to Arizona in 1998. Each of the Northbrook Separate Accounts is a ''separate account,'' as defined by Section 2(a)(37) of the Act, and is registered with the Commission pursuant to the Act as a unit investment trust.

7. Certain variable annuity contracts sponsored by Northbrook and issued through the Northbrook Separate Accounts (the ''Northbrook contracts,'' and together with the ''Allstate contracts,'' the ''Contracts'') are registered with the Commission pursuant to the Securities Act.

8. Northbrook VA is divided into 12 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of the Funds. Northbrook VA II is divided into 54 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of the Funds.

9. Allstate and Northbrook have determined to engage in transactions whereby Northbrook will be reorganized with and merged into Allstate, with Allstate as the surviving corporation (such transactions, collectively, the ''Merger''). By resolutions dated September 11, 2002, a Merger Agreement and Articles of Merger (collectively ''Agreement'') were approved and adopted by the respective boards of directors of Allstate and Northbrook. Prior approval of the Merger and the Agreement also will be obtained from the insurance departments of Arizona and Illinois, the states of domicile for Northbrook and Allstate, respectively.

10. On the effective date of the Merger: (a) Allstate will assume ownership of all the assets of Northbrook, including all the assets held in the Northbrook Separate Accounts; (b) Allstate will conduct the business presently conducted by Northbrook, and will be responsible for satisfaction of all of the liabilities and obligations of Northbrook; and (c) Northbrook will cease to exist as a separate corporate entity. Allstate will then control the merged separate account supporting the Contracts.

11. After considering the nature and purpose of each separate account, the respective boards of directors of Allstate and Northbrook have determined that the efficiency of the operations of the separate accounts after the Merger could be improved, and the overall administration enhanced, by merging Northbrook VA and Northbrook VA II into Allstate Separate Account I (collectively, ''Separate Accounts''). The Merger will be structured so there will be no change in the rights and benefits of persons having an interest in any of the Contracts issued by the Separate Accounts. Allstate, or an affiliate, will pay all expenses incurred in connection with the Merger. The Merger provides for the transfer of Northbrook VA's and Northbrook VA II's assets to Allstate Separate Account I and the assumption of the liabilities and contractual obligations of each of Northbrook VA and Northbrook VA II by Allstate Separate Account I in return for the crediting of accumulation units of Allstate Separate Account I to Northbrook VA and Northbrook VA II contract owners. Once this process has been completed, the units of Northbrook VA and Northbrook VA II would be cancelled, Northbrook VA and Northbrook VA II would each submit an application to the Commission pursuant to Section 8(f) of the Act to effect its deregistration as an investment company and would cease to exist, and Allstate Separate Account I would continue to exist.

12. Immediately following the Merger, each Northbrook VA and Northbrook VA II contract owner will possess a number of Allstate Separate Account I units, (both full and fractional) with an aggregate unit value equal to the aggregate unit value of the units the contract owner had in the respective Northbrook Separate Account immediately before the consummation of the Merger.

13. Upon the effective date of the Merger, Allstate will succeed to all of the business and operations of Northbrook, including the obligations pursuant to the Northbrook contracts. Allstate will distribute to each existing Northbrook VA and Northbrook VA II contract owner:

(a) A contract rider indicating that such contracts are thereafter funded by Allstate Separate Account I; (b) a letter informing such contract owners of the Merger; and (c) prospectus disclosure that reflects Allstate's sponsorship of

the surviving separate account as a result of the Merger.

14. Except for the change in the depositor and the separate account funding the variable annuity contracts, all the rights and benefits of the Northbrook contract owners will remain unchanged after the Merger. Further, the fees and charges under the Northbrook contracts will not change as a result of the Merger.

15. Allstate and Northbrook assert that the Merger will have no tax consequences for Northbrook contract owners. In addition, no payments will be required or charges imposed under the Northbrook contracts in connection with, or by virtue of, the Merger that would not otherwise be required or imposed.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides generally that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal to knowingly purchase or to sell any security or other property from or to such registered company.

2. Section 17(b) of the Act provides generally that the Commission may grant an order exempting a transaction otherwise prohibited by Section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. The Merger may be subject to the provisions of Section 17(a) of the Act because it could be viewed as involving an investment company (Northbrook VA or Northbrook VA II) selling its assets to another investment company (Allstate Separate Account I) that is affiliated by reason of having sponsoring insurance companies that are under common control, or by reason of having common directors.

4. Applicants request an order of the Commission pursuant to Section 17(b) of the Act to the extent necessary to exempt the Merger from the provisions of Section 17(a) of the Act.

5. Applicants assert that the terms of the Merger are fair and reasonable. The transfer of assets held by Northbrook VA and Northbrook VA II, respectively, will be made at the relative net asset values of the sub-accounts. Consequently, the interests of Allstate Separate Account I owners will not be diluted by the Merger, and each Northbrook VA and Northbrook VA II contract will be credited, immediately after the Merger, with units of Allstate Separate Account I having the same aggregate value as the aggregate value of the units of Northbrook VA and Northbrook VA II credited to such contract immediately prior to the Merger. The Merger will not result in any change in charges, costs, fees or expenses borne by any Contract owner. No direct or indirect costs will be incurred by any Separate Account concerned as a result of the Merger. Therefore, the proposed transactions will not result in dilution of the economic interests of any Contract owners. In addition, the Merger will result in no change in the investment options available to Northbrook contract owners. Each sub-account of the Separate Accounts will continue to invest in the same Fund as that sub-account invested in prior to the Merger.

6. Applicants assert that the Merger does not involve overreaching on the part of any party involved and is consistent with the general purposes of the Act. The purpose of the Merger is to consolidate three separate accounts, each of which issues variable annuity contracts, into a single separate account. The Merger will allow for administrative efficiencies and cost savings by Allstate because it can consolidate its separate account operations. The Merger will not dilute or otherwise adversely affect the economic interests of the owners of the Northbrook contracts, nor will the Merger affect the values determined under the Northbrook contracts. The Merger will not affect any current Allstate contract owners. Allstate, or an affiliate, will pay all expenses incurred in connection with the Merger.

7. Applicants represent that the Merger is consistent with the policy of each Separate Account as set forth in its registration statement. The policy of each Separate Account is to invest in the Funds. As noted above, the Merger will result in no change to any Fund underlying the Northbrook Separate Accounts. Each sub-account of the Separate Accounts will continue to invest in the same Fund as that sub-account invested in prior to the Merger. Accordingly, the assets underlying the Contracts will continue to be invested in accordance with the policies recited in the Separate Accounts' respective registration statements.

Conclusion

For the reasons summarized above, Applicants assert that the terms of the Merger, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of Allstate Separate Account I and the Northbrook Separate Accounts as recited in their registration statements, are consistent with the general purposes of the Act, and therefore meet the conditions for exemptive relief established by Section 17(b).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30666 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46887; File No. SR–Amex–2002–97]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Initial and Continued Listing Standards

November 22, 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 November 20, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Sections 101, 102, and 1003 of the Amex *Company Guide* to modify initial and continued listing standards. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

American Stock Exchange LLC Company Guide

Section 101

(a) through (c)—No Change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

(d) Initial Listing Standard 4

(1) Total Value of Market Capitalization—$75,000,000; or

Total assets and total revenue—$75,000,000 each in its last fiscal year, or in two of its last three fiscal years.

(2) Aggregate Market Value of Publicly Held Shares—$20,000,000.

(3) Distribution " See Section 102(a).

([d]*e*) Alternative Listing Standards

The securities of certain issuers which do not satisfy any of the Initial Listing Standards set forth in paragraphs (a)–([c]*d*) of this Section may be eligible for initial listing pursuant to the appeal procedures and the Alternative Listing Standards specified in Section 1203(c).

Additional criteria applicable to various classes of securities and issuers are set forth below. Applicants should also consider the policies regarding conflicts of interest, independent directors and voting rights described in §§ 120–125.

Commentary .01—No Change.

Section 102

(a)—No Change.

(b) Stock Price/Market Value of Shares Publicly Held—The Exchange requires a minimum market price of $3 per share for applicants seeking to qualify for listing pursuant to Section 101 (a), [or] (b) *or (d),* and $3,000,000 aggregate market value of publicly held shares for applicants seeking to qualify for listing pursuant to Section 101(a). In certain instances, however, the Exchange may favorably consider listing an issue selling for less than $3 per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above $3 per share, the applicant's capitalization and the number of outstanding and publicly-held shares of the issue.

(c)—No change.

* The terms "public distribution" and "public shareholders" as used in the Company Guide include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders and other concentrated (*i.e.* 10% or greater), affiliated or family holdings.

* * * * *

Section 1003

* * * * *

(a) Financial Condition and/or Operating Results—The Exchange will normally consider suspending dealings in, or removing from the list, securities of a company which:

(i) has stockholders' equity of less than $2,000,000 if such company has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or

(ii) has stockholders' equity of less than $4,000,000 if such company has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years; or

(iii) has stockholders' equity of less than $6,000,000 if such company has sustained losses from continuing operations and/or net losses in its five most recent fiscal years; or

(iv) has sustained losses which are so substantial in relation to its overall operations or its existing financial resources, or its financial condition has become so impaired that it appears questionable, in the opinion of the Exchange, as to whether such company will be able to continue operations and/or meet its obligations as they mature.

However, the Exchange will not normally consider suspending dealings in, or removing from the list, the securities of a company which is below any of standards (i) through (iii) above if the company is in compliance with the following:

(1) Total value of market capitalization of at least $50,000,000; or total assets and revenue of $50,000,000 each in its last fiscal year, or in two of its last three fiscal years; and*

(2) The company has at least 1,100,000 shares publicly held, a market value of publicly held shares of at least $15,000,000 and 400 round lot shareholders.

Companies falling below one of the above standards and considering a combination with an unlisted company should see Section 341 for the discussion of the Exchange's listing policies contained therein.

* *Market capitalization for purposes of Section 1003 includes the total common stock outstanding (excluding treasury shares) as well as any common stock that would be issued upon conversion of another outstanding equity security, if such other security is a "substantial equivalent" of common stock. Generally, the security must be (1) publicly traded or quoted, or (2) convertible into a publicly traded or quoted security. A convertible security will be considered the "substantial equivalent" of common stock if the convertible security is presently convertible, and the conversion price is equal to or less than the current market price of the common stock. For partnerships, the current capital structure will be analyzed to determine whether it is appropriate to include other publicly traded or quoted securities in the calculation.*

* * * * *

(b) Not applicable.

(c) Not applicable.

* * * * *

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, the Proposed Rule Change

1. Purpose

Based upon an evaluation of trends and developments within the Amex listed company community, as well as public issuers generally, the Exchange is proposing to modify initial and continued listing standards to enable it to evaluate listing eligibility against broader and more in-depth measures of financial condition. Specifically, some financially sound issuers may be unable to satisfy the shareholders' equity requirement contained in existing listing standards as a result of certain accounting conventions. An issuer may be forced to write-off goodwill associated with merger and acquisition activity or take significant depreciation charges which are customary in a particular industry (*e.g.,* telecommunications) which could have the effect of reducing the issuer's shareholders' equity and income.[3]

Accordingly, the Exchange is proposing to adopt a new initial listing standard (in addition to existing standards) which is designed to permit an assessment of an issuer's suitability for listing on the basis of compliance with total market capitalization or total

[3] A number of large telecommunications issuers report significant deficit equity. For example, Cablevisions Systems Corporation (NYSE:CVC) reported a deficit of $1.8 billion; Nextel Communications, Inc. (Nasdaq NMS: NXTL) reported a deficit of $479 million; and Level 3 Communications Inc. (Nasdaq NMS: LVLT) reported a deficit of $78 million as of each issuer's most recent periodic SEC filing. Similarly, Amazon.com, Inc. (Nasdaq NMS: AMZN) reported a deficit of $1.5 billion.

assets and revenues in substitution of shareholders' equity. As accounting requirements become increasingly complex, it is important to provide such alternative criteria so that financially sound issuers are not precluded from listing on the Exchange solely on the basis of particular accounting conventions. Specifically, the new initial listing standard would require the following:

Total value of market capitalization: $75 million, or

Total assets and total revenue: $75 million each (in most recent fiscal year or two of last three most recently completed fiscal years)

Price: $3

Market value of public float: $20 million

Public float shares/public stockholders: 500,000/800 or 1 million/400 or 500,000/400 (plus average daily volume of 2,000 shares)

The Exchange states that the proposed new standard is not materially different from standards in place at other marketplaces and is consistent with existing Amex listing standards. In this regard it should be noted that both the New York Stock Exchange (''NYSE'') and Nasdaq listing standards contain a variety of alternative qualifications standards, including standards based on measures of market capitalization, revenue and assets.

It is also proposed that corresponding revisions be adopted to the continued listing standards to provide that a listed company will not be subject to delisting (assuming compliance with other applicable standards) even if it has experienced net losses or losses from continuing operations, and does not satisfy existing equity requirements [4] if it is in compliance with the following requirements:

- Total value of market capitalization: $50 million, or
- Total assets and revenue: $50 million each (in most recent fiscal year or two of last three most recently completed fiscal years), and
- At least 1,100,000 shares publicly held, a market value of publicly held shares of at least $15,000,000 and 400 round lot shareholders.

The Exchange believes that an issuer with significant market capitalization or assets and revenue should be able to continue its listing despite several years of losses (and assuming compliance with other applicable continued listing standards), in that these financial measures are generally an indication of a company's strength.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) [6] in particular, in that it is 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 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes that the proposed rule change will allow for the evaluation of an issuer's listing eligibility against more meaningful and comprehensive criteria. The Exchange also believes that the proposed rule change will provide investors and potential investors in the securities that would be eligible for listing with the benefits inherent in an Amex listing. According to the Exchange, these benefits include: comprehensive regulation; transparent price discovery and trade reporting to facilitate best execution; and increased depth and liquidity resulting from the confluence of order flow found in an auction market environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 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:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the 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 Exchange. All submissions should refer to File No. SR–Amex–2002–97 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30667 Filed 12–3–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46916; File No. SR–AMEX–2002–36]

Self-Regulatory Organizations; American Stock Exchange L.L.C.; Notice of Filing of Proposed Rule Change To Establish Resolution Times for Uncompared Transactions

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

[4] Section 1003(a) of the Amex Company Guide provides that a listed company which has sustained losses in two of its three, three of its four, or five of its most recent fiscal years will be subject to delisting if its stockholders' equity is less than $2 million, $4 million or $6 million, respectively.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

(''Act''),[1] notice is hereby given that on April 22, 2002, American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.[2]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend Amex's rule 731 and to adopt Commentary .08 to rule 731 to provide flexibility in establishing resolution times for uncompared transactions in equities, including shares of exchange traded funds and shares of trust-issued receipts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex 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. Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The resolution of uncompared trades (''DKs'') has gone through substantial revision as the nature of trade comparison has changed. In 1966, standardized forms were adopted for the timely and efficient resolution of DKs. The primary responsibility for DK resolution at that time was entrusted to floor members.[4] In 1978, the time limit for replying to a DK notice was set at 3:45 p.m. on trade date plus three business days (''T+3'') or prior to 10 a.m. on trade date plus five business days (''T+5'') if a specialist or independent member was involved. Upon a change in the opening to 9:30 a.m. in 1985, members were then required to reply to a DK notice involving a specialist or independent member prior to 9:30 a.m. on T+5.

The Commission's 1987 Market Break Report[5] resulted in a major initiative to shorten the comparison process, including the development in 1990 of Amex's Intra-Day Comparison system (''IDC'').[6] In 1990, Amex also implemented rule 719, Comparison of Exchange Transactions, which required that any transactions effected on the exchange must be compared or otherwise closed out by Amex's close of business on the business day following the day of the contract.[7] Amex adopted further rule changes in 1991 to formalize the operational procedures for full implementation of Amex's electronic equity trade comparison facility.[8] Among the new rules adopted was rule 731, Resolution of Uncompared Transactions, that expressly required that member organizations resolve uncompared trades no later than 3 p.m. on T+1 or 3:30 p.m. on T+1 if an agent was involved.

Because of the inherent risks in the settlement process and in uncompared trades, Amex believes it should have the flexibility to change the time periods for the resolution of DKs. For example, market conditions and systemic changes may require Amex to implement different cut-off time periods for the resolution of DKs depending on the particular product, such as stocks, bonds, ETFs, or TIRs. Accordingly Amex proposes to amend rule 731 to allow Amex to establish DK resolution time periods for equities, bond, ETFs, and TIRs as appropriate.

Specifically, the proposed rule change will amend rule 731 by providing Amex flexibility in determining cut-off times and dates for member organizations to make any necessary additions, deletions, or changes to its DK data and in determining cut-off times for resolution and acceptance of DKs remaining uncompared in the system. The proposed rule change also will adopt Commentary .08 to rule 731 that extends the applicability of the rule to Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts orders to buy or sell a security where the price is derivatively based upon another security or index of securities.[9] The proposed Commentary also provides that Amex may establish separate times to review and resolve DKs in these products.

The proposed rule change is consistent with section 6(b) of the Act[10] in general and furthers the objectives of section 6(b) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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 self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] 15 U.S.C. 78s(b)(1).

[2] Amex staff informed the Commission staff on October 23, 2002, that it had satisfactorily concluded its discussions with the National Securities Clearing Corporation regarding the filing.

[3] The Commission has modified the text of the summaries prepared by Amex.

[4] A separate rule for uncompared options trades, rule 970, was adopted when options commenced trading at the Amex in 1975. Rule 970 sets forth the procedures for settling uncompared options trades through the Rejected Option Transaction Notice.

[5] Commission, Division of Market Regulation, The October 1987 Market Break (February 1988).

[6] Exchange Act Release No. 28069 (May 29, 1990), 55 FR 23324 (June 7, 1990), (SR–Amex–90–01) (order approving IDC for post-trade processing of transactions in equity securities).

[7] Exchange Act Release No. 27851 (March 27, 1990), 55 FR 12759 (April 5, 1990), (SR–Amex–89–05) (order permanently approving rule requiring regular way trades be compared or closed out by close of business on T+1). In 1994, the SEC approved trade date submission of comparison data at the Amex. Exchange Act Release No. 34298 (July 1, 1994), 59 FR 35397 (July 11, 1994), (SR–Amex–94–13)(order approving program to compare equity trades on trade date). Today Rule 719(a) requires members and member organizations to submit comparison data to their clearing firm for any transaction executed on Amex within two hours of the trade.

[8] Exchange Act Release No. 29157 (May 2, 1991), 56 FR 21510 (May 9, 1991), (SR–Amex–90–16)(order approving rule detailing mechanics of resolving uncompared equity trades through IDC).

[9] Orders to buy or sell an option will continue to be covered by rule 950(f) and the applicable Commentary to rule 950.

[10] 15 U.S.C. 78q–1.

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR–Amex–2002–36 and should be submitted by December 26, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30676 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46905; File No. SR–Amex–2002–85]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to Amendments to Sections 610 and 701 of the Exchange Company Guide

November 25, 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 October 17, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 19, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Sections 610 and 701 of the Amex *Company Guide* to clarify that annual reports and proxy materials may be delivered as permitted by and in compliance with applicable state and federal law. The text of the proposed rule change is below. New language is italicized; deleted language is bracketed.

Sec. 610. Publication of Annual Report

A listed company is required to publish and furnish to its shareholders (or to holders of any other listed security when its common stock is not listed on a national securities exchange) an annual report containing audited financial statements prepared in conformity with the requirements of the Securities and Exchange Commission. The company must disclose in its annual report to security holders, for the year covered by the report: (a) The number of unoptioned shares available at the beginning and at the close if the year for the granting of options under an option plan; and (b) any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options. Three copies of the report must be filed with the Exchange. Di*stribution of the annual report to shareholders shall be in such format and by such means as permitted or required by applicable law and regulation (including any interpretations thereof by the SEC). (See, for example, materials referenced in Sec. 701, Comm. .01 of the Company Guide*)

Sec. 701. Filing Material [Mailed] *Distributed* to Shareholders

A listed company is required to file with the Exchange five copies of proxy statements, forms of proxy and other soliciting materials [mailed] *distributed* to shareholders. A listed company is also required to file with the Exchange one copy of the notice of shareholders' meetings and three copies of annual reports [mailed] *distributed* to shareholders. Copies of such materials should be sent to the Exchange when [mailed] *distributed* to shareholders, unless the material was otherwise filed electronically with the SEC.

Commentary .01

Proxy statements, forms of proxy and other soliciting materials shall be distributed by such means as are permitted or required by applicable law and regulation (including any interpretations thereof by the SEC). (See, for example, the following interpretations by the SEC: Release No. 34–36345, File No. S7–31–95; Release No. 34–37182, File No. S7–13–96; and Release No. 34–42728, File No. S7–11–00). Companies should also note Rule 576 applicable to member organizations regarding transmission of proxy material to customers.

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 Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission in recent years has issued several interpretations regarding electronic delivery of materials to shareholders, including proxy materials. The Exchange has rules governing delivery of proxy materials by member organizations to shareholders (Amex Rules 574 through 585). Many of these rules are also included in the Amex *Company Guide* (Amex Sections 720 through 725). In addition, Amex Section

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 18, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange proposes to add the phrase ''(including any intepretations thereof by the SEC)'' to Section 610 of the Amex *Company Guide.*

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

610 of the Amex *Company Guide* requires listed companies to publish and furnish to shareholders an annual report containing audited financial statements. In the interest of promoting greater efficiency and potentially reduced costs incurred by listed companies and member organizations in delivery of such materials to shareholders, applicable sections of the *Company Guide* are proposed to be amended to clarify that annual reports and proxy materials may be delivered as permitted by and in compliance with applicable state and federal law.

The Exchange proposes to amend Amex Section 610 of the *Company Guide* to provide that a company's distribution of its annual report to shareholders shall be in such format and by such means as permitted or required by applicable law. Amex Section 701 of the *Company Guide* relating to filing of proxy materials with the Exchange would be amended to add Commentary .01 to provide that proxy materials shall be distributed by such means as are permitted or required by applicable law or regulation. For purposes of these provisions, applicable federal law includes any interpretations thereof by the Commission. References to materials ''mailed'' to shareholders in Amex Section 701 would be amended to ''distributed'' to reflect that alternative means of distribution (*e.g.*, electronic mail) may be applicable.

The Exchange will notify listed companies and member organizations of the amendments to Amex Sections 610 and 701, including reference to applicable state and federal law and Commission interpretations. In addition, the Exchange is interpreting Amex Rules 574 through 578 applicable to transmission of proxy materials by member organizations to permit member organizations to transmit materials to beneficial owners consistent with the proposed amendments to Amex Section 701.

Issuers and member organizations using electronic delivery means for annual reports, proxy materials and proxies are required under the proposed rule to ensure that they comply with current Commission interpretations, as well as any future interpretations that the Commission may issue on these issues. Amex understands that the Commission expects that the Exchange will monitor developments regarding electronic delivery requirements and notify their members and listed companies in the event the Commission issues future releases on these issues.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent withSection 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 investor and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change will impose no 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

Because the foregoing 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 for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has 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, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

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, 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 filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–85 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30679 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[6] Telephone call between Michael Cavalier, Associate General Counsel, Amex, and Jennifer Lewis, Attorney, Division, Commission, on November 20, 2002.

[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)(6). The Commission notes that it recently approved an identical proposal by the New York Stock Exchange. *See* Securities Exchange Act Release No. 45838 (April 26, 2002), 67 FR 22144 (May 2, 2002). The Commission did not receive any comments on that proposal when it was published for comment. *See* Securities Exchange Act Release No. 45602 (March 20, 2002), 67 FR 14756 (March 27, 2002).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46904; File No. SR–Amex–2002–87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by American Stock Exchange LLC Relating to Elimination of Separate Exchange Requirements Regarding the Use of Written Consent Solicitations

November 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on October 28, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Amex. On November 25, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend sections 705, 706, 710, 711, 712 and 713 of the Amex Company Guide to eliminate separate Exchange requirements regarding the use of consent solicitations. The following is the text of the proposed rule change. Proposed new language is italicized; deleted language is in brackets.

* * * * *

Sec. 705. Meetings and Solicitation of Proxies Required

A listed company is required, with respect to any matter requiring authorization by its [stockholders] *shareholders*, to *either (a)* hold a meeting of its [stockholders] *shareholders* in accordance with its charter, by-laws and applicable state or other laws and to solicit proxies (pursuant to a proxy statement conforming to the proxy rules of the SEC) for such meeting of stockholders[; unless, upon prior Exchange review and approval, the Exchange permits the solicitation from all stockholders of record, of written consents (conforming to the proxy rules of the SEC) in lieu of such meeting and proxy solicitation]*, or, (b) use written consents in lieu of a special meeting of shareholders as permitted by applicable law. The Exchange has no separate requirements with respect to the solicitation of such consents, but listed companies must comply with applicable state and federal laws and rules (including interpretations thereof), including without limitation, SEC Regulations 14A and 14C.*

Note: An information statement under Regulation 14C of the SEC is not considered a proxy statement for purposes of this requirement.

[Sec. 706. Solicitation of Shareholder Consents

Upon prior Exchange review and approval, the Exchange permits solicitation of written consents from shareholders in lieu of a shareholder meeting and the solicitation of proxies (other than for the election of directors or other major corporate action) as appropriate authorization for corporate action by a listed company whenever it appears that a convened meeting of shareholders is not required. The use of consents may be granted by the Exchange on an individual basis subject to the observance of certain Exchange requirements including, among others, the condition that consents conforming to the proxy-solicitation regulations of the SEC be solicited from all shareholders of record.

A listed company's request for permission to solicit written consents of shareholders must be accompanied by a statement as to whether any substantial controversy regarding any of the matters to be acted upon is anticipated. If it appears that a contest or controversy will develop, the Exchange will require a shareholder meeting. If permission to solicit consents is granted, such authorization will be subject to the condition that, if a contest develops or a controversy arises after the consent material is distributed to shareholders, the company will terminate the solicitation of consents and revert to a formal proxy solicitation and convene a meeting of shareholders.

The use of consents will not be permitted in connection with any matter on which the Exchange requires the vote of shareholders. (*See* §§ 710–713.)

In addition to prior Exchange approval, the following requirements also apply:

(a) a record date for the distribution of consent forms must be used in the same manner as for the distribution of proxy-soliciting material;

(b) consents must be sent to, and solicited from, all shareholders of record in conformity with the proxy-soliciting regulations of the SEC, which also apply to the solicitation of consents;

(c) corporate action is not to be taken on the matters presented for shareholders' consideration until the consent solicitation period has expired, even if the required number of consents is received earlier; and

(d) the solicitation period (preferably about 30 days) must be for a minimum of 20 days.]

Sec. 710. Vote Required

(a) *With respect to votes cast on a proposal in person or by proxy,* [T]*the* minimum vote, under §§ 711, 712 and 713, which will constitute shareholder approval for listing purposes, is defined as approval by a majority of votes cast [on a proposal in person or by proxy]. (See § 123 regarding quorum requirements.) *With respect to the use of written consents in lieu of a special shareholders meeting, the written consent to the proposal of holders of a majority of the shares entitled to vote will constitute shareholder approval for listing purpose under §§ 711, 712 and 713.*

(b)—No change.

Sec. 711. Options to Officers, Directors or Key Employees

Approval of shareholders is required *in accordance with § 705* (unless exempted under paragraphs (a) and (b) below) as a prerequisite to approval of applications to list additional shares reserved for options granted or to be granted to officers, directors or key employees, regardless of whether or not such authorization is required by law or by the company's charter. [The Exchange requires that such shareholders' approval be solicited pursuant to a proxy statement conforming to SEC proxy rules which discloses all of the essential details of the options or of the plan pursuant to which the options will be granted.]

Note: This policy does not preclude the adoption of a stock option plan, or the granting of options, subject to ratification by shareholders, prior to the filing of an application for the listing of the shares reserved for such purpose.

The Exchange will not require shareholders' approval as a condition to listing shares reserved for the exercise of options when:

(a) through (b)—No change.

Sec. 712. Acquisitions

Approval of shareholders is required *in accordance with § 705* [(pursuant to a proxy solicitation conforming to SEC proxy rules)] as a prerequisite to approval of applications to list additional shares to be issued as sole or partial consideration for an acquisition of the stock or assets of another company in the following circumstances:

[3] *See* letter from Claudia Crowley, Assistant General Counsel—Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 22, 2002 (''Amendment No. 1''). In Amendment No. 1, Amex proposes to delete the last sentence of the first paragraph of section 711 of the Amex *Company Guide* because the requirements set forth therein are already contained in section 705 of the Amex *Company Guide*.

[4] 15 U.S.C. 78s(b)(3)A).

[5] 17 CFR 240.19b–4(f)(6).

(a) through (b)—No change.

Sec. 713. Other Transactions

The Exchange will require shareholder approval *in accordance with § 705* [(pursuant to a proxy solicitation conforming to SEC proxy rules)] as a prerequisite to approval of applications to list additional shares to be issued in connection with:

(a) through (b)—No change.

Commentary—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, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex requires listed companies to obtain shareholder approval of certain discounted stock and option issuances as well as other potentially dilutive transactions. These requirements are set forth in Sections 711–713 of the Amex *Company Guide*. State law, as well as a company's charter and by-laws typically require shareholder approval of a variety of corporate actions as well. Section 705 of the Amex *Company Guide* requires listed companies to convene a formal shareholder meeting accompanied by a proxy solicitation conforming to SEC proxy requirements whenever shareholder approval is required. Although Section 706 of the Amex *Company Guide* permits a listed company, subject to Exchange approval, to solicit written consents from all shareholders in lieu of a meeting, it does not permit the use of consents for any matter requiring shareholder approval pursuant to Amex rules or for the election of directors and other major corporate action.

The Amex rules governing proxy solicitations and the use of written consents have been in existence for decades, and appear to be based on an assumption that the written consent process would not necessarily provide adequate shareholder participation or information. However, for several years, under Commission requirements, issuers relying on written consents have been required to provide disclosure comparable to that required in proxy solicitations. Consents will sometimes be used when a company is permitted under state law to take action without a shareholder meeting upon the written consent of a specified percentage of shareholders, and the company has an individual or a small group that holds sufficient voting power to approve the corporate action involved. Under federal securities laws, when a company is permitted to take corporate action without a shareholder meeting upon the written consent of a specified percentage of shareholders, such company is not required to solicit the consent of all shareholders. Instead, under certain circumstances, the company is required by Section 14(c) of the Act [6] and Regulation 14C thereunder [7] to furnish all shareholders with an information statement [8] that contains the same disclosure as would have been provided to those shareholders had they been sent a proxy or consent solicitation. Regulation 14C also requires that the information statement be sent at least 20 days prior to the earliest date that corporate action can be taken.[9]

A number of Amex-listed companies have such control vested in an individual or small group, and have, on occasion, indicated a desire to take corporate action on the basis of the written consent of such individual or group. Under existing Amex rules (Section 706 of the Amex *Company Guide*), listed companies are precluded from using consents for many corporate actions, and even if a company is permitted to use consents (*i.e.*, if the corporate action did not require shareholder approval pursuant to Amex rules or involve the election of directors or major corporate action), it would be required to actually solicit the consents from all shareholders, notwithstanding that the vote was predetermined because of the voting control of an individual or small group. The additional requirement to collect and tabulate votes adds an extra level of cost and burden to the process, which some companies argue has no substantive justification, since non-control shareholders cannot change the outcome, and receive the same information regarding the transaction whether their consent is solicited or not.

The Exchange believes that such concerns are credible and that it is appropriate to align the Exchange with what has become accepted corporate practice and has long been sanctioned by state and federal regulation. The federal proxy rules insure that all shareholders are provided all the information material to the corporate action being taken, regardless of whether the issuer must solicit shareholder approval generally, or is able to proceed based on the written consent of a smaller group. Accordingly, the Amex proposes to eliminate its separate requirements governing the use of written consents by listed companies in lieu of special shareholder meetings. This proposal would enable listed companies to obtain shareholder approval of corporate action when necessary by any lawful method.

Under the proposed rule amendments, a listed company would be permitted to obtain the requisite shareholder approval for corporate action (whether required by Amex rules or otherwise) by either holding a special meeting of shareholders and soliciting proxies in accordance with SEC proxy requirements, or by the use of written consents in lieu of such meeting as permitted by applicable law. However, Amex-listed companies will not be permitted to use written consents in lieu of the annual meeting of shareholders at which directors are to be elected.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 investor and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change will impose no burden on competition.

[6] 15 U.S.C. 78n(c).

[7] 17 CFR 240.14C.

[8] An information statement is a disclosure document used to inform shareholders of corporate action that has or will be taken without the general solicitation of their proxy, consent or authorization.

[9] 17 CFR 240.14C.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change, as amended: (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 for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange has 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, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that it recently approved a similar proposal by the New York Stock Exchange.[14] The Commission did not receive any comments on that proposal when it was published for comment.[15] For these reasons, the Commission designates the amended proposal to be effective and operative upon filing with the Commission.[16]

At any time within 60 days of the filing of such amended 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.[17]

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *See* Securities Exchange Act Release No. 46654 (October 11, 2002), 67 FR 64687 (October 21, 2002).

[15] *See* Securities Exchange Act Release No. 46092 (June 19, 2002), 67 FR 43199 (June 26, 2002).

[16] The proposed rule change became effective on November 25, 2002, the date on which Amendment No. 1 was filed.

[17] Because the proposed rule change became effective on November 25, 2002, the date on which Amendment No. 1 was filed, the 60-day abrogation period began on November 25, 2002.

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 Amex. All submissions should refer to File No. SR–Amex–2002–87 and should be submitted by December 26, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30680 Filed 12–3–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46923; File No. SR–Amex–2002–92]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Corporate Bond TRACERS Units Representing Ownership Interests in a Trust Linked to a Basket of Investment Grade Fixed Income Securities

November 27, 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 November 5, 2002, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, and II 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 and is approving the proposal on an accelerated basis.

[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 Exchange proposes to approve for listing and trading under section 107A of the Amex Company Guide (''Company Guide''), trust certificates linked to a basket of investment-grade fixed-income corporate debt instruments.

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 Amex 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 Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under section 107A of the Company Guide, Corporate Bond TRACERS Units (the ''Units'') representing ownership interests in the Structured Asset Trust Repackaging Series 2002–_____ (the ''Trust''),[4] a special purpose entity to be formed by Morgan Stanley Dean Witter (''MSDW'') Structured Asset Corporation (''SAC''),[5]

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] A series number will be assigned when the Trust is established. Pursuant to a telephone conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Hong-Anh Tran, Special Counsel, Division of Market Regulation (''Division''), Commission, dated November 14, 2002.

[5] SAC is a wholly-owned special purpose entity of Morgan Stanley and the registrant under form S–

Continued

the depositor, and the trustee of the Trust pursuant to a trust agreement, which will be entered into on the date that the Units are issued. The assets of the Trust will consist of a basket or portfolio of not less than 15 investment-grade fixed-income securities (the ''Underlying Corporate Bonds'').

The issuance of the Units will be a repackaging of the Underlying Corporate Bonds with the obligation of the Trust to make distributions to holders of the Units depending on the amount of distributions received by the Trust on the Underlying Corporate Bonds. Due to the pass-through and passive nature of the Units, the Exchange intends to rely on the asset and stockholder equity of the corporate issuer, parent or guarantor of such issuer of the Underlying Corporate Bonds rather than the Trust to meet the requirement in section 107A of the Company Guide. The distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the Units.[6] The corporate issuer, parent or guarantor of such issuer of each of the Underlying Corporate Bonds will meet or exceed the requirements of section 107A of the Company Guide.[7] Further, the Units will initially conform to the listing guidelines under section 107A,[8] and the continued listing guidelines under sections 1001–1003 [9] of the Company Guide. At the time of issuance, the Units will receive an investment grade rating from a nationally recognized securities rating organization (an ''NRSRO'').

The Exchange states that the basket of Underlying Corporate Bonds will not be managed and will generally remain static over the term of the Units. The Units provide for periodic distributions of interest dependent on the interest paid by the Underlying Corporate Bonds. To insure periodic interest distributions, the Underlying Corporate Bonds held by the Trust will have stepped or staggered interest payment dates. Principal distributions on the Units are expected to be made on or about the dates that correspond to the maturity dates of the Underlying Corporate Bonds. However, some of the Underlying Corporate Bonds may have redemption provisions, and in the event of an early redemption or other liquidation (*e.g.*, upon an event of default) of the Underlying Corporate Bonds, the proceeds from such redemption (including any amortization payments) or liquidation will be distributed pro rata to the holders of the Units.[10] Each Underlying Corporate Bond will be issued by a corporate issuer and purchased in the secondary market.

Holders of the Units will receive interest on the face value of the Underlying Corporate Bonds in an amount to be determined at the time of issuance of the Units and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent that coupon payments are received from the Underlying Corporate Bonds. Distributions of interest will be made periodically. Investors will also be entitled to be repaid the principal of their Units from the proceeds of the principal payments on the Underlying Corporate Bonds. The payout or return to investors on the Units will not be leveraged.

The Units will mature on the latest maturity date of the Underlying Corporate Bonds. Holders of the Units will have no direct ability to exercise any of the rights of a holder of the Underlying Corporate Bonds. However, holders of the Units as a group will have the right to direct the Trust in its exercise of its rights as a holder of the Underlying Corporate Bonds.

The Exchange states that the proposed Units are similar to equity linked notes (''ELNs''), previously approved by the Commission, except that the cash flow from the proposed Units will come from a basket of investment-grade corporate bonds as compared to a single equity, basket of equity securities or equity index in the case of an ELN.[11] In addition, ELNs may or may not pay interest while the Units will pay interest periodically based on the pass-through nature of the structure. Also, publicly issued asset backed securities that repackage a single underlying corporate debt obligation are currently listed and traded on the NYSE.[12] The proposed Units are similar to those repackaging transactions, except that the Trust will own more than one corporate debt obligation. In addition, the Exchange recently filed a similar proposal to list and trade asset-backed securities representing ownership interest in a trust consisting of a basket of investment-grade fixed-income

3 Registration Statement (No. 333–64879) under which the securities will be issued.

6 Telephone conversation between Jeff P. Burns, Assistant General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on November 26, 2002.

7 *See* section 104 of the Company Guide permitting the Exchange to list corporate debt securities where the issuer of equity securities listed on the Amex, New York Stock Exchange (''NYSE'') or Nasdaq National Market (''Nasdaq''), directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security or has guaranteed the debt security.

8 The initial listing standards for the Units require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. However, if traded in thousand dollar denominations, then there is no minimum public distribution and holder requirement. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in section 101 of the Company Guide, the Exchange will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

9 The Exchange's continued listing guidelines are set forth in sections 1001 through 1003 of part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the Units, the Exchange will rely, in part, on the guidelines for bonds in section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

10 The Trust will pay to holders of the Units interest and principal distributions pursuant to the schedule set forth in the prospectus. Among other things, the schedule discloses to holders of the Units, the maturity dates of the Underlying Corporate Bonds. Upon such distributions, holders of the Units will receive a report or notification regarding interest and principal payments showing the remaining Underlying Corporate Bonds.

11 See *e.g.*, Securities Exchange Act Release Nos. 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Institutional Holdings Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Industrial 15 Index); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of non-principal protected exchangeable notes linked to the Select Ten Index); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (approving the listing and trading of notes linked to a basket of no more than 20 equity securities); 40956 (January 20, 1999), 64 FR 4480 (January 28, 1999) (approving the listing and trading of notes linked to Select Sector SPDRs); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (approving the listing and trading of the Top Ten Yield MITTS); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (listing and trading of equity linked securities). *See also* Securities Exchange Act Release No. 41334 (April 27, 1999), 64 FR 23883 (May 4, 1999) (Bond Index Term Notes).

12 See *e.g.* Structured Asset Trust Unit Repackagings (SATURNS), CSFB USA Debenture Backed Series 2002–10, 1,330,000 of 7.00% Class A Callable Units, dated August 15, 2002 and trading under the symbol ''MKK''; 1,380,000 PreferredPlus 8.375% Trust Certificates underlying 7.05% Debentures of Citizens Communications Company, dated August 24, 2001 and trading under the symbol ''PIY''; and 1,980,000 Corporate Backed Trust Certificates, Royal & Sun Alliance Bond Backed Series 2002–2, underlying securities 8.95% subordinated guaranteed bonds issued by Royal & Sun Alliance Insurance Group plc, dated February 11, 2002 and trading under the symbol ''CCS.''

securities.[13] Accordingly, the Exchange proposes to provide for the listing and trading of the Units where the Underlying Corporate Bonds meet the Exchange's Bond and Debenture Listing Standards set forth in section 104 of the Company Guide. The Exchange represents that all of the Underlying Corporate Bonds in the proposed basket will meet or exceed these listing standards.

The Exchange's Bond and Debenture Listing Standards in section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and any of: (1) The issuer of the debt security has equity securities listed on the Exchange (or on the NYSE or on Nasdaq); (2) an issuer of equity securities listed on the Exchange (or on the NYSE or on Nasdaq) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on Nasdaq) has guaranteed the debt security; (4) a NRSRO has assigned a current rating to the debt security that is no lower than a Standard & Poor's Corporation (''S&P'') ''B'' rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than an S&P ''B'' rating or an equivalent rating by another NRSRO to a *pari passu* or junior issue.

In addition to the Exchange's Bond and Debenture Listing Standards, an Underlying Corporate Bond must also be of investment grade quality as rated by a NRSRO and at least 75% of the underlying basket is required to contain Underlying Corporate Bonds from issuances of $100 million or more. The payment of principal of the Units is expected to be made upon the maturity of each Underlying Corporate Bond unless it is paid upon an earlier redemption (including any amortization payments) or liquidation, as discussed above, with the maturity date of the Units being the latest maturity date of the Underlying Corporate Bonds. Amortization of the Units will be based on (1) the respective maturities of the Underlying Corporate Bonds; (2) principal payout amounts reflecting the *pro-rata* principal amount of maturing Underlying Corporate Bonds; and (3) any early redemption or liquidation of the Underlying Corporate Bonds.

Investors will be able to obtain the prices for the Underlying Corporate Bonds through Bloomberg L.P. (''Bloomberg'') or other market vendors, including the broker-dealer through whom the investor purchased the Units. In addition, the Bond Market Association provides links to price and other bond information sources on its investor web site at *http://www.investinginbonds.com.* Transaction prices and volume data for the most actively traded bonds on the exchanges are also published daily in newspapers and on a variety of financial websites. The National Association of Securities Dealers, Inc. (''NASD'') Trade Reporting and Compliance Engine (TRACE) will also help investors obtain transaction information for most corporate debt securities, such as investment grade corporate bonds.[14] For a fee, investors can have access to intra-day bellwether quotes.[15] Price quotes are also available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Valuation prices [16] and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The prices of the Underlying Corporate Bonds generally will be determined by one or more market makers in accordance with applicable statutory rules, self-regulatory organization rules and generally accepted accounting principles regarding the valuation of securities.

The Units will be listed in $1,000 denominations with the Exchange's existing debt floor trading rules applying to trading. First, pursuant to Amex rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Units.[17] Second, the Units will be subject to the debt margin rules of the Exchange.[18] Third, the Exchange will, prior to trading the Units, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Units and highlighting the special risks and characteristics of the Units. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Units: (1) To determine that such transaction is suitable for the customer; and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units. Specifically, the Amex will rely on its existing surveillance procedures governing debt, which have been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act,[19] in general, and furthers the objectives of section 6(b)(5),[20] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and, in general, 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 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

The Exchange did not receive any written on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing,

[13] *See* Securities Exchange Act Release No. 46835 (November 14, 2002), 67 FR 70271 (November 21, 2002).

[14] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at *http://www.nasdbondinfo.com/.*

[15] Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/.*

[16] ''Valuation Prices'' refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

[17] Amex rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[18] *See* Amex rule 462.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

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 Exchange. All submissions should refer to File No. SR–Amex–2002–92 and should be submitted by December 26, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[21] The Commission finds that this proposal is similar to several approved equity-linked instruments currently listed and traded on the Amex,[22] as well as to asset-backed securities listed and traded on the NYSE.[23] In addition, the Commission recently approved a similar proposal to list and trade asset-backed securities representing ownership interest in a trust consisting of a basket of investment-grade fixed-income securities.[24] Accordingly, the Commission finds that the listing and trading of the Units are consistent with the Act and will promote just and equitable principles of trade, 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 consistent with Securities 6(b)(5) of the Act.[25]

As described more fully above, the Units are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds, subject to certain distribution of interest obligations of the Trust. The Units are not leveraged instruments. The Units are debt instruments whose price will still be derived and based upon the value of the Underlying Corporate Bonds. The Exchange represents that the value of the Underlying Corporate Bonds will be determined by one or more market makers, in accordance with Exchange rules and generally accepted principles of accounting regarding the valuation of securities. Investors are guaranteed at least the principal amount that they paid for the Underlying Corporate Bonds. In addition, holders of the Units will receive interest on the face value of the Underlying Corporate Bonds in an amount to be determined at the time of issuance of the Units and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent that coupon payments are received from the Underlying Corporate Bonds. Distributions of interest will be made periodically. In addition, the Units will mature on the latest maturity date of the Underlying Corporate Bonds. However, due to the pass-through nature of Units, the level of risk involved in the purchase or sale of the Unit is similar to the risk involved in the purchase or sale of traditional common stock. The Commission notes that asset-backed securities that repackage a single underlying debt instrument are currently listed and traded on the NYSE. However, because the Units are asset-backed securities that repackage a basket of Underlying Corporate Bonds, instead of a single underlying corporate bond, there are several issues regarding the trading of this type of product that the Exchange must address.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the Units. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements notes above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Units. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the Units.

The Commission notes that the Units are dependent upon the individual credit of the issuers of the Underlying Corporate Bonds. To some extent the credit risk is minimized by the Exchange's listing standards in section 107A of the Company Guide, which provide that only issuers satisfying asset and equity requirements may issue securities such as the Units. In addition, the Exchange's ''Other Securities'' listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.[26] The Commission notes that the Exchange has represented that the Units will be listed in $1000 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Corporate Bonds will be publicly available.[27]

Due to the pass-through and passive nature of the Units, the Commission does not object to the Exchange's reliance on the assets and stockholder equity of the corporate issuer, parent or guarantor of such issuer of the Underlying Corporate Bonds rather than the Trust to meet the requirement in section 107A of the Company Guide. The Commission notes that the

[21] *Id.*

[22] *See* Securities Exchange Act Release Nos. 45160 (December 17, 2001), 66 FR 66485 (December 26, 2001) (approving the listing and trading of non-principal protected notes linked to the Balanced Strategy Index) (File No. SR–Amex–2001–91); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of non-principal protected notes linked to the Institutional Holdings Index) (File No. SR–Amex–2001–40); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of non-principal protected notes linked to the Industrial 15 Index) (File No. SR–Amex–2001–39); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (accelerated approval order for the listing and trading of Select Ten Notes) (File No. SR–Amex–2001–28); 42582 (March 27, 2000), 65 FR 17685 (April 4, 2000) (accelerated approval order for the listing and trading of notes linked to a basket of no more than 20 equity securities) (File No. SR–Amex–99–42); 41546 (June 22, 1999), 64 FR 35222 (June 30, 1999) (accelerated approval order for the listing and trading of notes linked to a narrow-based index with a non-principal protected put option) (File No. SR–Amex–99–15); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (notice of immediate effectiveness for the listing and trading non-principal protected commodity preferred securities linked to certain commodities indices) (File No. SR–Amex–97–47); 37533 (August 7, 1996), 61 FR 42075 (August 13, 1996) (accelerated approval order for the listing and trading of the Top Ten Yield Market Index Target Term Securities (''MITTS'')) (File No. SR–Amex–96–28); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (accelerated approval order for the listing and trading of Stock Upside Note Securities) (File No. SR–Amex–93–40); and 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (accelerated approval order for the listing and trading of non-principal protected notes linked to a single equity security) (File No. SR–Amex–92–42).

[23] *See e.g., supra* note 12.

[24] *See supra* note 13.

[25] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] *See* Company Guide section 107A.

[27] The Units will be registered under section 12 of the Act.

distribution and principal amount/aggregate market value requirements found in sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the Units. Thus, the Units will initially conform to the listing guidelines under section 107A and the continued listing guidelines under sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the Unites will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the Units should not unduly impact the market for the Underlying Corporate Bonds or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Corporate Bonds meet the Exchange's section 107A listing requirements, the Underlying Corporate Bonds will be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to section 104 of the Company Guide, which among other things, requires that underlying debt instrument receive at least in investment grade rating of ''B'' or equivalent from an NRSRO. Furthermore, at least 75% of the underlying basket is required to contain Underlying Corporate Bonds from issuances of $100 million or more. The Amex has also represents that the basket of Underlying Corporate Bonds will not be managed and will remain static over the term of the Units. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Corporate Bonds through market venders such Bloomberg, or though websites such as *www.investinbonds.com.*

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to a recently approved proposal to list and trade asset-backed securities representing ownership interest in a trust consisting of a basket of investment-grade fixed-income securities,[28] several other equity-linked instruments currently listed and traded on the Amex,[29] and other asset-backed securities currently listed and traded on the NYSE.[30] The Commission believes that the Units will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Units promptly. Additionally, the Units will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,[31] to approve the proposal an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[32] that the proposed rule change (SR–Amex–2002–92), is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30681 Filed 12–3–02; 8:45 am]

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[28] *See supra* note 13.

[29] *See supra* note 22.

[30] *See, e.g. supra* note 12.

[31] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46911; File No. SR–BSE–2002–10]

Self Regulatory Organizations; The Boston Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Eliminate the BSE's Current Revenue Sharing Program and To Establish Two Market Data Revenue Sharing Programs

November 26, 2002.

On July 22, 2002, The Boston Stock Exchange, Inc. (''BSE'' 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] a proposed rule change to eliminate its existing revenue sharing program and to establish two market data revenue sharing programs. The BSE amended the proposed rule change on August 2, 2002 and on August 20, 2002. The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on September 19, 2002.[2] The Commission received two comments on the proposal.[3] On October 28, 2002, the BSE responded to the NYSE Letter.[4]

The BSE proposes to operate market data revenue sharing programs that are substantially similar to existing programs at other self-regulatory organizations.[5] As set forth in its July 2, 2002 Order of Summary Abrogation (''Abrogation Order''),[6] the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow the BSE to operate market data revenue sharing programs that place the BSE on substantially similar footing as other self-regulatory organizations.

Thus, 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[7] and, in particular, the requirements of Section 6 of the Act[8] and the rules and regulations

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 46496 (September 13, 2002), 67 FR 59084.

[3] *See* October 21, 2002 letter from Meyer S. Frucher, Chairman and Chief Executive Officer, The Philadelphia Stock Exchange, Inc., to Jonathan G. Katz, Secretary, Commission (''Phlx Letter''); and October 21, 2002 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. (''NYSE''), to Jonathan G. Katz, Secretary, Commission (''NYSE Letter''). The Phlx Letter took no position on the BSE proposal, but instead spoke generally about the regulation of market data fees and revenues. The NYSE Letter asked the Commission to institute disapproval proceedings ''as a first step in eradicating all such [market data] rebate programs.'' Because neither letter specifically addresses the BSE proposed rule change, the Commission has not included a summary of comments in this order. The letters are available for review in the Public Reference Room at the Commission.

[4] *See* October 28, 2002 letter from John A. Boese, Assistant Vice President, Legal and Regulatory, BSE, to Jonathan Katz, Secretary, Commission (''BSE Response Letter''). The BSE did not respond to the Phlx Letter because it did not receive the Phlx letter until after the BSE submitted its response to the NYSE Letter. The Commission did not require the BSE to submit an additional response letter to address the comments in the Phlx Letter, because the Phlx Letter ''expresses no view'' on the BSE's proposed rule change. *See* Phlx Letter at p. 1. The BSE Response Letter is available for review in the Public Reference Room at the Commission.

[5] *See e.g.*, Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999)(SR–CSE–99–03).

[6] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37)(Order of Summary Abrogation).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f.

thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the BSE to establish the market data revenue sharing programs described in this proposed rule change, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [10] that the proposed rule change (SR–BSE–2002–10), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30671 Filed 12–3–02; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46922; File No. SR–CBOE–2002–66]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Eliminate Certain CBOE*direct* Connectivity Fees

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and rule 19b–4 thereunder,[2] notice hereby is given that on November 1, 2002, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to eliminate certain CBOE*direct* member connectivity charges. The text of the proposed rule change is available at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in item IV below. CBOE 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

Currently, in order to set up a Trader Workstation to access the CBOE*direct* screen-based trading platform, CBOE members and member organizations are charged a one-time $5,000 set up fee as well as an additional $1,500 for each additional terminal beyond the first. The Exchange has determined that it can encourage greater use of the CBOE*direct* Trader Workstations by eliminating these fees, and therefore proposes to do so.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with section 6(b) of the Act [3] in general and section 6(b)(4) [4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

CBOE represents that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to section 19(B)(3)(A)(ii) of the Act [5] and subparagraph (f)(2) of rule 19b–4 thereunder.[6] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–66 and should be submitted by December 26, 2002.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30673 Filed 12–3–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46915; File No. SR–DTC–2002–13]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change To Establish the Prospectus Repository System

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 11, 2002, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by the DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish the Prospectus Repository System that will make prospectuses and official statements relating to new issues of corporate and municipal securities available electronically to interested DTC participants and DTC-authorized third parties.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In response to industry demand, DTC has recently developed a new service for participants that would make prospectuses and official statements relating to new issues of corporate and municipal securities (''Offering Documents'') available in electronic format. The new service, the Prospectus Repository System (''PRS'') will enable participants and DTC-authorized third parties (collectively referred to as ''users'') to view Offering Documents from a DTC-maintained website.[3]

As a new service related to DTC's underwriting services, PRS would function as a multi-purpose library where users can view, download, and print Offering Documents for those issues made eligible by DTC. Underwriters will be responsible for providing DTC with Offering Documents for both corporate and municipal securities. Access to the Offering Documents posted on the website will be controlled by password protection, where users will be able to view preliminary and final Offering Documents. By posting Offering Documents in PRS, DTC intends to make access to Offering Documents easier and more efficient. PRS features will include on-line search capabilities of preliminary and final Offering Documents, retrieval by ticker symbol, CUSIP, or issuer, and downloadable or printable files.

All users accessing Offering Document information in PRS will be required to affirm that they have read DTC's disclaimer prior to viewing the information. [4] The disclaimer states that Offering Documents posted on the PRS website are for informational purposes only and do not constitute bids, offers, or solicitations for securities. Further, DTC indicates that by virtue of offering the PRS service DTC is not participating in a particular offering as an underwriter, dealer, investment advisor, or otherwise and is not providing any form of investment advice or recommendation as to a particular security, issuer, or offering. In general, DTC will also disclaim responsibility for the following:

- Satisfying Offering Document delivery requirements under federal securities laws or under Municipal Securities Rulemaking Board rules;
- Informing users of PRS of restrictions or limitations on securities or participation in an offering;
- The form or content of any Offering Document posted on the PRS website;
- The accuracy or DTC's verification of information submitted to DTC;
- The responsibility to update any Offering Document posted on the website;
- Posting a final Offering Document if it posts a preliminary Document;
- Posting any supplements to a final Offering Document;
- Keeping an Offering Document posted for any amount of time.

DTC believes that the proposed rule filing is consistent with section 17A of the Act because it provides a service that will benefit DTC participants as well as the industry as a whole. PRS will reduce operating costs to underwriters, make Offering Documents readily available to syndicate members, and expand DTC's underwriting services to participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by the DTC.

[3] PRS authorized third-party users will include syndicate members, correspondent banks, paying agents, transfer agents, and certain legal counsel and financial advisors associated with the underwriting. Individual investors will not have access to Offering Documents via the website.

[4] A copy of DTC's PPS disclaimer is attached as exhibit B to DTC's filing and is available at the Commission's Public Reference office or through DTC.

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the DTC. All submissions should refer to File No. SR–DTC–2002–13 and should be submitted by December 21, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30675 Filed 12–2–02; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46917; File No. SR–NASD–2002–151]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. to Modify SuperMontage Transaction Execution Fees and Credits

November 26, 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 October 23, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[3] and rule 19b–4(f)(2) thereunder,[4] which renders the rule effective upon Commission receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify order execution charges and liquidity provider credits applicable to Non-Directed, Preferenced, and Directed Orders in Nasdaq's SuperMontage system. Nasdaq will implement the rule change on November 1, 2002. Because the transition from the current SuperSOES, SOES, and SelectNet environment to SuperMontage is occurring over the course of several weeks, with stocks moving from one system to the other in stages, Nasdaq will continue to charge its filed prices for SuperSOES, SOES, SelectNet, and quotation updates for stocks that have not transitioned, while charging the SuperMontage prices established through SR–NASD–2002–44,[5] SR–NASD–2002–91,[6] SR–NASD–2002–135,[7] and SR–NASD–2002–151 for stocks that have transitioned.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in [brackets].

Rule 7010. System Services

* * * * *

(a)–(h) No change.

(i) Nasdaq National Market Execution System (SuperMontage).

The following charges shall apply to the use of the Nasdaq National Market Execution System (commonly known as SuperMontage) by members:

Order Entry	
Non-Directed Orders (excluding Preferenced Orders)	No charge
Preferenced Orders:	
Preferenced Orders that access a Quote/Order of the member that entered the Preferenced Order).	No charge
Other Preferenced Orders	$0.02 per order entry
Directed Orders	$0.10 per order entry
Order Execution	
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through the NNMS:	
Charge to member entering order	[$0.002] *$0.003* per share executed (but no more than $75 per trade for trades in securities executed at $1.00 or less per share)
Credit to member providing liquidity	[$0.001] *$0.002* per share executed (but no more than [$37.50] *$50* per trade for trades in securities executed at $1.00 or less per share)
Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee to market participants accessing its Quotes/Orders through the NNMS.	$0.001 per share executed (but no more than [$37.50] *$25* per trade for trades in securities executed at $1.00 or less per share)
Directed Order	[$0.0025] *$0.003* per share executed
Non-Directed or Preferenced Order entered by a member that accesses a Quote/Order of such member.	No charge

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Securities Exchange Act Release No. 45906 (May 10, 2002), 67 FR 34965 (May 16, 2002) (SR–NASD–2002–44). SR–NASD–2002–44 established a fee scheduled for members' use of SuperMontage.

[6] Securities Exchange Act Release No. 46343 (August 13, 2002), 67 FR 53822 (August 19, 2002) (SR–NASD–2002–91). SR–NASD–2002–91 provides that the fees for the use of SuperMontage by a national securities exchange trading Nasdaq securities on an unlisted trading privileges basis (a ''UTP Exchange'') may be established by means of an agreement between Nasdaq and the UTP Exchange.

[7] Securities Exchange Act Release No. 46648 (October 11, 2002), 67 FR 64439 (October 18, 2002) (SR–NASD–2002–135). SR–NASD–2002–135 established maximum execution fees and credits for transactions in low-priced securities.

Order Cancellation	
Non-Directed Orders (excluding Preferenced Orders)	$0.01 per order cancelled
Preferenced Orders	$0.01 per order cancelled
Directed Orders	$0.10 per order cancelled
Entry and Maintenance of Quotes/Orders by Nasdaq Quoting Market Participants	
Initial entry of Quote/Order	No charge
Change of Quote/Order due to order execution through SuperMontage.	No charge
Cancel/replace of Quote/Order to increase size	No charge
Cancel/replace of Quote/Order to change price	$0.01
Cancel/replace of Quote/Order to decrease size manually	$0.01
Cancellation of Quote/Order	$0.01
Cancellation of Quote/Order due to order purge or timeout	$0.0075

(j)–(s) 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, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to increase the order execution charges and the liquidity provider credits applicable to the execution of Non-Directed, Preferenced, and Directed Orders in SuperMontage. Earlier this year, in anticipation of the launch of SuperMontage, Nasdaq established a price schedule that featured: (i) A $0.002 per share charge for the execution (in full or in part) of a Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that does not charge an access fee to market participants accessing its Quotes/Orders through SuperMontage; (ii) a $0.001 per share charge for the execution (in full or in part) of a Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee; (iii) a $0.001 per share credit to a member that provides the liquidity for an execution and does not charge an access fee; and (iv) a $0.0025 per share charge for the execution of Directed Orders.

Nasdaq believes that a liquidity provider credit, which was introduced in Nasdaq's SuperSoes system [8] and was recently approved by the Commission for Nasdaq's InterMarket,[9] serves to encourage market makers to display quotes and limit orders that set the inside market through Nasdaq, thereby enhancing the opportunities for favorable executions of market orders routed to Nasdaq. Nasdaq also believes that the credit serves to enhance competition between electronic communications networks (''ECNs''), which are permitted to charge fees for accessing their quotations, and market makers, which generally are prohibited from doing so.[10] Accordingly, the credit is not available to members that charge fees for accessing their quotes through SuperMontage, because such market participants are already compensated for providing liquidity if their quote is executed against and an access fee is charged. Moreover, Nasdaq charges a lower fee for the execution of a Non-Directed or Preferenced Order that accesses the Quote/Order of a market participant that charges an access fee, in order to offset the access fee that the liquidity taker must pay.

According to Nasdaq, ECNs are now generally charging $0.003 per share to liquidity takers while offering $0.002 per share to liquidity providers. As such, Nasdaq believes that it must increase both the order execution fee and the credit to liquidity providers in order to ensure that competition between Nasdaq and ECNs is based on market quality rather than price. Without a change in SuperMontage fees, Nasdaq believes that market participants will have a financial incentive to route limit orders to ECNs rather than posting them in SuperMontage. Accordingly, Nasdaq is increasing the execution fee for Non-Directed and Preferenced Orders that access the Quote/Order of a market participant that does not charge an access fee, as well as the execution fee for Directed Orders, to $0.003 per share, while increasing the credit paid to liquidity providers that do not charge an access fee to $0.002 per share. The execution fee for a Non-Directed or Preferenced Order that accesses the Quote/Order of an access-fee-charging market participant remains $0.001. Finally, Nasdaq is adjusting the fee and credit caps established by SR–NASD–2002–135 for transactions in low-priced securities to ensure that the ratio between these caps remains equal to the ratio between underlying per share prices. Thus, the cap on the liquidity provider credit is being increased to $50, while the cap on the fee to access the Quote/Order of a market participant that charges an access fee is being lowered to $25.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] in general, and with section 15A(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers, and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[8] Securities Exchange Act Release No. 44910 (October 5, 2001), 66 FR 52167 (October 12, 2001) (SR–NASD–2001–67).

[9] Securities Exchange Act Release No. 46594 (October 3, 2002), 67 FR 63485 (October 11, 2002) (SR–NASD–2002–109).

[10] *Compare* letter from Richard R. Lindsay, Director, Division of Market Regulation (''Division''), to Charles R. Hood, Senior Vice President and General Counsel, Instinet Corporation (January 17, 1997) (acknowledging ECN access fee of up to $0.015 per share) *with* letter from Robert L.D. Colby, Deputy Director, Division, to M. Joseph Messina, Vice President, M.H. Meyerson & Co., Inc. (May 5, 1998) (interpreting SEC Rule 11Ac1–1 to prohibit market makers from charging fees for access to their public quotes).

[11] 15 U.S.C. 78*o*–3.

[12] 15 U.S.C. 78*o*–3(b)(5).

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 foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [13] and rule 19b–4(f)(2) thereunder, because it establishes or changes a due, fee, or charge imposed by the self-regulatory organization.[14] 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 NASD. All submissions should refer to file number SR–NASD–2002–151 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30678 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(a)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–46913; File No. SR–NSCC–2002–09)

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Acceptance of Trade Data

November 26, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on October 24, 2002, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend NSCC's rules to provide that NSCC may accept trade data from derivatives clearing organizations.

II. Self-Regulatory Organization's Statement of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on 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. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to allow NSCC to accept trade data from derivatives clearing organizations (''DCOs'') that are registered or deemed registered with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act. OneChicago LLC has developed a physically-settled, narrow-based security index futures that wills delivery of the underlying securities at expiration. To facilitate the settlement of these futures at expiration, NSCC will need to receive trade date relating to exercise obligations.

NSCC's rules currently provide that NSCC may accept trade data from self regulatory organizations (''SROs)'', as defined in the Act.[3] In its connection with OneChicago and these physically-settled, narrow-based security index futures, the Chicago Mercantile Exchange (''CME'') will have trade data relating to expiration obligations necessary for settlement. While the CME is a DCO, it is not an SRO. In order to be able to accept trade data from the CME, NSCC is proposing to amend Section 5 of its Rule 7 (Comparison and Trade Recording Operation) to provided that NSCC may accept trade data from DCOs that are registered or deemed to be registered with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act.

NSCC believes that the proposed rule filing is consistent with the requirements of the Act and the rules and regulations there under because it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations there under particularly with the requirements of Section 17A(b)(3)(F).[4] Section 17A(b)(3)(F) requires that the rules of a

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Section 3(a)(26) of the Act defines an SRO as any national securities exchange, registered securities association, registered clearing agency, or (solely for purposes of sections 19(b), 19(c), an 23(b) of the Act) the Municipal Securities Rulemaking Board established by Section 15B of the Act.

[4] 15 U.S.C. 78q–1(b)(3)(F).

clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. By authorizing NSCC to accept trade data from registered DCOs, the proposed rule change will allow NSCC to accept trade relating to expiration obligations of security futures from CME or any other DCO with such information. As a result, the proposed rule change promotes the prompt and accurate clearance and settlement of security futures.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission funds good cause for approving the rule change prior to the thirtieth day after publication because by so approving NSCC will be able to accept trade data from the CME on these physically-settled, narrow-based security index futures once they begin trading in the near future.

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 related to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–2002–09 and should be submitted by December 26, 2002.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2002–09) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30662 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46888; File No. SR–NYSE–2002–34]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to the Amendment of Rule 342 (Offices—Approval, Supervision, and Control)

November 22, 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 August 16, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 22, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed amendment to NYSE Rule 342 (''Offices—Approval, Supervision, and Control'') providing for a new definition of the term ''branch office.'' The proposed amendment to the rule would limit the requirement to register certain business locations as ''branch offices'' to account for advances in technology used to conduct and monitor business, changes in the structure of broker-dealers and in the lifestyles and work habits of broker-dealers. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

Rule 342. Offices—Approval, Supervision, and Control

(a)–(e) No Change.

Supplementary Material

.19 [.10] Annual fee.—Each office of a member organization (including any foreign branch office), other than the main office of the member organization, shall be subject during its existence to a registration fee as determined by the Exchange for each calendar year or part thereof, unless specifically exempted by the Exchange.

.10 Definition of Branch Office

A ''branch office'' is any location, other than the main office, where one or more associated persons of a member or member organization (''associated person'') regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding:

(A) any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(B) any location that is the associated person's primary residence; provided that: (i) the location is used for less than 50 business days in any one calendar year; (ii) only one associated person, or multiple associated persons, who reside at that location and are members of the same immediate family, conduct business at the location; (iii) the location is not held out to the public as an office and the associated person does not meet with customers at the location; (iv) neither customer funds nor securities are handled at that location; (v) the associated person is assigned to a designated branch office, and such branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person; (vi) the associated person's correspondence and communications with the public are subject to the firm's supervision; (vii) electronic communications (i.e., e-mail) are made through the member organization's electronic system; (viii) all orders are entered through the designated branch office; (ix) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member or member organization; and

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission (October 21, 2002) (''Amendment No. 1''). In Amendment No. 1, the Exchange corrected the reference to the provision of the Act under which the proposal was filed. The original filing was incorrectly marked as having been filed pursuant to section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), while Amendment No. 1 was marked as having been filed pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2).

(x) a list of the locations is maintained by the member or member organization;

(C) any location, other than a primary residence, that is used for less than 30 business days in any one calendar year, provided the member organization complies with the provisions of (iii) through (ix) of paragraph (B) above;

(D) any office of convenience, where the associated person occasionally and exclusively by appointment meets with customers, which is not held out to the public as a branch office (where such location is on bank premises, however, only signage required by the Interagency Statement (Statement on Retail Sales of Nondeposit Investment Products required under Banking Regulations) may be displayed);

(E) any location that is used primarily to engage in non-securities activities and from which the associated person effects no more than 25 securities transactions in any one calendar year; provided that any advertisements or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person conducting business at the non-branch locations are directly supervised;

(F) the Floor of a registered national securities exchange where a member or member organization conducts a direct access business with public customers; or

(G) a temporary location established in response to the implementation of a business continuity plan.

The term ''business day'' as used herein shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business. The term an ''associated person of a member'' for purposes of this Rule means member, allied member or employee associated with a member or member organization.

* * * * *

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, the Proposed Rule Change

1. Purpose [4]

Background

Currently, Exchange Rule 342(c) broadly requires that a member or member organization obtain the Exchange's prior written consent for each office established other than a main office. Continued advances in technology used to conduct and monitor business, changes in the structure of broker-dealers and in the lifestyles and work habits of the workforce have caused the Exchange to reexamine whether all business locations continue to need to be registered as branch offices of broker-dealer members and member organizations.

The definition of the term ''branch office'' under various self-regulatory organizations' (''SROs'') and states' rules in this regard differ significantly. Further, they differ in the registration, notification and approval process as well. Recently, the Exchange has worked with the NASD and states' regulators to develop a definition, which recognizes the industry changes noted above, while meeting regulatory objectives.

Proposed Definition

As proposed, the term ''branch office'' means any location, other than the main office, where one or more associated persons of a member or member organization (''associated person'') regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such. The definition provides for exceptions noted below. The core definition is consistent with the term ''office'' as it is defined in the SEC's new amendments [5] to its books and records rules (Rules 17a–3 and 17a–4),[6] which were enacted to provide timely access to broker-dealers' books and records and to help expedite SEC, SRO and state examinations and investigations.

In developing a definition, the NYSE considered the evolving nature of its members' and member organizations' business models. For example, bank-owned members and member organizations often establish small offices on bank premises, whereby a registered representative would be designated to a parent branch for supervision but would visit different bank branches occasionally, and by appointment only, to meet with customers. Under the proposed definition such locations would be exempt from registering as branch offices, where the bank location is not held out as a branch office.

In exempting such offices of convenience from branch office registration, the NYSE has imposed important safeguards for the public. In this regard, at such offices of convenience, associated persons would be limited to meeting customers occasionally and exclusively by appointment. Further, at bank locations, the only permitted signage such offices of convenience may display, under regulations promulgated by the Office of the Comptroller of the Currency, will be ones advertising to the public that ''non-deposit investment products'' are being offered at such locations. This signage will prevent confusing customers who might otherwise believe that traditional riskless investments, such as deposits, are being offered by associated persons at such offices located on bank premises. In addition, other than meeting customers at these offices of convenience, all other functions of the associated person will be conducted and supervised through the designated branch office.

Changing life/work issues of members' and member organizations' associated persons is also recognized in the new definition. In this regard, associated persons are often forced to work occasionally from home to provide childcare and eldercare for certain family members. Moreover, illness forces work at home as well. Further, the development of technology, and advanced electronic communications, have necessitated rethinking traditional views of what constitutes a branch office and the supervision of such offices.

In excepting primary residences from the definition of branch office, important safeguards and limitations have been imposed on such locations to provide for monitoring and oversight of activities. Limitations include, in part,

[4] The NYSE requested that the Commission change certain language submitted by the NYSE in the purpose section of the filing to clarify that the instant filing pertains to the NYSE's proposed rule filing alone. While the Commission believes that other SROs will submit similar filings, such similar filings have not yet been submitted and it is not certain that other SROs' filings will be uniform. Telephone discussion between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Katherine England, Assistant Director, Elizabeth Badawy, Sr. Policy Liaison, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (November 21, 2002).

[5] Securities Exchange Act Release No. 44992 (October 26, 2001), 66 FR 55818 (November 2, 2001).

[6] 17 CFR 240.17a–3 and 240.17a–4.

that: The location is used for less than 50 business days in one calendar year; the location is not held out as a branch office; the associated person is assigned to a designated branch office for supervision and such office is reflected on all business cards, stationery, advertisements and communications to the public; the associated person does not meet with customers at his or her residence; the associated person's correspondence and communications with the public are subject to the firm's supervision; electronic communications, including e-mails, are made through the firm's electronic system; all orders are entered through the designated branch office; and written procedures relating to the supervision of sales activities conducted at the residence are maintained by the member or member organization.

The definition also exempts from branch office registration any temporary location, other than the primary residence discussed above, provided it is used less than 30 business days in any calendar year. In granting this exemption, the NYSE has imposed the same safeguards noted above for the exemption granted for primary residence. The Exchange believes that effective supervision can be achieved because of the use of advanced and sophisticated technology in the supervision and review of associated persons in such exempt locations.

In addition, under both exceptions noted above, the NYSE has defined ''business day'' to include any partial day, provided the associated person spends less than four hours on such business day at his or her designated branch office during the hours such office is normally open for business.[7] In doing so, it will prevent associated persons from regularly conducting business from their primary or other residences for the majority of a business day, without such activity being counted towards the 30 and 50 day limitations.

Where the 50 business day (primary residence) and 30 business day (other location) exemptions are utilized by associated persons, members and member organizations are expected to maintain records adequate to demonstrate compliance with the ''business day'' limitations.

In addition, the definition exempts from registration locations where associated persons are primarily engaged in non-securities activities (*e.g.*, insurance) and from which an associated person effects no more than 25 securities transactions in a calendar year, provided that advertisements or sales literature identifying such location also set forth locations from which the associated persons are directly supervised. Further, such activities attendant to the primary function performed as an occasional accommodation to customers will be conducted through and supervised by the associated person's designated registered branch office.

Similarly, the new definition exempts non-sales locations, *e.g.*, where operations activities are conducted, from registering as a branch office. Such locations must be established solely for customer service and/or back office functions and not be held out to the public as a branch office, and no sales activities may be conducted from such locations.

The proposed definition of branch office would serve the entire broker-dealer community by recognizing the many different business models and streamlining the branch office registration process significantly. The scope of sales practice examinations conducted by the Exchange will be expanded to ensure compliance with the new rule amendments.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[8] in general, and section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating transactions in securities.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

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:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, 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 filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2002–34 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30668 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[7] The NYSE requested that the Commission make a clarifying correction of language in the purpose section of the NYSE's filing with regard to the definition of ''business day.'' Telephone discussion between Mary Anne Furlong, Director, Rule and Interpretive Standards, NYSE, and Katherine England, Assistant Director, Elizabeth Badawy, Sr. Policy Liaison, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (November 21, 2002).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46906; File No. SR–NYSE–2002–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Extending the NYSE Direct+ Pilot Program Through December 23, 2003

November 25, 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 October 8, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On November 1, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through December 23, 2003[7] the effectiveness of a pilot program for NYSE Direct+ (''Pilot''). A current extension of the Pilot ends December 23, 2002.[8]

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. No changes to previously approved rule language are being proposed.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Direct+ was originally filed as a one-year pilot, ending on December 21, 2001.[9] The Exchange then extended the Pilot for an additional one-year period, ending December 23, 2002.[10]

The Pilot provides for the automatic execution of orders of 1099 shares or less (''auto ex'' orders) against trading interest reflected in the Exchange's published quotation. It is not mandatory that all limit orders of 1099 shares be entered as auto ex orders; rather, the member organization entering the order, or its customer if enabled by the member organization, can choose to enter an auto ex order when such member organization (or customer) believes that the speed and certainty of an execution at the Exchange's published bid or offer price is in its customer's best interest.

The Exchange proposes to extend the Pilot for an additional year (from December 24, 2002 until December 23, 2003). The Exchange notes, however, that there are two other proposed rule changes concerning NYSE Direct+ which have also been filed with the Commission during the current Pilot. These include (a) a proposal to amend NYSE Rule 1000 to provide that NYSE Direct+ executions will not be available if the resulting trade would be more than five cents away from the last sale;[11] and (b) a proposal to (i) amend NYSE Rule 13 to establish a one-year pilot program that would expand Direct+ order size eligibility for Exchange-Traded Funds (''ETFs'') and Holding Company Depositary Receipts (''HOLDRs''); (ii) amend NYSE Rule 1002 to include ETFs and HOLDRs and provide that ETFs trade until 4:15 p.m.; and (iii) amend NYSE Rule 1005 to reflect that the rule applies to ETFs and HOLDRs. [12]

The Exchange proposes that the above-mentioned proposed filings amending NYSE Direct+ will become incorporated into the Pilot upon their respective approvals by the Commission.[13]

2. Statutory Basis

The Exchange represents that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act [14] in that it is 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. The Exchange further represents that the proposed rule change, as amended, is designed to support the principles of Section 11A(a)(1) of the Act [15] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market, and provide an opportunity for investors' orders to be executed without the participation of a dealer.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 31, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange requested a waiver of the 5-day pre-filing requirement under Rule 19b–4(f)(6)(iii), withdrew its request for a waiver of the 30-day operative period under the same rule, and clarified that it would implement proposed changes to NYSE Direct+ that the NYSE has submitted in other proposed rule changes as they are approved by the Commission.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on November 1, 2002, when Amendment No. 1 was filed.

[7] Telephone conversation among Jeffrey Rosenstrock, Senior Special Counsel, Market Surveillance, NYSE and Terri Evans, Assistant Director and Steven Johnston, Special Counsel, Division, Commission, on November 5, 2002 (clarifying date of proposed extension of the pilot).

[8] *See* Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002)(File No. SR–NYSE–2001–50)(notice of filing and immediate effectiveness of proposal to extend NYSE Direct+ until December 23, 2002). The Pilot is implemented through a series of rules, NYSE Rules 1000 through 1005, and NYSE Rule 13. In addition, the Exchange previously submitted for Commission approval interpretations of certain rules, as well as a no action or interpretive position which the Exchange requested the Commission adopt under its short sale rule, Rule 10a–1 under the Act. *See* Securities Exchange Act Release No. 45331 (January 24, 2002), 67 FR 5024 (February 1, 2002). The Exchange proposes that these exemptions and interpretations be extended for an additional year concurrent with the extension of the NYSE Direct+ Pilot through December 23, 2003. Telephone conversation between Jeffrey Rosenstrock, Senior Special Counsel, Market Surveillance, NYSE and Terri Evans, Assistant Director, Division, Commission on November 25, 2002.

[9] *See* Securities Exchange Act Release No. 43767 (December 22, 2000), 66 FR 834 (January 4, 2001) (File No. SR–NYSE–00–18) (order approving amended proposed rule change establishing NYSE Direct+ pilot program).

[10] *See supra,* note 7.

[11] *See* File No. SR–NYSE–2002–44.

[12] *See* Securities Exchange Act Release No. 46527 (September 20, 2002), 67 FR 61368 (September 30, 2002)(noticing SR–NYSE–2002–37).

[13] *See* Amendment No. 1, *supra* note 3.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78k–1(a)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act [16] and Rule 19b–4(f)(6) [17] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[18]

The Exchange has requested that the Commission waive the pre-filing notice requirement. The Commission has determined to waive the five-day pre-filing notice requirement, given that the Exchange filed the original proposed rule change on October 8, 2002.

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 filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–47 and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30670 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes of calculating the 30-day delayed operative date and the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on November 1, 2002, when Amendment No. 1 was filed.

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46858A; File No. SR–NYSE–2002–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Adopt Amendments to Exchange Rule 342 (''Offices—Approval, Supervision and Control'') and its Interpretation, Rule 401 (''Business Conduct''), Rule 408 (''Discretionary Power in Customers' Accounts''), and Rule 410 (''Records of Orders'')

November 27, 2002.

Correction

In Release No. 34–46858, issued on November 20, 2002, a portion of the rule text for New York Stock Exchange rule 401 was noticed incorrectly. The corrected text appears below. Additions are in italics; deletions are in brackets.

* * * * *

Business Conduct

Rule 401.(a)–(b) no change.

The policies and procedures required under (b)(1), (b)(2), and (b)(3) above must include a means/method of customer confirmation, notification, or follow-up that can be documented.

* * * * *

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30677 Filed 12–3–02; 8:45 am]

BILLING CODE 4010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46914; File No. SR–OCC–2002–22]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Clear and Settle Options on Nonequity Fund Shares

November 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), as amended,[1] notice is hereby given that on September 27, 2002, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on October 18, 2002, amended the proposed rule change as described in items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend OCC's by-laws and rules to accommodate the clearance and settlement of options on nonequity fund shares (*i.e.*, shares representing interests in entities holding portfolios or baskets of nonequity securities).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. OCC has prepared summaries, set forth in sections (A), (B)

[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The immediate purpose of the proposed rule change amends article I, VI and XII of OCC's by-laws and chapters VI and XVIII of its rules to accommodate the introduction of options on ''iShares.'' iShares represent interests in an investment company holding portfolios of government securities, corporate debt securities, or government and corporate debt securities. OCC currently issues and clears options on interests in various entities holding portfolios of equity securities (including iShares' equity-based funds). OCC's Rules define such options and their underlying interests as ''stock fund options'' and ''stock fund shares,'' respectively. To accommodate options on iShares representing interests in an entity holding portfolios of debt securities and to accommodate the possibility that exchanges may in the future list options on interests in other entities holding non-equity securities (or a combination of equity and non-equity), the proposed rule change will replace the terms ''stock fund options'' and ''stock fund shares'' with the terms ''fund options'' and ''fund shares'' and will eliminate any reference to ''stock'' or ''equity'' within the definitions.[3]

OCC will interpret the term ''fund shares'' broadly, as it did the term ''stock fund shares,'' to include not only interests in registered investment companies but also interests in unregistered trusts (*e.g.*, HOLDRs) and in other investment vehicles holding portfolios of securities. Accordingly, to reflect this broad interpretation the proposed rule change will substitute the term ''trusts'' for ''unit investment trusts'' in the definition of ''fund share.'' Conforming changes will be made throughout OCC's By-laws and Rules to incorporate the new definitions.

OCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act,[4] as amended, and the rules and regulations thereunder applicable to OCC because it promotes the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder, requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] The Commission finds that the proposed rule change is consistent with this obligation because by allowing OCC to clear and settle options on nonequity fund shares, market participants trading these products will obtain the efficiencies and safeguards provided by OCC, a registered clearing agency.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. Both the American Stock Exchange (''Amex'') and the Chicago Board Options Exchange (''CBOE'') have informed OCC that they intend to begin trading options on iShares debt-based funds upon the Commission's approval of this proposed rule change and of a related supplement to the Options Disclosure Document. Accordingly, the Commission finds that there is good cause to approve the rule change prior to the thirtieth day after publication of the notice of filing because by so approving OCC will be able to immediately commence clearing and settling nonequity fund options when Amex and CBOE commence trading them.

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2002–22 and should be submitted by December 26, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–22) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30674 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46902; File No. SR–PCX–2002–63]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Pacific Exchange, Inc., To Amend Its Clearly Erroneous Policy

November 25, 2002.

On September 23, 2002, the Pacific Exchange, Inc. (''PCX''), 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

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Because the term ''fund share'' is now being defined to include a broad class of securities, OCC will separately amend Filing No. SR–OCC–2002–04, which proposes to expand the forms of margin collateral accepted by OCC to include money market fund shares, to eliminate the few instances in which the same term is used to refer narrowly to money market fund shares.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposed rule change relating to its ''Clearly Erroneous Policy.'' Notice of the proposed rule change was published for comment in the **Federal Register** on October 22, 2002.[3] No comments were received on the proposed rule change.

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend PCXE Rule 7.11(d) to confer authority on a PCXE officer designated by PCXE who, in addition to the Chief Executive Officer and President, may nullify transactions or modify their terms arising out of any disruption or malfunction in the Archipelago Exchange trading system, the equities trading facility of PCXE. The rule change also adds conforming language to PCXE Rule 10.13 regarding appeals from such decisions.

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.[4] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[5] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–PCX–2002–63) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30669 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 46661 (October 15, 2002), 67 FR 64950.

[4] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46912; File No. SR–Phlx–2002–72]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Set Time Limits Within Which Phlx Members Must Request Credits Under the Phlx Monthly Credit Program

November 26, 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 October 31, 2002, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On November 26, 2002, the Phlx amended the proposed rule change.[3] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Phlx under section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt certain provisions in connection with its Monthly Credit Program (''Program'').

Background

In May 2000, the Exchange adopted, for an aggregate period of 36 months,[5] the Program, which allows a monthly credit of up to $1,000 to be applied against fees, dues, charges and other amounts as may from time to time be owed to the Exchange that month (collectively referred to as ''credit-eligible fees''), except fines, late fees, out-of-pocket expenses, pass-through costs, capital funding fees, payment for order flow fees, any fees paid by equity trading permit (''ETP'') holders respecting any trading permits the Exchange may issue,[6] the fee for electronic communications networks, and the fee for the print subscription of the Phlx Guide by members who own the membership by which they are a member and certain other categories of members. The Program is in effect until May 16, 2003.

Pursuant to the Program, the amount of credit-eligible fees owed to the Exchange is reduced on a monthly basis by an amount equal to: (1) $1,000 per month if such fees, dues, charges and other amounts are equal to or greater than $1,000, or (2) the amount of such fees, dues, charges and other amounts if such fees, dues, charges and other amounts are less than $1,000. Credits may not be carried over from one month to the next and only one credit of up to $1,000 is available per membership per month.

Credits cannot be shared among members, except qualified member(s) in the same member organization may aggregate their credit(s). The monthly credit of up to $1,000 will be applied against the invoice of the member or member organization with which the member is associated. Currently, any request to receive the credit is application driven with each applicant submitting an Exchange form delineating the credit-eligible fees for that calendar month. A member's eligibility for the monthly credit is determined by the opening of trading on the first business day of each month.

Proposal

In connection with the Program, the Exchange has accrued on its books credit-eligible funds to be reimbursed to members who are eligible for the monthly credit of up to $1,000, but who have not submitted a request to receive

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* November 25, 2002, letter from Cynthia K. Hoekstra, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission (''Amendment No. 1''). In Amendment No. 1, the Phlx replaces the text in footnote 3 on page 2 (and also footnote 4 on page 9) of the original filing with new text. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on November 26, 2002, the date the Phlx filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] This aggregate period of 36 months includes the time period that previous pilot programs were in effect. The first monthly credit pilot program became effective upon filing on May 16, 2000, and lasted six months, expiring on November 16, 2000. *See* Securities Exchange Act Release No. 42791 (May 16, 2000), 65 FR 33606 (May 24, 2000)(SR–Phlx–00–44). The pilot program was then extended for six months through May 16, 2001. *See* Securities Exchange Act Release No. 43567 (November 15, 2000), 65 FR 71187 (November 29, 2000)(SR–Phlx–00–100). Therefore, the Program will be in effect from May 16, 2000 until May 16, 2003. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001)(SR–Phlx–2001–49).

[6] In March 2002, this provision was amended to provide that ETP monthly fees are credit-eligible. *See* Securities Exchange Act Release No. 45480 (February 26, 2002), 67 FR 10029 (March 5, 2002)(SR–Phlx–2002–10).

the credit.[7] Therefore, the Exchange proposes to set a time limit within which Exchange members must request the credit.

In connection with unclaimed past credits, any member eligible for the monthly credit must submit his/her credit request form within three months after the date of the release issued pursuant to the Act whereby the proposal has been filed and has become effective. For example, if the Commission issues a Notice of Filing and Immediate Effectiveness respecting this change to the Program on, hypothetically, November 15, 2002, members will have until February 15, 2003 to claim any past credits. After that time period, any request for unclaimed past credits will be denied, except as described in the following paragraph.

Going forward, members must request their monthly credit within three months from the first day of the month in which the credits were earned. For example, if a member is eligible to receive a credit of $600 for the month of September, the member must request that credit by December 1 (three months from September 1). Any requests for credits not made within this three month time period will be denied, and credits will not be pro-rated over any month.

The Phlx proposes no other changes to the Program at this time.

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, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to set time limits within which Phlx Members must request credits under the Program. Due to the bookkeeping and associated costs with monitoring the Program, the Exchange proposes to set a date certain by which the members must request a claim for past-due credits. If the credit is not claimed by that date, the members will not be able to claim the credit in the future.

In addition, the time limit within which Exchange members must request the monthly credit should promote compliance with the Exchange's intent for members to timely claim the credit and to remove from the Exchange's books reserves for unclaimed credits that may never be requested.

The Phlx intends to send a memorandum to members, member organizations and clearing firms to clarify the proposed credit procedures, and will include a copy of the memorandum with the Exchange's monthly invoice.[8]

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)(4)[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of rule 19b–4 thereunder,[12] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 Exchange. All submissions should refer to file number SR–Phlx–2002–72, and should be submitted by December 26, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30672 Filed 12–3–02; 8:45 am]

BILLING CODE 8010–01–P

[7] In addition, there are members who originally stated they were not eligible for the credit and therefore did not submit a request to claim the credit. These members, however, subsequently discovered they were eligible for the credit and provided supporting information to the Exchange. These members will also be allowed to claim past credits, although these amounts may not have been accrued.

[8] The Phlx notifies members of various Exchange proposals by way of memoranda generally sent to the members, member organizations and their respective clearing firms. The Exchange intends to send the memorandum with the October invoice, which is sent in the beginning of November.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(a)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Public Notice 4198]

Secretary of State's Advisory Committee on Private International Law: Study Group on International Transport Law: Meeting Notice

There will be a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Friday, December 13, 2002, to consider the draft instrument on the International Transport Law, under negotiation at the United Nations Commission on International Trade Law (UNCITRAL). The meeting will be held from 1 p.m. to 5 p.m. in the offices of Holland & Knight, Suite 100, 2099 Pennsylvania Avenue, NW., Washington, DC.

The purpose of the Study Group meeting is to assist the Departments of State and Transportation in preparing for the next session of the UNCITRAL Working Group on this draft instrument, to be held in New York from March 24 to April 4, 2003.

The draft text and the report of prior meetings of the UNCITRAL Working Group on this subject constitute the basic working documents of the UNCITRAL Working Group. These documents are available on UNCITRAL's web site, *http://www.uncitral.org*. (The documents are listed under Working Group III (Transportation).)

The Study Group meeting is open to the public up to the capacity of the meeting room. Persons who wish to have their views considered are encouraged to submit written comments in advance of the meeting. Comments should refer to Docket number MARAD–2001–11135. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20490–0001. You may also send comments electronically via the internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., EST, Monday through Friday, except federal holidays. An electronic version of all documents entered into this docket is available on the internet at *http//dms.dot.gov*.

For further information, you may contact Mary Helen Carlson at 202–776–8420, or by e-mail at *carlsonmh@ms.state.gov*.

Mary Helen Carlson,

Deputy Assistant Legal Adviser for Private International Law, Department of State.

Edmund T. Sommer, Jr.,

Chief, Division of General Law, International Law and Litigation, Office of the Chief Counsel, Maritime Administration, Department of Transportation.

[FR Doc. 02–30767 Filed 12–3–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 22, 2002

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2002–13866.
Date Filed: November 18, 2002.
Parties: Members of the International Air Transport Association.
Subject: PSC/Reso/116 dated November 11, 2002, Expedited Resolutions r1–r14, Intended effective date: expedited 2 January 2003.

Docket Number: OST–2002–13873.
Date Filed: November 19, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC31 N&C/CIRC 0221 dated 15 November 2002, TC31 North and Central Pacific Areawide Expedited Resolution r1, PTC31 N&C/CIRC 0223 dated 15 November 2002, TC3–Central America, South America Expedited Resolutions r2–r6, Intended effective date: 1 January 2003.

Docket Number: OST–2002–13874.
Date Filed: November 19, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC31 N&C/CIRC 0222 dated 15 November 2002, TC3 (except Japan)-North America, Caribbean Expedited Resolutions r1–r10 (except between Malaysia and USA), Intended effective date: 1 January 2003.

Docket Number: OST–2002–13919.
Date Filed: November 22, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0980 dated 22 November 2002, Mail Vote 253—Resolution 010j, TC3/TC23 Special Passenger Amending Resolution from Papua New Guinea, Intended effective date: 1 December 2002.

Docket Number: OST–2002–13920.
Date Filed: November 22, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0484 dated 8 November 2002 r1–r32, PTC2 EUR 0485 dated 8 November 2002 r33–r39, PTC2 EUR 0487 dated 15 November 2002 r40–r50, Minutes—PTC2 EUR 0488 dated 15 November 2002, Tables—PTC2 EUR Fares 0070 dated 8 November 2002, Intended effective dates: 1 March, 1 April, 2 April 2003.

Docket Number: OST–2002–13921.
Date Filed: November 22, 2002.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0978 dated 22 November 2002, Mail Vote 252—Resolution 010i, TC3/TC23 Special Passenger Amending Resolution from Korea (Dem. Rep. of) r1, Intended effective date: 1 December 2002.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 02–30736 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration (NHTSA)

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition to upgrade and expand the scope of a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted by Mr. Clarence Ditlow, dated July 22, 2002, to NHTSA under 49 U.S.C. § 30162, which requested an ongoing investigation (SQ01–014) be upgrade to an Engineering Analysis to determine whether a safety defect trend exists in Model Year (MY) 1992–2001 Ford Crown Victoria, Mercury Grand Marquis, and Lincoln Town Car vehicles. The petition also requested that the scope of the investigation be broadened to include all subject vehicle fuel-fed crashes regardless of the direction of the impact and to include vehicle-to-object impacts. After reviewing the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. The agency accordingly denies the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Borris, Safety Defects Engineer,

Vehicle Integrity Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5202.

SUPPLEMENTARY INFORMATION: In a letter dated July 20, 2000, Clarence M. Ditlow, Executive Director of the Center for Auto Safety in Washington, DC, petitioned NHTSA to expand a then-pending investigation (SQ01–014) involving post-rear crash fires in certain Model Year (MY) 1992–2001 Ford Crown Victoria, Lincoln Town Car, and Mercury Grand Marquis vehicles. These are known as Panther Platform vehicles. The Office of Defects Investigation (ODI) opened a Service Query (SQ01–014) after reviewing a Technical Service Bulletin (TSB) (Ford Article 01–21–14) issued by Ford Motor Company (Ford). The TSB provides information and suggests modifications aimed at reducing the potential for post-rear crash fuel tank punctures in Ford's Panther Platform vehicles produced during MY 1992–2001.

Prior to the publication of the TSB, ODI received three letters from law enforcement organizations expressing concern or requesting an investigation into the potential for fuel leaks in Crown Victoria Police Interceptor (CVPI) vehicles following rear impact crashes. ODI requested additional information from one correspondent (National Troopers Coalition) and received summaries of 17 incidents alleging post-rear crash fires (PRCF) in CVPI vehicles from calendar year (CY) 1983 to 2001. The summaries included allegations of 11 deaths, of which 4 occurred during CY 2001. All the target vehicles involved were CVPIs, and 14 were within the scope of the TSB. It stands to reason that the majority of PRCF's would occur within the law enforcement population of Panther vehicles due to their use on highways where high-energy collisions are most likely to occur. Law enforcement officers routinely pull motorists to the shoulder area, exposing their vehicles to a greater risk of rear impact.

A search of ODI's consumer complaint database revealed one incident involving a MY 2000 CVPI that burst into flames following a high-energy rear impact. Fortunately, the officer escaped with relatively minor injuries.

Based on information available at the time of opening SQ01–014 indicating that each of the post-crash fires resulted from rear impacts, ODI limited the scope of its investigation to crashes where the initial impact point was between the 5 o'clock and 7 o'clock positions (with 12 o'clock representing the center of the front bumper). NHTSA requested information from Ford on all post-rear crash incidents resulting in fuel loss or fire in Panther Platform vehicles. A similar information request was sent to General Motors with respect to MY 1986–1996 Chevrolet B-Body (Caprice and Impala models) vehicles. The B-Body vehicles represent the closest comparative vehicle to the subject vehicles, since they have similar weight and dimensions, utilize a rear-mounted fuel tank, and were also used by law enforcement agencies.

ODI closed its investigation October 3, 2002, determining that further investigation would be unlikely to produce sufficient evidence to demonstrate the existence of a safety-related defect in the subject vehicles. To address assertions made by the petitioner and determine whether to grant the petition, ODI analyzed information produced during SQ01–014 and real-world crash data in NHTSA's Fatality Analysis Reporting System (FARS).

Analysis

To ascertain whether the Panther Platform vehicles have an elevated risk of fire following crashes (including high-energy crashes) compared to other sedans, ODI conducted searches of the FARS database for information on all MY 1992–2001 Panther vehicles and all other sedans (AOS) for fatal crashes involving fire. These searches included all impact locations and were executed both including police vehicles and excluding police vehicles. The risk of fire is expressed as a ratio of fires in fatal vehicles per total fatal vehicles. For the Ford Panther compared to AOS, with police vehicles included, the risk is identical at 0.033. Excluding police vehicles yields a ratio of 0.029 for the Ford Panther versus 0.033 for AOS. These results indicate that the subject vehicles are not over-represented with respect to the risk of fire in real-world high-energy crashes.

A further discussion of issues related to post-crash fires in Panther Platform vehicles is set out in the closing report for SQ01–014, which has been placed in the docket for this petition. It can be viewed at *http://www.nhtsa.dot.gov/current/crownvic/index.htm.*

Conclusion

According to the analysis of FARS data, the subject vehicles are not over-represented with respect to the risk of fire following a high-energy crash in all impact directions as alleged in the petition. In fact, the data show that the civilian population of Panther vehicles has an overall lower risk of post-crash fires than AOS when all impact points are considered.

After reviewing the petition and its supporting materials, as well as information furnished by Ford and GM, and information within the agency's possession from previous investigations and other related actions, NHTSA has concluded that further investigation concerning post-crash fires in the subject vehicles is not likely to lead to a decision that the vehicles contain a safety defect.

For the foregoing reasons, further expenditure of the agency's investigative resources on the allegation in the petition does not appear to be warranted. Therefore, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at 49 CFR 1.50 and 501.8.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 02–30735 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–13955; Notice 1]

Columbia Body Manufacturing Co.; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

We are asking for comments on the application by Columbia Body Manufacturing Co. (''Columbia'') of Clackamas, Oregon, for an exemption of three years from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection.* Columbia asserts that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with our regulations on the subject. This action does not mean that we have made a judgment yet about the merits of the application.

Columbia's Need for an Exemption

Columbia manufactures and sells a dump body type of trailer (the ''trailer'') which means that the body's front end must be lifted in order to discharge the load out of the back. The load is asphalt, used in road construction. This design of trailer generally has an overhang at the rear for funneling asphalt material into a paving machine; consequently, it needs 16 to 18 inches of unobstructed clearance behind its rear wheels to hook

up with the paving machine and dump its load. Standard No. 224 requires the rearmost surface of an underride guard to be located not more than 305mm (12 inches) from the ''rear extremity'' of the trailer.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 kg or more, including Columbia's, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards.* Columbia argued that installation of the rear impact guard would prevent its trailer from operating with the paving machine, and ''would interfere with the hook-up of the asphalt machine and dump operation of the trailer.'' Columbia avers that it ''has investigated the retrofit and modifications needed to bring our products into compliance with FMVSS 224 without success.'' We discuss below its efforts to conform in greater detail.

Columbia's Reasons Why It Believes That Compliance Would Cause It Substantial Economic Hardship and That It Has Tried in Good Faith To Comply With Standard No. 224

Columbia is a small volume manufacturer. Its average production over the past three years has been 12 trailers a year, ''none of which were asphalt paving trailers.'' Normally, it would produce 10 to 40 trailers annually. The company employs 30 people full time and has annual sales of $4–5,000,000. Columbia ''has had requests to quote on 14'' trailers and ''14 truck mounted dump boxes, bringing the total sales figure to around $750,000.00.'' Absent an exemption, Columbia ''will be unable to quote these units substantially decreasing our projected sales figures.'' Its cumulative net loss for the fiscal years 1998, 1999, and 2000 was $99,764. We have asked Columbia to provide data on its fiscal year ending December 31, 2001.

Columbia asserted that it has sought manufacturers of underride guards since 1998. As a result of its search,

> We only found one English company, Quinton-Hazell that is no longer making either type, telescoping or hydraulic. Their research found that because of the expense of these two types of guards they would not be marketable. We have also investigated the work done by SRAC, located in Los Angeles, CA in the hopes that we might be able to use or modify the guards they designed for the trailers we wish to build. Neither was suitable because retracting the bumper and finding a way to keep the build up of asphalt off of any moving parts was not possible.

The company stated that it intended to continue to try and resolve the problems through continued research.

Columbia's Reasons Why It Believes That a Temporary Exemption Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Columbia believes that an exemption would be in the public interest and consistent with traffic safety objectives because, ''our type of trailer helps state and municipal governments to produce the safe highways that are needed.'' It contemplates building less than 50 units a year while an exemption is in effect. Further, the amount of time actually spent on the road is limited because of the need to move the asphalt to the job site before it hardens.

How You May Comment on Columbia's Application

If you would like to comment on Columbia's application, please do so in writing, in duplicate, referring to the docket and notice number, and mail to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

We shall consider all comments received before the close of business on the date indicated below. Comments are available for examination in the docket in room PL–401 both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we also consider comments filed after the closing date. We will publish our decision on the application, pursuant to the authority indicated below.

Comment closing date: January 3, 2003.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: November 27, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–30734 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–02–13956, Notice 1]

Lotus Cars Ltd.; Receipt of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 201

Lotus Cars Ltd. (''Lotus'') of Norwich, England, through Lotus Cars USA, Inc., has applied for a renewal of NHTSA Temporary Exemption No. 99–12 from S7, Performance Criterion, of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact,* as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with the requirements of 49 U.S.C. 30113(b)(2), and have made no judgment on the merits of the application.

Background

On November 10, 1999, NHTSA granted Lotus Cars Ltd. NHTSA Temporary Exemption No. 99–12 from S7, Performance Criterion, of Federal Motor Vehicle Safety Standard No. 201, *Occupant Protection in Interior Impact* (64 FR 61379). The basis of the grant was that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. The exemption covered the Esprit model, and was to expire on September 1, 2002. However, Lotus applied for a renewal of its hardship exemption on May 10, 2002, thereby staying the expiration date until the agency has acted upon its petition (49 CFR 555.8(e)). The reader is referred to the 1999 notice for information on the original application and Administrator's decision to grant it.

Why Lotus Needs a Temporary Exemption

In early 1997, Lotus decided to terminate production of the Esprit on September 1, 1999, and to homologate the Elise for the American market beginning in 2000. This decision allowed it to choose the option for compliance with S7 provided by S6.1.3, Phase-in-Schedule #3, of Standard No. 201, to forego compliance with new protective criteria for the period September 1, 1998—September 1, 1999, and to conform 100% of its production thereafter.

But a fresh look was taken at the direction of the company, and the plans of early 1997 were abandoned. In due course, new management decided to continue the Esprit in production beyond September 1, 1999, until September 1, 2002, while developing an all-new Esprit, and to remain in the American market without interruption. However, as described in its original petition, the company found itself unable to conform the current Esprit to Standard No. 201. It petitioned for, and received, a temporary exemption until September 1, 2002. Its continued need for an exemption is explained in the next section.

Why Compliance Would Cause Substantial Economic Hardship and How Lotus Has Tried in Good Faith To Comply With Standard No. 201

Lotus remarks that the entity that ultimately controls Lotus Cars is ''the Malaysian company Perusahan Otomobile Nasional Berhad.'' However, Lotus' balance sheets and income statements do not indicate that this Asian entity, itself a motor vehicle manufacturer, makes capital contributions to Lotus or otherwise participates in the management of this British company. Lacking these indicia of control, NHTSA has decided not to count cumulatively the production of the two companies which, if totaling at least 10,000 units would render Lotus ineligible for a hardship exemption. In 1999, Lotus produced 2,569 Lotus automobiles; in 2000, 2,993 Lotus automobiles plus 127 Opel/Vauxhall automobiles; and in 2001, 5,181 Lotus automobiles and 3,046 for Opel/Vauxhall. Over the same three-year period it exported 112,162, and 48 vehicles respectively to the United States. Notwithstanding the increase in production, Lotus submitted financial information on September 16, 2002, indicating a total operating loss of 7,513,000 pounds for its fiscal year 2001–2002, a loss of 20,244,000 pounds for its fiscal year 2000–2001, and an operating profit of 12,368,000 pounds for its fiscal year 1999–2000. This represents a cumulative loss of 15,389,000 pounds, or $24,622,400 computed at a rate of $1.6=1 pound.

Lotus had intended to cease production of the exemption Esprit by August 31, 2002, but the successor project was cancelled in early 2001 because of lack of capital. A back-up plan was conceived for a project called M260, but ''was unable to launch itself.'' By the end of 2001, Lotus had laid off 197 employees, and, by early 2002, ''an additional 241 employees were made redundant.'' However, it had located ''an additional supply of air bags and transmissions * * * permitting the construction of up to an additional 140 vehicles.'' The company stated that its ''only hope for keeping the U.S. market alive [is] to build the additional 140 Esprits, ending production on December 31, 2003,'' the period for which it has requested an exemption. No further exemption will be requested for the Esprit as its V8 engine is not designed to meet Model Year 2004 U.S. emissions standards. It hopes to ''find a way to finance'' the M260 project for introduction in the U.S. in 2004. Lotus's petition thus implies that the M260 is being designed to conform with Standard No. 201.

Absent an exemption until 2004, Lotus will suffer the loss of the U.S. market, a substantial economic hardship.

Why an Exemption Would Be in the Public Interest and Consistent With the Objectives of Motor Vehicle Safety

Lotus simply said that ''the extension will continue to be consistent with the public interest and the objectives of the Safety Act.'' In the past, Lotus argued that after many years of sales of the Esprit with its current body shape, the company knew of no head injuries suffered by occupants contacting the upper interior of the cockpit. The number of vehicles anticipated to be sold during the exemption period is insignificant in terms of the number of vehicles already on the roads.

If Lotus USA is required to close because of a denial, its employees will be out of work. In its new application, the company adds that its ''image and credibility would be ruined.'' An exemption would be consistent with the public policy of affording consumers a wide choice of motor vehicles.

How You May Comment on Lotus's Application

We invite you to submit comments on the application described above. Your comments should refer to the docket number and the notice number, and be submitted to: Docket Management Facility, room Pl–401, 400 Seventh Street, SW., Washington, DC 20590. We ask, but do not require, that you submit your comments in duplicate. You may submit your comments by hand, mail, fax (202–493–2251) or electronically: log onto the DMS Web site, *http://dms.dot.gov*, and click on ''Help and Information'' or ''Help/Info'' to obtain instructions.

We shall consider all comments received before the close of business on the comment closing date indicated below. You may examine comments in the docket (from 10 a.m. to 5 p.m.) at the above address both before and after that date. You may also view them on the internet at Web site *http://dms.dot.gov.* To the extent possible, we shall also consider comments filed after the closing date. We shall publish a notice of final action on the application in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 3, 2003.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: November 27, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–30733 Filed 12–3–02; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 191X)]

Union Pacific Railroad Company—Abandonment Exemption—in Davis and Weber Counties, UT

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 23.69-mile line of railroad from milepost 754.31 near Valencia, to milepost 778.00 near Ogden, in Davis and Weber Counties, UT.[1] The line traverses United States Postal Zip Codes 84010, 84014, 84015, 84025, 84041, 84067, 84087, and 84401.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.*—

[1] UP states that the physical assets of the line, including the real property interests and track structure thereon, have been sold to the Utah Transit Authority (UTA), in connection with UTA's corridor preservation project. UTA previously filed a verified notice of exemption to acquire from UP this and several other nearby railroad rights-of-way and related improvements in Davis, Weber, Salt Lake and Utah Counties, UT. UTA also simultaneously filed a motion to dismiss that proceeding, maintaining that the transaction was not subject to the Board's jurisdiction, and UTA's dismissal request was granted. UP, however, retained an exclusive, perpetual easement and common carrier obligation on the line to conduct freight operations. *See Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company,* STB Finance Docket No. 34170 (STB served Feb. 22, 2002 and May 22, 2002), respectively. The retained easement will expire upon consummation of the instant abandonment exemption.

Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 1, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 12, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 23, 2002, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Mark H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Suite 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by December 6, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339]. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by December 2, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our web site at *http://www.stb.dot.gov*.

Decided: November 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30690 Filed 12–3–02; 8:45 am]

BILLING CODE 4915–00–P

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 192X)]

Union Pacific Railroad Company—Abandonment Exemption—in Salt Lake and Utah Counties, UT

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 3.23-mile portion of a line of railroad of the Provo Industrial Lead, from milepost 772.00 near Cutler, to milepost 775.23 near Mount, in Salt Lake and Utah Counties, UT.[1] The line traverses United States Postal Zip Codes 84003 and 84020.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 1, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 12, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 23, 2002, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Mark H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Suite 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by December 6, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the

[1] UP states that the physical assets of the line, including the real property interests and track structure thereon, have been sold to the Utah Transit Authority (UTA), in connection with UTA's corridor preservation project. UTA previously filed a verified notice of exemption to acquire from UP this and several other nearby railroad rights-of-way and related improvements in Davis, Weber, Salt Lake and Utah Counties, UT. UTA also simultaneously filed a motion to dismiss that proceeding, maintaining that the transaction was not subject to the Board's jurisdiction, and UTA's dismissal request was granted. UP, however, retained an exclusive, perpetual easement and common carrier obligation on the line to conduct freight operations. *See Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company,* STB Finance Docket No. 34170 (STB served Feb. 22, 2002 and May 22, 2002), respectively. The retained easement will expire upon consummation of the instant abandonment exemption.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Federal Information Relay Service (FIRS) at 1–800–877–8339]. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by December 2, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: November 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30691 Filed 12–3–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 193X)]

Union Pacific Railroad Company—Abandonment Exemption—in Utah County, UT

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.83-mile portion of the Provo Industrial Lead from milepost 753.27 near Provo, to milepost 756.10 near Gatex, in Utah County, UT.[1] The line traverses United States Postal Service Zip Code 84116.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 1, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 12, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 23, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 6, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by December 2, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: November 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30692 Filed 12–3–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 194X)]

Union Pacific Railroad Company—Abandonment Exemption—in Salt Lake County, UT

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 5.21-mile rail line over the Bingham Industrial Lead from milepost 6.60 near Bagley, to milepost 11.81 near Lead Mine, in Salt Lake County, UT.[1] The line traverses

[1] UP states that the physical assets of the line, including the real property interests and track structure thereon, have been sold to the Utah Transit Authority (UTA), in connection with UTA's corridor preservation project. UTA previously filed a verified notice of exemption to acquire from UP this and several other nearby railroad rights-of-way and related improvements in Davis, Weber, Salt Lake and Utah Counties, UT. UTA also simultaneously filed a motion to dismiss that proceeding, maintaining that the transaction was not subject to the Board's jurisdiction, and UTA's dismissal request was granted. UP, however, retained an exclusive, perpetual easement and common carrier obligation on the line to conduct freight operations. *See Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company,* STB Finance Docket No. 34170 (STB served Feb. 22, 2002 and May 22, 2002), respectively. The retained easement will expire upon consummation of the instant abandonment exemption.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which is currently set at $1,100. *See* 49 CFR 1002.2(f)(25).

[1] UP states that the physical assets of the line, including the real property interests and track structure thereon, have been sold to the Utah

United States Postal Service Zip Codes 84006, 84088 and 84095.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

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A copy of any petition filed with the Board should be sent to applicant's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

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UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by December 6, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by December 2, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at http://www.stb.dot.gov.

Decided: November 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–30693 Filed 12–3–02; 8:45 am]

BILLING CODE 4915–00–P

Transit Authority (UTA), in connection with UTA's corridor preservation project. UTA previously filed a verified notice of exemption to acquire from UP this and several other nearby railroad rights-of-way and related improvements in Davis, Weber, Salt Lake and Utah Counties, UT. UTA also simultaneously filed a motion to dismiss that proceeding, maintaining that the transaction was not subject to the Board's jurisdiction, and UTA's dismissal request was granted. UP, however, retained an exclusive, perpetual easement and common carrier obligation on the line to conduct freight operations. *See Utah Transit Authority—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company,* STB Finance Docket No. 34170 (STB served Feb. 22, 2002 and May 22, 2002), respectively. The retained easement will expire upon consummation of the instant abandonment exemption.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which is currently set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 22, 2002.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 3, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1231.

Regulation Project Number: IA–38–90 Final (T.D. 8382).

Type of Review: Extension.

Title: Penalty on Income Tax Return Preparers Who Understate Taxpayer's Liability on a Federal Income Tax Return or a Claim for Refund.

Description: These regulations set forth rules under section 6694 of the Internal Revenue Code regarding the penalty for understatement of a taxpayer's liability on a Federal income tax return or claim for refund. In certain circumstances, the preparer may avoid the penalty of disclosing on a form 8275 or by advising the taxpayer or another preparer that disclosure is necessary.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion, annually.

Estimated Total Reporting Burden: 50,000 hours.

OMB Number: 1545–1509.

Form Number: IRS form 941 TeleFile.

Type of Review: Revision.

Title: Employer's Quarterly Federal Tax Return.

Description: Form 941 TeleFile is used by employers to report by phone payments made to employees subject to income and social security and Medicare taxes and the amounts of these taxes.

Respondents: Business or other for-profit, not-for-profit institutions, State, local or tribal government.

Estimated Number of Respondents/Recordkeepers: 230,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form 941	
Recordkeeping	12 hr., 24 min.

Form 941	
Learning about the law or the form.	40 min.
Preparing the form	1 hr., 49 min.
Copying, assembling, and sending the form to the IRS.	16 min.

Form 941 TeleFile	
Recordkeeping	5 hr., 30 min.
Learning about the law or the Tax Record.	18 min.
Preparing the Tax Record	24 min.
TeleFile phone call	11 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 5,740,000 hours.

OMB Number: 1545–1660.

Notice Number: Notice 99–43.

Type of Review: Extension.

Title: Nonrecognition Exchanges under Section 897.

Description: This notice announces a modification of the current rules under Temporary Regulation § 1.897–6T(a)(1) regarding transfers, exchanges, and other dispositions of U.S. real property interests in nonrecognition transactions occurring after June 18, 1980. The new rule will be included in regulations finalizing the temporary regulations.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: 200 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental PRA Clearance Officer.

[FR Doc. 02–30750 Filed 12–3–02; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 67, No. 233

Wednesday, December 4, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

Correction

In notice document 02–29882 beginning on page 70584 in the issue of Monday, November 25, 2002, make the following correction:

On page 70585, in the first column, after paragraph (b), in item number 3, in the first line, ''Dr. C.I. Change'' should read, ''Dr. C.I. Chang''.

[FR Doc. C2–29882 Filed 12–3–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 431

[Docket No. EE–RM–96–400]

RIN 1904–AB11

Energy Efficiency Program for Certain Commercial and Industrial Equipment: Extension of Time for Electric Motor Manufacturers To Certify Compliance With Energy Efficiency Standards

Correction

In rule document 02–29969 beginning on page 70677 in the issue of Tuesday, November 26, 2002, make the following correction:

§ 431.123 [Corrected]

On page 70678, in the first column, in § 431.123, in paragraph (g), in the third line, ''February 28, 2003'' should read, ''April 30, 2003''.

[FR Doc. C2–29969 Filed 12–3–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9020]

RIN 1545–BB19

Substantiation of Incidental Expenses

Correction

In rule document 02–28543 beginning on page 68512 in the issue of Tuesday, November 12, 2002 make the following correction:

§ 1.274–5T [Corrected]

On page 68513, in the second column, in §1.274–5T, in paragraph (j)(1) and (2), in the second line, ''*see*'' should read, ''see''.

[FR Doc. C2–28543 Filed 12–3–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
December 4, 2002

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7385–7]

RIN 2060–AG57

National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for plastic parts and products surface coating operations located at major sources of hazardous air pollutants (HAP). The proposed standards would implement section 112(d) of the Clean Air Act (CAA) by requiring these operations to meet HAP emission standards reflecting the application of the maximum achievable control technology (MACT). The proposed rule would protect air quality and promote the public health by reducing emissions of HAP emitted in the largest quantities by facilities in the surface coating of plastic parts and products source category to include methyl ethyl ketone (MEK), methyl isobutyl ketone (MIBK), toluene, and xylenes. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, skin, and mucous membranes, and effects on the central nervous system, liver, and heart. In general, these findings have only been shown with concentrations higher than those typically in the ambient air. The proposed standards would reduce nationwide HAP emissions from major sources in this source category by approximately 80 percent.

DATES: *Comments.* Submit comments on or before February 3, 2003.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing, they should do so by December 24, 2002. If requested, a public hearing will be held within approximately 30 days following publication of this notice in the **Federal Register**.

ADDRESSES: *Comments.* By U.S. Postal Service, written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–99–12, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket Number A–99–12, U.S. EPA, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW, Washington DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT**.

Public Hearing. If a public hearing is held, it will be held at the new EPA facility complex in Research Triangle Park, North Carolina. You should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–7946, to request to speak at a public hearing or to find out if a hearing will be held.

Docket. Docket No. A–99–12 contains supporting information used in developing the proposed standards. The docket is located at the U.S. EPA, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW, Washington DC 20460, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Teal, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–5580; facsimile number (919) 541–5689; electronic mail (e-mail) address: *teal.kim@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® file format. All comments and data submitted in electronic form must note the docket number: A–99–12. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Ms. Kim Teal, c/o OAQPS Document Control Officer (C404–02), U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27709. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Janet Eck, Coatings and Consumer Products Group, Emission Standards Division (C539–03), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–7946 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Eck to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed emission standards.

Docket. The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 566–1742. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of the proposed 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.

Regulated Entities. The source category definition includes facilities that apply coatings to plastic parts and

products. In general, facilities that coat plastic parts and products are covered under the Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes listed in Table 1. However, facilities classified under other SIC or NAICS codes may be subject to the proposed standards if they meet the applicability criteria. Not all facilities classified under the SIC and NAICS codes in the following table will be subject to the proposed standards because some of the classifications cover products outside the scope of the NESHAP for plastic parts and products.

TABLE 1.—CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE PROPOSED STANDARDS

Category	SIC	NAICS	Examples of potentially regulated entities
Industrial	2522	337214	Office furniture, except wood.
	3086	32614, 32615	Plastic foam products (*e.g.*, pool floats, wrestling mats, life jackets).
	3089	326199	Plastic products not elsewhere classified (*e.g.*, name plates, coin holders, storage boxes, license plate housings, cosmetic caps, cup holders).
	3579	333313	Office machines.
	3663	33422	Radio and television broadcasting and communications equipment (*e.g.*, cellular telephones).
	3711	336211	Motor Vehicle Body Manufacturing.
	3714	336399	Motor vehicle parts and accessories.
	3715	336212	Truck Trailer Manufacturing.
	3716	336213	Motor Home Manufacturing.
	3792	336214	Travel Trailer and Camper Manufacturing.
	3799	336999	Transportation equipment not elsewhere classified (*e.g.*, snowmobile hoods, running boards, tractor body panels, personal watercraft parts).
	3841	339111, 339112	Medical equipment and supplies.
	3949	33992	Sporting and athletic goods.
	3993	33995	Signs and advertising specialties.
	3999	339999	Manufacturing industries not elsewhere classified (*e.g.*, bezels, consoles, panels, lenses).
Federal, State, and Local Governments.			Government owned or operated facilities that perform plastic parts and products surface coating. Examples include Department of Defense facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your coating operation is regulated by this action, you should examine the applicability criteria in § 63.4481 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

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G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Plastic Parts and Products (Surface Coating) category of major sources was listed on July 16, 1992 (57 FR 31576) under the Surface Coating Processes industry group. Major sources of HAP are those that emit or have the potential to emit equal to, or greater than, 9.1

megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.7 Mg/yr (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 the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is 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 the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Are the Health Effects Associated With HAP Emissions From the Surface Coating of Plastic Parts and Products?

The major HAP emitted from the plastic parts and products surface coating industry include MEK, MIBK, toluene, and xylenes. These compounds account for over 85 percent of the nationwide HAP emissions from this source category. Other HAP identified in emissions include ethylene glycol monobutyl ether (EGBE) and glycol ethers. The HAP that would be controlled with this proposed rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, birth defects and effects on the central nervous system, liver, and heart), and acute health disorders (*e.g.*, irritation of the lung, skin, and mucous membranes, and effects on the central nervous system).

We do not have the type of current detailed data on each of the facilities covered by the proposed emission standards for this source category, and the people living around the facilities, that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the proposed rule would reduce emissions and subsequent exposures.

II. Summary of the Proposed Rule

A. What Source Categories and Subcategories Are Affected By This Proposed Rule?

The proposed rule will apply to you if you own or operate a plastic parts and products surface coating facility that is a major source, or is located at a major source, or is part of a major source of HAP emissions. We have defined a plastic parts and products surface coating facility as any facility engaged in the surface coating of any plastic part or product.

You will not be subject to the proposed rule if your plastic parts and products surface coating facility is located at an area source. An area source of HAP is any facility that has the potential to emit HAP but is not a major source. You may establish area source status by limiting the source's potential to emit HAP through appropriate mechanisms available through your permitting authority.

The source category does not include research or laboratory facilities or janitorial, building, and facility maintenance operations, or hobby shops that are operated for personal rather than commercial purposes. The source category also does not include coating of magnet wire, coating of plastics to produce fiberglass boats (except post-mold coating of personal watercraft or their parts), or the extrusion of plastic onto a part or product to form a coating. Post-mold coating of personal watercraft and their parts is included in the source category.

This source category also does not include surface coating of plastic parts and products that would be subject to certain other subparts of 40 CFR part 63. In particular, it does not include the following coating operations:

(1) Coating operations that are subject to the aerospace manufacturing and rework facilities NESHAP (40 CFR part 63, subpart GG).

(2) Operations coating plastic and wood that are subject to the wood furniture NESHAP (40 CFR part 63, subpart JJ).

(3) Operations coating plastic and metal parts of large appliances that are subject to the large appliance surface coating NESHAP (40 CFR part 63, subpart NNNN, 67 FR 48254, July 23, 2002).

(4) Operations coating plastic and metal parts of metal furniture that would be subject to the proposed metal furniture surface coating NESHAP (67 FR 20206, April 24, 2002).

(5) Operations coating plastic and wood parts of wood building products that would be subject to the proposed wood building products surface coating NESHAP (67 FR 42400, June 21, 2002).

(6) In-mold and gel coating operations in manufacturing of reinforced plastic composites that are subject to the proposed reinforced plastics composites production NESHAP (66 FR 40324, August 2, 2001).

(7) Surface coating of parts that are pre-assembled from plastic and metal components, where greater than 50 percent of the surface area coated is metal and subject to the proposed NESHAP for the surface coating of miscellaneous metal parts and products (subpart MMMM of part 63; 67 FR 52780, August 13, 2002). If you can demonstrate that more than 50 percent of the surface area coated is comprised of metal, then you would need to demonstrate compliance only with the proposed NESHAP for miscellaneous metal parts and products (proposed subpart MMMM of part 63; 67 FR 52780, August 13, 2002). You must maintain records to document that more than 50 percent of the surface area coated is metal.

We have established four subcategories in the plastic parts and products surface coating source category: (1) General use coating, (2) thermoplastic olefin (TPO) coating, (3) headlamp coating, and (4) assembled on-road vehicle coating. The general use coating subcategory includes all plastic parts and products coating operations except TPO, headlamp, and assembled on-road vehicle coating. This includes operations that coat a wide variety of substrates, surfaces, and types of plastic parts, as well as more specialized coating scenarios. Each subcategory consists of all coating operations, including associated surface

preparation, equipment cleaning, mixing, storage, and waste handling.

As discussed in section III.A. of this preamble, our analysis of data currently available to us indicates that while subcategories for headlamp coating, TPO coating, and assembled on-road vehicle coating are appropriate, there is no need for further subcategorization. We are, however, interested in public comments regarding whether there is additional information that would indicate the need for a separate subcategory for other plastic coating operations. Subcategorization may be appropriate in operations that employ separate and distinct processes for which there is no technology available (including reformulation) to allow compliance with the general use limits. We welcome public comments and data on any additional separate and distinct coating operations, including facility-specific data on processes, coating and cleaning material usage, emissions, and control techniques that may require consideration for subcategorization.

Late in development of the proposed rule, Department of Defense (DoD) stakeholders approached EPA and suggested that their operations are distinctly different from the kinds of operations addressed in these standards. Furthermore, DoD operations may present unique challenges in permitting, demonstrating compliance, and enforcement of potentially overlapping regulations. The DoD stakeholders suggested that a separate subcategory or source category dealing with multiple surface coating operations performed by DoD civilian and military personnel or performed at DoD installations may be appropriate.

Some of the specific concerns expressed by DoD stakeholders include the requirement to purchase materials that meet military specifications for their surface coating operations. Military specifications are typically based on the coating's performance characteristics (*e.g.*, chemical agent resistance), and the coatings must often be compatible with multiple substrates. These materials are purchased using a stock number which could represent hundreds of different formulations that meet the performance specifications; however, the HAP content of such materials could fluctuate widely between formulations. Additionally, since the materials may be used at the maintenance depot, DoD installation, or in the field, the options available to achieve emissions reductions (*e.g.*, add-on control technology) could be limited. Furthermore, much of DoD equipment is coated as an assembled product comprised of as many as five different substrates, in a wide range of shapes and sizes, which must be capable of serving in a multitude of challenging environments and situations. We are currently evaluating the need for a DoD source category or subcategory, and we request comment on the appropriate approach for addressing unique DoD coating operations.

An alternative approach to establishing separate emission limits for each subcategory would be to establish a ''multi-component'' emission limit for the entire source category. A multi-component approach could allow sources to calculate a source-specific emission limit based on a weighted-average using the MACT limit and the percentage solids for each component of the limit. The source would then calculate its emission rate to determine compliance with the source-specific emission limit.

The source-specific emission limit would be calculated as follows:

Emission Limit = [''component A'' MACT limit) × (''component A'' %solids)]+ [''component B'' MACT limit) × (''component B'' % solids)]

The source's emission rate would be calculated as follows:

$$\text{Emission Rate} = \frac{\text{Total pounds of organic HAP emitted}}{\text{Total pounds of solids used}}$$

The source-specific approach would allow averaging between the different components of the multi-component emission limit. However, there would be some additional requirements. In addition to the monitoring, recordkeeping, and reporting requirements included in these proposed standards, the multi-component emission limit approach would require a source to calculate and record the source-specific emission limit each month. The calculation would reflect a rolling 12-month compliance period based on the amount of coating solids used for each separate component during each rolling 12-month period.

We are requesting comments on the feasibility, and burden associated with each of the approaches (*i.e.*, subcategory or multi-component emission limits). Comments should include specific examples and supporting information for the advantages and disadvantages of each approach.

B. What Is the Relationship to Other Rules?

Affected sources subject to the proposed rule may also be subject to other rules if they perform surface coating of parts or products that are regulated by other NESHAP. For example, there may be facilities that coat plastic and metal parts using the same or different coatings, coating application processes, and conveyance equipment, either simultaneously or at alternative times. These facilities could be required to demonstrate compliance with two surface coating NESHAP (*e.g.*, proposed subparts MMMM (67 FR 52780, August 13, 2002) and PPPP) with limits based on different units (*i.e.*, pounds HAP emitted per gallon of coating solids used versus pounds HAP emitted per pound of coating solids used) and possibly different compliance dates. Furthermore, because their operations may not be dedicated to particular parts or products (*e.g.*, job shops or contract coaters), their compliance requirements could vary over time due to fluctuations in their operations. These types of facilities may present unique challenges with respect to permitting, demonstrating compliance (*e.g.*, possibly dual recordkeeping and reporting requirements), and enforcement.

Historically, EPA has handled this situation by giving facilities the option of complying with the NESHAP with the most stringent emission limits (*i.e.*, the NESHAP that results in the lowest emissions from the affected source), in lieu of complying with each otherwise applicable NESHAP. This option would require sources to demonstrate which of the applicable standards is the most stringent. This demonstration is necessary because, as stated previously, the emission limits may be expressed in different units. Under this compliance option, once the demonstration is made, a facility would ensure that all coating operations covered by a NESHAP comply with the single, more stringent NESHAP. This option allows a facility operational flexibility, while ensuring that the facility is in compliance with the requirements of the CAA (*i.e.*,

achieving emissions reductions consistent with section 112(d)). This option may also simplify permitting and provide clarity for compliance and enforcement. The EPA believes that this approach towards addressing potentially overlapping regulations is appropriate in this proposed rule and solicits comments on the desirability of providing such a compliance option.

A second option which may provide facilities with the desired operational flexibility is the ''predominant activity'' approach which was shared with stakeholders in May 2001. This approach would allow a facility to determine the predominant coating activity (*e.g.*, plastic parts) among all the coating activities that are subject to a NESHAP (*e.g.*, plastic parts and miscellaneous metal products) and demonstrate compliance with the NESHAP established for the source category represented by the predominant activity. A source not electing to comply with the predominant activity option would continue to be subject to separate NESHAP and would need to demonstrate compliance with each one.

Although EPA received encouraging feedback for a predominant activity approach from many stakeholders (*e.g.*, industry representatives, State and local authorities), there were few suggestions on either how to measure and document predominant (*e.g.*, surface area coated, volume solids used, *etc.*) or the appropriate criteria for establishing which activity is predominant (*e.g.*, a numerical percent of the facility's surface coating operations that would qualify appropriately as predominant).

In defining a predominant activity approach, the criteria used to define predominant should, for practical reasons, minimize fluctuation of the predominant activity between different source categories at job shops/contract coaters. In addition, the basis (*e.g.*, surface area coated, volume solids used, etc.) for measuring predominant would need to be established and should be suitable for all sources. One possible way to help minimize fluctuation over time in what is identified as the predominant activity would be to base predictions about which activity would be predominant on appropriate records for the most recent 3–5 years. Sources would then comply with the NESHAP relevant to that predominant activity under its operating permit and would have the opportunity to review its predominant activity designation, and modify as appropriate, during each permit renewal.

In implementing a predominant activity option, EPA needs to balance good public policy (avoiding overlapping regulations where feasible and sensible) with ensuring emissions reductions consistent with the legislative mandate of sections 112(d)(3) and (i)(3) of the CAA (*i.e.*, ensuring emission reductions achieved under the predominant activity option are comparable to those achieved through compliance with each applicable NESHAP separately). We specifically request comment on how a predominant activity approach should be structured to ensure that emission reductions achieved are consistent with the requirements of sections 112(d)(3) and (i)(3).

A third option under consideration is the development of a subcategory for facilities with coating operations that would otherwise be subject to more than one coating NESHAP. Based on survey data collected under CAA section 114, we would establish a MACT floor that reflects HAP emission rates from the relevant coating operations. The practical advantages associated with this approach are similar to the benefits stated for the more stringent NESHAP approach (*i.e.*, simplification of permitting, clarity of requirements, and achieving mandated emissions reductions). This approach may also limit the need for separate tracking systems for surface coating operations. A disadvantage with this option is that it may not afford facilities as much operational flexibility as the other two options.

A fourth option is to expand the definition of the source category and four subcategories currently under consideration to include ''incidental'' surface coating operations being performed on other substrates (*e.g.* metal) that meet the applicability criteria for another surface coating source category. Under this approach, a facility could demonstrate that a specified percentage of its NESHAP-regulated surface coating activities are within the scope of a specific category or subcategory. The remaining NESHAP-regulated coating operations would be considered incidental for purposes of determining which category or subcategory the overall operations were in, as they would represent a small portion of the total coating operations. Once this demonstration is made, all NESHAP-regulated coating operations conducted at the facility would be included in, and subject to, the emission limitations for the primary source category.

We request comment on the feasibility, benefits, and disadvantages associated with each option presented. We also request comment on additional options for consideration. For all options, we request facility-specific data that would support the recommended option. These data include information on the processes; coating and cleaning material usage; the proportion of coating and cleaning material being used with different substrates; and the difference in the emission reductions achieved based on complying with each applicable NESHAP separately and the option being recommended. Additionally, we request comment and supporting documentation on the criteria (*e.g.*, numerical percentage) and basis (*e.g.*, surface area coated) for determining predominant activity and defining incidental operations. Finally, we request comment on the burden associated with monitoring, recordkeeping, and reporting for each option.

Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines—40 CFR Part 60, Subpart TTT

The new source performance standards (NSPS) for plastic parts for business machines apply to facilities that apply coatings to plastic parts for use in business machines that began construction, reconstruction, or modification after January 8, 1986. The pollutants regulated are volatile organic compounds (VOC). Emissions of VOC are limited to 1.5 kilogram VOC per liter (kg VOC/liter) of coating solids applied for primers and color coats, and 2.3 kg VOC/liter of coating solids applied for texture coatings and touch-up coatings. The affected facility is each individual spray booth.

The proposed rule differs from the NSPS in three ways. First, the affected source for the proposed rule is defined broadly as the collection of all coating operations and related activities and equipment at the facility, whereas the affected facility for the NSPS is defined narrowly as each individual spray booth. The broader definition of an affected source allows a facility's emissions to be combined for compliance purposes. Second, the proposed rule regulates organic HAP. While most, although not all, organic HAP emitted from plastic parts and products surface coating operations are VOC, some VOC are not listed as HAP. Therefore, the NSPS regulate a potentially different range of pollutants than the proposed NESHAP. Third, the HAP emission limitations in the proposed rule are based on the amount of coating solids used at the affected source. The VOC limitations in the NSPS are based on the amount of coating solids actually applied to the

plastic parts and products, which necessitates estimates of transfer efficiency in the compliance calculations.

Because of the differences between the NSPS and the proposed NESHAP, compliance with either rule cannot be deemed compliance with the other. A plastic parts and products surface coating operation that meets the applicability requirements of both the NSPS and the proposed NESHAP must comply with both. Overlapping reporting, recordkeeping, and monitoring requirements may be resolved through your title V permit.

Aerospace Manufacturing and Rework Facilities NESHAP (40 CFR Part 63, Subpart GG)

The aerospace NESHAP establish HAP and VOC emission limitations for aerospace manufacturing and rework facilities that produce or repair aerospace vehicles (*e.g.*, airplanes, helicopters, space vehicles) or vehicle parts. The aerospace NESHAP apply only to parts and assemblies that are critical to the aerospace vehicle's structural integrity or flight performance. Therefore, the possibility exists that some facilities would be subject to the requirements of both the aerospace NESHAP and the proposed plastic parts and products surface coating NESHAP. For example, a facility that performs maintenance operations consisting of both exterior and interior reconstruction and overhaul of commercial airplanes may perform coating of plastic parts, such as tray tables and seat panels, that are not considered critical to the structural integrity or flight performance. These parts may be removed from the airplane and painted on-site to cover scratches and other wear marks before being reinstalled. Such coating activities and associated equipment would be subject to the proposed plastic parts and products coating NESHAP.

We do not foresee that any conflicts will exist between the requirements for the aerospace NESHAP and the proposed plastic parts and products surface coating NESHAP. If a plastic part that is critical to the aerospace vehicle's structural integrity or flight performance is coated, the coating operation for that part will fall under the aerospace NESHAP. Only plastic parts that are not critical to the aerospace vehicle's structural integrity or flight performance will fall under the proposed plastic parts and products surface coating NESHAP.

C. What Are the Primary Sources of Emissions and What Are the Emissions?

The proposed NESHAP would regulate emissions of organic HAP. Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from plastic parts and products surface coating operations include MEK, MIBK, toluene, and xylenes. These compounds account for over 85 percent of this source category's nationwide organic HAP emissions. Other organic HAP emissions identified include EGBE and glycol ethers. The majority of organic HAP emissions from a facility engaged in plastic parts and products surface coating operations can be attributed to the application, drying, and curing of coatings. The remaining emissions are primarily from cleaning operations. In most cases, organic HAP emissions from mixing, storage, and waste handling are relatively small.

The organic HAP emissions associated with coatings (the term ''coatings'' includes protective and decorative coatings as well as adhesives) occur due to volatilization of solvents and carriers. Coatings are most often applied either by using a spray gun in a spray booth or by dipping the substrate in a tank containing the coating. In a spray booth, volatile components evaporate from the coating as it is applied to the part and from the overspray. The coated part then passes through a flash-off area where additional volatiles evaporate from the coating. Finally, the coated part passes through a drying/curing oven, or is allowed to air dry, where the remaining volatiles are evaporated.

Organic HAP emissions also occur from the activities undertaken during cleaning operations where solvent is used to remove coating residue or other unwanted materials. Cleaning in this industry includes cleaning of spray guns and transfer lines (*e.g.*, tubing or piping), tanks, and the interior of spray booths. Cleaning also includes applying solvents to manufactured parts prior to coating application and to equipment (*e.g.*, cleaning rollers, pumps, conveyors, *etc.*).

Mixing and storage are other sources of emissions. Organic HAP emissions can occur from displacement of organic vapor-laden air in containers used to store organic HAP solvents or to mix coatings containing organic HAP solvents. The displacement of vapor-laden air can occur during the filling of containers and can be caused by changes in temperature or barometric pressure, or by agitation during mixing. Volatilization of organic HAP can also occur during waste handling.

D. What Is the Affected Source?

We define an affected source as a stationary source, a group of stationary sources, or part of a stationary source to which a specific emission standard applies. The proposed standards define the affected source as the collection of all operations associated with the surface coating of plastic parts and products within each of the four subcategories (TPO, headlamps, assembled on-road vehicle and general use). These operations include preparation of a coating for application (*e.g.*, mixing with thinners or other additives); surface preparation of the plastic parts and products; coating application and flash-off; drying and/or curing of applied coatings; cleaning of equipment used in surface coating; storage of coatings, thinners, and cleaning materials; and handling and conveyance of waste materials from the surface coating operations. The coating operation does not include the application of coatings using hand-held aerosol containers.

A few facilities have coating operations in more than one subcategory. For example, a few facilities have TPO coating operations that are in the TPO coating subcategory and also have other plastic parts and products coating operations that are in the general use coating subcategory. In such a case, the facility would have two separate affected sources: (1) The collection of all operations associated with the surface coating of TPO, and (2) the collection of all operations associated with general use coating. Each of these affected sources would be required to meet the emission limits that apply to its subcategory.

Another example of a facility with coating operations in more than one subcategory would be a facility that assembles and paints motor homes. The use of adhesives, caulks, sealants, and associated materials in assembling the motor home would be in the general use coating subcategory and would constitute one affected source. The use of coatings and associated materials in painting the assembled motor home would be in the assembled on-road vehicle subcategory and would constitute a second affected source.

E. What Are the Emission Limits, Operating Limits, and Other Standards?

Emission Limits. We are proposing to limit organic HAP emissions from each existing affected source using the emission limits in Table 2. The proposed emission limits for each new

or reconstructed affected source are given in Table 3.

TABLE 2.—EMISSION LIMITS FOR EXISTING AFFECTED SOURCES

For any affected source applying coating to . . .	The organic HAP emission limit you must meet, in kg organic HAP emitted/kg coating solids used (lb organic HAP source emitted/lb coating solids used), is:
TPO substrates	0.23
Headlamps	0.45
Aassembled on-road vehicles	1.34
Other (general use) plastic parts and products.	0.16

TABLE 3.—EMISSION LIMITS FOR NEW OR RECONSTRUCTED AFFECTED SOURCES

For any affected source applying coating to . . .	The organic HAP emission limit you must meet, in kg organic HAP emitted/kg coating solids used (lb organic HAP emitted/lb coating solids used), is:
TPO substrates	0.17
Headlamps	0.26
Assembled on-road vehicles	1.34
Other (general use) plastic parts and products.	0.16

You can choose from several compliance options in the proposed rule to achieve the emission limits. You could comply by applying materials (coatings, thinners and other additives, and cleaning materials) that meet the emission limits, either individually or collectively, during each compliance period. You could also use a capture system and add-on control device to meet the emission limits. You could also comply by using a combination of both approaches.

Operating Limits. If you reduce emissions by using a capture system and add-on control device (other than a solvent recovery system for which you conduct a liquid-liquid material balance), the proposed operating limits would apply to you. These limits are site-specific parameter limits that you determine during the initial performance test of the system. For capture systems that are not permanent total enclosures, you would establish average volumetric flow rates or duct static pressure limits for each capture device (*e.g.*, a hood or enclosure) in each capture system. For capture systems that are permanent total enclosures, you would establish limits on average facial velocity or pressure drop across openings in the enclosure.

For thermal oxidizers, you would monitor the combustion temperature. For catalytic oxidizers, you would monitor the temperature immediately before and after the catalyst bed, or you would monitor the temperature before the catalyst bed and prepare and implement an inspection and maintenance plan that includes periodic catalyst activity checks. For carbon adsorbers for which you do not conduct a liquid-liquid material balance, you would monitor the carbon bed temperature and the amount of steam or nitrogen used to desorb the bed. For condensers for which you do not conduct a liquid-liquid material balance, you would monitor the outlet gas temperature from the condenser. For concentrators, you would monitor the temperature of the desorption stream and the pressure drop across the concentrator.

The site-specific parameter limits that you establish must reflect operation of the capture system and control device during a performance test that demonstrates achievement of the emission limits during representative operating conditions.

Work Practice Standards. If you use an emission capture system and control device for compliance, you would be required to develop and implement a work practice plan to minimize organic HAP emissions from mixing operations, storage tanks and other containers, and handling operations for coatings, thinners, cleaning materials, and waste materials.

If you use a capture system and control device for compliance, you would be required to develop and operate according to a startup, shutdown, and malfunction plan (SSMP) during periods of startup, shutdown, or malfunction of the capture system and control device.

The NESHAP General Provisions at 40 CFR part 63, subpart A, codify certain procedures and criteria for all 40 CFR part 63 NESHAP and would apply to you as indicated in the proposed rule. The General Provisions contain administrative procedures, preconstruction review procedures for new sources, and procedures for conducting compliance-related activities such as notifications, reporting and recordkeeping, performance testing, and monitoring. The proposed rule refers to individual sections of the General Provisions to emphasize key sections that are relevant. However, unless specifically overridden in the proposed rule, all of the applicable General Provisions requirements would apply to you.

F. What Are the Testing and Initial Compliance Requirements?

Existing affected sources would have to be in compliance with the final rule no later than 3 years after the effective date of the final rule. New and reconstructed sources would have to be in compliance upon initial startup of the affected source or by the effective date of the final rule, whichever is later. The effective date is the date on which the final rule is published in the **Federal Register**. However, affected sources would not be required to demonstrate compliance until the end of the initial compliance period when they will have accumulated the necessary records to document the rolling 12-month organic HAP emission rate.

Compliance with the emission limits is based on a rolling 12-month organic HAP emission rate determined each month. Each 12-month period is a compliance period. The initial compliance period, therefore, is the 12-month period beginning on the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period begins on the compliance date and extends through the end of that month plus the following 12 months. We have defined ''month'' as a calendar month or a pre-specified period of 28 to 35 days to allow for flexibility at sources where data are based on a business accounting period.

Being ''in compliance'' means that the owner or operator of the affected source meets the requirements to achieve the proposed emission limitations during the initial compliance period. However, they will not have accumulated the records for the rolling 12-month organic HAP emission rate until the end of the initial compliance period. At the end of the initial compliance period, the owner or operator would use the data and records generated to determine whether or not the affected source is in compliance with the organic HAP emission limit and other applicable requirements for that period. If the affected source does not meet the applicable limit and other requirements, it is out of compliance.

Emission Limits. There are three proposed options for complying with

the proposed emission limits, and the testing and initial compliance requirements vary accordingly. You may choose to use one compliance option for the entire affected source, or you may use different compliance options for different coating operations within the affected source. You may also use different compliance options for the same coating operation at different times.

Option 1: Compliant Materials

This option is a pollution prevention option that allows you to easily demonstrate compliance by using low-HAP or non-HAP coatings and other materials. If you use coatings that, based on their organic HAP content, individually meet the kg (pound (lb)) organic HAP emitted per kg (lb) coating solids used levels in the applicable emission limits and you use non-HAP thinners and other additives and cleaning materials, this compliance option is available to you. For this option, we have minimized recordkeeping and reporting requirements. You can demonstrate compliance by using manufacturer's formulation data and readily available purchase records to determine the organic HAP content of each coating or other material and the amount of each material used. You would not need to perform any detailed emission rate calculations.

If you demonstrate compliance based on the coatings and other materials used, you would demonstrate that the organic HAP content of each coating meets the emission limits for the appropriate subcategory as shown in Tables 2 and 3, and that you used no organic HAP-containing thinners, other additives, or cleaning materials. For example, if you are using the compliant materials option and your existing source has TPO coating operations, headlamp coating operations, assembled on-road vehicle coating operations, and general use coating operations, you would demonstrate that: (1) Each coating used in the TPO coating operation has an organic HAP content no greater than 0.23 kg (0.23 lb) organic HAP emitted per kg (lb) coating solids used; (2) each coating used in the headlamp coating operations has an organic HAP content no greater than 0.45 kg (0.45 lb) organic HAP emitted per kg (lb) coating solids used; (3) each coating used in the assembled on-road vehicle coating operations has an organic HAP content no greater than 1.34 kg (1.34 lb) organic HAP emitted per kg (lb) coating solids used; (4) each general use coating has an organic HAP content no greater than 0.16 kg (0.16 lb) organic HAP emitted per kg (lb) coating solids used; (5) and that you used no organic HAP-containing thinners, other additives, or cleaning materials. Note that ''no organic HAP'' is not intended to mean absolute zero. Materials that contain ''no organic HAP'' should be interpreted to mean materials that contain organic HAP levels below the levels specified in § 63.4541(a) of the proposed rule, which are typical reporting levels. These typical reporting levels only count organic HAP that are present at 0.1 percent or more by mass for Occupational Safety and Health Administration (OSHA)-defined carcinogens and at 1.0 percent or more by mass for other compounds.

To determine the mass of organic HAP in coatings, thinners, and cleaning materials and the mass fraction of coating solids, you could rely on manufacturer's formulation data. You would not be required to perform tests or analysis of the material if formulation data are available. Alternatively, you could use results from the test methods listed below. You may also use alternative test methods provided you get EPA approval in accordance with the NESHAP General Provisions, 40 CFR 63.7(f). However, if there is any inconsistency between the test method results (either EPA's or an approved alternative) and manufacturer's data, the test method results would prevail for compliance and enforcement purposes. If you elect to perform tests:

- For organic HAP content, use Method 311 of 40 CFR part 63, appendix A.
- The proposed rule would allow you to use nonaqueous volatile matter as a surrogate for organic HAP, which would include all organic HAP plus all other organic compounds, and excluding water. If you choose this option, use Method 24 of 40 CFR part 60, appendix A.
- For mass fraction of coating solids, use Method 24.

Option 2: Compliance Based on the Emission Rate Without Add-on Controls

This option is a pollution prevention option where you can demonstrate compliance based on the organic HAP contained in the mix of coatings, thinners and other additives, and cleaning materials you use. This option allows you the flexibility to use some individual coatings that do not, by themselves, meet the kg (lb) organic HAP emitted per kg (lb) coating solids used levels in the applicable emission limits if you use other low-HAP or non-HAP coatings such that overall emissions from the affected source over a 12-month period meet the emission limits. You must use this option if you use HAP-containing thinners, other additives, and cleaning materials and do not have add-on controls. You would keep track of the mass of organic HAP in each coating, thinner or other additive, and cleaning material, and the amount of each material you use in your affected source each month of the compliance period. You would use this information to determine the total mass of organic HAP in all coatings, thinners and other additives, and cleaning materials divided by the total mass of coating solids used during the compliance period. You would demonstrate that your emission rate (in kg (lb) organic HAP emitted per kg (lb) coating solids used) meets the applicable emission limit. You can use readily available purchase records and manufacturer's formulation data to determine the amount of each coating or other material you used and the organic HAP in each material. The proposed rule contains equations that show you how to perform the calculations to demonstrate compliance.

If you demonstrate compliance using Option 2, you would be required to:

- Determine the quantity of each coating, thinner and other additive, and cleaning material used.
- Determine the mass of organic HAP in each coating, thinner and other additive, and cleaning material using the same types of data and methods previously described for Option 1. You may rely on manufacturer's formulation data or you may choose to use test results as described under Option 1.
- Determine the mass fraction of coating solids for each coating using the same types of data or methods described under Option 1.
- Calculate the total mass of organic HAP in all materials and total mass of coating solids used each month. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.
- Calculate the total mass of organic HAP emissions and total mass of coating solids for the initial compliance period by adding together all the monthly values for mass of organic HAP and for mass of coating solids for the 12 months of the initial compliance period.
- Calculate the ratio of the total mass of organic HAP emitted for the materials used to the total mass of coating solids used (kg (lb) organic HAP emitted per kg (lb) of coating solids used) for the initial compliance period.

• Record the calculations and results and include them in your Notification of Compliance Status.

Note that if you choose to use this option for a particular coating operation rather than for an entire affected source, you would calculate the organic HAP emission rate using just the materials used in that operation. Similarly, if your facility has multiple affected sources using this option (*e.g.*, a TPO affected source, a headlamp affected source, an assembled on-road vehicle affected source, and a general use affected source), you would do a separate calculation for each affected source to show that each affected source meets its emission limit.

Option 3: Emission Rate With Add-on Controls Option

This option allows sources to use a capture system and an add-on pollution control device, such as a combustion device or a recovery device, to meet the emission limits. While we believe that, based on typical emission characteristics, most sources will not use control devices, we are providing this option for sources that can use control devices. Fewer than 10 percent of the existing sources for which we have data use control devices and may continue using the control devices for compliance with the proposed standards. Under this option, testing is required to demonstrate the capture system and control device efficiency. Alternatively, you may conduct a liquid-liquid material balance to demonstrate the amount of organic HAP collected by your recovery device. The proposed rule provides equations showing you how to use records of materials usage, organic HAP contents of each material, capture and control efficiencies, and coating solids content to calculate your emission rate during the compliance period.

If you demonstrate compliance based on this option, you would demonstrate that your emission rate considering controls (in kg (lb) organic HAP emitted per kg (lb) of coating solids used) is less than the applicable emission limit. For a capture system and add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance, your testing and initial compliance requirements would be as follows:

• Conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis. The performance test would have to be completed no later than the compliance date for existing sources and 180 days after the compliance date for new and reconstructed sources.

• Determine the mass of organic HAP in each coating and other material, and the mass fraction of coating solids for each coating used each month of the initial compliance period.

• Calculate the total mass of organic HAP in all coatings and other materials, and total mass of coating solids used each month in the controlled operation or group of coating operations. You may subtract from the total mass of organic HAP the amount contained in waste materials you send to a hazardous waste treatment, storage, and disposal facility regulated under 40 CFR part 262, 264, 265, or 266.

• Calculate the organic HAP emissions from the controlled coating operations each month using the capture and control efficiencies determined during the performance test, and the total mass of organic HAP in materials used in controlled coating operations that month.

• Calculate the total mass of organic HAP emissions and total volume of coating solids for the initial compliance period by adding together all the monthly values for mass of organic HAP emissions and for mass of coating solids for the 12 months in the initial compliance period.

• Calculate the ratio of the total mass of organic HAP emissions to the total mass of coating solids used during the initial compliance period.

• Record the calculations and results and include them in your Notification of Compliance Status.

• Develop and implement a work practice plan to minimize emissions from storage, mixing, and handling of organic HAP-containing materials.

Note that if you choose to use this option for a particular coating operation rather than for the entire affected source, you would calculate the organic HAP emission rate using just the materials used in that operation. Similarly, if your facility has multiple affected sources using this option (*e.g.*, a TPO affected source, a headlamp affected source, an assembled on-road vehicle affected source, and a general use affected source), you would do a separate calculation for each affected source to show that each affected source meets its emission limit.

If you use a capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, you would use specified test methods to determine both the efficiency of the capture system and the emission reduction efficiency of the control device. To determine the capture efficiency, you would either verify the presence of a permanent total enclosure using EPA Method 204 of 40 CFR part 51, appendix M (and all materials must be applied and dried within the enclosure); or use one of three protocols in § 63.4565 of the proposed rule to measure capture efficiency. If you have a permanent total enclosure and all materials are applied and dried within the enclosure and you route all exhaust gases from the enclosure to a control device, you would assume 100 percent capture.

To determine the emission reduction efficiency of the control device, you would conduct measurements of the inlet and outlet gas streams. The test would consist of three runs, each run lasting 1 hour, using the following EPA Methods in 40 CFR part 60, appendix A:

• Method 1 or 1A for selection of the sampling sites.

• Method 2, 2A, 2C, 2D, 2F, or 2G to determine the gas volumetric flow rate.

• Method 3, 3A, or 3B for gas analysis to determine dry molecular weight.

• Method 4 to determine stack moisture.

• Method 25 or 25A to determine organic volatile matter concentration. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, and approved by the Administrator, could be used.

If you use a solvent recovery system, you could choose to determine the overall control efficiency using a liquid-liquid material balance instead of conducting an initial performance test. If you use the material balance alternative, you would be required to measure the amount of all materials used in the controlled coating operations served by the solvent recovery system during each month of the initial compliance period and determine the total volatile matter contained in these materials. You would also measure the amount of volatile matter recovered by the solvent recovery system during each month of the initial compliance period. Then you would compare the amount recovered to the amount used to determine the overall control efficiency each month and apply this efficiency to the total mass of organic HAP in the materials used to determine total organic HAP emissions for the month. You would total these 12 monthly organic HAP emission values and divide by the total of the 12 monthly values for coating solids used to calculate the emission rate for the 12-month initial compliance period. You would record the calculations and

results and include them in your Notification of Compliance Status.

Operating Limits. As mentioned above, you would establish operating limits as part of the initial performance test of a capture system and control device other than a solvent recovery system for which you conduct liquid-liquid material balances. The operating limits are the minimum or maximum (as applicable) values achieved for capture systems and control devices during the most recent performance test, conducted under representative conditions, that demonstrated compliance with the emission limits.

The proposed rule specifies the parameters to monitor for the types of emission control systems commonly used in the industry. You would be required to install, calibrate, maintain, and continuously operate all monitoring equipment according to manufacturer's specifications and ensure that the continuous parameter monitoring systems (CPMS) meet the requirements in § 63.4568 of the proposed rule. If you use control devices other than those identified in the proposed rule, you would submit the operating parameters to be monitored to the Administrator for approval. The authority to approve the parameters to be monitored is retained by EPA and is not delegated to States.

If you use a thermal or catalytic oxidizer, you would continuously monitor the appropriate temperature and record it at least every 15 minutes. For thermal oxidizers, the temperature monitor is placed in the firebox or in the duct immediately downstream of the firebox before any substantial heat exchange occurs. The operating limit would be the average temperature measured during the performance test and for each consecutive 3-hour period, the average temperature would have to be at or above this limit. For catalytic oxidizers, temperature monitors are placed immediately before and after the catalyst bed. The operating limits would be the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed during the performance test. For each 3-hour period, the average temperature and the average temperature difference would have to be at or above these limits. Alternatively, you would be allowed to meet only the temperature limit before the catalyst bed if you develop and implement an inspection and maintenance plan for the catalytic oxidizer.

If you use a carbon adsorber and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the carbon bed temperature after each regeneration and the total amount of steam or nitrogen used to desorb the bed for each regeneration. The operating limits would be the carbon bed temperature at the time the carbon bed is returned to service (not to be exceeded) and the amount of steam or nitrogen used for desorption (to be met as a minimum).

If you use a condenser and do not conduct liquid-liquid material balances to demonstrate compliance, you would monitor the outlet gas temperature to ensure that the air stream is being cooled to a low enough temperature. The operating limit would be the average condenser outlet gas temperature measured during the performance test and for each consecutive 3-hour period the average temperature would have to be at or below this limit.

If you use a concentrator, you would monitor the temperature of the desorption concentrate stream and the pressure drop across the concentrator. These values would be recorded at least once every 15 minutes. The operating limits would be the average temperature (to be met as a minimum) and the average pressure drop (not to be exceeded) measured during the performance test.

For each capture system that is not a permanent total enclosure, you would establish operating limits for gas volumetric flow rate or duct static pressure for each enclosure or capture device. The operating limit would be the average volumetric flow rate or duct static pressure during the performance test, to be met as a minimum. For each capture system that is a permanent total enclosure, the operating limit would require the average facial velocity of air through all natural draft openings to be at least 200 feet per minute or the pressure drop across the enclosure to be at least 0.007 inches water.

Work Practices. If you use a capture system and control device for compliance, you would be required to develop and implement on an ongoing basis a work practice plan for minimizing organic HAP emissions from storage, mixing, material handling, and waste handling operations. This plan would include a description of all steps taken to minimize emissions from these sources (*e.g.*, using closed storage containers, practices to minimize emissions during filling and transfer of contents from containers, using spill minimization techniques, placing solvent-laden cloths in closed containers immediately after use, *etc.*). You would have to make the plan available for inspection if the Administrator requests to see it.

If you use a capture system and control device for compliance, you would be required to develop and operate according to a SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

G. What Are the Continuous Compliance Provisions?

Emission Limits. If you use the compliant materials option (Option 1), you would demonstrate continuous compliance if each coating meets the applicable emission limit and you use no organic HAP-containing thinners, other additives, or cleaning materials. If you use the emission rate without add-on controls option (Option 2), you would demonstrate continuous compliance if, for each 12-month compliance period, the ratio of kg (lb) organic HAP emitted to kg (lb) coating solids used is less than or equal to the applicable emission limit. You would follow the same procedures for calculating the organic HAP emitted to coating solids ratio that you used for the initial compliance period.

For each coating operation on which you use a capture system and control device (Option 3) other than a solvent recovery system for which you conduct a liquid-liquid material balance, you would use the continuous parameter monitoring results for the month as part of the determination of the mass of organic HAP emissions. If the monitoring results indicate no deviations from the operating limits and there were no bypasses of the control device, you would assume the capture system and control device are achieving the same percent emission reduction efficiency as they did during the most recent performance test in which compliance was demonstrated. You would then apply this percent reduction to the total mass of organic HAP in materials used in the controlled coating operations to determine the emissions from those operations during the month. If there were any deviations from the operating limits during the month or any bypasses of the control device, you would account for them in the calculation of the monthly emissions by assuming the capture system and control device were achieving zero emission reduction during the periods of deviation. Then you would determine the organic HAP emission rate by dividing the total mass of organic HAP emissions for the 12-month compliance period by the total mass of coating solids used during the 12-month compliance period. Every month, you would calculate the emission rate for the previous 12-month period.

For each coating operation on which you use a solvent recovery system and conduct a liquid-liquid material balance each month, you would use the liquid-liquid material balance to determine control efficiency. To determine the overall control efficiency, you must measure the amount of all materials used during each month and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month, calculate the overall control efficiency, and apply it to the total mass of organic HAP in the materials used to determine total organic HAP emissions each month. Then you would determine the 12-month organic HAP emission rate in the same manner described above.

Operating Limits. If you use a capture system and control device, the proposed rule would require you to achieve on a continuous basis the operating limits you establish during the performance test. If the continuous monitoring shows that the capture system and control device are operating outside the range of values established during the performance test, you have deviated from the established operating limits.

If you operate a capture system and control device with bypass lines that could allow emissions to bypass the control device, you would have to demonstrate that captured organic HAP emissions within the affected source are being routed to the control device by monitoring for potential bypass of the control device. You may choose from the following four monitoring procedures:

- Flow control position indicator to provide a record of whether the exhaust stream is directed to the control device;
- Car-seal or lock-and-key valve closures to secure the bypass line valve in the closed position when the control device is operating;
- Valve closure monitoring to ensure any bypass line valve or damper is closed when the control device is operating; or
- Automatic shutdown system to stop the coating operation when flow is diverted from the control device.

A deviation would occur for any period of time the bypass monitoring indicates that emissions are not routed to the control device.

Work Practices. If you use an emission capture system and control device for compliance, you would be required to implement, on an ongoing basis, the work practice plan you developed during the initial compliance period. If you did not develop a plan for reducing organic HAP emissions or you do not implement the plan, this would be a deviation from the work practice standard.

If you use a capture system and control device for compliance, you would be required to operate according to your SSMP during periods of startup, shutdown, or malfunction of the capture system and control device.

H. What Are the Notification, Recordkeeping, and Reporting Requirements?

You are required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in the proposed rule. The General Provisions notification requirements include: initial notifications, notification of performance test if you are complying using a capture system and control device, notification of compliance status, and additional notifications required for affected sources with continuous monitoring systems. The General Provisions also require certain records and periodic reports.

Initial Notifications. If you own or operate an existing affected source, you must send a notification to the EPA Regional Office in the region where your facility is located and to your State agency no later than 1 year after the final rule is published in the **Federal Register**. For new and reconstructed sources, you must send the notification within 120 days after the date of initial startup or 120 days after publication of the final rule, whichever is later. That report notifies us and your State agency that you have an existing affected source that is subject to the proposed standards or that you have constructed a new affected source. Thus, it allows you and the permitting authority to plan for compliance activities. You would also need to send a notification of planned construction or reconstruction of a source that would be subject to the proposed rule and apply for approval to construct or reconstruct.

Notification of Performance Test. If you demonstrate compliance by using a capture system and control device for which you do not conduct a liquid-liquid material balance, you would conduct a performance test. The performance test would be required no later than the compliance date for an existing affected source. For a new or reconstructed affected source, the performance test would be required no later than 180 days after startup or 180 days after **Federal Register** publication of the final rule, whichever is later. You must notify us (or the delegated State or local agency) at least 60 calendar days before the performance test is scheduled to begin and submit a report of the performance test results no later than 60 days after the test.

Notification of Compliance Status. You must submit a Notification of Compliance Status within 30 days after the end of the initial 12-month compliance period. In the notification, you must certify whether each affected source has complied with the proposed standards, identify the option(s) you used to demonstrate initial compliance, summarize the data and calculations supporting the compliance demonstration, and provide information on any deviations from the emission limits, operating limits, or other requirements.

If you elect to comply by using a capture system and control device for which you conduct performance tests, you must provide the results of the tests. Your notification must also include the measured range of each monitored parameter, the operating limits established during the performance test, and information showing whether the source has complied with its operating limits during the initial compliance period.

Recordkeeping Requirements. You must keep records of reported information and all other information necessary to document compliance with the proposed rule for 5 years. As required under the General Provisions, records for the 2 most recent years must be kept on-site; the other 3 years' records may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

Depending on the compliance option that you choose, you may need to keep records of the following:

- Organic HAP content or volatile organic matter content and coating solids content (for all compliance options).
- Quantity of the coatings, thinners and other additives, and cleaning materials used during each compliance period (for all compliance options).
- For the emission rate (with or without add-on controls) compliance options, calculations of your emission rate for each 12-month compliance period.
- All documentation supporting initial notifications and notifications of compliance status.

If you demonstrate compliance by using a capture system and control device, you must keep records of the following:

- All required measurements, calculations, and supporting documentation needed to demonstrate compliance with the standards.

• All results of performance tests and parameter monitoring.

• All information necessary to demonstrate conformance with your plan for minimizing emissions from mixing, storage, and waste handling operations.

• All information necessary to demonstrate conformance with the affected source's SSMP when the plan procedures are followed.

• The occurrence and duration of each startup, shutdown, or malfunction of the emission capture system and control device.

• Actions taken during startup, shutdown, and malfunction that are different from the procedures specified in the affected source's SSMP.

• Each period during which a CPMS is malfunctioning or inoperative (including out-of-control periods).

The proposed rule would require you to collect and keep records according to certain minimum data requirements for the CPMS. Failure to collect and keep the specified minimum data would be a deviation that is separate from any emission limits, operating limits, or work practice standards.

Deviations, as determined from these records, would need to be recorded and also reported. A deviation is any instance when any requirement or obligation established by the proposed rule including, but not limited to, the emission limits, operating limits, and work practice standards, is not met.

If you use a capture system and control device to reduce organic HAP emissions, you would have to make your SSMP available for inspection if the Administrator requests to see it. The plan would stay in your records for the life of the affected source or until the source is no longer subject to the proposed standards. If you revise the plan, you would need to keep the previous superseded versions on record for 5 years following the revision.

Periodic Reports. Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you would submit a semiannual report stating that the affected source has been in continuous compliance. If deviations occur, you would include them in the report as follows:

• Report each deviation from the emission limit.

• Report each deviation from the work practice standards if you use an emission capture system and control device.

• If you use an emission capture system and control device other than a solvent recovery system for which you conduct liquid-liquid material balances, report each deviation from an operating limit and each time a bypass line diverts emissions from the control device to the atmosphere.

• Report other specific information on the periods of time the deviations occurred.

You would also have to include in each semiannual report an identification of the compliance option(s) you used for each affected source and any time periods when you changed to another compliance option.

Other Reports. You would be required to submit reports for periods of startup, shutdown, or malfunction of the capture system and control device. If the procedures you follow during any startup, shutdown, or malfunction are inconsistent with your plan, you would report those procedures with your semiannual reports in addition to immediate reports required by 40 CFR 63.10(d)(5)(ii).

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category and Subcategories?

The surface coating of plastic parts and products is a source category that is on the list of source categories to be regulated because it contains major sources which emit or have the potential to emit at least 9.07 Mg (10 tons) of any one HAP or at least 22.7 Mg (25 tons) of any combination of HAP annually. The proposed rule would control organic HAP emissions from both new and existing major sources. Area sources are not being regulated under this proposed rule.

The plastic parts and products surface coating category consists of facilities that apply protective or decorative coatings and adhesive coatings to plastic parts and products through a post-mold coating process. The surface coating of plastic parts and products includes any facility engaged in the surface coating of plastic parts or products, including panels, housings, bases, covers, and other components formed of synthetic polymers. We use the plastic parts and products lists contained in the SIC and NAICS code descriptions to describe the vast array of plastic parts and products.

Due to the broad scope of the plastic parts and products surface coating source category, the source category definition likewise needs to be broad in order to include the varieties of operations and activities that might occur at these facilities. However, a broad description has the potential to unintentionally include surface coating operations that we would not consider to be part of the source category. We intend the source category to include facilities for which the surface coating of plastic parts and products is either their principal activity or an integral part of a production process that is the principal activity. Most coating operations are located at plant sites that are dedicated to these activities. However, some may be located at sites for which some other activity is principal, such as automobile assembly plants that coat plastic automobile parts or accessories off the assembly line. Co-located surface coating operations comparable to the types and sizes of the dedicated plastic parts surface coating facilities, in terms of the coating operation and applicable emission control techniques, are included in the source category.

We reviewed the available data and information to identify a descriptor common to sources we intended to include in the category that would further help to describe the category. Based on our review, we believe the quantity of coating used is the most equitable descriptor for purposes of defining the scope of the category. Other descriptors that could have been used but were rejected because they would either be too difficult to implement or they are not as equitable as coating usage include production rate, quantity of emissions, and solvent usage.

In selecting the quantity of coating used, we found that facilities in the source category for which data were available to us reported annual coating usage of at least 100 gallons per year. Those facilities that reported below this amount used coatings to assist in or repair minor defects during product assembly operations, and the surface coating operations were not integral to plastic parts and products surface coating. Therefore, the MACT floor determination and the estimated environmental, energy, cost, and economic impacts were based on facilities that used greater than 100 gallons per year. We are not aware of any surface coating operation at a major source that is dedicated to plastic parts and products surface coating that is using less than 100 gallons per year and, thus, did not evaluate whether the MACT level of control would be appropriate for such operations if they exist.

The source category does not include research or laboratory facilities or janitorial, building, and facility maintenance operations, or hobby shops that are operated for personal rather than commercial purposes. The source category also does not include coating of magnet wire, coating of plastics to produce fiberglass boats (except the

post-mold coating of personal watercraft or their parts), or the extrusion of plastic onto a plastic part or product to form a coating. These activities and operations are not comparable to the types and sizes of the dedicated facilities in terms of coating operations and applicable control techniques and are regulated or are being considered for regulation as part of other source categories. Thus, they are not considered to be within the scope of the source category. The post-mold coating of personal watercraft and their parts is considered within the scope of the source category.

The source category also does not include certain other coatings of plastic parts and products that are already being, or would be, regulated by another NESHAP as part of a different source category. We want to avoid overlap of source categories where coating of the same part would be subject to multiple rules.

Subcategory Selection. The statute gives us discretion to determine if and how to subcategorize. Once the floor has been determined for new or reconstructed and existing affected sources for a source category or subcategory, we must set MACT standards that are no less stringent than the MACT floor. Such standards must then be met by all sources within the source category or subcategory. A subcategory is a group of similar sources within a given source category. As part of the regulatory development process, we evaluate the similarities and differences between industry segments or groups of facilities comprising a source category. In establishing subcategories, we consider factors such as process operations (type of process, raw materials, chemistry/formulation data, associated equipment, and final products); emission characteristics (amount and type of HAP); control device applicability; and opportunities for pollution prevention. We may also consider existing regulations or guidance from States and other regulatory agencies in determining subcategories.

After reviewing survey responses from the industry, facility site visit reports, and information received from stakeholders meetings, we found that the plastic parts and products surface coating industry could be grouped into four subcategories: (1) General use coating, (2) TPO coating, (3) headlamp coating, and (4) assembled on-road vehicle coating. The general use coating subcategory includes all plastic parts and products coating operations except TPO, headlamp, and assembled on-road vehicle coating. This includes operations that coat a wide variety of substrates, surfaces, and types of plastic parts, as well as more specialized coating scenarios. Each of the subcategories includes coating operations, including associated surface preparation, equipment cleaning, mixing and storage, and waste handling.

The TPO coating is considered a separate subcategory from other plastic parts and products coating operations because the surface coating of TPO substrates requires the use of an adhesion promoter in order to apply subsequent coatings to the substrate. The adhesion promoters required in TPO coating operations contain significant levels of organic HAP because these materials contain organic HAP solvents that are capable of wetting the TPO substrate and swelling the rubber content of the substrate. Wetting of the substrate requires a solvent in the adhesion promoter that spreads out over the substrate, and this is dictated by the surface tension of the substrate and the solvent. The surface tensions of organic HAP solvents such as toluene, xylene, and other aromatics are ideal for wetting TPO while other non-HAP solvents have surface tensions too high to allow the adhesion promoter to spread out over the TPO part. In conjunction with adequate wetting of the TPO, the solvents in the adhesion promoter must be capable of migrating through the surface of the TPO substrate to swell the rubber content (elastomer) in the TPO. It is this optimum swelling of the rubber content in the TPO and the subsequent entanglement of the elastomer with the paint that provides the adhesion necessary to coat TPO successfully. Many non-HAP solvents either evaporate too quickly to adequately migrate through and swell the rubber or the solvents swell the rubber content of the TPO to the point of distortion of the part. Therefore, the adhesion promoters used in TPO coating operations often contain high levels of organic HAP solvents to achieve adequate wetting of the substrate, swelling of the rubber, and ultimately, adhesion of the paint to the substrate. The need to use these HAP-containing materials would make it technically difficult for existing facilities coating TPO to achieve the lower emission rates established by facilities that do not coat TPO. In summary, the technical differences in the type of coatings required due to the nature of the TPO substrate warrant a separate subcategory for TPO coating.

Headlamp coating is considered as a separate subcategory because these coating operations require specialized reflective argent coatings and hard clear coatings to meet U.S. Department of Transportation Motor Vehicle Safety Standards for reflectivity, brightness, color, and other performance criteria. The reflective argent coatings often used in automotive headlamp coating operations contain significant levels of organic HAP because these coatings achieve the required reflective aluminum appearance with aluminum pigments contained in the coating. These coatings require the use of aromatic or aliphatic HAP solvents in order to allow the aluminum pigments to rise to the surface correctly to create the reflective finish required by Federal safety standards. The hard clear coatings often used in automotive headlamp coating operations, such as the thermal cure and silicone hardcoat technologies, are required to provide the polycarbonate headlamp substrate with necessary abrasion and scratch resistance. Polycarbonate is currently the only plastic substrate approved by the National Highway Traffic Safety Administration for use in automotive headlamps because this material is shatter resistant and resists high levels of heat. The hard clear coatings used on the polycarbonate headlamps require the use of certain organic HAP solvents, such as butyl cellosolve, in these coatings to avoid etching of the substrate surface. Other non-HAP solvents can etch the surface of the polycarbonate which would deflect light and create performance and safety concerns for the final headlamp product. The need to use these materials would make it technically difficult for existing facilities coating automotive headlamps to achieve the lower emission rates established by facilities that do not coat headlamps. In summary, technical differences in the type of coatings required to meet unique end-product requirements warrant a separate subcategory for headlamp coating.

Assembled on-road vehicle coating is considered a separate subcategory because these coating operations are performed on fully-assembled vehicles that may contain heat sensitive parts. In addition, fully assembled on-road vehicles are physically larger than the other parts and products coated in this source category. The large size and presence of heat sensitive parts make certain lower-HAP technologies, such as heat-cured waterborne coatings, not feasible for use on fully assembled on-road vehicles and make it technically difficult for these sources to achieve the same emission level as sources that do not coat assembled on-road vehicles.

The problems associated with coating of assembled on-road vehicles were first raised by recreational vehicle manufacturers that build motor homes

and travel trailers. The EPA recognized that the same problems (*i.e.*, large part size and heat sensitive components) would be encountered by other facilities that coat plastic bodies on other types of assembled on-road vehicles. In addition, some facilities coat a mix of assembled on-road vehicles including automobiles, recreational vehicles, public transportation vehicles, and fleet trucks. Therefore, EPA decided to include all of these in the assembled on-road vehicle subcategory and not limit the subcategory to just recreational vehicles. The on-road vehicle subcategory is limited to only surface coating on fully assembled on-road vehicles in order to avoid an overlap with source categories that include assembly-line coating operations at automobile, light-duty truck, and heavy-duty truck manufacturing facilities.

The EPA also recognizes that most assembled on-road vehicles are a mix of plastic and metal body components. An assembled on-road vehicle coating operation is considered part of this subcategory if greater than 50 percent of the surface being coated on a vehicle is plastic.

B. How Did We Select the Regulated Pollutants?

Available emission data collected during the development of the proposed NESHAP show that the primary organic HAP emitted from the surface coating of plastic parts and products include MEK, MIBK, toluene, and xylenes. These compounds account for more than 85 percent of this category's nationwide organic HAP emissions. Other organic HAP emissions include EGBE and other glycol ethers. However, many other organic HAP are used, or can be used, in coatings, thinners, and cleaning materials. Therefore, the proposed rule would regulate emissions of all organic HAP.

Although most of the coatings used in this source category do not contain inorganic HAP, a few special purpose coatings used by a few facilities in this source category contain inorganic HAP such as chromium and lead. No inorganic HAP were reported in cleaning materials. If coatings are applied by spraying, inorganic HAP components remain as solids in the dry coating film on the parts being coated or are deposited onto the walls, floor, and grates of the spray booths in which they are applied. Some of the inorganic HAP particles would be entrained in the spray booth exhaust air. Although these emissions have not been quantified, we believe that the inorganic HAP emission levels are very low. Furthermore, emissions of these materials to the atmosphere are minimal because very few of the facilities in this source category use spray application techniques to apply coatings that contain inorganic HAP compounds. At this time, it does not appear that emissions of inorganic HAP from this source category warrant Federal regulation.

C. How Did We Select the Affected Source?

In selecting the affected source(s) for emission standards, our primary goal is to ensure that MACT is applied to HAP-emitting operations or activities within the source category being regulated. The affected source also serves to establish where new source MACT applies under a particular standard. Specifically, the General Provisions in subpart A of 40 CFR part 63 define the terms ''construction'' and ''reconstruction'' with reference to the term ''affected source'' (40 CFR 63.2) and provide that new source MACT applies when construction or reconstruction of an affected source occurs (40 CFR 63.5). The collection of equipment and activities evaluated in determining MACT (including the MACT floor) is used in defining the affected source.

When emission standards are based on a collection of emissions sources or total facility emissions, we select an affected source based on that same collection of emission sources or the total facility as well. This approach for defining the affected source broadly is particularly appropriate for industries where a single emission standard encompassing multiple emission points within the plant provides the opportunity and incentive for owners and operators to utilize control strategies that are more cost effective than if separate standards were established for each emission point within a facility.

The affected source for these proposed standards is broadly defined to include all operations associated with the coating of plastic parts and products and the cleaning of products, substrates or coating operation equipment in a subcategory (*i.e.*, TPO coating, headlamp coating, assembled on-road vehicle coating, or general use coating). These operations include storage and mixing of coatings and other materials; surface preparation of the plastic parts and products prior to coating application; coating application and flash-off, drying and curing of applied coatings; cleaning operations; and waste handling operations.

A few facilities have coating operations in more than one subcategory. For example, a few facilities have TPO coating operations that are in the TPO coating subcategory and also have other plastic parts and products coating operations that are in the general use coating subcategory. In such a case, the facility would have two separate affected sources: (1) The collection of all operations associated with the surface coating of TPO, and (2) the collection of all operations associated with general use coating. Each of these affected sources would be required to meet the emission limits that apply to its subcategory.

In selecting the affected source, we considered, for each operation, the extent to which HAP-containing materials are used and the amount of HAP that are emitted. Cleaning and coating application, flash-off, and curing/drying operations account for the majority of HAP emissions at plastic parts and products surface coating operations. These operations are included in the affected source.

Mixing, storage, and waste handling operations are included in the affected source. Because we are assuming that all the organic HAP in the materials entering the affected source are volatilized (emitted), emissions from operations occurring within the affected source (*e.g.*, mixing operations and storage) are accounted for in the estimate of total materials usage at the affected source.

A broad definition of the affected source was selected to provide maximum flexibility in complying with the proposed emission limits for organic HAP. In planning its compliance, each facility can select among available coatings, thinners and other additives, and cleaning materials, as well as the use of emissions capture and add-on control systems, to comply with the emission limits for each subcategory in the most cost-effective manner. Additional information on the plastic parts and products surface coating operations selected for regulation, and other operations, are included in the docket for the proposed standards.

D. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

The MACT floor analysis was performed using a sourcewide emission rate approach for each of the four subcategories: (1) General use coating, (2) TPO coating, (3) headlamp coating, and (4) assembled on-road vehicle coating. Because organic HAP emissions from an affected source are directly related to the materials used, and since it is very difficult to estimate the emissions that occur in any one area within the affected source, an emission

rate approach for affected sources in each subcategory is the most feasible way to determine emission limits. The emission rate approach covers the emissions from all areas within the affected source for each subcategory, including the application and curing process, equipment cleaning and surface preparation operations, mixing and storage of organic HAP materials, and waste handling.

The broad emission rate approach will allow for the maximum flexibility for those affected sources in the general use coating subcategory that perform many different types of coating applications and coat many different types of parts during a given year. It would be very difficult to define and set limits on each individual coating step within every coating process. Also, such rules would allow no flexibility and might not be technically feasible for every source. An emission limit that includes all coating operations within an affected source allows an owner/operator to determine how to most efficiently and cost effectively meet the emission limit for each subcategory.

To determine the existing and new source MACT floor for each subcategory, we determined the organic HAP emission rate for each facility in units of kg (lb) organic HAP emitted per kg (lb) of coating solids used for each subcategory. We then ranked the sources in each subcategory from lowest to highest emission rate to identify the best-performing sources. We used information obtained from industry survey responses and subsequent changes and clarifications received from the facilities to estimate the sourcewide organic HAP emission rate from each survey respondent. In the relatively few cases where a facility had coating operations in more than one subcategory (*e.g.*, a TPO coating operation, headlamp coating operation, or assembled on-road vehicle coating operation, and a general use coating operation), we calculated the organic HAP emission rate for each subcategory separately. For facilities that reported no add-on control devices, we calculated total organic HAP emissions by assuming that the organic HAP components in all coatings, thinners and other additives, and cleaning materials are emitted. If add-on control devices were reported, their capture and control efficiencies were taken into account. Sources included in the population for determining the MACT floor emission limits were those facilities that are identified as major sources based on their potential to emit, and those that were identified as ''synthetic minor'' sources.

For each of the four subcategories, the best-performing 12 percent of sources (or the best five sources) were the sources with the lowest calculated organic HAP emission rates. The average, or arithmetic mean, of the best-performing 12 percent of sources (or best five sources) was calculated to determine the MACT floor level for each subcategory. For the general use coating subcategory, the average of the best-performing 12 percent of existing sources was determined to be 0.16 kg (0.16 lb) organic HAP emitted per kg (lb) coating solids used. For the TPO coating subcategory, the average of the best-performing five existing sources was 0.23 kg (0.23 lb) organic HAP emitted per kg (lb) coating solids used. For the headlamp coating subcategory, the average of the best-performing five existing sources was 0.45 kg (0.45 lb) organic HAP emitted per kg (lb) coating solids used. For the assembled on-road vehicle coating subcategory, the average of the best-performing five existing sources was 1.34 kg (1.34 lb) organic HAP emitted per kg (lb) coating solids used.

The facilities represented by the average MACT floor emission level for each of the subcategories were reviewed to assess the achievability of the emission levels for the range of sources in the subcategory. The parameters that were considered in the review included coating types and technologies, application methods, curing temperatures, substrates, regulatory and performance specifications, location by state, part types, industry sectors and amounts of materials used. The review resulted in the determination that there were no differences in the ability of sources within a given subcategory to achieve the existing source MACT floor emission levels, and therefore, it appears that all sources could achieve the existing source MACT floor emission rate for their subcategory. The MACT floor memorandum in the docket includes additional details of our review. We request comment on the analysis and our conclusions.

The new source MACT floor level for the general use coating subcategory was determined to be the same as the MACT floor level for existing sources. For the general use coating subcategory, the facilities whose emission rates were lower than the existing source floor (0.16 kg (0.16 lb) organic HAP emitted per kg (lb) coating solids used) were evaluated to determine whether one of them could be considered the best-performing similar source and represent the diversity of operations included in the subcategory. We evaluated whether a single source with a lower emission rate was sufficiently similar to all other operations in the subcategory in terms of parts coated, coating types, and application methods used. No single source with an emission rate lower than the existing source MACT floor emission rate represented the full range of variability in the subcategory. For example, some of the facilities with the lowest emission rates used only one or two types of coatings with a narrow range of types of parts and coating application methods. Because a new facility might need to use a variety of coating types and technologies, we rejected facilities using only one or two types of coatings with a limited range of coated parts and application methods as similar sources for the purpose of setting a floor for new sources. Therefore, the new source MACT floor is determined to be the same as the MACT floor for existing sources. You may refer to the MACT floor memorandum in the docket for additional details.

The new source MACT floor levels for the TPO coating and headlamp coating subcategories are more stringent than the existing source MACT floor levels for these subcategories. For the TPO coating subcategory, the best-performing single source achieves an emission level of 0.17 kg (0.17 lb) organic HAP emitted per kg (lb) coating solids used. The facility is using a waterborne TPO coating process. Available information indicates that waterborne coatings are feasible for TPO substrates, including TPO used in external parts such as bumpers, and can meet performance specifications for the coated parts. When designing a new source, it would be feasible to design the TPO coating operations to use a waterborne coating process, or otherwise control emissions to achieve the emission level of the best-performing individual source in this subcategory. Therefore, the MACT floor for new sources in the TPO subcategory is determined to be 0.17 kg (0.17 lb) organic HAP emitted per kg (lb) coating solids used.

For the headlamp coating subcategory, the identification of best-performing similar source was conducted by reviewing the emission rates for existing headlamp coating sources, excluding any organic HAP and solids from adhesives that are used in these operations. The two best-performing headlamp coating sources both use low-HAP, high-solids adhesives in the headlamp operation to do final assembly of the headlamp. While the use of these adhesives is representative of the operations at these existing sources, it is unclear whether new sources in the headlamp coating

subcategory would be performing final assembly of the headlamps or would only be coating one component of the headlamp body. The use of adhesives in headlamp coating operations is purely dependent upon individual customer needs and business decisions on whether to assemble the headlamps at the same site. New headlamp sources with lower emission rates that include adhesives do not represent a similar source that would establish a new source level for the range of new sources in the subcategory. The two best-performing similar sources in the headlamp subcategory achieve emission rates (excluding adhesives) of 0.034 kg (0.034 lb) HAP emitted per kg (lb) coating solids used and 0.26 kg (0.26 lb) HAP emitted per kg (lb) coating solids used. The source that is achieving the emission rate of 0.034 kg (0.034 lb) HAP emitted per kg (lb) coating solids used has total enclosures and add-on control devices on a portion of its headlamp coating operation. It is uncertain whether other new headlamp coating sources would be able to use enclosures and add-on control devices and achieve this emission rate. Typical organics stream concentrations estimated for sources in this subcategory are generally too low to make the use of enclosures and control devices technically feasible. However, the source that is achieving the emission rate of 0.26 kg (0.26 lb) HAP emitted per kg (lb) coating solids used coats automotive headlamps using low-HAP, ultra violet (UV)-cure clearcoat technology and low-HAP, vacuum metallizing technology on polycarbonate substrate. Although this emission rate is not achievable for existing sources that do not currently have the capability to use UV-cure clearcoat technology or vacuum metallizing technology, it would be feasible to design a new headlamp coating process to use similar low-HAP, UV-cure clearcoats and low-HAP, vacuum metallizing technology, or otherwise control emissions to achieve the emission level of this best-performing similar source in the headlamp subcategory. Therefore, the MACT floor for new sources in the headlamp coating subcategory is determined to be 0.26 kg (0.26 lb) HAP emitted per kg (lb) coating solids used.

The new source MACT floor level for the assembled on-road vehicle coating subcategory was determined to be the same as the MACT floor level for existing sources. For this coating subcategory, the facilities whose emission rates were lower than the existing source floor (1.34 kg (1.34 lb) organic HAP emitted per kg (lb) coating solids used) were evaluated to determine whether one of them could be considered the best-performing similar source (and sufficiently representative of the diversity of operations encompassing the subcategory). Some of the variables considered were the types of vehicles coated (*e.g.*, motorhomes or towable RVs), the amount of the vehicle coated (either fully painted or only partially painted), whether multiple colors of basecoat were used and the overall ratio of basecoat to clearcoat, and whether or not repair coating operations were performed. Given the diversity of assembled on-road vehicle coating operations observed during EPA site visits and among the facilities present in the MACT database, EPA has determined that the sources with emission rates lower than the existing source MACT floor emission rate are not representative of the possible range of new sources in the subcategory. For example, some facilities may use only a single color of basecoat per vehicle, while others may use up to four colors of basecoat in more elaborate color schemes. Some facilities may apply a single layer of clearcoat while others may apply two or three layers for a more durable finish. Additionally, some facilities may perform a combination of these during a single compliance period. Given the variability in these factors, EPA does not believe that any single source with a lower emission rate than the existing source floor represents a similar source for the full range of variability for this subcategory. Therefore, the new source MACT floor is determined to be the same as the MACT floor for existing sources.

After the MACT floors have been determined for new and existing sources in a source category or subcategory, we must set emission standards that are technically achievable and no less stringent than the floors. Such standards must then be met by all sources within the category or subcategory. We identify and consider any reasonable regulatory alternatives that are ''beyond-the-floor,'' taking into account emissions reductions, cost, non-air quality health and environmental impacts, and energy requirements. These alternatives may be different for new and existing sources because of different MACT floors, and separate standards may be established for new and existing sources.

No options beyond the MACT floor could be identified for the general use coating subcategory that would be technically feasible for all new or existing facilities in the subcategory.

For the TPO coating subcategory, the use of a waterborne coating technology was identified as a beyond-the-floor option for existing sources to be considered. There are currently at least two existing sources that coat TPO using waterborne adhesion promoters and other coatings, and the new source MACT floor (0.17 kg (0.17 lb) HAP emitted per kg (lb) coating solids used) is based on a facility using the waterborne TPO coating process. We considered the beyond-the-floor option of requiring other existing sources coating TPO to switch their TPO coating operations to the waterborne process. However, requiring existing sources to switch to waterborne coating technology would require many costly retrofits to an existing TPO coating operation, including the addition of special pretreatment steps prior to coating application, the installation of curing ovens that aren't currently available at all existing TPO facilities, a lengthening of the coating line to allow for increased drying/flash-off time required for waterborne coatings, and a switch to stainless steel spray guns and lines to prevent corrosion of equipment. Information from an existing TPO source that retrofitted its existing coating lines to allow for waterborne TPO coating indicates that their cost to switch to waterborne coating was approximately $9 million. The HAP emissions reductions that would be achieved by a typical existing source complying with the MACT floor for TPO coating sources would be approximately 75 percent reduction. If the same typical existing source achieved the beyond the floor level of 0.17 kg (0.17 lb) HAP emitted per kg (lb) coating solids used, it would achieve approximately an additional 7 percent emission reduction. Without having information on the benefits that would be achieved by further reducing emissions beyond-the-floor, we do not believe the additional cost of going beyond the floor is warranted at this time without a further evaluation of risk. Therefore, we are not requiring beyond-the-floor levels of emissions reductions at this time. After implementation of these standards, we will evaluate the remaining health and environmental risks that may be posed as a result of exposure to emissions from the plastic parts and products surface coating source category. At that time, we will determine whether the additional costs are warranted in light of the available risk information.

For the headlamp coating subcategory, we considered two low-HAP technologies as beyond-the-floor options for existing sources. These technologies are UV-cure clearcoat and vacuum metallizing. There are currently two existing sources that use UV-cure

clearcoats and one existing source that uses vacuum metallizing to obtain the necessary reflectivity for the headlamps. The new source MACT floor for headlamp coating (0.26 kg (0.26 lb) HAP emitted per kg (lb) coating solids used) is based on a facility using both technologies to coat automotive headlamps.

We considered the beyond-the-floor option of requiring other existing sources to switch their coating operations to either of these low-HAP technologies. However, based on industry information, requiring existing sources to switch to UV-cure clearcoats or vacuum metallizing could require costly retrofits to an existing headlamp coating operation. The switch to UV-cure clearcoat technology could require extensive modifications to coating line design as well as the installation of UV-lamps to cure the coatings. Furthermore, since UV-cure processes do not have production capacities as high as thermal-cure clearcoat processes, existing sources could be required to build additional coating lines to maintain the same production capacity, and this would require more floor space.

The switch to vacuum metallizing from liquid argent coatings could require extensive modifications to the coating line design and raw materials used, as well as the purchase and installation of vacuum metallizing equipment. A single vacuum metallizing chamber can produce approximately 500,000 headlamp lens bodies a year and could cost approximately $2 million per chamber. Many sources could need multiple chambers. In addition to the purchase and installation of vacuum metallizing chambers, existing sources would need to purchase more expensive raw plastic materials (*i.e.*, thermoplastics) in order to achieve the beyond-the-floor level of 0.26 kg (0.26 lb) organic HAP emitted per kg (lb) coating solids used. Vacuum metallizing requires an absolutely smooth surface for proper reflectivity, and this can be achieved with thermoplastics. Less expensive thermoset plastics that can be used in liquid argent coating processes do not produce the necessary surface to vacuum metallize, without a pre-coating step that would result in additional HAP emissions. For an existing facility to switch to vacuum metallizing from liquid argent coating without adding a pre-coating step, the cost of thermoplastic raw materials could be three times the cost of thermoset materials. Therefore, assuming existing headlamp coating sources would require at least two vacuum metallizing chambers and a switch to thermoplastic raw materials, retrofitting an existing headlamp source could result in capital costs of at least $4 million for the metallizing chambers and an annual material purchase cost of three times current annual material costs. These costs do not account for additional process line modifications, oven replacements, and testing requirements that will vary in cost from source to source.

The HAP emission reductions that would be achieved by a typical existing source complying with the MACT floor for headlamp coating sources would be approximately 78 percent reduction. The incremental emission reduction that would be achieved for the same typical source to reduce its emissions to the beyond-the-floor level would be approximately 9 percent. Without having information on the benefits that would be achieved by further reducing emissions beyond-the-floor, we do not believe the additional cost of going beyond the floor is warranted at this time without a further evaluation of risk. Therefore, we are not requiring beyond-the-floor levels of emission reductions at this time. After implementation of these standards, we will evaluate the remaining health and environmental risks that may be posed as a result of exposure to emissions from the plastic parts and products surface coating source category. At that time, we will determine whether the additional costs are warranted in light of the available risk information.

No options beyond the MACT floor could be identified for the assembled on-road vehicle coating subcategory that would be technically feasible for all new or existing facilities in the subcategory.

Add-on controls were also reviewed to determine if a facility using add-on controls would represent a technically feasible beyond-the-floor option for all new or existing sources in any of the four subcategories. Add-on controls are used at a few individual facilities in the plastic parts and products surface coating source category and three of its four subcategories. No add-on controls are used in the assembled off-road vehicle subcategory. However, based on typical organics stream concentrations estimated for typical facilities in the four subcategories, add-on control techniques are generally not technically feasible. Therefore, add-on control techniques were not considered as a beyond-the-floor option.

For existing sources, we based the proposed standards on the existing source MACT floors for each of the four subcategories. As described earlier, we determined that beyond-the-floor options were not technically or economically feasible for all existing sources. For the same reasons, we based the proposed standards for new sources on the new source MACT floor.

The MACT levels of control for new and existing sources can be achieved in several different ways. Many sources would be able to use lower-HAP coatings, although they may not be available to meet the needs of every source. If a source is also using cleaning materials that contain organic HAP, then it may be able to switch to lower-HAP or non-HAP cleaning materials, which are widely available, to reduce the sourcewide organic HAP emissions rate to the MACT level. Other available options might be the use of capture systems and add-on control devices to reduce emissions.

We note here that our assumption, used in the development of the MACT floors, that 100 percent of the organic HAP in the materials used are emitted by the affected source would not apply when the source sends organic HAP-containing waste materials to a facility for treatment or disposal. We made that assumption because the industry survey responses provided little information as to the amount of organic HAP recovered and recycled or treated and disposed. We, therefore, concluded that offsite or onsite treatment and disposal may not be common within the plastic parts and products surface coating industry. We recognize, however, that some facilities may conduct such activities and should be allowed to account for such activities in determining their emissions. Thus, the proposed rule allows you to reduce the organic HAP emissions by the amount of any organic HAP contained in waste treated or disposed at a hazardous waste treatment, storage, and disposal facility that is regulated under 40 CFR part 262, 264, 265, or 266.

E. How Did We Select the Format of the Proposed Standards?

We selected the format of the proposed standards to be an emission rate expressed in terms of the mass of organic HAP emitted per mass of coating solids used. The emission rate format would allow plastic parts and products surface coating operation owners and operators flexibility in choosing any combination of means (including coating reformulation, use of lower-HAP or non-HAP materials, solvent elimination, work practices, and add-on control devices) that is workable for their particular situation to comply with the emission limits.

We selected mass of coating solids used as a component of the proposed format to normalize the rate of organic HAP emissions across all sizes and

types of facilities. We also selected kg (lb) organic HAP emitted per kg (lb) coating solids used because this is consistent with the data generally available in this industry through Material Safety Data Sheets and other manufacturers' formulation data. Considering the primary means of compliance is likely to be the use of low- and no-organic HAP coatings and other materials, this format best ensures that comparable levels of control are achieved by all affected sources. Also, this format allows sources flexibility to use a combination of emission capture and control systems, as well as low-HAP content coatings and other materials.

Other choices for the format of the proposed standards that we considered, but rejected, included a usage limit (mass per unit time) and a never-to-be-exceeded limit on the organic HAP content of each coating, solvent, or cleaning material. As it is not our intent to limit a facility's production under these proposed standards, we rejected a usage limit. We also rejected a never-to-be-exceeded organic HAP content limit in order to provide for averaging of HAP emissions from the materials used during the compliance period. In this decision, we considered the nature of the available data, as well as the need to allow for seasonal variations and frequent changes in some coating operations, such as job shops. Finally, we rejected a percent reduction limit as most plastic parts and products surface coating facilities are not expected to use capture systems and add-on control devices for compliance.

In lieu of emission standards, section 112(h) of the CAA allows work practice standards or other requirements to be established when a pollutant cannot be emitted through a conveyance or capture system, or when measurement is not practicable because of technological and economic limitations. Many plastic parts and products surface coating facilities use some type of work practice measure to reduce HAP emissions from mixing, cleaning, storage, and waste handling areas as part of their standard operating procedures. They use these measures to decrease solvent usage and minimize exposure to workers. However, we do not have data to quantify accurately the emissions reductions achievable by the work practice measures. The level of emissions depends on the type of equipment and the work practices used at the facility and would be very site-specific. For example, emissions from solvent-laden rags used to clean spray booths would depend on the method used to isolate and store such rags. In addition to lacking adequate data and information to quantify an emissions level for such operations, it is not practicable to measure emissions from these operations since they often occur in large open areas not amenable to testing. Therefore, work practice standards are appropriate for such operations under section 112(h) of the CAA.

Under the compliance options where emissions are reduced by using low- or no-HAP materials, the compliance determination procedure assumes that all the organic HAP in the materials entering the affected source are volatilized (emitted). Therefore, emissions from operations occurring within the affected source (*e.g.*, mixing operations) are accounted for in the determination of total materials usage and emission rate at the affected source. This may not be true when you comply by using capture systems and add-on control devices, particularly if some coating operations at your facility use capture systems and add-on control devices and others do not. In this case, you might determine usage of coatings and other materials in the controlled coating operations by some method other than total solvent purchase records. It is possible that emissions from mixing and transport of the materials prior to their use in the controlled coating operation might not be included in your usage and emission rate calculations. Emissions from mixing, storage, and waste handling operations are often not routed to the control devices and would not be practicable to measure for inclusion in a determination of compliance with the emission limit. Therefore, the proposed rule would require development and implementation of an emission reduction work practice plan to assure that emissions are reduced from such operations.

F. How Did We Select the Testing and Initial Compliance Requirements?

The proposed standards would allow you to choose among several options to demonstrate compliance with the proposed standards for organic HAP: compliant materials (*i.e.*, coatings and other materials with low or no organic HAP); emission rate without add-on controls option; or emission rate with add-on controls option.

Compliant Materials Option. You would be required to document the organic HAP content of all coatings (general use, TPO, headlamp, and assembled on-road vehicle coatings) on an as-received basis and show that each is less than the applicable emission limit. You would also have to show that each thinner, other additive, and cleaning material on an as-received basis contains no organic HAP. Note that ''no organic HAP'' is not intended to mean absolute zero. Materials that contain ''no organic HAP'' should be interpreted to mean materials that contain organic HAP levels below 0.1 percent by mass for OSHA-defined carcinogens and 1.0 percent by mass for other compounds.

You may use manufacturer's formulation data to demonstrate the HAP content of each material and the solids content of each coating. If you choose to use test data, you would use the following procedures on each coating, thinner or other additive, and cleaning material in the condition it is in when it is received from its manufacturer or supplier and before any alteration. If you recycle or reclaim coatings, thinners, cleaning materials, or other additives at your facility, you do not need to demonstrate that these materials meet the emission limit, provided they were initially demonstrated to comply with the compliant material option.

Method 311 is the method developed by EPA for determining the mass fraction of organic HAP in coatings and has been used in previous surface coating NESHAP. We have not identified any other methods that provide advantages over Method 311 for use in the proposed standards for determining organic HAP content.

Method 24 is the method developed by EPA for determining the mass fraction of volatile matter for coatings and can be used if you choose to determine the nonaqueous volatile matter content as a surrogate for organic HAP. In past standards, VOC emission control measures have been implemented in coating industries, with Method 24 as the compliance method. We have not identified any other methods that provide advantages over Method 24 for use in the proposed standards.

Method 24 is the method specified for determining the coating solids content of each coating. We have not identified any other methods that provide advantages over Method 24 for use in the proposed standards.

Emission Rate Without Add-on Controls Option. To demonstrate initial compliance using this option, you would calculate the organic HAP emission rate for one or more coating operations in each affected source, based on the mass of organic HAP in all coatings, thinners and other additives, and cleaners, and the mass of coating solids used during the compliance period. You would demonstrate that your emission rate does not exceed the

applicable emission limit for the affected source. You would determine the HAP content from manufacturer's formulation data or by using EPA Method 24 or 311 as discussed previously.

Emission Rate With Add-on Controls Option. If you use a capture system and control device other than a solvent recovery device for which you conduct a liquid-liquid material balance, you would be required to conduct an initial performance test of the system to determine its overall control efficiency using EPA Method 25 or 25A depending on the type of control device and the outlet concentration. You would also need to determine the capture efficiency of the capture system using EPA Methods 204 and 204A through 204F. For a solvent recovery system for which you conduct a liquid-liquid material balance, you would determine the quantity of volatile matter applied and the quantity recovered during the initial compliance period to determine its overall control efficiency. For both cases, the overall control efficiency would be combined with the monthly mass of organic HAP in the coatings and other materials used to calculate the monthly organic HAP emissions in kg (lb) HAP emitted. The monthly amount (kg (lb)) of coating solids used would also be determined. These values would be combined to calculate your emission rate for the 12-month compliance period according to equations in the proposed rule. You would demonstrate that your emission rate does not exceed the applicable emission limit for the affected source. If you conduct a performance test, you would also determine parameter operating limits during the test. The proposed test methods for the performance test have been required in many NSPS for industrial surface coating sources under 40 CFR part 60 and NESHAP under 40 CFR part 63. We have not identified any other methods that provide advantages over these methods.

G. How Did We Select the Continuous Compliance Requirements?

To demonstrate continuous compliance with either the compliant materials option or the emission rate without add-on controls option, you would need records of the data and calculations supporting your determination of the organic HAP content and solids content of each material used. You would also need records of the quantity of coatings and other materials used. For the compliant materials option, you would demonstrate compliance for each material used. For the emission rate without add-on controls option, you would demonstrate compliance with the applicable 12-month emission limit on a monthly basis using data from the previous 12 months of operation.

If you use the emission rate with add-on controls option, you would also be required to continuously monitor operating parameters of capture systems and control devices and maintain records of this monitoring. We selected the following requirements based on reasonable cost, ease of execution, and usefulness of the resulting data to both the owners or operators and EPA for ensuring continuous compliance with the emission limits and/or operating limits.

We are proposing that certain parameters be continuously monitored for the types of capture systems and control devices commonly used in the industry. These monitoring parameters have been used in other standards for similar industries and control devices. The values of these parameters are established during the initial or most recent performance test that demonstrates compliance. These values are your operating limits for the capture system and control device.

You would be required to determine 3-hour average values for most monitored parameters for the controlled coating operations within the affected source. We selected this averaging period to reflect operating conditions during the performance test to ensure the control system is continuously operating at the same or better control level as during a performance test demonstrating compliance with the emission limits.

If you conduct liquid-liquid material balances, you would need records of the quantity of volatile matter used and the quantity recovered by the solvent recovery system. You would demonstrate compliance with the emission limit on a monthly basis using data from the previous 12 months of operation.

H. How Did We Select the Notification, Recordkeeping, and Reporting Requirements?

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 2 of the proposed subpart PPPP. We evaluated the General Provisions requirements and included those we determined to be the minimum notification, recordkeeping, and reporting necessary to ensure compliance with, and effective enforcement of, the proposed standards, modifying them as appropriate for the plastic parts and products surface coating source category.

I. How Did We Select the Compliance Date?

You would be allowed 3 years to comply with the final standards for existing affected sources. This is the maximum period allowed by the CAA. We believe that 3 years for compliance is necessary to allow adequate time to accommodate the variety of compliance methods that existing sources may use. Most sources in this category would need this 3-year maximum amount of time to develop and test reformulated coatings, particularly those that may opt to comply using a different lower-emitting coating technology. We want to encourage the use of these pollution prevention technologies. In addition, time would be needed to establish records management systems required for enforcement purposes. Some sources may need the time to purchase and install emission capture and control systems. In such cases, you would need to obtain permits for the use of add-on controls, which will require time for approval from the permitting authority.

The CAA requires that new or reconstructed affected sources comply with standards immediately upon startup or the effective date of the final rule, whichever is later.

IV. Summary of Environmental, Energy, and Economic Impacts

For the purpose of assessing impacts, we assumed that all sources would convert to liquid coatings, thinners, and other additives with lower organic HAP content than those presently used and would convert to lower-HAP or no-HAP cleaning materials rather than using add-on control devices, except for those already using add-on control devices.

A. What Are the Air Impacts?

The 1997 nationwide baseline organic HAP emissions for the 202 major source plastic parts and products surface coating facilities of which EPA is aware are estimated to be 9,820 tpy. Implementation of the emission limitations as proposed would reduce these emissions by approximately 80 percent to 2,260 tpy. In addition, the proposed emission limitations will not result in any significant secondary air impacts. We expect that the majority of facilities will switch to low- or no-organic HAP-containing materials to comply with the standards rather than installing add-on control devices. Thus, increases in electricity consumption (which could lead to increases in emissions of nitrogen oxides, sulfur dioxide, carbon monoxide, and carbon

dioxide from electric utilities) will be minimal.

B. What Are the Cost Impacts?

The total capital cost (including monitoring costs) for existing sources is estimated to be approximately $803,830. The nationwide annual cost (including monitoring, recordkeeping, and reporting costs) for existing sources is approximately $10.7 million per year. Costs for new sources were based on an estimate of six new sources being constructed within 5 years after promulgation of the final standards. The total capital cost (including monitoring costs) for new sources is $28,000. The total annual cost (including monitoring, recordkeeping, and reporting costs) for new sources is estimated to be approximately $194,000 per year.

Cost estimates are based on information available to the Administrator and presented in the economic analysis of this rule. The costs are calculated assuming that the majority of sources would comply by using lower HAP-containing or non-HAP coatings and cleaning materials because such materials are generally available, and add-on controls would not be technically feasible for typical facilities. Waterborne coatings are a type of potentially lower-HAP coating which could be used by facilities and may contribute to higher costs due to increased drying times or temperatures that may be needed for waterborne coatings. However, the data available in the plastic parts ICR database did not indicate any definite relationship between coating types and drying times or curing temperatures. We also assumed that facilities presently equipped with add-on controls would continue to operate those control devices and capture systems and would perform the required performance tests and parameter monitoring. During development of the proposed emission limitations, limited information was available on the costs associated with the switch to low-HAP or non-HAP coatings and cleaning materials. Thus, we request comment on the assumptions and methodology used to determine these costs. Any comments should provide detailed information that includes identification of the coatings or cleaning materials (and associated costs) currently being used and the coatings or cleaning materials (and associated costs) that would be used to comply with the proposed emission limitations, as well as the basis for the cost information. You may refer to the Determination of Baseline Emissions and Costs and Emissions Impacts for New and Existing Sources in the Plastic Parts and Products Surface Coating Source Category memorandum in the docket for additional details.

C. What Are the Economic Impacts?

We prepared an economic impacts analysis (EIA) to evaluate the impacts the proposed rule would have on the plastic parts and products surface coating industry, consumers, and society. Economic impacts were calculated on a facility-specific basis, as well as on a market segment basis (*e.g.*, automobile manufacturing, sporting goods, electronics equipment, etc.). Economic impact indicators examined included price, output, and employment impacts.

The EIA shows that the expected price increase for affected plastic parts and products would be less than 0.1 percent as a result of the proposed standards. Therefore, we do not expect any adverse impact to occur for those industries that produce or consume plastic parts and products such as home appliances, computer hardware producers, motor vehicle manufacturers, and recreational vehicle manufacturers.

The distribution of costs across plastic parts and products production facilities is slanted toward the lower impact levels with many facilities incurring costs related only to annually recurring monitoring, reporting, and recordkeeping activities. The EIA indicates that these regulatory costs are expected to represent only 0.25 percent of the value of coating services, which should not cause producers to cease or alter their current operations. Hence, no firms or facilities are at risk of closures because of the proposed standards.

D. What Are the Non-air Health, Environmental, and Energy Impacts?

Based on information from the industry survey responses, we found no indication that the use of low-organic HAP content coatings, thinners and other additives, and cleaning materials at affected sources would result in any increase or decrease in non-air health, environmental, and energy impacts. There would be no change in the utility requirements associated with the use of these materials, so there would be no change in the amount of energy consumed as a result of the material conversion. We estimate that the proposed emission limitations will have a minimal impact on water quality because only a few facilities are expected to comply by making process modifications or by using add-on control devices that would generate wastewater. However, because many low-HAP and no-HAP materials are waterborne, an increase in wastewater generation from cleaning activities may result. Although additional wastewater may be generated by facilities switching to waterborne coatings, the amount of wastewater generated by these facilities is not expected to increase significantly. We also estimate that the proposed emission limitations will result in a decrease in the amount of both solid and hazardous waste from facilities, as the majority of facilities will be using lower organic HAP-containing materials which will result in a decrease in the amount of waste materials that would have to be disposed of as hazardous. In addition, we expect that the majority of facilities will comply by using low-HAP or no-organic HAP-containing materials rather than add-on control devices. Thus, there will be little or no increase in energy usage caused by the operation of add-on controls.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10,

1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the 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 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. Pursuant to the terms of Executive Order 13132, it has been determined that this proposed rule does not have ''federalism implications'' because it does not meet the necessary criteria. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, or the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate plastic parts and products surface coating facilities. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by 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 proposed rule is not subject to Executive Order 13045 because it does not establish environmental standards based on an assessment of health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, this proposed rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed 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 proposed rule is not likely to have any adverse energy effects. Affected sources are expected to comply with the proposed rule through pollution prevention rather than end-of-pipe controls, and therefore, there would be no increase in energy usage.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures 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 EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed 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. The maximum total annual cost of this proposed rule for any 1 year has been estimated to be slightly less than $11 million. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed 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 proposed rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601, et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 500 or 1,000 employees, depending on the size definition for the affected NAICS Code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. It should be noted that companies in 32 NAICS codes are affected by this proposed rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration size standards (13 CFR part 121).

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. We have determined that 67 of the 130 firms, or 51 percent of the total, affected by this proposed rule may be small entities. While the number of small firms appears to be a large proportion of the total number of affected firms, the small firms only experience 21 percent of the total national compliance cost of $11 million (1997 $). Of the 67 affected small firms, only three firms are estimated to have compliance costs that exceed 1 percent of their revenues. The maximum impact on any affected small entity is a compliance cost of 1.8 percent of its sales. Finally, while there is a difference between the median compliance cost-to-sales estimates for the affected small and large firms (0.08 percent compared to 0.01 percent for the large firms, and 0.03 percent across all affected firms), no adverse economic impacts are expected for either small or large firms affected by the proposed rule. Therefore, the affected small firms are not disproportionately affected by this proposed rule as compared to the affected large firms.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this proposed rule on small entities. The Agency has also reached out to small entities as part of our outreach to affected industries. Representatives of small entities have participated in stakeholder meetings held during the last 3 years as well as site visits conducted by the EPA for data gathering purposes. Small entities will be afforded extensive flexibility in demonstrating compliance through pollution prevention rather than the use of add-on control technology. We are proposing compliance options which give small entities flexibility in choosing the most cost-effective and least burdensome alternative for their operation. For example, a facility could purchase and use low-HAP coatings and other materials (*i.e.,* pollution prevention) that meet the proposed standards instead of using add-on capture and control systems. This method of compliance can be demonstrated with minimum burden by using purchase and usage records. No testing of materials would be required, as the facility owner could show that their coatings and other materials meet the emission limits by providing formulation data supplied by the manufacturer.

We continue to be interested in the potential impacts of the proposed standards on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to 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. 2044.01) and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr.* The information collection requirements are not effective until OMB approves them.

The information collection requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed standards would require maintaining records of all coatings, thinners and other additives, and cleaning materials data and calculations used to determine compliance. This information includes the volume used during each compliance period, mass fraction of organic HAP, density, and mass fraction of coating solids.

If an add-on control device is used, records must be kept of the capture efficiency of the capture system, destruction or removal efficiency of the add-on control device, and the monitored operating parameters. In addition, records must be kept of each calculation of the affected source's emissions for each 12-month compliance period and all data, calculations, test results, and other supporting information used to determine this value.

The monitoring, recordkeeping, and reporting burden in the 3rd year after the effective date of the promulgated rule is estimated to be 118,835 labor hours at a cost of $5.4 million for new and existing sources. This estimate includes the cost of determining and recording organic HAP content, solids content, and density, as needed, of the regulated materials, and developing a system for determining and recording the amount of each material used and performing the calculations needed for demonstrating compliance.

For those affected sources using an add-on control device to comply, the costs also include a one-time performance test and report (with repeat tests where needed) of the add-on control device, one-time purchase and installation of CPMS, one-time submission of a SSMP, and any required startup, shutdown, and malfunction reports. Total capital/startup costs associated with the monitoring requirements over the 3-year period of

the ICR are estimated at $133,000, with operation and maintenance costs of $655 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA'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. By U.S. Postal Service, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington DC 20460; or by courier, send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822T), 1301 Constitution Avenue, NW., Room 6143, Washington DC 20460 (202 566–1700); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 4, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by January 3, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency does not use available and applicable VCS.

This proposed rulemaking involves technical standards. The EPA proposes in this rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A–F, and 311. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A–F, and 311. The search and review results have been documented and are placed in the docket (Docket No. A–99–12) for this proposed rule.

Six VCS: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 91), and ASTM D5403–93 are already incorporated by reference in EPA Method 24. In addition, we are separately specifying the use of ASTM D1475–98, ''Standard Test Method for Density of Liquid Coatings, Inks, and Related Products,'' for measuring the density of individual coating components, such as organic solvents.

Five VCS: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are incorporated by reference in EPA Method 311. The VCS ASTM D4457–85 (Reapproved 1996), ''Standard Test Method for Determination of Dichloromethane (Methylene chloride) and 1,1,1-Trichloroethane (Methyl chloroform) in Paints and Coatings by Direct Injection into a Gas Chromatograph,'' is not a complete alternative to EPA Method 311, but is an acceptable alternative to EPA Method 311 for the following two HAP: (1) Dichloromethane (methylene chloride) and (2) 1,1,1-Trichlorethane (methyl chloroform). Therefore, EPA will incorporate by reference ASTM D4457 into 40 CFR 63.14 in the future.

In addition to the VCS EPA proposes to use in this proposed rule, the search for emission measurement procedures identified 17 other VCS. The EPA determined that 13 of these 17 standards were impractical alternatives to EPA test methods for the purposes of this proposed rulemaking. Therefore, EPA does not propose to adopt these standards today. (*See* docket A–99–12 for further information on the methods.)

The following four of the 17 VCS identified in this search were not available at the time the review was conducted for the purposes of this proposed rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; ISO/DIS 12039, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' for EPA Method 3A; and ISO/PWI 17895, ''Paints and Varnishes—Determination of the Volatile Organic Compound Content of Water-based Emulsion Paints,'' for EPA Method 24. While we are not proposing to include these four VCS in today's proposal, the EPA will consider the VCS when finalized.

The EPA takes comment on the compliance demonstration requirements in this proposed rulemaking and specifically invites the public to identify potentially-applicable VCS. Commentors should also explain why this proposed rule should adopt these VCS in lieu of or in addition to EPA's method. Emission test methods submitted for evaluation should be accompanied by a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

Sections 63.4541, 63.4551, 63.4561, 63.4565, and 63.4566 of the proposed standards list the EPA testing methods included in the proposed standards. Under 40 CFR 63.7(f) of the General Provisions, a source may apply to EPA for permission to use alternative test methods in place of any of the EPA testing methods.

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: November 8, 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 proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart PPPP to read as follows:

Subpart PPPP—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products

What This Subpart Covers

Sec.
63.4480 What is the purpose of this subpart?
63.4481 Am I subject to this subpart?
63.4482 What parts of my plant does this subpart cover?
63.4483 When do I have to comply with this subpart?

Emission Limitations

63.4490 What emission limits must I meet?
63.4491 What are my options for meeting the emission limits?
63.4492 What operating limits must I meet?
63.4493 What work practice standards must I meet?

General Compliance Requirements

63.4500 What are my general requirements for complying with this subpart?
63.4501 What parts of the General Provisions apply to me?

Notifications, Reports, and Records

63.4510 What notifications must I submit?
63.4520 What reports must I submit?
63.4530 What records must I keep?
63.4531 In what form and for how long must I keep my records?

Compliance Requirements for the Compliant Material Option

63.4540 By what date must I conduct the initial compliance demonstration?
63.4541 How do I demonstrate initial compliance with the emission limitations?
63.4542 How do I demonstrate continuous compliance with the emission limitations?

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Subpart PPPP—National Emission Standards for Hazardous Air Pollutants: Surface Coating of Plastic Parts and Products

What This Subpart Covers

§ 63.4480 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for plastic parts and products surface coating facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.4481 Am I subject to this subpart?

(a) Plastic parts and products include, but are not limited to, plastic components of the following types of products as well as the products themselves: motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products. Except as provided in paragraph (c) of this section, the source category to which this subpart applies is the surface coating of any plastic part or product, as described in paragraph (a)(1) of this section, and it includes the subcategories listed in paragraphs (a)(2) through (5) of this section.

(1) Surface coating is the application of coating to a substrate using, for example, spray guns or dip tanks, and associated activities, such as surface preparation, cleaning, mixing, and storage, etc.

(2) The general use coating subcategory includes all coating operations that are not headlamp coating operations, thermoplastic olefin (TPO) coating operations, or assembled on-road vehicle coating operations.

(3) The headlamp coating subcategory includes the surface coating of plastic components of the body of an automotive headlamp; typical coatings used are reflective argent coatings and clear topcoats.

(4) The TPO coating subcategory includes the surface coating of TPO substrates; typical coatings used are adhesion promoters, primers, color coatings, clear coatings and topcoats. The coating of TPO substrates on fully assembled on-road vehicles is not included in the TPO coating subcategory.

(5) The assembled on-road vehicle coating subcategory includes the surface coating of plastic parts on fully assembled motor vehicles and trailers intended for on-road use, including, but not limited to, plastic parts on: automobiles and light trucks that have been repaired after a collision or otherwise repainted, fleet delivery trucks, and motor homes and other recreational vehicles (including camping trailers and fifth wheels). The assembled on-road vehicle coating subcategory does not include the surface coating of plastic parts prior to their attachment to an on-road vehicle on an original equipment manufacturer's (OEM) assembly line. The assembled on-road vehicle coating subcategory also does not include the use of adhesives, sealants, and caulks used in assembling on-road vehicles.

(b) You are subject to this subpart if you own or operate a new, reconstructed, or existing affected source, as defined in § 63.4482, that uses 100 gallons per year, or more, of coatings in the surface coating of plastic parts and products defined in paragraph (a) of this section; and that is a major source, is located at a major source, or is part of a major source of emissions of hazardous air pollutants (HAP). A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (Mg) (10 tons) or more per year or any

combination of HAP at a rate of 22.68 Mg (25 tons) or more per year.

(c) This subpart does not apply to surface coating that meets the criteria of paragraphs (c)(1) through (12) of this section.

(1) Surface coating conducted at a source that uses only coatings, thinners and other additives, and cleaning materials that contain no organic HAP, as determined according to § 63.4541(a).

(2) Surface coating of plastic subject to the NESHAP for aerospace manufacturing and rework facilities (subpart GG of this part).

(3) Surface coating of plastic and wood subject to the NESHAP for wood furniture manufacturing facilities (subpart JJ of this part).

(4) Surface coating of plastic and metal subject to the NESHAP for large appliance surface coating (subpart NNNN of this part).

(5) Surface coating of plastic and metal subject to the NESHAP for metal furniture surface coating.[1]

(6) Surface coating of plastic and wood subject to the NESHAP for wood building products surface coating.[2]

(7) In-mold coating operations or gel coating operations in the manufacture of reinforced plastic composite parts subject to the NESHAP for reinforced plastics composites production.[3]

(8) Surface coating of parts that are pre-assembled from plastic and metal components, where greater than 50 percent of the coatings (by volume, determined on a rolling 12-month basis) are applied to the metal surfaces, and where the source is subject to the NESHAP for miscellaneous metal parts surface coating.[4] If your source is subject to the NESHAP for miscellaneous metal parts surface coating[5] and you can demonstrate that more than 50 percent of coatings are applied to metal surfaces, then compliance with the NESHAP for miscellaneous metal parts surface coating[6] constitutes compliance with subpart PPPP. You must maintain records (such as coating usage or surface area) to document that more than 50 percent of coatings are applied to metal surfaces.

(9) Surface coating that occurs at research or laboratory facilities or is part of janitorial, building, and facility maintenance operations, or hobby shops that are operated for personal rather than commercial purposes.

(10) Surface coating of magnet wire.

(11) Surface coating of fiberglass boats or parts of fiberglass boats where the facility is subject to the requirements for fiberglass boat manufacturing facilities in the NESHAP for boat manufacturing (subpart VVVV of this part), except where the surface coating of the boat is a post-mold coating operation performed on personal watercraft or parts of personal watercraft. This subpart applies to post-mold coating operations performed on personal watercraft or parts of personal watercraft. For the purposes of this subpart, a personal watercraft is defined as a vessel (boat) which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person or persons sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(12) Operations where plastic is extruded onto the plastic part or product to form a coating.

(d) If you own or operate an affected source that is subject to this subpart and at the same affected source you also perform surface coating subject to any other NESHAP in this part, you may choose to be subject to the requirements of the more stringent of the subparts for the entire surface coating facility. If you choose to be subject to the requirements of another subpart and demonstrate that, by doing so, your facility-wide HAP emissions in kilograms (kg) per year (tons per year) from surface coating operations will be less than or equal to the emissions achieved by complying separately with all applicable subparts, compliance with the more stringent NESHAP will constitute compliance with this subpart.

§ 63.4482 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, and existing affected source within each of the four subcategories listed in § 63.4481(a).

(b) The affected source is the collection of all of the items listed in paragraphs (b)(1) through (4) of this section that are used for surface coating of plastic parts and products within each subcategory:

(1) All coating operations as defined in § 63.4581;

(2) All storage containers and mixing vessels in which coatings, thinners and other additives, and cleaning materials are stored or mixed;

(3) All manual and automated equipment and containers used for conveying coatings, thinners and other additives, and cleaning materials; and

(4) All storage containers and all manual and automated equipment and containers used for conveying waste materials generated by a coating operation.

(c) An affected source is a new source if it meets the criteria in paragraph (c)(1) of this section and the criteria in either paragraph (c)(2) or (3) of this section.

(1) You commenced the construction of the source after December 4, 2002, by installing new coating equipment.

(2) The new coating equipment is used to coat plastic parts and products at a source where no plastic parts surface coating was previously performed.

(3) The new coating equipment is used to perform plastic parts and products coating in a subcategory that was not previously performed.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.4483 When do I have to comply with this subpart?

The date by which you must comply with this subpart is called the compliance date. The compliance date for each type of affected source is specified in paragraphs (a) through (c) of this section. The compliance date begins the initial compliance period during which you conduct the initial compliance demonstration described in §§ 63.4540, 63.4550, and 63.4560.

(a) For a new or reconstructed affected source, the compliance date is the applicable date in paragraph (a)(1) or (2) of this section:

(1) If the initial startup of your new or reconstructed affected source is before [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], the compliance date is [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(2) If the initial startup of your new or reconstructed affected source occurs after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], the compliance date is the date of initial startup of your affected source.

(b) For an existing affected source, the compliance date is the date 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(c) For an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP emissions, the compliance date is specified in paragraphs (c)(1) and (2) of this section.

(1) For any portion of the source that becomes a new or reconstructed affected source subject to this subpart, the

[1] Proposed at 67 FR 20206, April 24, 2002.
[2] Proposed at 67 FR 42400, June 21, 2002.
[3] Proposed at 66 FR 40323, August 2, 2001.
[4] Proposed at 67 FR 62780, August 13, 2002.
[5] Proposed at 67 FR 52780, August 13, 2002.
[6] Proposed at 67 FR 52780, August 13, 2002.

compliance date is the date of initial startup of the affected source or [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], whichever is later.

(2) For any portion of the source that becomes an existing affected source subject to this subpart, the compliance date is the date 1 year after the area source becomes a major source or 3 years after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], whichever is later.

(d) You must meet the notification requirements in § 63.4510 according to the dates specified in that section and in subpart A of this part. Some of the notifications must be submitted before the compliance dates described in paragraphs (a) through (c) of this section.

Emission Limitations

§ 63.4490 What emission limits must I meet?

(a) For a new or reconstructed affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit specified in paragraphs (a)(1) through (4) of this section, determined according to the requirements in § 63.4541, § 63.4551, or § 63.4561.

(1) For each new general use coating affected source, limit organic HAP emissions to no more than 0.16 kg (0.16 pound (lb)) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(2) For each new headlamp coating affected source, limit organic HAP emissions to no more than 0.26 kg (0.26 lb) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(3) For each new TPO coating affected source, limit organic HAP emissions to no more than 0.17 kg (0.17 lb) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(4) For each new assembled on-road vehicle coating affected source, limit organic HAP emissions to no more than 1.34 kg (1.34 lb) of organic HAP emitted per kg (lb) of coating solids used during each 12-month compliance period.

(b) For an existing affected source, you must limit organic HAP emissions to the atmosphere from the affected source to the applicable limit specified in paragraphs (b)(1) through (4) of this section, determined according to the requirements in § 63.4541, § 63.4551, or § 63.4561.

(1) For each existing general use coating affected source, limit organic HAP emissions to no more than 0.16 kg (0.16 lb) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(2) For each existing headlamp coating affected source, limit organic HAP emissions to no more than 0.45 kg (0.45 lb) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(3) For each existing TPO coating affected source, limit organic HAP emissions to no more than 0.23 kg (0.23 lb) of organic HAP emitted per kg (lb) coating solids used during each 12-month compliance period.

(4) For each existing assembled on-road vehicle coating affected source, limit organic HAP emissions to no more than 1.34 kg (1.34 lb) of organic HAP emitted per kg (lb) of coating solids used during each 12-month compliance period.

§ 63.4491 What are my options for meeting the emission limits?

You must include all coatings (as defined in § 63.4581), thinners and other additives, and cleaning materials used in the affected source when determining whether the organic HAP emission rate is equal to or less than the applicable emission limit in § 63.4490. To make this determination, you must use at least one of the three compliance options listed in paragraphs (a) through (c) of this section. You may apply any of the compliance options to an individual coating operation, or to multiple coating operations as a group, or to the entire affected source. You may use different compliance options for different coating operations, or at different times on the same coating operation. However, you may not use different compliance options at the same time on the same coating operation. If you switch between compliance options for any coating operation or group of coating operations, you must document this switch as required by § 63.4530(c), and you must report it in the next semiannual compliance report required in § 63.4520.

(a) *Compliant material option.* Demonstrate that the organic HAP content of each coating used in the coating operation(s) is less than or equal to the applicable emission limit in § 63.4490, and that each thinner, other additive, and cleaning material used contains no organic HAP. You must meet all the requirements of §§ 63.4540, 63.4541, and 63.4542 to demonstrate compliance with the applicable emission limit using this option.

(b) *Emission rate without add-on controls option.* Demonstrate that, based on the coatings, thinners and other additives, and cleaning materials used in the coating operation(s), the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.4490, calculated as a rolling 12-month emission rate and determined on a monthly basis. You must meet all the requirements of §§ 63.4550, 63.4551, and 63.4552 to demonstrate compliance with the emission limit using this option.

(c) *Emission rate with add-on controls option.* Demonstrate that, based on the coatings, thinners and other additives, cleaning materials used in the coating operation(s), and the emissions reductions achieved by emission capture systems and add-on controls, the organic HAP emission rate for the coating operation(s) is less than or equal to the applicable emission limit in § 63.4490, calculated as a rolling 12-month emission rate and determined on a monthly basis. If you use this compliance option, you must also demonstrate that all emission capture systems and add-on control devices for the coating operation(s) meet the operating limits required in § 63.4492, except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j), and that you meet the work practice standards required in § 63.4493. You must meet all the requirements of §§ 63.4560 through 63.4568 to demonstrate compliance with the emission limits, operating limits, and work practice standards using this option.

§ 63.4492 What operating limits must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any operating limits.

(b) For any controlled coating operation(s) on which you use the emission rate with add-on controls option, except those for which you use a solvent recovery system and conduct a liquid-liquid material balance according to § 63.4561(j), you must meet the operating limits specified in table 1 of this subpart. These operating limits apply to the emission capture and control systems on the coating operation(s) for which you use this option, and you must establish the operating limits during the performance test according to the requirements in § 63.4567. You must meet the operating limits at all times after you establish them.

(c) If you use an add-on control device other than those listed in table 1 of this

subpart, or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.4493 What work practice standards must I meet?

(a) For any coating operation(s) on which you use the compliant material option or the emission rate without add-on controls option, you are not required to meet any work practice standards.

(b) If you use the emission rate with add-on controls option, you must develop and implement a work practice plan to minimize organic HAP emissions from the storage, mixing, and conveying of coatings, thinners and other additives, and cleaning materials used in, and waste materials generated by, the controlled coating operation(s) for which you use this option; or you must meet an alternative standard as provided in paragraph (c) of this section. The plan must specify practices and procedures to ensure that, at a minimum, the elements specified in paragraphs (b)(1) through (5) of this section are implemented.

(1) All organic-HAP-containing coatings, thinners and other additives, cleaning materials, and waste materials must be stored in closed containers.

(2) Spills of organic-HAP-containing coatings, thinners and other additives, cleaning materials, and waste materials must be minimized.

(3) Organic-HAP-containing coatings, thinners and other additives, cleaning materials, and waste materials must be conveyed from one location to another in closed containers or pipes.

(4) Mixing vessels which contain organic-HAP-containing coatings and other materials must be closed except when adding to, removing, or mixing the contents.

(5) Emissions of organic HAP must be minimized during cleaning of storage, mixing, and conveying equipment.

(c) As provided in § 63.6(g), we, the U.S. Environmental Protection Agency (EPA), may choose to grant you permission to use an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.4500 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations in this subpart as specified in paragraphs (a)(1) and (2) of this section.

(1) Any coating operation(s) for which you use the compliant material option or the emission rate without add-on controls option, as specified in § 63.4491(a) and (b), must be in compliance with the applicable emission limit in § 63.4490 at all times.

(2) Any coating operation(s) for which you use the emission rate with add-on controls option, as specified in § 63.4491(c), must be in compliance with the emission limitations as specified in paragraphs (a)(2)(i) through (iii) of this section.

(i) The coating operation(s) must be in compliance with the applicable emission limit in § 63.4490 at all times except during periods of startup, shutdown, and malfunction.

(ii) The coating operation(s) must be in compliance with the operating limits for emission capture systems and add-on control devices required by § 63.4492 at all times except during periods of startup, shutdown, and malfunction, and except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j).

(iii) The coating operation(s) must be in compliance with the work practice standards in § 63.4493 at all times.

(b) You must always operate and maintain your affected source, including all air pollution control and monitoring equipment you use for purposes of complying with this subpart, according to the provisions in § 63.6(e)(1)(i).

(c) If your affected source uses an emission capture system and add-on control device, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3). The plan must address the startup, shutdown, and corrective actions in the event of a malfunction of the emission capture system or the add-on control device. The plan must also address any coating operation equipment that may cause increased emissions or that would affect capture efficiency if the process equipment malfunctions, such as conveyors that move parts among enclosures.

§ 63.4501 What parts of the General Provisions apply to me?

Table 2 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

Notifications, Reports, and Records

§ 63.4510 What notifications must I submit?

(a) *General.* You must submit the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9(b) through (e) and (h) that apply to you by the dates specified in those sections, except as provided in paragraphs (b) and (c) of this section.

(b) *Initial notification.* You must submit the Initial Notification required by § 63.9(b) for a new or reconstructed affected source no later than 120 days after initial startup or 120 days after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], whichever is later. For an existing affected source, you must submit the Initial Notification no later than 1 year after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(c) *Notification of compliance status.* You must submit the Notification of Compliance Status required by § 63.9(h) no later than 30 calendar days following the end of the initial compliance period described in § 63.4540, § 63.4550, or § 63.4560 that applies to your affected source. The Notification of Compliance Status must contain the information specified in paragraphs (c)(1) through (9) of this section and in § 63.9(h).

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period. The reporting period is the initial compliance period described in § 63.4540, § 63.4550, or § 63.4560 that applies to your affected source.

(4) Identification of the compliance option or options specified in § 63.4491 that you used on each coating operation in the affected source during the initial compliance period.

(5) Statement of whether or not the affected source achieved the emission limitations for the initial compliance period.

(6) If you had a deviation, include the information in paragraphs (c)(6)(i) and (ii) of this section.

(i) A description and statement of the cause of the deviation.

(ii) If you failed to meet the applicable emission limit in § 63.4490, include all the calculations you used to determine the kg (lb) of organic HAP emitted per kg (lb) coating solids used. You do not need to submit information provided by the materials suppliers or manufacturers, or test reports.

(7) For each of the data items listed in paragraphs (c)(7)(i) through (iv) of this section that is required by the compliance option(s) you used to demonstrate compliance with the emission limit, include an example of how you determined the value, including calculations and supporting data. Supporting data can include a copy of the information provided by the supplier or manufacturer of the example coating or material, or a summary of the

results of testing conducted according to § 63.4541(a), (b), or (c). You do not need to submit copies of any test reports.

(i) Mass fraction of organic HAP for one coating, for one thinner or other additive, and for one cleaning material.

(ii) Mass fraction of coating solids for one coating.

(iii) Density for one coating, one thinner or other additive, and one cleaning material, except that if you use the compliant material option, only the example coating density is required.

(iv) The amount of waste materials and the mass of organic HAP contained in the waste materials for which you are claiming an allowance in Equation 1 of § 63.4551.

(8) The calculation of kg (lb) of organic HAP emitted per kg (lb) coating solids used for the compliance option(s) you used, as specified in paragraphs (c)(8)(i) through (iii) of this section.

(i) For the compliant material option, provide an example calculation of the organic HAP content for one coating, using Equation 1 of § 63.4541.

(ii) For the emission rate without add-on controls option, provide the calculation of the total mass of organic HAP emissions for each month; the calculation of the total mass of coating solids used each month; and the calculation of the 12-month organic HAP emission rate, using Equations 1 and 1A through 1C, 2, and 3, respectively, of § 63.4551.

(iii) For the emission rate with add-on controls option, provide the calculation of the total mass of organic HAP emissions for the coatings, thinners and other additives, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4551; the calculation of the total mass of coating solids used each month using Equation 2 of § 63.4551; the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.4561 and Equations 2, 3, and 3A through 3C of § 63.4561, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.4561; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.4561.

(9) For the emission rate with add-on controls option, you must include the information specified in paragraphs (c)(9)(i) through (iv) of this section, except that the requirements in paragraphs (c)(9)(i) through (iii) of this section do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j).

(i) For each emission capture system, a summary of the data and copies of the calculations supporting the determination that the emission capture system is a permanent total enclosure (PTE) or a measurement of the emission capture system efficiency. Include a description of the protocol followed for measuring capture efficiency, summaries of any capture efficiency tests conducted, and any calculations supporting the capture efficiency determination. If you use the data quality objective (DQO) or lower confidence limit (LCL) approach, you must also include the statistical calculations to show you meet the DQO or LCL criteria in appendix A to subpart KK of this part. You do not need to submit complete test reports.

(ii) A summary of the results of each add-on control device performance test. You do not need to submit complete test reports.

(iii) A list of each emission capture system's and add-on control device's operating limits and a summary of the data used to calculate those limits.

(iv) A statement of whether or not you developed and implemented the work practice plan required by § 63.4493.

§ 63.4520 What reports must I submit?

(a) *Semiannual compliance reports.* You must submit semiannual compliance reports for each affected source according to the requirements of paragraphs (a)(1) through (7) of this section. The semiannual compliance reporting requirements may be satisfied by reports required under other parts of the Clean Air Act (CAA), as specified in paragraph (a)(2) of this section.

(1) *Dates.* Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must prepare and submit each semiannual compliance report according to the dates specified in paragraphs (a)(1)(i) through (iv) of this section. Note that the information reported for each of the months in the reporting period will be based on the last 12 months of data prior to the date of each monthly calculation.

(i) The first semiannual compliance report must cover the first semiannual reporting period which begins the day after the end of the initial compliance period described in § 63.4540, § 63.4550, or § 63.4560 that applies to your affected source and ends on June 30 or December 31, whichever occurs first following the end of the initial compliance period.

(ii) Each subsequent semiannual compliance report must cover the subsequent semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(iii) Each semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(iv) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the date specified in paragraph (a)(1)(iii) of this section.

(2) *Inclusion with title V report.* Each affected source that has 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 an affected source submits a semiannual compliance report pursuant to 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 semiannual compliance report includes all required information concerning deviations from any emission limitation in this subpart, its submission will be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a semiannual compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(3) *General requirements.* The semiannual compliance report must contain the information specified in paragraphs (a)(3)(i) through (v) of this section, and the information specified in paragraphs (a)(4) through (7) and (c)(1) of this section that is applicable to your affected source.

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period. The reporting period is the 6-month period ending on June 30 or December 31. Note that the information reported for each of the 6 months in the reporting period will be based on the last 12

months of data prior to the date of each monthly calculation.

(iv) Identification of the compliance option or options specified in § 63.4491 that you used on each coating operation during the reporting period. If you switched between compliance options during the reporting period, you must report the beginning and ending dates you used each option.

(v) If you used the emission rate without add-on controls or the emission rate with add-on controls compliance option (§ 63.4491(b) or (c)), the calculation results for each rolling 12-month organic HAP emission rate during the 6-month reporting period.

(4) *No deviations.* If there were no deviations from the emission limitations in §§ 63.4490, 63.4492, and 63.4493 that apply to you, the semiannual compliance report must include a statement that there were no deviations from the emission limitations during the reporting period. If you used the emission rate with add-on controls option and there were no periods during which the continuous parameter monitoring systems (CPMS) were out-of-control as specified in § 63.8(c)(7), the semiannual compliance report must include a statement that there were no periods during which the CPMS were out-of-control during the reporting period.

(5) *Deviations: Compliant material option.* If you used the compliant material option and there was a deviation from the applicable HAP content requirements in § 63.4490, the semiannual compliance report must contain the information in paragraphs (a)(5)(i) through (iv) of this section.

(i) Identification of each coating used that deviated from the applicable emission limit, and each thinner, other additive, and cleaning material used that contained organic HAP, and the dates and time periods each was used.

(ii) The calculation of the organic HAP content (using Equation 1 of § 63.4541) for each coating identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (e.g., information provided by coating suppliers or manufacturers, or test reports).

(iii) The determination of mass fraction of organic HAP for each thinner, other additive, and cleaning material identified in paragraph (a)(5)(i) of this section. You do not need to submit background data supporting this calculation (e.g., information provided by material suppliers or manufacturers, or test reports).

(iv) A statement of the cause of each deviation.

(6) *Deviations: Emission rate without add-on controls option.* If you used the emission rate without add-on controls option and there was a deviation from the applicable emission limit in § 63.4490, the semiannual compliance report must contain the information in paragraphs (a)(6)(i) through (iii) of this section.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.4490.

(ii) The calculations used to determine the 12-month organic HAP emission rate for the compliance period in which the deviation occurred. You must submit the calculations for Equations 1, 1A through 1C, 2, and 3 of § 63.4551; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4551(e)(4). You do not need to submit background data supporting these calculations (e.g., information provided by materials suppliers or manufacturers, or test reports).

(iii) A statement of the cause of each deviation.

(7) *Deviations: Emission rate with add-on controls option.* If you used the emission rate with add-on controls option and there was a deviation from an emission limitation (including any periods when emissions bypassed the add-on control device and were diverted to the atmosphere), the semiannual compliance report must contain the information in paragraphs (a)(7)(i) through (xiv) of this section. This includes periods of startup, shutdown, and malfunction during which deviations occurred.

(i) The beginning and ending dates of each compliance period during which the 12-month organic HAP emission rate exceeded the applicable emission limit in § 63.4490.

(ii) The calculations used to determine the 12-month organic HAP emission rate for each compliance period in which a deviation occurred. You must provide the calculation of the total mass of organic HAP emissions for the coatings, thinners and other additives, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4551; and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4551(e)(4); the calculation of the total mass of coating solids used each month, using Equation 2 of § 63.4551; the calculation of the mass of organic HAP emission reduction each month by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.4561, and Equations 2, 3, and 3A through 3C of § 63.4561, as applicable; the calculation of the total mass of organic HAP emissions each month, using Equation 4 of § 63.4561; and the calculation of the 12-month organic HAP emission rate, using Equation 5 of § 63.4561. You do not need to submit the background data supporting these calculations (e.g., information provided by materials suppliers or manufacturers, or test reports).

(iii) The date and time that each malfunction started and stopped.

(iv) A brief description of the CPMS.

(v) The date of the latest CPMS certification or audit.

(vi) The date and time that each CPMS was inoperative, except for zero (low-level) and high-level checks.

(vii) The date, time, and duration that each CPMS was out-of-control, including the information in § 63.8(c)(8).

(viii) The date and time period of each deviation from an operating limit in Table 1 of this subpart; date and time period of any bypass of the add-on control device; and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(ix) A summary of the total duration of each deviation from an operating limit in Table 1 of this subpart and each bypass of the add-on control device during the semiannual reporting period, and the total duration as a percent of the total source operating time during that semiannual reporting period.

(x) A breakdown of the total duration of the deviations from the operating limits in Table 1 of this subpart and bypasses of the add-on control device during the semiannual reporting period into those that were due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(xi) A summary of the total duration of CPMS downtime during the semiannual reporting period and the total duration of CPMS downtime as a percent of the total source operating time during that semiannual reporting period.

(xii) A description of any changes in the CPMS, coating operation, emission capture system, or add-on control device since the last semiannual reporting period.

(xiii) For each deviation from the work practice standards, a description of the deviation, the date and time period of the deviation, and the actions you took to correct the deviation.

(xiv) A statement of the cause of each deviation.

(b) *Performance test reports.* If you use the emission rate with add-on controls option, you must submit reports of performance test results for emission capture systems and add-on control devices no later than 60 days after completing the tests as specified in § 63.10(d)(2).

(c) *Startup, shutdown, malfunction reports.* If you used the emission rate with add-on controls option and you had a startup, shutdown, or malfunction during the semiannual reporting period, you must submit the reports specified in paragraphs (c)(1) and (2) of this section.

(1) If your actions were consistent with your startup, shutdown, and malfunction plan, you must include the information specified in § 63.10(d) in the semiannual compliance report required by paragraph (a) of this section.

(2) If your actions were not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report as described in paragraph (c)(2)(i) and (ii) of this section.

(i) You must describe the actions taken during the event in a report delivered by facsimile, telephone, or other means to the Administrator within 2 working days after starting actions that are inconsistent with the plan.

(ii) You must submit a letter to the Administrator within 7 working days after the end of the event, unless you have made alternative arrangements with the Administrator as specified in § 63.10(d)(5)(ii). The letter must contain the information specified in § 63.10(d)(5)(ii).

§ 63.4530 What records must I keep?

You must collect and keep records of the data and information specified in this section. Failure to collect and keep these records is a deviation from the applicable standard.

(a) A copy of each notification and report that you submitted to comply with this subpart, and the documentation supporting each notification and report.

(b) A current copy of information provided by materials suppliers or manufacturers, such as manufacturer's formulation data, or test data used to determine the mass fraction of organic HAP and density for each coating, thinner or other additive and cleaning material, and the mass fraction of coating solids for each coating. If you conducted testing to determine mass fraction of organic HAP, density, or mass fraction of coating solids, you must keep a copy of the complete test report. If you use information provided to you by the manufacturer or supplier of the material that was based on testing, you must keep the summary sheet of results provided to you by the manufacturer or supplier. You are not required to obtain the test report or other supporting documentation from the manufacturer or supplier.

(c) For each compliance period, the records specified in paragraphs (c)(1) through (4) of this section.

(1) A record of the coating operations on which you used each compliance option and the time periods (beginning and ending dates and times) you used each option.

(2) For the compliant material option, a record of the calculation of the organic HAP content for each coating, using Equation 1 of § 63.4541.

(3) For the emission rate without add-on controls option, a record of the calculation of the total mass of organic HAP emissions for the coatings, thinners and other additives, and cleaning materials used each month, using Equations 1, 1A through 1C, and 2 of § 63.4551 and, if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4551(e)(4); the calculation of the total mass of coating solids used each month using Equation 2 of § 63.4551; and the calculation of each 12-month organic HAP emission rate, using Equation 3 of § 63.4551.

(4) For the emission rate with add-on controls option, records of the calculations specified in paragraphs (c)(4)(i) through (v) of this section.

(i) The calculation of the total mass of organic HAP emissions for the coatings, thinners and other additives, and cleaning materials used each month, using Equations 1 and 1A through 1C of § 63.4551; and if applicable, the calculation used to determine mass of organic HAP in waste materials according to § 63.4551(e)(4);

(ii) The calculation of the total mass of coating solids used each month, using Equation 2 of § 63.4551;

(iii) The calculation of the mass of organic HAP emission reduction by emission capture systems and add-on control devices, using Equations 1 and 1A through 1D of § 63.4561 and Equations 2, 3, and 3A through 3C of § 63.4561, as applicable;

(iv) The calculation of each month's organic HAP emission rate, using Equation 4 of § 63.4561; and

(v) The calculation of each 12-month organic HAP emission rate, using Equation 5 of § 63.4561.

(d) A record of the name and volume of each coating, thinner or other additive, and cleaning material used during each compliance period. If you are using the compliant material option for all coatings at the source, you may maintain purchase records for each material used rather than a record of the volume used.

(e) A record of the mass fraction of organic HAP for each coating, thinner or other additive, and cleaning material used during each compliance period.

(f) A record of the mass fraction of coating solids for each coating used during each compliance period.

(g) If you use either the emission rate without add-on controls or the emission rate with add-on controls compliance option, the density for each coating, thinner or other additive, and cleaning material used during each compliance period.

(h) If you use an allowance in Equation 1 of § 63.4551 for organic HAP contained in waste materials sent to or designated for shipment to a treatment, storage, and disposal facility (TSDF) according to § 63.4551(e)(4), you must keep records of the information specified in paragraphs (h)(1) through (3) of this section.

(1) The name and address of each TSDF to which you sent waste materials for which you use an allowance in Equation 1 of § 63.4551, a statement of which subparts under 40 CFR parts 262, 264, 265, and 266 apply to the facility, and the date of each shipment.

(2) Identification of the coating operations producing waste materials included in each shipment and the month or months in which you used the allowance for these materials in Equation 1 of § 63.4551.

(3) The methodology used in accordance with § 63.4551(e)(4) to determine the total amount of waste materials sent to or the amount collected, stored, and designated for transport to a TSDF each month; and the methodology to determine the mass of organic HAP contained in these waste materials. This must include the sources for all data used in the determination, methods used to generate the data, frequency of testing or monitoring, and supporting calculations and documentation, including the waste manifest for each shipment.

(i) [Reserved]

(j) You must keep records of the date, time, and duration of each deviation.

(k) If you use the emission rate with add-on controls option, you must keep the records specified in paragraphs (k)(1) through (8) of this section.

(1) For each deviation, a record of whether the deviation occurred during a period of startup, shutdown, or malfunction.

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) The records required to show continuous compliance with each operating limit specified in Table 1 of this subpart that applies to you.

(4) For each capture system that is a PTE, the data and documentation you used to support a determination that the capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and has a capture efficiency of 100 percent, as specified in § 63.4565(a).

(5) For each capture system that is not a PTE, the data and documentation you used to determine capture efficiency according to the requirements specified in §§ 63.4564 and 63.4565(b) through (e), including the records specified in paragraphs (k)(5)(i) through (iii) of this section that apply to you.

(i) *Records for a liquid-to-uncaptured gas protocol using a temporary total enclosure or building enclosure.* Records of the mass of total volatile hydrocarbon (TVH) as measured by Method 204A or F of appendix M to 40 CFR part 51 for each material used in the coating operation, and the total TVH for all materials used during each capture efficiency test run, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run, as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(ii) *Records for a gas-to-gas protocol using a temporary total enclosure or a building enclosure.* Records of the mass of TVH emissions captured by the emission capture system as measured by Method 204B or C of appendix M to 40 CFR part 51 at the inlet to the add-on control device, including a copy of the test report. Records of the mass of TVH emissions not captured by the capture system that exited the temporary total enclosure or building enclosure during each capture efficiency test run as measured by Method 204D or E of appendix M to 40 CFR part 51, including a copy of the test report. Records documenting that the enclosure used for the capture efficiency test met the criteria in Method 204 of appendix M to 40 CFR part 51 for either a temporary total enclosure or a building enclosure.

(iii) *Records for an alternative protocol.* Records needed to document a capture efficiency determination using an alternative method or protocol as specified in § 63.4565(e), if applicable.

(6) The records specified in paragraphs (k)(6)(i) and (ii) of this section for each add-on control device organic HAP destruction or removal efficiency determination as specified in § 63.4566.

(i) Records of each add-on control device performance test conducted according to §§ 63.4564 and 63.4566.

(ii) Records of the coating operation conditions during the add-on control device performance test showing that the performance test was conducted under representative operating conditions.

(7) Records of the data and calculations you used to establish the emission capture and add-on control device operating limits as specified in § 63.4567 and to document compliance with the operating limits as specified in Table 1 of this subpart.

(8) A record of the work practice plan required by § 63.4493 and documentation that you are implementing the plan on a continuous basis.

§ 63.4531 In what form and for how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1). Where appropriate, the records may be maintained as electronic spreadsheets or as a database.

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records off site for the remaining 3 years.

Compliance Requirements for the Compliant Material Option

§ 63.4540 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements in § 63.4541. The initial compliance period begins on the applicable compliance date specified in § 63.4483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through that month plus the next 12 months. The initial compliance demonstration includes the calculations according to § 63.4541 and supporting documentation showing that during the initial compliance period, you used no coating with an organic HAP content that exceeded the applicable emission limit in § 63.4490, and that you used no thinners, other additives, or cleaning materials that contained organic HAP as determined according to § 63.4541(a).

§ 63.4541 How do I demonstrate initial compliance with the emission limitations?

You may use the compliant material option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the emission rate without add-on controls option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the compliant material option, the coating operation or group of coating operations must use no coating with an organic HAP content that exceeds the applicable emission limit in § 63.4490 and must use no thinner or other additive, or cleaning material that contains organic HAP as determined according to this section. Any coating operation for which you use the compliant material option is not required to meet the operating limits or work practice standards required in §§ 63.4492 and 63.4493, respectively. You must conduct a separate initial compliance demonstration for each general use coating, TPO coating, headlamp coating, and assembled on-road vehicle coating affected source. You must meet all the requirements of this section. Use the procedures in this section on each coating, thinner or other additive, and cleaning material in the condition it is in when it is received from its manufacturer or supplier and prior to any alteration. You do not need to redetermine the HAP content of coatings, thinners and other additives, and cleaning materials that are reclaimed onsite and reused in the coating operation for which you use the compliant material option, provided these materials in their condition as received were demonstrated to comply with the compliant material option.

(a) *Determine the mass fraction of organic HAP for each material used.* You must determine the mass fraction of organic HAP for each coating, thinner or other additive, and cleaning material used during the compliance period by

using one of the options in paragraphs (a)(1) through (5) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of organic HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when performing a Method 311 test.

(i) Count each organic HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not have to count it. Express the mass fraction of each organic HAP you count as a value truncated to four places after the decimal point (*e.g.*, 0.3791).

(ii) Calculate the total mass fraction of organic HAP in the test material by adding up the individual organic HAP mass fractions and truncating the result to three places after the decimal point (*e.g.*, 0.763).

(2) *Method 24 (appendix A to 40 CFR part 60).* For coatings, you may use Method 24 to determine the mass fraction of nonaqueous volatile matter and use that value as a substitute for mass fraction of organic HAP.

(3) *Alternative method.* You may use an alternative test method for determining the mass fraction of organic HAP once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(4) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) through (3) of this section, such as manufacturer's formulation data, if it represents each organic HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to count it. If there is a disagreement between such information and results of a test conducted according to paragraphs (a)(1) through (3) of this section, then the test method results will take precedence.

(5) *Solvent blends.* Solvent blends may be listed as single components for some materials in data provided by manufacturers or suppliers. Solvent blends may contain organic HAP which must be counted toward the total organic HAP mass fraction of the materials. When test data and manufacturer's data for solvent blends are not available, you may use the default values for the mass fraction of organic HAP in these solvent blends listed in Table 3 or 4 of this subpart. If you use the tables, you must use the values in Table 3 for all solvent blends that match Table 3 entries, and you may only use Table 4 if the solvent blends in the materials you use do not match any of the solvent blends in Table 3 and you only know whether the blend is aliphatic or aromatic. However, if the results of a Method 311 test indicate higher values than those listed on Table 3 or 4 of this subpart, the Method 311 results will take precedence.

(b) *Determine the mass fraction of coating solids for each coating.* You must determine the mass fraction of coating solids (pounds of coating solids per pound of coating) for each coating used during the compliance period by a test or by information provided by the supplier or the manufacturer of the material, as specified in paragraphs (b)(1) through (3) of this section. If test results obtained according to paragraph (b)(1) or (2) of this section do not agree with the information obtained under paragraph (b)(3) of this section, the test results will take precedence.

(1) *Method 24 (appendix A to 40 CFR part 60).* You may use Method 24 for determining the mass fraction of solids of coatings.

(2) *Alternative method.* You may use an alternative test method for determining the solids content of each coating once the Administrator has approved it. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(3) *Information from the supplier or manufacturer of the material.* You may obtain the mass fraction of coating solids for each coating from the supplier or manufacturer. If there is disagreement between such information and the test method results, then the test method results will take precedence.

(c) *Calculate the organic HAP content of each coating.* Calculate the organic HAP content, kg (lb) of organic HAP emitted per kg (lb) coating solids used, of each coating used during the compliance period, using Equation 1 of this section:

$$H_c = \frac{W_c}{S_c} \qquad \text{(Eq. 1)}$$

Where:

H_c = organic HAP content of the coating, kg (lb) of organic HAP emitted per kg (lb) coating solids used.

W_c = mass fraction of organic HAP in the coating, lb organic HAP per lb coating, determined according to paragraph (a) of this section.

S_c = mass fraction of coating solids, lb coating solids per lb coating, determined according to paragraph (b) of this section.

(d) *Compliance demonstration.* The calculated organic HAP content for each coating used during the initial compliance period must be less than or equal to the applicable emission limit in § 63.4490; and each thinner or other additive, and cleaning material used during the initial compliance period must contain no organic HAP, determined according to paragraph (a) of this section. You must keep all records required by §§ 63.4530 and 63.4531. As part of the Notification of Compliance Status required in § 63.4510, you must identify the coating operation(s) for which you used the compliant material option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.4490, and you used no thinners, other additives, or cleaning materials that contained organic HAP, determined according to the procedures in paragraph (a) of this section.

§ 63.4542 How do I demonstrate continuous compliance with the emission limitations?

(a) For each compliance period to demonstrate continuous compliance, you must use no coating for which the organic HAP content (determined using Equation 1 of § 63.4541) exceeds the applicable emission limit in § 63.4490, and use no thinner or other additive, or cleaning material that contains organic HAP, determined according to § 63.4541(a). A compliance period consists of 12 months. Each month, after the end of the initial compliance period described in § 63.4540, is the end of a compliance period consisting of that month and the preceding 11 months.

(b) If you choose to comply with the emission limitations by using the compliant material option, the use of any coating, thinner or other additive, or cleaning material that does not meet the criteria specified in paragraph (a) of this section is a deviation from the emission limitations that must be reported as specified in §§ 63.4510(c)(6) and 63.4520(a)(5).

(c) As part of each semiannual compliance report required by § 63.4520, you must identify the coating

operation(s) for which you used the compliant material option. If there were no deviations from the applicable emission limit in § 63.4490, submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because you used no coatings for which the organic HAP content exceeded the applicable emission limit in § 63.4490, and you used no thinner or other additive, or cleaning material that contained organic HAP, determined according to § 63.4541(a).

(d) You must maintain records as specified in §§ 63.4530 and 63.4531.

Compliance Requirements for the Emission Rate Without Add-On Controls Option

§ 63.4550 By what date must I conduct the initial compliance demonstration?

You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4551. The initial compliance period begins on the applicable compliance date specified in § 63.4483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and mass of coating solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the calculations according to § 63.4551 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.4490.

§ 63.4551 How do I demonstrate initial compliance with the emission limitations?

You may use the emission rate without add-on controls option for any individual coating operation, for any group of coating operations in the affected source, or for all the coating operations in the affected source. You must use either the compliant material option or the emission rate with add-on controls option for any coating operation in the affected source for which you do not use this option. To demonstrate initial compliance using the emission rate without add-on controls option, the coating operation or group of coating operations must meet the applicable emission limit in § 63.4490, but is not required to meet the operating limits or work practice standards in §§ 63.4492 and 63.4493, respectively. You must conduct a separate initial compliance demonstration for each general use coating, TPO coating, headlamp coating, and assembled on-road vehicle coating affected source. You must meet all the requirements of this section. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners or other additives, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate with add-on controls option or coating operations in a different affected source in a different subcategory. You do not need to redetermine the mass of organic HAP in coatings, thinners and other additives, or cleaning materials that have been reclaimed onsite and reused in the coating operation for which you use the emission rate without add-on controls option.

(a) *Determine the mass fraction of organic HAP for each material.* Determine the mass fraction of organic HAP for each coating, thinner or other additive, and cleaning material used during each month according to the requirements in § 63.4541(a).

(b) *Determine the mass fraction of coating solids.* Determine the mass fraction of coating solids (pounds of solids per pound of coating) for each coating used during each month according to the requirements in § 63.4541(b).

(c) *Determine the density of each material.* Determine the density of each coating, thinner or other additive, and cleaning material used during each month from test results using ASTM Method D1475–98, information from the supplier or manufacturer of the material, or reference sources providing density or specific gravity data for pure materials. If there is disagreement between ASTM Method D1475–98 test results and other such information sources, the test results will take precedence.

(d) *Determine the volume of each material used.* Determine the volume (gallons) of each coating, thinner or other additive, and cleaning material used during each month by measurement or usage records.

(e) *Calculate the mass of organic HAP emissions.* The mass of organic HAP emissions is the combined mass of organic HAP contained in all coatings, thinners and other additives, and cleaning materials used during each month minus the organic HAP in certain waste materials. Calculate the mass of organic HAP emissions using Equation 1 of this section.

$$H_e = A + B + C - R_w \qquad \text{(Eq. 1)}$$

Where:

H_e = total mass of organic HAP emissions during the month, lb.

A = total mass of organic HAP in the coatings used during the month, lb, as calculated in Equation 1A of this section.

B = total mass of organic HAP in the thinners and other additives used during the month, lb, as calculated in Equation 1B of this section.

C = total mass of organic HAP in the cleaning materials used during the month, lb, as calculated in Equation 1C of this section.

R_w = total mass of organic HAP in waste materials sent or designated for shipment to a hazardous waste TSDF for treatment or disposal during the month, lb, determined according to paragraph (e)(4) of this section. (You may assign a value of zero to R_w if you do not wish to use this allowance.)

(1) Calculate the lb organic HAP in the coatings used during the month using Equation 1A of this section:

$$A = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A = total mass of organic HAP in the coatings used during the month, lb.

$Vol_{c,i}$ = total volume of coating, i, used during the month, gallons.

$D_{c,i}$ = density of coating, i, lb coating per gallon coating.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, lb organic HAP per lb coating.

m = number of different coatings used during the month.

(2) Calculate the lb of organic HAP in the thinners and other additives used

during the month using Equation 1B of this section:

$$B = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B = total mass of organic HAP in the thinners and other additives used during the month, lb.

$Vol_{t,j}$ = total volume of thinner or other additive, j, used during the month, gallons.

$D_{t,j}$ = density of thinner or other additive, j, lb per gallon.

$W_{t,j}$ = mass fraction of organic HAP in thinner or other additive, j, lb organic HAP per lb thinner.

n = number of different thinners or other additives used during the month.

(3) Calculate the lb organic HAP in the cleaning materials used during the month using Equation 1C of this section:

$$C = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 1C)}$$

Where:

C = total mass of organic HAP in the cleaning materials used during the month, lb.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month, gallons.

$D_{s,k}$ = density of cleaning material, k, lb per gallon.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, lb organic HAP per lb material.

p = number of different cleaning materials used during the month.

(4) If you choose to account for the mass of organic HAP contained in waste materials sent or designated for shipment to a hazardous waste TSDF in Equation 1 of this section, then you must determine it according to paragraphs (e)(4)(i) through (iv) of this section.

(i) You may include in the determination only waste materials that are generated by coating operations in the affected source for which you use Equation 1 of this section and that will be treated or disposed of by a facility that is regulated as a TSDF under 40 CFR part 262, 264, 265, or 266. The TSDF may be either off-site or on-site. You may not include organic HAP contained in wastewater.

(ii) You must determine either the amount of the waste materials sent to a TSDF during the month or the amount collected and stored during the month and designated for future transport to a TSDF. Do not include in your determination any waste materials sent to a TSDF during a month if you have already included them in the amount collected and stored during that month or a previous month.

(iii) Determine the total mass of organic HAP contained in the waste materials specified in paragraph (e)(4)(ii) of this section.

(iv) You must document the methodology you use to determine the amount of waste materials and the total mass of organic HAP they contain, as required in § 63.4530(h). To the extent that waste manifests include this, they may be used as part of the documentation of the amount of waste materials and mass of organic HAP contained in them.

(f) *Calculate the total mass of coating solids used.* Determine the total mass of coating solids used, lb, which is the combined mass of coating solids for all coatings used during each month using Equation 2 of this section:

$$M_{st} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(M_{s,i}\right) \qquad \text{(Eq. 2)}$$

Where:

M_{st} = total mass of coating solids used during the month, lb.

$Vol_{c,i}$ = total volume of coating, i, used during the month, gallons.

$D_{c,i}$ = density of coating, i, lbs per gallon coating, determined according to 63.4551(c).

$M_{s,i}$ = mass fraction of coating solids for coating, i, lbs solids per lb coating, determined according to § 63.4541(b).

m = number of coatings used during the month.

(g) Calculate the organic HAP emission rate for the 12-month compliance period, kg (lb) of organic HAP emitted per kg (lb) coating solids used, using Equation 3 of this section:

$$H_{yr} = \frac{\sum_{y=1}^{12} H_e}{\sum_{y=1}^{12} M_{st}} \qquad \text{(Eq. 3)}$$

Where:

H_{yr} = average organic HAP emission rate for the 12-month compliance period, kg (lb) of organic HAP emitted per kg (lb) coating solids used.

H_e = total mass of organic HAP emissions from all materials used during month, y, lb, as calculated by Equation 1 of this section.

M_{st} = total mass of coating solids used during month, y, lb, as calculated by Equation 2 of this section.

y = identifier for months.

(h) *Compliance demonstration.* The organic HAP emission rate for the initial 12-month compliance period must be less than or equal to the applicable emission limit in § 63.4490. You must keep all records as required by §§ 63.4530 and 63.4531. As part of the Notification of Compliance Status required by § 63.4510, you must identify the coating operation(s) for which you used the emission rate without add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4490, determined according to the procedures in this section.

§ 63.4552 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance, the organic HAP emission rate for each compliance period, determined according to § 63.4551(a) through (g), must be less than or equal to the applicable emission limit in § 63.4490. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.4550 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.4551(a) through (g) on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.4490, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.4510(c)(6) and 63.4520(a)(6).

(c) As part of each semiannual compliance report required by § 63.4520, you must identify the coating operation(s) for which you used the emission rate without add-on controls option. If there were no deviations from the emission limitations, you must submit a statement that the coating operation(s) was (were) in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4490, determined according to § 63.4551(a) through (g).

(d) You must maintain records as specified in §§ 63.4530 and 63.4531.

Compliance Requirements for the Emission Rate With Add-On Controls Option

§ 63.4560 By what date must I conduct performance tests and other initial compliance demonstrations?

(a) *New and reconstructed affected sources.* For a new or reconstructed affected source, you must meet the requirements of paragraphs (a)(1) through (4) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j), you must conduct a performance test of each capture system and add-on control device according to §§ 63.4564, 63.4565, and 63.4566 and establish the operating limits required by § 63.4492 no later than 180 days after the applicable compliance date specified in § 63.4483. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4561(j), you must initiate the first material balance no later than the applicable compliance date specified in § 63.4483.

(2) You must develop and begin implementing the work practice plan required by § 63.4493 no later than the compliance date specified in § 63.4483.

(3) You must complete the initial compliance demonstration for the initial compliance period according to the requirements of § 63.4561. The initial compliance period begins on the applicable compliance date specified in § 63.4483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and mass of coatings solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4564, 63.4565, and 63.4566; results of liquid-liquid material balances conducted according to § 63.4561(j); calculations according to § 63.4561 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.4490; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4568; and documentation of whether you developed and implemented the work practice plan required by § 63.4493.

(4) You do not need to comply with the operating limits for the emission capture system and add-on control device required by § 63.4492 until after you have completed the performance tests specified in paragraph (a)(1) of this section. Instead, you must maintain a log detailing the operation and maintenance of the emission capture system, add-on control device, and continuous parameter monitors during the period between the compliance date and the performance test. You must begin complying with the operating limits for your affected source on the date you complete the performance tests specified in paragraph (a)(1) of this section. The requirements in this paragraph do not apply to solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements in § 63.4561(j).

(b) *Existing affected sources.* For an existing affected source, you must meet the requirements of paragraphs (b)(1) through (3) of this section.

(1) All emission capture systems, add-on control devices, and CPMS must be installed and operating no later than the applicable compliance date specified in § 63.4483. Except for solvent recovery systems for which you conduct liquid-liquid material balances according to § 63.4561(j), you must conduct a performance test of each capture system and add-on control device according to the procedures in §§ 63.4564, 63.4565, and 63.4566 and establish the operating limits required by § 63.4492 no later than the compliance date specified in § 63.4483. For a solvent recovery system for which you conduct liquid-liquid material balances according to § 63.4561(j), you must initiate the first material balance no later than the compliance date specified in § 63.4483.

(2) You must develop and begin implementing the work practice plan required by § 63.4493 no later than the compliance date specified in § 63.4483.

(3) You must complete the compliance demonstration for the initial compliance period according to the requirements of § 63.4561. The initial compliance period begins on the applicable compliance date specified in § 63.4483 and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. You must determine the mass of organic HAP emissions and mass of coatings solids used each month and then calculate a 12-month organic HAP emission rate at the end of the initial 12-month compliance period. The initial compliance demonstration includes the results of emission capture system and add-on control device performance tests conducted according to §§ 63.4564, 63.4565, and 63.4566; results of liquid-liquid material balances conducted according to § 63.4561(j); calculations according to § 63.4561 and supporting documentation showing that during the initial compliance period the organic HAP emission rate was equal to or less than the applicable emission limit in § 63.4490; the operating limits established during the performance tests and the results of the continuous parameter monitoring required by § 63.4568; and documentation of whether you developed and implemented the work practice plan required by § 63.4493.

§ 63.4561 How do I demonstrate initial compliance?

(a) You may use the emission rate with add-on controls option for any coating operation, for any group of coating operations in the affected source, or for all of the coating operations in the affected source. You may include both controlled and uncontrolled coating operations in a group for which you use this option. You must use either the compliant material option or the emission rate without add-on controls option for any coating operation in the affected source for which you do not use the emission rate with add-on controls option. To demonstrate initial compliance, the coating operation(s) for which you use the emission rate with add-on controls option must meet the applicable emission limitations in §§ 63.4490,

63.4492, and 63.4493. You must conduct a separate initial compliance demonstration for each general use coating, TPO coating, headlamp coating and assembled on-road vehicle coating affected source. You must meet all the requirements of this section. When calculating the organic HAP emission rate according to this section, do not include any coatings, thinners and other additives, or cleaning materials used on coating operations for which you use the compliant material option or the emission rate without add-on controls option or coating operations in a different affected source in a different subcategory. You do not need to redetermine the mass of organic HAP in coatings, thinners and other additives, or cleaning materials that have been reclaimed onsite and reused in the coatings operation(s) for which you use the emission rate with add-on controls option.

(b) *Compliance with operating limits.* Except as provided in § 63.4560(a)(4), and except for solvent recovery systems for which you conduct liquid-liquid material balances according to the requirements of paragraph (j) of this section, you must establish and demonstrate continuous compliance during the initial compliance period with the operating limits required by § 63.4492, using the procedures specified in §§ 63.4567 and 63.4568.

(c) *Compliance with work practice requirements.* You must develop, implement, and document your implementation of the work practice plan required by § 63.4493 during the initial compliance period, as specified in § 63.4530.

(d) *Compliance with emission limits.* You must follow the procedures in paragraphs (e) through (n) of this section to demonstrate compliance with the applicable emission limit in § 63.4490 for each affected source in each subcategory.

(e) *Determine the mass fraction of organic HAP, density, volume used, and mass fraction of coating solids.* Follow the procedures specified in § 63.4551(a) through (d) to determine the mass fraction of organic HAP, density, and volume of each coating, thinner or other additive, and cleaning material used during each month; and the mass fraction of coating solids for each coating used during each month.

(f) *Calculate the total mass of organic HAP emissions before add-on controls.* Using Equation 1 of § 63.4551, calculate the total mass of organic HAP emissions before add-on controls from all coatings, thinners and other additives, and cleaning materials used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option.

(g) *Calculate the organic HAP emission reduction for each controlled coating operation.* Determine the mass of organic HAP emissions reduced for each controlled coating operation during each month. The emission reduction determination quantifies the total organic HAP emissions that pass through the emission capture system and are destroyed or removed by the add-on control device. Use the procedures in paragraph (h) of this section to calculate the mass of organic HAP emission reduction for each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances. For each controlled coating operation using a solvent recovery system for which you conduct a liquid-liquid material balance, use the procedures in paragraph (j) of this section to calculate the organic HAP emission reduction.

(h) *Calculate the organic HAP emission reduction for each controlled coating operation not using liquid-liquid material balance.* For each controlled coating operation using an emission capture system and add-on control device other than a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction, using Equation 1 of this section. The calculation applies the emission capture system efficiency and add-on control device efficiency to the mass of organic HAP contained in the coatings, thinners and other additives, and cleaning materials that are used in the coating operation served by the emission capture system and add-on control device during each month. For any period of time a deviation specified in § 63.4563(c) or (d) occurs in the controlled coating operation, including a deviation during a period of startup, shutdown, or malfunction, then you must assume zero efficiency for the emission capture system and add-on control device. Equation 1 of this section treats the materials used during such a deviation as if they were used on an uncontrolled coating operation for the time period of the deviation.

$$H_C = \left(A_C + B_C + C_C - H_{UNC}\right)\left(\frac{CE}{100} \times \frac{DRE}{100}\right) \qquad \text{(Eq. 1)}$$

Where:

H_C = mass of organic HAP emission reduction for the controlled coating operation during the month, lb.

A_C = total mass of organic HAP in the coatings used in the controlled coating operation during the month, lb, as calculated in Equation 1A of this section.

B_C = total mass of organic HAP in the thinners and other additives used in the controlled coating operation during the month, lb, as calculated in Equation 1B of this section.

C_C = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, lb, as calculated in Equation 1C of this section.

H_{UNC} = total mass of organic HAP in the coatings, thinners and other additives, and cleaning materials used during all deviations specified in § 63.4563(c) and (d) that occurred during the month in the controlled coating operation, lb, as calculated in Equation 1D of this section.

CE = capture efficiency of the emission capture system vented to the add-on control device, percent. Use the test methods and procedures specified in §§ 63.4564 and 63.4565 to measure and record capture efficiency.

DRE = organic HAP destruction or removal efficiency of the add-on control device, percent. Use the test methods and procedures in §§ 63.4564 and 63.4566 to measure and record the organic HAP destruction or removal efficiency.

(1) Calculate the mass of organic HAP in the coatings used in the controlled coating operation, lb, using Equation 1A of this section:

$$A_C = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 1A)}$$

Where:

A_C = total mass of organic HAP in the coatings used in the controlled coating operation during the month, lb.

$Vol_{c,i}$ = total volume of coating, i, used during the month, gallons.

$D_{c,i}$ = density of coating, i, lb per gallon.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, lb per lb.

m = number of different coatings used.

(2) Calculate the mass of organic HAP in the thinners and other additives used in the controlled coating operation, lb using Equation 1B of this section.

$$B_C = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 1B)}$$

Where:

B_C = total mass of organic HAP in the thinners and other additives used in the controlled coating operation during the month, lb.

$Vol_{t,j}$ = total volume of thinner or other additive, j, used during the month, gallons.

$D_{t,j}$ = density of thinner or other additive, j, lb per gallon.

$W_{t,j}$ = mass fraction of organic HAP in thinner or other additive, j, lb per lb.

n = number of different thinners and other additives used.

(3) Calculate the mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, lb, using Equation 1C of this section.

$$C_C = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 1C)}$$

Where:

C_C = total mass of organic HAP in the cleaning materials used in the controlled coating operation during the month, lb.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month, gallons.

$D_{s,k}$ = density of cleaning material, k, lb per gallon.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, lb per lb.

p = number of different cleaning materials used.

(4) Calculate the mass of organic HAP in the coatings, thinners and other additives, and cleaning materials used in the controlled coating operation during deviations specified in § 63.4563(c) and (d), using Equation 1D of this section.

$$H_{UNC} = \sum_{h=1}^{q} \left(Vol_h\right)\left(D_h\right)\left(W_h\right) \qquad \text{(Eq. 1D)}$$

Where:

H_{UNC} = total mass of organic HAP in the coatings, thinners and other additives, and cleaning materials used during all deviations specified in § 63.4563(c) and (d) that occurred during the month in the controlled coating operation, lb.

Vol_h = total volume of coating, thinner or other additive, or cleaning material, h, used in the controlled coating operation during deviations, gallons.

D_h = density of coating, thinner or other additive, or cleaning material, h, lb per gallon.

W_h = mass fraction of organic HAP in coating, thinner or other additive, or cleaning material, h, lb organic HAP per lb coating.

q = number of different coatings, thinners and other additives, and cleaning materials used.

(i) [Reserved]

(j) *Calculate the organic HAP emission reduction for each controlled coating operation using liquid-liquid material balances.* For each controlled coating operation using a solvent recovery system for which you conduct liquid-liquid material balances, calculate the organic HAP emission reduction by applying the volatile organic matter collection and recovery efficiency to the mass of organic HAP contained in the coatings, thinners and other additives, and cleaning materials that are used in the coating operation controlled by the solvent recovery system during each month. Perform a liquid-liquid material balance for each month as specified in paragraphs (j)(1) through (6) of this section. Calculate the mass of organic HAP emission reduction by the solvent recovery system as specified in paragraph (j)(7) of this section.

(1) For each solvent recovery system, install, calibrate, maintain, and operate according to the manufacturer's specifications, a device that indicates the cumulative amount of volatile organic matter recovered by the solvent recovery system each month. The device must be initially certified by the manufacturer to be accurate to within ± 2.0 percent of the mass of volatile organic matter recovered.

(2) For each solvent recovery system, determine the mass of volatile organic matter recovered for the month, based on measurement with the device required in paragraph (j)(1) of this section.

(3) Determine the mass fraction of volatile organic matter for each coating, thinner or other additive, and cleaning material used in the coating operation

controlled by the solvent recovery system during the month, lb volatile organic matter per lb coating. You may determine the volatile organic matter mass fraction using Method 24 of 40 CFR part 60, appendix A, or an EPA approved alternative method, or you may use information provided by the manufacturer or supplier of the coating. In the event of any inconsistency between information provided by the manufacturer or supplier and the results of Method 24 of 40 CFR part 60, appendix A, or an approved alternative method, the test method results will govern.

(4) Determine the density of each coating, thinner or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, lb per gallon, according to § 63.4551(c).

(5) Measure the volume of each coating, thinner or other additive, and cleaning material used in the coating operation controlled by the solvent recovery system during the month, gallons.

(6) Each month, calculate the solvent recovery system's volatile organic matter collection and recovery efficiency, using Equation 2 of this section:

$$R_v = 100 \frac{M_{VR}}{\sum_{i=1}^{m} Vol_i D_i WV_{c,i} + \sum_{j=1}^{n} Vol_j D_j WV_{t,j} + \sum_{k=1}^{p} Vol_k D_k WV_{s,k}} \qquad \text{(Eq. 2)}$$

Where:

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system during the month, percent.

M_{VR} = mass of volatile organic matter recovered by the solvent recovery system during the month, lb.

Vol_i = volume of coating, i, used in the coating operation controlled by the solvent recovery system during the month, gallons.

D_i = density of coating, i, lb per gallon.

$WV_{c,i}$ = mass fraction of volatile organic matter for coating, i, lb volatile organic matter per lb coating.

Vol_j = volume of thinner or other additive, j, used in the coating operation controlled by the solvent recovery system during the month, gallons.

D_j = density of thinner or other additive, j, lb per gallon.

$WV_{t,j}$ = mass fraction of volatile organic matter for thinner or other additive, j, lb volatile organic matter per lb thinner or other additive.

Vol_k = volume of cleaning material, k, used in the coating operation controlled by the solvent recovery system during the month, gallons.

D_k = density of cleaning material, k, lb per gallon.

$WV_{s,k}$ = mass fraction of volatile organic matter for cleaning material, k, lb volatile organic matter per lb cleaning material.

m = number of different coatings used in the coating operation controlled by the solvent recovery system during the month.

n = number of different thinners and other additives used in the coating operation controlled by the solvent recovery system during the month.

p = number of different cleaning materials used in the coating operation controlled by the solvent recovery system during the month.

(7) Calculate the mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system during the month, using Equation 3 of this section and according to paragraphs (j)(7)(i) through (iii) of this section:

$$H_{CSR} = \left(A_{CSR} + B_{CSR} + C_{CSR}\right)\left(\frac{R_V}{100}\right) \qquad \text{(Eq. 3)}$$

Where:

H_{CSR} = mass of organic HAP emission reduction for the coating operation controlled by the solvent recovery system using a liquid-liquid material balance during the month, lb.

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, lb, calculated using Equation 3A of this section.

B_{CSR} = total mass of organic HAP in the thinners and other additives used in the coating operation controlled by the solvent recovery system, lb, calculated using Equation 3B of this section.

C_{CSR} = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system, lb, calculated using Equation 3C of this section.

R_V = volatile organic matter collection and recovery efficiency of the solvent recovery system, percent, from Equation 2 of this section.

(i) Calculate the mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system, lb, using Equation 3A of this section:

$$A_{CSR} = \sum_{i=1}^{m} \left(Vol_{c,i}\right)\left(D_{c,i}\right)\left(W_{c,i}\right) \qquad \text{(Eq. 3A)}$$

Where:

A_{CSR} = total mass of organic HAP in the coatings used in the coating operation controlled by the solvent recovery system during the month, lb.

$Vol_{c,i}$ = total volume of coating, i, used during the month in the coating operation controlled by the solvent recovery system, gallons.

$D_{c,i}$ = density of coating, i, lb per gallon.

$W_{c,i}$ = mass fraction of organic HAP in coating, i, lb organic HAP per lb coating.

m = number of different coatings used.

(ii) Calculate the mass of organic HAP in the thinners and other additives used in the coating operation controlled by the solvent recovery system, lb, using Equation 3B of this section:

$$B_{CSR} = \sum_{j=1}^{n} \left(Vol_{t,j}\right)\left(D_{t,j}\right)\left(W_{t,j}\right) \qquad \text{(Eq. 3B)}$$

Where:

B_{CSR} = total mass of organic HAP in the thinners and other additives used in the coating operation controlled by the solvent recovery system during the month, lb.

$Vol_{t,j}$ = total volume of thinner or other additive, j, used during the month in the coating operation controlled by the solvent recovery system, gallons.

$D_{t,j}$ = density of thinner or other additive, j, lb per gallon.

$W_{t,j}$ = mass fraction of organic HAP in thinner or other additive, j, lb organic HAP per lb thinner or other additive.

n = number of different thinners and other additives used.

(iii) Calculate the mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, lb, using Equation 3C of this section.

$$C_{CSR} = \sum_{k=1}^{p} \left(Vol_{s,k}\right)\left(D_{s,k}\right)\left(W_{s,k}\right) \qquad \text{(Eq. 3C)}$$

Where:

C_{CSR} = total mass of organic HAP in the cleaning materials used in the coating operation controlled by the solvent recovery system during the month, lb.

$Vol_{s,k}$ = total volume of cleaning material, k, used during the month in the coating operation controlled by the solvent recovery system, gallons.

$D_{s,k}$ = density of cleaning material, k, lb per gallon.

$W_{s,k}$ = mass fraction of organic HAP in cleaning material, k, lb organic HAP per lb cleaning material.

p = number of different cleaning materials used.

(k) *Calculate the total mass of coating solids used.* Determine the total mass of coating solids used, pounds, which is the combined mass of coating solids for all the coatings used during each month in the coating operation or group of coating operations for which you use the emission rate with add-on controls option, using Equation 2 of § 63.4551.

(l) *Calculate the mass of organic HAP emissions for each month.* Determine the mass of organic HAP emissions, lb, during each month, using Equation 4 of this section:

$$H_{HAP} = H_e - \sum_{i=1}^{q}\left(H_{C,i}\right) - \sum_{j=1}^{r}\left(H_{CSR,j}\right) \qquad \text{(Eq. 4)}$$

Where:

H_{HAP} = total mass of organic HAP emissions for the month, lb.

H_e = total mass of organic HAP emissions before add-on controls from all the coatings, thinners and other additives, and cleaning materials used during the month, lb, determined according to paragraph (f) of this section.

$H_{C,i}$ = total mass of organic HAP emission reduction for controlled coating operation, i, not using a liquid-liquid material balance, during the month, lb, from Equation 1 of this section.

$H_{CSR,j}$ = total mass of organic HAP emission reduction for coating operation, j, controlled by a solvent recovery system using a liquid-liquid material balance, during the month, lb, from Equation 3 of this section.

q = Number of controlled coating operations not using a liquid-liquid material balance.

r = Number of coating operations controlled by a solvent recovery system using a liquid-liquid material balance.

(m) *Calculate the organic HAP emission rate for the 12-month compliance period.* Determine the organic HAP emission rate for the 12-month compliance period, kg (lb) of organic HAP emitted per kg (lb) coating solids used, using Equation 5 of this section:

$$H_{annual} = \frac{\sum_{y=1}^{12} H_{HAP,y}}{\sum_{y=1}^{12} M_{st,y}} \qquad \text{(Eq. 5)}$$

Where:

H_{annual} = organic HAP emission rate for the 12-month compliance period, kg of organic HAP emitted per kg coating solids used (lb organic HAP emitted per lb coating solids used).

$H_{HAP,y}$ = organic HAP emission rate for month, y, determined according to Equation 4 of this section.

$M_{st,y}$ = total mass of coating solids used during month, y, lb, from Equation 2 of § 63.4551.

y = identifier for months.

(n) *Compliance demonstration.* To demonstrate initial compliance with the emission limit, calculated using Equation 5 of this section, must be less than or equal to the applicable emission limit for each subcategory in § 63.4490. You must keep all records as required by §§ 63.4530 and 63.4531. As part of the Notification of Compliance Status required by § 63.4510, you must identify the coating operation(s) for which you used the emission rate with add-on controls option and submit a statement that the coating operation(s) was (were) in compliance with the emission

limitations during the initial compliance period because the organic HAP emission rate was less than or equal to the applicable emission limit in § 63.4490, and you achieved the operating limits required by § 63.4492 and the work practice standards required by § 63.4493.

§ 63.4562 [Reserved.]

§ 63.4563 How do I demonstrate continuous compliance with the emission limitations?

(a) To demonstrate continuous compliance with the applicable emission limit in § 63.4490, the organic HAP emission rate for each compliance period, determined according to the procedures in § 63.4561, must be equal to or less than the applicable emission limit in § 63.4490 for that subcategory. A compliance period consists of 12 months. Each month after the end of the initial compliance period described in § 63.4560 is the end of a compliance period consisting of that month and the preceding 11 months. You must perform the calculations in § 63.4561 on a monthly basis using data from the previous 12 months of operation.

(b) If the organic HAP emission rate for any 12-month compliance period exceeded the applicable emission limit in § 63.4490, this is a deviation from the emission limitation for that compliance period and must be reported as specified in §§ 63.4510(b)(6) and 63.4520(a)(7).

(c) You must demonstrate continuous compliance with each operating limit required by § 63.4492 that applies to you, as specified in Table 1 of this subpart.

(1) If an operating parameter is out of the allowed range specified in Table 1 of this subpart, this is a deviation from the operating limit that must be reported as specified in §§ 63.4510(b)(6) and 63.4520(a)(7).

(2) If an operating parameter deviates from the operating limit specified in Table 1 of this subpart, then you must assume that the emission capture system and add-on control device were achieving zero efficiency during the time period of the deviation. For the purposes of completing the compliance calculations specified in §§ 63.4561(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.4561.

(d) You must meet the requirements for bypass lines in § 63.4568(b) for controlled coating operations for which you do not conduct liquid-liquid material balances. If any bypass line is opened and emissions are diverted to the atmosphere when the coating operation is running, this is a deviation that must be reported as specified in §§ 63.4510(b)(6) and 63.4520(a)(7). For the purposes of completing the compliance calculations specified in §§ 63.4561(h), you must treat the materials used during a deviation on a controlled coating operation as if they were used on an uncontrolled coating operation for the time period of the deviation as indicated in Equation 1 of § 63.4561.

(e) You must demonstrate continuous compliance with the work practice standards in § 63.4493. If you did not develop a work practice plan, or you did not implement the plan, or you did not keep the records required by § 63.4530(k)(8), this is a deviation from the work practice standards that must be reported as specified in §§ 63.4510(c)(6) and 63.4520(a)(7).

(f) As part of each semiannual compliance report required in § 63.4520, you must identify the coating operation(s) for which you used the emission rate with add-on controls option. If there were no deviations from the emission limitations, submit a statement that you were in compliance with the emission limitations during the reporting period because the organic HAP emission rate for each compliance period was less than or equal to the applicable emission limit in § 63.4490, and you achieved the operating limits required by § 63.4492 and the work practice standards required by § 63.4493 during each compliance period.

(g) During periods of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency, you must operate in accordance with the startup, shutdown, and malfunction plan required by § 63.4500(c).

(h) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction of the emission capture system, add-on control device, or coating operation that may affect emission capture or control device efficiency are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period you identify as a startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(i) [Reserved]

(j) You must maintain records as specified in §§ 63.4530 and 63.4531.

§ 63.4564 What are the general requirements for performance tests?

(a) You must conduct each performance test required by § 63.4560 according to the requirements in § 63.7(e)(1) and under the conditions in this section, unless you obtain a waiver of the performance test according to the provisions in § 63.7(h).

(1) *Representative coating operation operating conditions.* You must conduct the performance test under representative operating conditions for the coating operation. Operations during periods of startup, shutdown, or malfunction and during periods of nonoperation do not constitute representative conditions. You must record the process information that is necessary to document operating conditions during the test and explain why the conditions represent normal operation.

(2) *Representative emission capture system and add-on control device operating conditions.* You must conduct the performance test when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. You must record information that is necessary to document emission capture system and add-on control device operating conditions during the test and explain why the conditions represent normal operation.

(b) You must conduct each performance test of an emission capture system according to the requirements in § 63.4565. You must conduct each performance test of an add-on control device according to the requirements in § 63.4566.

§ 63.4565 How do I determine the emission capture system efficiency?

You must use the procedures and test methods in this section to determine capture efficiency as part of the performance test required by § 63.4560.

(a) *Assuming 100 percent capture efficiency.* You may assume the capture system efficiency is 100 percent if both of the conditions in paragraphs (a)(1) and (2) of this section are met:

(1) The capture system meets the criteria in Method 204 of appendix M to 40 CFR part 51 for a PTE and directs all the exhaust gases from the enclosure to an add-on control device.

(2) All coatings, thinners and other additives, and cleaning materials used in the coating operation are applied within the capture system; coating

solvent flash-off, curing, and drying occurs within the capture system; and the removal or evaporation of cleaning materials from the surfaces they are applied to occurs within the capture system. For example, this criterion is not met if parts enter the open shop environment when being moved between a spray booth and a curing oven.

(b) *Measuring capture efficiency.* If the capture system does not meet both of the criteria in paragraphs (a)(1) and (2) of this section, then you must use one of the three protocols described in paragraphs (c), (d), and (e) of this section to measure capture efficiency. The capture efficiency measurements use TVH capture efficiency as a surrogate for organic HAP capture efficiency. For the protocols in paragraphs (c) and (d) of this section, the capture efficiency measurement must consist of three test runs. Each test run must be at least 3 hours duration or the length of a production run, whichever is longer, up to 8 hours. For the purposes of this test, a production run means the time required for a single part to go from the beginning to the end of the production, which includes surface preparation activities and drying and curing time.

(c) *Liquid-to-uncaptured-gas protocol using a temporary total enclosure or building enclosure.* The liquid-to-uncaptured-gas protocol compares the mass of liquid TVH in materials used in the coating operation to the mass of TVH emissions not captured by the emission capture system. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (c)(1) through (6) of this section to measure emission capture system efficiency using the liquid-to-uncaptured-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners and other additives, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions for routing to an add-on control device, such as the entrance and exit areas of an oven or spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204A or 204F of appendix M to 40 CFR part 51 to determine the mass fraction of TVH liquid input from each coating, thinner and other additive, and cleaning material used in the coating operation during each capture efficiency test run. To make the determination, substitute TVH for each occurrence of the term volatile organic compounds (VOC) in the methods.

(3) Use Equation 1 of this section to calculate the total mass of TVH liquid input from all the coatings, thinners and other additives, and cleaning materials used in the coating operation during each capture efficiency test run:

$$TVH_{used} = \sum_{i=1}^{n} (TVH_i)(Vol_i)(D_i) \qquad \text{(Eq. 1)}$$

Where:

TVH_{used} = Mass of liquid TVH in materials used in the coating operation during the capture efficiency test run, lb.

TVH_i = mass fraction of TVH in coating, thinner or other additive, or cleaning material, i, that is used in the coating operation during the capture efficiency test run, lb TVH per lb material.

Vol_i = total volume of coating, thinner or other additive, or cleaning material, i, used in the coating operation during the capture efficiency test run, gallons.

D_i = density of coating, thinner or other additive, or cleaning material, i, lb material per gallon material.

n = number of different coatings, thinners and other additives, and cleaning materials used in the coating operation during the capture efficiency test run.

(4) Use Method 204D or E of appendix M to 40 CFR part 51 to measure the total mass, lb, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(5) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 2 of this section:

$$CE = \frac{(TVH_{used} - TVH_{uncaptured})}{TVH_{used}} \times 100 \qquad \text{(Eq. 2)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

TVH_{used} = total mass of TVH liquid input used in the coating operation during the capture efficiency test run, lb.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, lb.

(6) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(d) *Gas-to-gas protocol using a temporary total enclosure or a building enclosure.* The gas-to-gas protocol compares the mass of TVH emissions captured by the emission capture system to the mass of TVH emissions not captured. Use a temporary total enclosure or a building enclosure and the procedures in paragraphs (d)(1) through (5) of this section to measure emission capture system efficiency using the gas-to-gas protocol.

(1) Either use a building enclosure or construct an enclosure around the coating operation where coatings, thinners and other additives, and cleaning materials are applied, and all areas where emissions from these applied coatings and materials subsequently occur, such as flash-off, curing, and drying areas. The areas of the coating operation where capture devices collect emissions generated by the coating operation for routing to an add-on control device, such as the entrance and exit areas of an oven or a spray booth, must also be inside the enclosure. The enclosure must meet the applicable definition of a temporary total enclosure or building enclosure in Method 204 of appendix M to 40 CFR part 51.

(2) Use Method 204B or 204C of appendix M to 40 CFR part 51 to measure the total mass, lb, of TVH emissions captured by the emission capture system during each capture efficiency test run as measured at the inlet to the add-on control device. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) The sampling points for the Method 204B or 204C measurement must be upstream from the add-on control device and must represent total emissions routed from the capture system and entering the add-on control device.

(ii) If multiple emission streams from the capture system enter the add-on control device without a single common duct, then the emissions entering the add-on control device must be simultaneously measured in each duct and the total emissions entering the add-on control device must be determined.

(3) Use Method 204D or 204E of appendix M to 40 CFR part 51 to measure the total mass, lb, of TVH emissions that are not captured by the emission capture system; they are measured as they exit the temporary total enclosure or building enclosure during each capture efficiency test run. To make the measurement, substitute TVH for each occurrence of the term VOC in the methods.

(i) Use Method 204D if the enclosure is a temporary total enclosure.

(ii) Use Method 204E if the enclosure is a building enclosure. During the capture efficiency measurement, all organic compound emitting operations inside the building enclosure, other than the coating operation for which capture efficiency is being determined, must be shut down, but all fans and blowers must be operating normally.

(4) For each capture efficiency test run, determine the percent capture efficiency of the emission capture system using Equation 3 of this section:

$$CE = \frac{TVH_{captured}}{\left(TVH_{captured} + TVH_{uncaptured}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

CE = capture efficiency of the emission capture system vented to the add-on control device, percent.

$TVH_{captured}$ = total mass of TVH captured by the emission capture system as measured at the inlet to the add-on control device during the emission capture efficiency test run, lb.

$TVH_{uncaptured}$ = total mass of TVH that is not captured by the emission capture system and that exits from the temporary total enclosure or building enclosure during the capture efficiency test run, lb.

(5) Determine the capture efficiency of the emission capture system as the average of the capture efficiencies measured in the three test runs.

(e) *Alternative capture efficiency protocol.* As an alternative to the procedures specified in paragraphs (c) and (d) of this section, you may determine capture efficiency using any other capture efficiency protocol and test methods that satisfy the criteria of either the DQO or LCL approach as described in appendix A to subpart KK of this part.

§ 63.4566 How do I determine the add-on control device emission destruction or removal efficiency?

You must use the procedures and test methods in this section to determine the add-on control device emission destruction or removal efficiency as part of the performance test required by § 63.4560. You must conduct three test runs as specified in § 63.7(e)(3) and each test run must last at least 1 hour.

(a) For all types of add-on control devices, use the test methods specified in paragraphs (a)(1) through (5) of this section.

(1) Use Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select sampling sites and velocity traverse points.

(2) Use Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 3, 3A, or 3B of appendix A to 40 CFR part 60, as appropriate, for gas analysis to determine dry molecular weight.

(4) Use Method 4 of appendix A to 40 CFR part 60, to determine stack gas moisture.

(5) Methods for determining gas volumetric flow rate, dry molecular weight, and stack gas moisture must be performed, as applicable, during each test run.

(b) Measure total gaseous organic mass emissions as carbon at the inlet and outlet of the add-on control device simultaneously, using either Method 25 or 25A of appendix A to 40 CFR part 60.

(1) Use Method 25 if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be more than 50 parts per million (ppm) at the control device outlet.

(2) Use Method 25A if the add-on control device is an oxidizer and you expect the total gaseous organic concentration as carbon to be 50 ppm or less at the control device outlet.

(3) Use Method 25A if the add-on control device is not an oxidizer.

(c) If two or more add-on control devices are used for the same emission stream, then you must measure emissions at the outlet to the atmosphere of each device. For example, if one add-on control device is a concentrator with an outlet to the atmosphere for the high-volume, dilute stream that has been treated by the concentrator, and a second add-on control device is an oxidizer with an outlet to the atmosphere for the low-volume, concentrated stream that is treated with the oxidizer, you must measure emissions at the outlet of the oxidizer and the high volume dilute stream outlet of the concentrator.

(d) For each test run, determine the total gaseous organic emissions mass flow rates for the inlet and the outlet of the add-on control device, using Equation 1 of this section. If there is more than one inlet or outlet to the add-on control device, you must calculate the total gaseous organic mass flow rate using Equation 1 of this section for each inlet and each outlet and then total all of the inlet emissions and total all of the outlet emissions:

$$M_f = Q_{sd}\, C_c\, (12)\, (0.0416)\, (10^{-6}) \qquad \text{(Eq. 1)}$$

Where:

M_f = total gaseous organic emissions mass flow rate, kg/per hour (h).

C_c = concentration of organic compounds as carbon in the vent gas, as determined by Method 25 or Method 25A, parts per million by volume (ppmv), dry basis.

Q_{sd} = volumetric flow rate of gases entering or exiting the add-on control device, as determined by Method 2, 2A, 2C, 2D, 2F, or 2G, dry standard cubic meters/hour (dscm/h).

0.0416 = conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(e) For each test run, determine the add-on control device organic emissions destruction or removal efficiency, using Equation 2 of this section:

$$DRE = \frac{M_{fi} - M_{fo}}{M_{fi}} \cdot 100 \qquad \text{(Eq. 2)}$$

Where:

DRE = organic emissions destruction or removal efficiency of the add-on control device, percent.

M_{fi} = total gaseous organic emissions mass flow rate at the inlet(s) to the add-on control device, using Equation 1 of this section, kg/h.

M_{fo} = total gaseous organic emissions mass flow rate at the outlet(s) of the add-on control device, using Equation 1 of this section, kg/h.

(f) Determine the emission destruction or removal efficiency of the add-on control device as the average of the efficiencies determined in the three test runs and calculated in Equation 2 of this section.

§ 63.4567 How do I establish the emission capture system and add-on control device operating limits during the performance test?

During the performance test required by § 63.4560 and described in §§ 63.4564, 63.4565, and 63.4566, you must establish the operating limits required by § 63.4492 according to this section, unless you have received approval for alternative monitoring and operating limits under § 63.8(f) as specified in § 63.4492.

(a) *Thermal oxidizers.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (a)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(2) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(b) *Catalytic oxidizers.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to either paragraphs (b)(1) and (2) or paragraphs (b)(3) and (4) of this section.

(1) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across the catalyst bed at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(3) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (b)(4) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(4) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (b)(3) of this section. The plan must address, at a minimum, the elements specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) Annual sampling and analysis of the catalyst activity (i.e, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures.

(ii) Monthly inspection of the oxidizer system, including the burner assembly and fuel supply lines for problems and, as necessary, adjust the equipment to assure proper air-to-fuel mixtures.

(iii) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine destruction efficiency according to § 63.4566.

(c) *Carbon adsorbers.* If your add-on control device is a carbon adsorber, establish the operating limits according to paragraphs (c)(1) and (2) of this section.

(1) You must monitor and record the total regeneration desorbing gas (e.g., steam or nitrogen) mass flow for each regeneration cycle, and the carbon bed temperature after each carbon bed regeneration and cooling cycle for the regeneration cycle either immediately preceding or immediately following the performance test.

(2) The operating limits for your carbon adsorber are the minimum total desorbing gas mass flow recorded during the regeneration cycle and the maximum carbon bed temperature recorded after the cooling cycle.

(d) *Condensers.* If your add-on control device is a condenser, establish the operating limits according to paragraphs (d)(1) and (2) of this section.

(1) During the performance test, you must monitor and record the condenser outlet (product side) gas temperature at least once every 15 minutes during each of the three test runs.

(2) Use the data collected during the performance test to calculate and record the average condenser outlet (product side) gas temperature maintained during the performance test. This average condenser outlet gas temperature is the maximum operating limit for your condenser.

(e) *Concentrator.* If your add-on control device includes a concentrator, you must establish operating limits for the concentrator according to

paragraphs (e)(1) through (4) of this section.

(1) During the performance test, you must monitor and record the desorption concentrate stream gas temperature at least once every 15 minutes during each of the three runs of the performance test.

(2) Use the data collected during the performance test to calculate and record the average temperature. This is the minimum operating limit for the desorption concentrate gas stream temperature.

(3) During the performance test, you must monitor and record the pressure drop of the dilute stream across the concentrator at least once every 15 minutes during each of the three runs of the performance test.

(4) Use the data collected during the performance test to calculate and record the average pressure drop. This is the maximum operating limit for the dilute stream across the concentrator.

(f) *Emission capture system.* For each capture device that is not part of a PTE that meets the criteria of § 63.4565(a), establish an operating limit for either the gas volumetric flow rate or duct static pressure, as specified in paragraphs (f)(1) and (2) of this section. The operating limit for a PTE is specified in Table 1 of this subpart.

(1) During the capture efficiency determination required by § 63.4560 and described in §§ 63.4564 and 63.4565, you must monitor and record either the gas volumetric flow rate or the duct static pressure for each separate capture device in your emission capture system at least once every 15 minutes during each of the three test runs at a point in the duct between the capture device and the add-on control device inlet.

(2) Calculate and record the average gas volumetric flow rate or duct static pressure for the three test runs for each capture device. This average gas volumetric flow rate or duct static pressure is the minimum operating limit for that specific capture device.

§ 63.4568 What are the requirements for continuous parameter monitoring system installation, operation, and maintenance?

(a) *General.* You must install, operate, and maintain each CPMS specified in paragraphs (c), (e), (f), and (g) of this section according to paragraphs (a)(1) through (6) of this section. You must install, operate, and maintain each CPMS specified in paragraphs (b) and (d) of this section according to paragraphs (a)(3) through (5) of this section.

(1) The CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation in 1 hour.

(2) You must determine the average of all recorded readings for each successive 3-hour period of the emission capture system and add-on control device operation.

(3) You must record the results of each inspection, calibration, and validation check of the CPMS.

(4) You must maintain the CPMS at all times and have available necessary parts for routine repairs of the monitoring equipment.

(5) You must operate the CPMS and collect emission capture system and add-on control device parameter data at all times that a controlled coating operation is operating, except during monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, if applicable, calibration checks and required zero and span adjustments).

(6) You must not use emission capture system or add-on control device parameter data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities when calculating data averages. You must use all the data collected during all other periods in calculating the data averages for determining compliance with the emission capture system and add-on control device operating limits.

(7) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the CPMS to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations is a deviation from the monitoring requirements.

(b) *Capture system bypass line.* You must meet the requirements of paragraphs (b)(1) and (2) of this section for each emission capture system that contains bypass lines that could divert emissions away from the add-on control device to the atmosphere.

(1) You must monitor or secure the valve or closure mechanism controlling the bypass line in a nondiverting position in such a way that the valve or closure mechanism cannot be opened without creating a record that the valve was opened. The method used to monitor or secure the valve or closure mechanism must meet one of the requirements specified in paragraphs (b)(1)(i) through (iv) of this section.

(i) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that takes a reading at least once every 15 minutes and provides a record indicating whether the emissions are directed to the add-on control device or diverted from the add-on control device. The time of occurrence and flow control position must be recorded, as well as every time the flow direction is changed. The flow control position indicator must be installed at the entrance to any bypass line that could divert the emissions away from the add-on control device to the atmosphere.

(ii) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. You must visually inspect the seal or closure mechanism at least once every month to ensure that the valve is maintained in the closed position, and the emissions are not diverted away from the add-on control device to the atmosphere.

(iii) *Valve closure monitoring.* Ensure that any bypass line valve is in the closed (nondiverting) position through monitoring of valve position at least once every 15 minutes. You must inspect the monitoring system at least once every month to verify that the monitor will indicate valve position.

(iv) *Automatic shutdown system.* Use an automatic shutdown system in which the coating operation is stopped when flow is diverted by the bypass line away from the add-on control device to the atmosphere when the coating operation is running. You must inspect the automatic shutdown system at least once every month to verify that it will detect diversions of flow and shut down the coating operation.

(2) If any bypass line is opened, you must include a description of why the bypass line was opened and the length of time it remained open in the semiannual compliance reports required in § 63.4520.

(c) *Thermal oxidizers and catalytic oxidizers.* If you are using a thermal oxidizer or catalytic oxidizer as an add-on control device (including those used with concentrators or with carbon adsorbers to treat desorbed concentrate streams), you must comply with the requirements in paragraphs (c)(1) through (3) of this section:

(1) For a thermal oxidizer, install a gas temperature monitor in the firebox of the thermal oxidizer or in the duct immediately downstream of the firebox before any substantial heat exchange occurs.

(2) For a catalytic oxidizer, install gas temperature monitors both upstream and downstream of the catalyst bed. The temperature monitors must be in the gas stream immediately before and after the

catalyst bed to measure the temperature difference across the bed.

(3) For all thermal oxidizers and catalytic oxidizers, you must meet the requirements in paragraphs (a) and (c)(3)(i) through (vii) of this section for each gas temperature monitoring device.

(i) Locate the temperature sensor in a position that provides a representative temperature.

(ii) Use a temperature sensor with a measurement sensitivity of 4 degrees Fahrenheit or 0.75 percent of the temperature value, whichever is larger.

(iii) Shield the temperature sensor system from electromagnetic interference and chemical contaminants.

(iv) If a gas temperature chart recorder is used, it must have a measurement sensitivity in the minor division of at least 20 degrees Fahrenheit.

(v) Perform an electronic calibration at least semiannually according to the procedures in the manufacturer's owners manual. Following the electronic calibration, you must conduct a temperature sensor validation check in which a second or redundant temperature sensor placed nearby the process temperature sensor must yield a reading within 30 degrees Fahrenheit of the process temperature sensor reading.

(vi) Conduct calibration and validation checks any time the sensor exceeds the manufacturer's specified maximum operating temperature range or install a new temperature sensor.

(vii) At least monthly, inspect components for integrity and electrical connections for continuity, oxidation, and galvanic corrosion.

(d) *Carbon adsorbers.* If you are using a carbon adsorber as an add-on control device, you must monitor the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle, the carbon bed temperature after each regeneration and cooling cycle, and comply with paragraphs (a)(3) through (5) and (d)(1) and (2) of this section.

(1) The regeneration desorbing gas mass flow monitor must be an integrating device having a measurement sensitivity of plus or minus 10 percent capable of recording the total regeneration desorbing gas mass flow for each regeneration cycle.

(2) The carbon bed temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater, and must be capable of recording the temperature within 15 minutes of completing any carbon bed cooling cycle.

(e) *Condensers.* If you are using a condenser, you must monitor the condenser outlet (product side) gas temperature and comply with paragraphs (a) and (e)(1) and (2) of this section.

(1) The gas temperature monitor must have a measurement sensitivity of 1 percent of the temperature recorded or 1 degree Fahrenheit, whichever is greater.

(2) The temperature monitor must provide a gas temperature record at least once every 15 minutes.

(f) *Concentrator.* If you are using a concentrator, such as a zeolite wheel or rotary carbon bed concentrator, you must comply with the requirements in paragraphs (f)(1) and (2) of this section.

(1) You must install a temperature monitor in the desorption gas stream. The temperature monitor must meet the requirements in paragraphs (a) and (c)(3) of this section.

(2) You must install a device to monitor pressure drop across the zeolite wheel or rotary carbon bed. The pressure monitoring device must meet the requirements in paragraphs (a) and (f)(2)(i) through (vii) of this section.

(i) Locate the pressure sensor(s) in or as close to a position that provides a representative measurement of the pressure.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Use a gauge with a minimum tolerance of 0.5 inch of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(iv) Check the pressure tap daily.

(v) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(vi) Conduct calibration checks anytime the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(vii) At least monthly, inspect all components for integrity, all electrical connections for continuity, and all mechanical connections for leakage.

(g) *Emission capture systems.* The capture system monitoring system must comply with the applicable requirements in paragraphs (g)(1) and (2) of this section.

(1) For each flow measurement device, you must meet the requirements in paragraphs (a) and (g)(1)(i) through (iv) of this section.

(i) Locate a flow sensor in a position that provides a representative flow measurement in the duct from each capture device in the emission capture system to the add-on control device.

(ii) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(iii) Conduct a flow sensor calibration check at least semiannually.

(iv) At least monthly, inspect components for integrity, electrical connections for continuity, and mechanical connections for leakage.

(2) For each pressure drop measurement device, you must comply with the requirements in paragraphs (a) and (g)(2)(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 drop across each opening you are monitoring.

(ii) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(iii) Check pressure tap pluggage daily.

(iv) Using an inclined manometer with a measurement sensitivity of 0.0002 inch water, 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 components for integrity, electrical connections for continuity, and mechanical connections for leakage.

Other Requirements and Information

§ 63.4580 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if implementation and enforcement of 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 subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the 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 listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the work practice standards in § 63.4493 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.4581 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Additive means a material that is added to a coating after purchase from a supplier (*e.g.*, catalysts, activators, accelerators).

Add-on control means an air pollution control device, such as a thermal oxidizer or carbon adsorber, that reduces pollution in an air stream by destruction or removal before discharge to the atmosphere.

Adhesive, adhesive coating means any chemical substance that is applied for the purpose of bonding two surfaces together.

Assembled on-road vehicle coating means any coating operation in which coating is applied to the surface of some plastic component or plastic surface of a fully assembled motor vehicle or trailer intended for on-road use, including, but not limited to, plastic components or surfaces on: automobiles and light trucks that have been repaired after a collision or otherwise repainted, fleet delivery trucks, and motor homes and other recreational vehicles (including camping trailers and fifth wheels). Assembled on-road vehicle coating does not include the surface coating of plastic parts prior to their attachment to an on-road vehicle on an original equipment manufacturer's (OEM) assembly line. Assembled on-road vehicle coating also does not include the use of adhesives, sealants, and caulks used in assembling on-road vehicles.

Capture device means a hood, enclosure, room, floor sweep, or other means of containing or collecting emissions and directing those emissions into an add-on air pollution control device.

Capture efficiency or capture system efficiency means the portion (expressed as a percentage) of the pollutants from an emission source that is delivered to an add-on control device.

Capture system means one or more capture devices intended to collect emissions generated by a coating operation in the use of coatings or cleaning materials, both at the point of application and at subsequent points where emissions from the coatings and cleaning materials occur, such as flashoff, drying, or curing. As used in this subpart, multiple capture devices that collect emissions generated by a coating operation are considered a single capture system.

Cleaning material means a solvent used to remove contaminants and other materials, such as dirt, grease, oil, and dried or wet coating (*e.g.*, depainting), from a substrate before or after coating application or from equipment associated with a coating operation, such as spray booths, spray guns, racks, tanks, and hangers. Thus, it includes any cleaning material used on substrates or equipment or both.

Coating means a material applied to a substrate for decorative, protective, or functional purposes. Such materials include, but are not limited to, paints, sealants, liquid plastic coatings, caulks, inks, adhesives, and maskants. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered coatings for the purposes of this subpart.

Coating operation means equipment used to apply cleaning materials to a substrate to prepare it for coating application (surface preparation) or to remove dried coating; to apply coating to a substrate (coating application) and to dry or cure the coating after application; or to clean coating operation equipment (equipment cleaning). A single coating operation may include any combination of these types of equipment, but always includes at least the point at which a coating or cleaning material is applied and all subsequent points in the affected source where organic HAP emissions from that coating or cleaning material occur. There may be multiple coating operations in an affected source. Coating application with handheld, nonrefillable aerosol containers, touch-up markers, or marking pens is not a coating operation for the purposes of this subpart.

Coatings solids means the nonvolatile portion of the coating that makes up the dry film.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this subpart, used to sample, condition (if applicable), analyze, and provide a record of coating operation, or capture system, or add-on control device parameters.

Controlled coating operation means a coating operation from which some or all of the organic HAP emissions are routed through an emission capture system and add-on control device.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit or operating limit, or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limit, or operating limit, or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means an emission limit, operating limit, or work practice standard.

Enclosure means a structure that surrounds a source of emissions and captures and directs the emissions to an add-on control device.

Exempt compound means a specific compound that is not considered a VOC due to negligible photochemical reactivity. The exempt compounds are listed in 40 CFR 51.100(s).

Facility maintenance means the routine repair or renovation (including the surface coating) of the tools, equipment, machinery, and structures that comprise the infrastructure of the affected facility and that are necessary for the facility to function in its intended capacity.

General-use coating means any coating operation that is not a headlamp, TPO, or assembled on-road vehicle coating operation.

Headlamp coating means any coating operation in which coating is applied to the surface of some component of the body of an automotive headlamp, including the application of reflective argent coatings and clear topcoats. Headlamp coating does not include any coating operation performed on an assembled on-road vehicle.

Hobby shop means any surface coating operation, located at an affected source, that is used exclusively for personal, noncommercial purposes by the affected source's employees or assigned personnel.

Liquid plastic coating means a coating made from fine, particle-size polyvinyl chloride (PVC) in solution (also referred to as plastisol).

Manufacturer's formulation data means data on a material (such as a

coating) that are supplied by the material manufacturer based on knowledge of the ingredients used to manufacture that material, rather than based on testing of the material with the test methods specified in § 63.4541. Manufacturer's formulation data may include, but are not limited to, information on density, organic HAP content, volatile organic matter content, and coating solids content.

Mass fraction of coating solids means the ratio of the mass of solids (also known as the mass of nonvolatiles) to the mass of a coating in which it is contained; lb of coating solids per lb of coating.

Mass fraction of organic HAP means the ratio of the mass of organic HAP to the mass of a material in which it is contained, expressed as lb of organic HAP per lb of material.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Organic HAP content means the mass of organic HAP per mass of coating solids for a coating calculated using Equation 1 of § 63.4541. The organic HAP content is determined for the coating in the condition it is in when received from its manufacturer or supplier and does not account for any alteration after receipt.

Permanent total enclosure (PTE) means a permanently installed enclosure that meets the criteria of Method 204 of appendix M, 40 CFR part 51 for a PTE and that directs all the exhaust gases from the enclosure to an add-on control device.

Personal Watercraft means a vessel (boat) which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person or persons sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

Plastic part and product means any piece or combination of pieces of which at least one has been formed from one or more resins. Such pieces may be solid, porous, flexible or rigid.

Protective oil means an organic material that is applied to metal for the purpose of providing lubrication or protection from corrosion without forming a solid film. This definition of protective oil includes, but is not limited to, lubricating oils, evaporative oils (including those that evaporate completely), and extrusion oils.

Research or laboratory facility means a facility whose primary purpose is for research and development of new processes and products, that is conducted under the close supervision of technically trained personnel, and is not engaged in the manufacture of final or intermediate products for commercial purposes, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Startup, initial means the first time equipment is brought online in a facility.

Surface preparation means use of a cleaning material on a portion of or all of a substrate. This includes use of a cleaning material to remove dried coating, which is sometimes called ''depainting.''

Temporary total enclosure means an enclosure constructed for the purpose of measuring the capture efficiency of pollutants emitted from a given source as defined in Method 204 of appendix M, 40 CFR part 51.

Thermoplastic olefin (TPO) coating means any coating operation in which the coatings are components of a system of coatings applied to a TPO substrate, including adhesion promoters, primers, color coatings, clear coatings and topcoats. Thermoplastic olefin coating does not include the coating of TPO substrates on assembled on-road vehicles.

Thinner means an organic solvent that is added to a coating after the coating is received from the supplier.

Total volatile hydrocarbon (TVH) means the total amount of nonaqueous volatile organic matter determined according to Methods 204 and 204A through 204F of appendix M to 40 CFR part 51 and substituting the term TVH each place in the methods where the term VOC is used. The TVH includes both VOC and non-VOC.

Uncontrolled coating operation means a coating operation from which none of the organic HAP emissions are routed through an emission capture system and add-on control device.

Volatile organic compound (VOC) means any compound defined as VOC in 40 CFR 51.100(s).

Wastewater means water that is generated in a coating operation and is collected, stored, or treated prior to being discarded or discharged.

If you are required to comply with operating limits by § 63.4491(c), you must comply with the applicable operating limits in the following table:

TABLE 1.—TO SUBPART PPPP OF PART 63—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION

For the following device	you must meet the following operating limit . . .	and you must demonstrate continuous compliance with the operating limit by . . .
1. thermal oxidizer	a. the average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.4567(a).	i. collecting the combustion temperature data according to § 63.4568(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average combustion temperature at or above the temperature limit.
2. catalytic oxidizer	a. the average temperature measured just before the catalyst bed in any 3-hour period must not fall below the limit established according to § 63.4567(b); and either.	i. collecting the temperature data according to § 63.4568(c); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature before the catalyst bed at or above the temperature limit.
	b. ensure that the average temperature difference across the catalyst bed in any 3-hour period does not fall below the temperature difference limit established according to § 63.4567(b)(2); or	i. collecting the temperature data according to § 63.4568(c), reducing the data to 3-hour block averages, and maintaining the 3-hour average temperature difference at or above the temperature difference limit; or

TABLE 1.—TO SUBPART PPPP OF PART 63—OPERATING LIMITS IF USING THE EMISSION RATE WITH ADD-ON CONTROLS OPTION—Continued

For the following device	you must meet the following operating limit . . .	and you must demonstrate continuous compliance with the operating limit by . . .
	c. develop and implement an inspection and maintenance plan according to § 63.4567(b)(4).	i. maintaining an up-to-date inspection and maintenance plan, records of annual catalyst activity checks, records of monthly inspections of the oxidizer system, and records of the annual internal inspections of the catalyst bed. If a problem is discovered during a monthly or annual inspection required by § 63.4567(b)(4), you must take corrective action as soon as practicable consistent with the manufacturer's recommendations.
3. carbon adsorber	a. the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each carbon bed regeneration cycle must not fall below the total regeneration desorbing gas mass flow limit established according to § 63.4567(c).	i. measuring the total regeneration desorbing gas (*e.g.*, steam or nitrogen) mass flow for each regeneration cycle according to § 63.4568(d); and ii. maintaining the total regeneration desorbing gas mass flow at or above the mass flow limit.
	b. the temperature of the carbon bed, after completing each regeneration and any cooling cycle, must not exceed the carbon bed temperature limit established according to § 63.4567(c).	i. measuring the temperature of the carbon bed after completing each regeneration and any cooling cycle according to § 63.4568(d); and ii. operating the carbon beds such that each carbon bed is not returned to service until completing each regeneration and any cooling cycle until the recorded temperature of the carbon bed is at or below the temperature limit.
4. condenser	a. the average condenser outlet (product side) gas temperature in any 3-hour period must not exceed the temperature limit established according to § 63.4567(d).	i. collecting the condenser outlet (product side) gas temperature according to § 63.4568(e); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas temperature at the outlet at or below the temperature limit.
5. concentrators, including zeolite wheels and rotary carbon adsorbers.	a. the average gas temperature of the desorption concentrate stream in any 3-hour period must not fall below the limit established according to § 63.4567(e).	i. collecting the temperature data according to 63.4568(f); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average temperature at or above the temperature limit.
	b. the average pressure drop of the dilute stream across the concentrator in any 3-hour period must not fall below the limit established according to § 63.4567(e).	i. collecting the pressure drop data according to 63.4568(f); and ii. reducing the pressure drop data to 3-hour block averages; and iii. maintaining the 3-hour average pressure drop at or above the pressure drop limit.
6. emission capture system that is a PTE according to § 63.4565(a).	a. the direction of the air flow at all times must be into the enclosure; and either b. the average facial velocity of air through all natural draft openings in the enclosure must be at least 200 feet per minute; or. c. the pressure drop across the enclosure must be at least 0.007 inch H_2O, as established in Method 204 of appendix M to 40 CFR part 51.	i. collecting the direction of air flow, and either the facial velocity of air through all natural draft openings according to § 63.4568(g)(1) or the pressure drop across the enclosure according to § 63.4568(g)(2); and ii. maintaining the facial velocity of air flow through all natural draft or the pressure drop openings at or above the facial velocity limit or pressure drop limit, and maintaining the direction of air flow into the enclosure at all times.
7. emission capture system that is not a PTE according to § 63.4565(a).	a. the average gas volumetric flow rate or duct static pressure in each duct between a capture device and add-on control device inlet in any 3-hour period must not fall below the average volumetric flow rate or duct static pressure limit established for that capture device according to § 63.4567(f).	i. collecting the gas volumetric flow rate or duct static pressure for each capture device according to § 63.4568(g); ii. reducing the data to 3-hour block averages; and iii. maintaining the 3-hour average gas volumetric flow rate or duct static pressure for each capture device at or above the gas volumetric flow rate or duct static pressure limit.

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART PPPP OF PART 63.— APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.1(a)(1)–(14)	General Applicability	Yes.	
§ 63.1(b)(1)–(3)	Initial Applicability Determination	Yes	Applicability to subpart PPPP is also specified in § 63.4481.
§ 63.1(c)(1)	Applicability After Standard Established	Yes.	
§ 63.1(c)(2)–(3)	Applicability of Permit Program for Area Sources.	No	Area sources are not subject to subpart PPPP.
§ 63.1(c)(4)–(5)	Extensions and Notifications	Yes.	
§ 63.1(e)	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are specified in § 63.4581.
§ 63.3(a)–(c)	Units and Abbreviations	Yes.	
§ 63.4(a)(1)–(5)	Prohibited Activities	Yes.	
§ 63.4(b)–(c)	Circumvention/Severability	Yes.	
§ 63.5(a)	Construction/Reconstruction	Yes.	
§ 63.5(b)(1)–(6)	Requirements for Existing, Newly Constructed, and Reconstructed Sources.	Yes.	
§ 63.5(d)	Application for Approval of Construction/Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/Reconstruction	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on Prior State Review.	Yes.	
§ 63.6(a)	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7)	Compliance Dates for New and Reconstructed Sources.	Yes	§ 63.4483 specifies the compliance dates.
§ 63.6(c)(1)–(5)	Compliance Dates for Existing Sources	Yes	§ 63.4483 specifies the compliance dates.
§ 63.6(e)(1)–(2)	Operation and Maintenance	Yes.	
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	Yes	Only sources using an add-on control device to comply with the standard must complete startup, shutdown, and malfunction plans.
§ 63.6(f)(1)	Compliance Except During Startup, Shutdown, and Malfunction.	Yes	Applies only to sources using an add-on control device to comply with the standard.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Yes.	
§ 63.6(g)(1)–(3)	Use of an Alternative Standard	Yes.	
§ 63.6(h)	Compliance With Opacity/Visible Emission Standards.	No	Subpart PPPP does not establish opacity standards and does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16)	Extension of Compliance	Yes.	
§ 63.6(j)	Presidential Compliance Exemption	Yes.	
§ 63.7(a)(1)	Performance Test Requirements—Applicability.	Yes	Applies to all affected sources. Additional requirements for performance testing are specified in §§ 63.4564, 63.4565, and 63.4566.
§ 63.7(a)(2)	Performance Test Requirements—Dates	Yes	Applies only to performance tests for capture system and control device efficiency at sources using these to comply with the standard. Section 63.4560 specifies the schedule for performance test requirements that are earlier than those specified in § 63.7(a)(2).
§ 63.7(a)(3)	Performance Tests Required By the Administrator.	Yes.	
§ 63.7(b)–(e)	Performance Test Requirements—Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.7(f)	Performance Test Requirements—Use of Alternative Test Method.	Yes	Applies to all test methods except those used to determine capture system efficiency.

TABLE 2 TO SUBPART PPPP OF PART 63.— APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63—Continued

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.7(g)–(h)	Performance Test Requirements—Data Analysis, Recordkeeping, Reporting, Waiver of Test.	Yes	Applies only to performance tests for capture system and add-on control device efficiency at sources using these to comply with the standard.
§ 63.8(a)(1)–(3)	Monitoring Requirements—Applicability	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for monitoring are specified in § 63.4568.
§ 63.8(a)(4)	Additional Monitoring Requirements	No	Subpart PPPP does not have monitoring requirements for flares.
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)–(3)	Continuous Monitoring Sysem (CMS) Operation and Maintenance.	Yes	Applies only to monitoring of capture system and add-on control device efficiency at sources using these to comply with the standard. Additional requirements for CMS operations and maintenance are specified in § 63.4568.
§ 63.8(c)(4)	CMS	No	§ 63.4568 specifies the requirements for the operation of CMS for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(5)	COMS	No	Subpart PPPP does not have opacity or visible emission standards.
§ 63.8(c)(6)	CMS Requirements	No	§ 63.4568 specifies the requirements for monitoring systems for capture systems and add-on control devices at sources using these to comply.
§ 63.8(c)(7)	CMS Out-of-Control Periods	Yes.	
§ 63.8(c)(8)	CMS Out-of-Control Periods and Reporting.	No	§ 63.4520 requires reporting of CMS out of control periods.
§ 63.8(d)–(e)	Quality Control Program and CMS Performance Evaluation.	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.8(f)(1)–(5)	Use of an Alternative Monitoring Method	Yes.	
§ 63.8(f)(6)	Alternative to Relative Accuracy Test	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.8(g)(1)–(5)	Data Reduction	No	§§ 63.4567 and 63.4568 specify monitoring data reduction.
§ 63.9(a)–(d)	Notification Requirements	Yes.	
§ 63.9(e)	Notification of Performance Test	Yes	Applies only to capture system and add-on control device performance tests at sources using these to comply with the standard.
§ 63.9(f)	Notification of Visible Emissions/Opacity Test.	No	Subpart PPPP does not have opacity or visible emission standards.
§ 63.9(g)(1)–(3)	Additional Notifications When Using CMS.	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.9(h)	Notification of Compliance Status	Yes	§ 63.4510 specifies the dates for submitting the notification of compliance status.
§ 63.9(i)	Adjustment of Submittal Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability and General Information.	Yes.	
§ 63.10(b)(1)	General Recordkeeping Requirements	Yes	Additional requirements are specified in §§ 63.4530 and 63.4531.

TABLE 2 TO SUBPART PPPP OF PART 63.— APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPP OF PART 63—Continued

Citation	Subject	Applicable to subpart PPPP	Explanation
§ 63.10(b)(2)(i)–(v)	Recordkeeping Relevant to Startup, Shutdown, and Malfunction Periods and CMS.	Yes	Requirements for Startup, Shutdown, and Malfunction records only apply to add-on control devices used to comply with the standard.
§ 63.10(b)(2)(vi)–(xi)		Yes.	
§ 63.10(b)(2)(xii)	Records	Yes.	
§ 63.10(b)(2)(xiii)		No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.10(b)(2)(xiv)		Yes.	
§ 63.10(b)(3)	Recordkeeping Requirements for Applicability Determinations.	Yes.	
§ 63.10(c)(1)–(6)	Additional Recordkeeping Requirements for Sources with CMS.	Yes.	
§ 63.10(c)(7)–(8)		No	The same records are required in § 63.4520(a)(7).
§ 63.10(c)(9)–(15)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements	Yes	Additional requirements are specified in § 63.4520.
§ 63.10(d)(2)	Report of Performance Test Results	Yes	Additional requirements are specified in § 63.4520(b).
§ 63.10(d)(3)	Reporting Opacity or Visible Emissions Observations.	No	Subpart PPPP or does not require opacity or visible emissions observations.
§ 63.10(d)(4)	Progress Reports for Sources With Compliance Extensions.	Yes.	
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports.	Yes	Applies only to add-on control devices at sources using these to comply withthe standard.
§ 63.10(e)(1)–(2)	Additional CMS Reports	No	Subpart PPPP does not require the use of continuous emissions monitoring systems.
§ 63.10(e)(3)	Excess Emissinos/CMS Performance Reports.	No	§ 63.4520(b) specifies the contents of periodic compliance reports.
§ 63.10(e)(4)	COMS Data Reports	No	Subpart PPPP does not specify requirements for opacity or COMS.
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11	Control Device Requirements/Flares	No	Subpart PPPP does not specify use of flares for compliance.
§ 63.12	State Authority and Delegations	Yes.	
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	
§ 63.15	Availability of Information/Confidentiality	Yes.	

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data.

TABLE 3 TO SUBPART PPPP OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS

Solvent/solvent blend	CAS No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
1. Toluene	108–88–3	1.0	Toluene
2. Xylene(s)	1330–20–7	1.0	Xylenes, ethylbenzene
3. Hexane	110–54–3	0.5	n-hexane
4. n-Hexane	110–54–3	1.0	n-hexane
5. Ethylbenzene	100–41–4	1.0	Ethylbenzene
6. Aliphatic 140		0	None
7. Aromatic 100		0.02	1% xylene, 1% cumene
8. Aromatic 150		0.09	Naphthalene
9. Aromatic naphtha	64742–95–6	0.02	1% xylene, 1% cumene
10. Aromatic solvent	64742–94–5	0.1	Naphthalene
11. Exempt mineral spirits	8032–32–4	0	None

TABLE 3 TO SUBPART PPPP OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR SOLVENTS AND SOLVENT BLENDS—Continued

Solvent/solvent blend	CAS No.	Average organic HAP mass fraction	Typical organic HAP, percent by mass
12. Ligroines (VM & P)	8032–32–4	0	None
13. Lactol spirits	64742–89–6	0.15	Toluene
14. Low aromatic white spirit	64742–82–1	0	None
15. Mineral spirits	64742–88–7	0.01	Xylenes
16. Hydrotreated naphtha	64742–48–9	0	None
17. Hydrotreated light distillate	64742–47–8	0.001	Toluene
18. Stoddard solvent	8052–41–3	0.01	Xylenes
19. Super high-flash naphtha	64742–95–6	0.05	Xylenes
20. Varsol® solvent	8052–49–3	0.01	0.5% xylenes, 0.5% ethylbenzene
21. VM & P naphtha	64742–89–8	0.06	3% toluene, 3% xylene
22. Petroleum distillate mixture	68477–31–6	0.08	4% naphthalene, 4% biphenyl

You may use the mass fraction values in the following table for solvent blends for which you do not have test data or manufacturer's formulation data:

TABLE 4 TO SUBPART PPPP OF PART 63.—DEFAULT ORGANIC HAP MASS FRACTION FOR PETROLEUM SOLVENT GROUPS [a]

Solvent type	Average organic HAP mass fraction	Typical organic HAP percent by mass
Aliphatic [b]	0.03	1% Xylene, 1% Toluene, and 1% Ethylbenzene
Aromatic [c]	0.06	4% Xylene, 1% Toluene, and 1% Ethylbenzene

[a] Use this table only if the solvent blend does not match any of the solvent blends in Table 3 to this subpart and you only know whether the blend is aliphatic or aromatic.

[b] Mineral Spirits 135, Mineral Spirits 150 EC, Naphtha, Mixed Hydrocarbon, Aliphatic Hydrocarbon, Aliphatic Naphtha, Naphthol Spirits, Petroleum Spirits, Petroleum Oil, Petroleum Naphtha, Solvent Naphtha, Solvent Blend.

[c] Medium-flash Naphtha, High-flash Naphtha, Aromatic Naphtha, Light Aromatic Naphtha, Light Aromatic Hydrocarbons, Aromatic Hydrocarbons, Light Aromatic Solvent.

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Part III

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7385–5]

RIN 2060–AG58

National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes national emission standards for hazardous air pollutants (NESHAP) for facilities that coat paper and other web substrates and are major sources of hazardous air pollutants (HAP) emissions. The standards implement section 112(d) of the Clean Air Act (CAA) to protect public health and the environment by reducing HAP emissions from new and existing facilities. The CAA requires these sources to achieve the maximum degree of reduction in HAP emissions that is achievable. The final standards will eliminate approximately 80 percent of nationwide HAP emissions from facilities that coat paper and other web substrates.

EFFECTIVE DATE: December 4, 2002. The incorporation by reference of certain publications listed in today's final rule is approved by the Director of the Federal Register as of December 4, 2002.

ADDRESSES: *Docket.* Docket No. A–99–09 contains supporting information used in developing the standards for the paper and other web coating source category. The docket is located at the Environmental Protection Agency, Office of Air & Radiation Docket & Information Center, Mail Code 6102T, 1301 Constitution Avenue, NW, Room B108, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Almodovar, Coating and Consumer Products Group (C539–03), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0283, facsimile number (919) 541–5689, electronic mail (e-mail) address: *almodovar.paul@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 rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (*See* section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air and Radiation Docket and Information Center by calling (202) 566–1742. A reasonable fee may be charged for copying docket materials.

WorldWide Web (WWW). In addition to being available in the docket, an electronic copy of today's final rule will also be available on the WWW through the EPA's Technology Transfer Network (TTN). Following signature by the EPA Administrator, 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.

Regulated Entities. Categories and entities potentially regulated by this action include those listed on the following table. This table is not intended to be exhaustive, but is just a guide to entities likely to be regulated by these standards. It lists the types of entities that may be regulated, but you should examine the applicability criteria in §§ 63.3290 and 63.3300 of the rule to decide whether your facility is regulated by the standards. If you have any questions about whether your facility is subject to the standards, call the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

CATEGORIES AND ENTITIES POTENTIALLY REGULATED BY THE STANDARDS

Category	NAICS Codes	Examples of Potentially Regulated Entities
Paper and Other Web Coating ..	322211 322212 [a] 322221 322222 [a] 322223 [a] 322224 322225 322226 [a] 322299 323111 323116 325992 326111 326112 [a] 326113 32613 326192 [a] 32791 332999 339944	Those facilities with web coating operations [b] that coat substrate used in products including, but not limited to: corrugated and solid fiber boxes; folding paperboard boxes, including sanitary; flexible packaging (packing paper and plastics film, coated and laminated); pressure sensitive tape and labels, medical tape, duct tape, coated and laminated paper, not elsewhere classified (nec); plastics, foil, and coated paper bags; bags: uncoated paper and multiwall; die-cut paper and board; converted paper and paperboard products, nec (gift wrap, paper wallpaper, cigarette paper); commercial printing, gravure; manifold business forms; plastic aseptic packaging; unsupported plastics film and sheet; laminated plastics plate, sheet, and profile shapes; abrasive products; laminated aluminum (metal) foil and leaf, flexible packaging; photographic equipment and supplies; carbon paper and inked ribbons; linoleum, asphalted-felt base, and other hard surface floor coverings.

[a] Facilities in these NAICS codes are expected to be primarily covered under the printing and publishing NESHAP.

[b] Web coating operations refer to the application of a continuous layer of coating material across the entire width or any portion of the width of a web substrate, and any associated curing/drying equipment between an unwind or feed station and a rewind or cutting station where the continuous web substrate is flexible enough to be wound or unwound as rolls.

Judicial Review. Under section 307(b) of the CAA, judicial review of the final rule is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 3, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the rule which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. What Are the Subject and Purpose of the Rule?
II. Does This Rule Apply to Me?
A. What Facilities Are Subject to the Rule?
B. What Is the Affected Source?
III. What Are the Emission Standards?
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IX. Administrative Requirements
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B. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
C. Executive Order 13132, Federalism
D. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, and Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601, *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. What Are the Subject and Purpose of the Rule?

The CAA requires us to establish standards to control HAP emissions from source categories identified under section 112(c) of the CAA. An initial source category list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The source category list identifies ''Paper and Other Web Coating (Surface Coating)'' as a source category because it contains major sources of HAP emissions. Under the CAA, a major source is defined as ''* * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year (tpy) or more of any one HAP or 25 tpy or more of any combination of HAP.'' We have estimated that there are over 400 existing paper and other web coating facilities with approximately 203 estimated to be major sources of HAP emissions.

The purpose of the rule is to reduce emissions of HAP from paper and other web coating major sources. The source category is for major sources only. Area sources are not included in this source category and, therefore, are not subject to the standards. We estimate that annual baseline organic HAP emissions from this source category are approximately 37,800 megagrams per year (Mg/yr) (42,000 tpy). The final rule will eliminate approximately 31,300 Mg/yr (34,500 tpy) of these organic HAP emissions (about an 80 percent reduction).

The organic HAP emitted from the paper and other web coating process include toluene, methanol, methyl ethyl ketone, xylenes, phenol, methylene chloride, ethylene glycol, glycol ethers, hexane, methyl isobutyl ketone, cresols and cresylic acid, dimethylformamide, vinyl acetate, formaldehyde, and ethyl benzene. These pollutants can cause reversible or irreversible toxic effects following sufficient exposure. The potential toxic effects include eye, nose, throat, and skin irritation, and blood cell, heart, liver, kidney damage, and possibly cancer.

The degree of adverse effects to human health from exposure to HAP can range from mild to severe. The extent and degree to which the human health effects may be experienced are dependent upon (1) the ambient concentration observed in the area (as influenced by emission rates, meteorological conditions, and terrain); (2) the frequency and duration of exposures; (3) characteristics of exposed individuals (genetics, age, preexisting health conditions, and lifestyle) which vary significantly with the population; and (4) pollutant-specific characteristics (toxicity, half-life in the environment, bioaccumulation, and persistence).

II. Does the Rule Apply to Me?

A. What Facilities Are Subject to the Rule?

The paper and other web coating source category includes any facility that is located at a major source and is engaged in the coating of paper, plastic film, metallic foil, and other web surfaces. Paper and other web coating may be simply referred to as ''web coating'' since paper is one of several web substrates in the paper and other web coating source category. The source category does not include printing operations covered under the Printing and Publishing NESHAP (40 CFR part 63, subpart KK) or web coating lines subject to the Magnetic Tape Manufacturing NESHAP (40 CFR part 63, subpart EE). The source category does not include coil coating, *i.e.*, the application of a coating to the surface of any metal strip at least 0.15 millimeter (0.006 inch) thick that is packaged in a roll or coil, which is being regulated as a separate source category. However, we have identified facilities that coat metal webs greater than 0.15 millimeter thick that are coated for use in flexible packaging. These web coating lines are part of the paper and other web coating source category and, therefore, are not subject to the Coil Coating NESHAP. Fabric coating operations are also being regulated as a separate source category, except for fabric coating for use in pressure sensitive tape and abrasive materials.

The rule applies to you if you own or operate any web coating lines at a facility that is a major source of HAP emissions. This means that the web coating lines at a major source would be subject to the standards without regard to the relative proportion of HAP emissions from the web coating lines to total HAP emissions at the source.

If your facility is a nonmajor (area) source, *i.e.*, actual and potential annual emissions are less than 10 tons of any single HAP and less than 25 tons of all HAP combined, you would not be subject to the rule.

If your facility is a major source, you would be required to meet the emission limits for all the web coating lines at your facility. We have defined a web to be a continuous substrate (*e.g.*, paper, plastic film, foil) that is capable of being rolled at any point during the coating

process. We have defined a web coating line to be any number of work stations, of which one or more applies a continuous layer of coating material along the entire width of a continuous web substrate or any portion of the width of the web substrate, and any associated curing/drying equipment between an unwind (or feed) station and a rewind (or cutting) station. As stated before, printing presses subject to the Printing and Publishing NESHAP (40 CFR part 63, subpart KK) are not web coating lines.

B. What Is the Affected Source?

We define an affected source as a stationary source, group of stationary sources, or part of a stationary source to which a specific NESHAP applies. Within a source category, we select the specific emission sources (emission points or groupings of emission points) that will make up the affected source for that category. To select these emission sources, we mainly consider the constituent HAP and quantity emitted from individual or groups of emission points.

For the Paper and Other Web Coating NESHAP, the affected source is the collection of all the web coating lines at a facility. As previously stated, a web coating line is defined as any number of work stations, of which one or more applies a continuous layer of coating material across the entire width or any portion of the width of a web substrate, and any associated curing/drying equipment between an unwind or feed station and a rewind or cutting station.

Affiliated operations such as mixing or dissolving of coating ingredients prior to application; coating mixing for viscosity adjustment, color tint or additive blending, or pH adjustment; cleaning of coating lines and coating line parts; handling and storage of coatings and solvent; and conveyance and treatment of wastewater are part of the paper and other web surface coating source category. The final distinction between these affiliated operations and other activities that go beyond the affiliated operations described above will be resolved in the context of the Miscellaneous Organic Chemical Manufacturing NESHAP or the Miscellaneous Coating Manufacturing NESHAP, both currently under development. Review of the industry survey data reflected that only a small portion of the surveyed facilities reported any data concerning affiliated operations, and only some of these facilities reported that HAP emissions from affiliated operations were controlled. For facilities that reported control of HAP emissions from these sources, the data were not sufficiently detailed to determine if the reported control represented the facility level of control or the control for one unit operation of this type out of several in the facility. For example, mixing may be performed in a mix room and at the application station. It was not clear from the reported data if a facility reporting capture and control of emissions from mixing operations conducted all mixing at controlled application stations or possibly just a single mix room was controlled. When these operations occur inside a permanent total enclosure, emissions reductions can be achieved at the overall control efficiency of the capture and control system. We were not able to identify emissions reductions for affiliated operations with the available data. Since we were not able to identify emissions reductions for affiliated operations, we believe it is not appropriate at this time to include them in the affected source in the final rule.

The requirements of the future Miscellaneous Organic Chemical Manufacturing NESHAP and the Miscellaneous Coating Manufacturing NESHAP will not apply to affiliated operations located at a facility subject to the rule. Activities which go beyond the affiliated operations described above may, however, be subject to the requirements of the Miscellaneous Organic Chemical Manufacturing NESHAP and the Miscellaneous Coating Manufacturing NESHAP. Language will be added to both of these rules to clarify their applicability.

Coating lines and equipment that are not in the source category and thus, not in the affected source, include those that perform both coating and printing and are subject to the national emission standards for the printing and publishing industry (40 CFR part 63, subpart KK); metal coil coating operations, except for the coating of metal webs greater than 0.15 millimeter thick that are used in flexible packaging; and fabric coating operations, except for fabric coating for use in pressure sensitive tape and abrasive materials.

Many industrial facilities perform both coating and printing operations. Within the printing industry, the product and packaging rotogravure and wide-web flexographic industry segment (that includes the flexible packaging industry as a major subsector) does the most coating, with material use distributed almost equally between inks and other types of coatings. Printing operations are covered under the NESHAP for the printing and publishing industry (40 CFR part 63, subpart KK). The Printing and Publishing NESHAP also include an option for facilities that perform both printing and coating to include certain coating operations as affected sources subject to that rule. Therefore, many facilities that could potentially be subject to the Paper and Other Web Coating NESHAP may have coating lines already subject to the Printing and Publishing NESHAP. Such web coating lines included in compliance demonstrations under the Printing and Publishing NESHAP are not subject to the Paper and Other Web Coating NESHAP. A detailed discussion of the printing and publishing industry is included in the background information document for that industry (Docket No. A–92–42, National Emission Standards for Hazardous Air Pollutants: Printing and Publishing Industry—Background Information for Proposed Standards (EPA–453/R–95–002a)).

III. What Are the Emission Standards?

A. Emission Limits

In the rule, we expressed the emission limit in three formats based on whether HAP emissions are measured in terms of mass of organic HAP applied, mass of coating material applied, or mass of coating solids applied. You may choose to comply with any of these formats (referred to as the ''emission limits''). The HAP emission limits are based on emission capture and control technology that can reduce total organic HAP emissions by 95 percent at existing affected sources and 98 percent at new affected sources. The HAP emission limits reflect this level of control by limiting organic HAP emissions to no more than 5 percent and 2 percent of the organic HAP applied each month at existing and new affected sources, respectively; and by equivalently limiting emissions based on the mass of the solids part of your coatings or the mass of your total coating materials. We believe expressing emission limits in this way is appropriately based on the maximum achievable control technology (MACT) level of control and offers flexibility to reduce emissions through the use of control technology, pollution prevention, or a combination of the two.

The three HAP emission limits for existing affected sources are: (1) Limit emissions to no more than 5 percent of the mass of organic HAP applied each month (95 percent reduction); (2) limit the total mass of organic HAP in your coating materials, or the total mass of organic HAP emitted, to no more than 4 mass percent of the total mass of coating materials applied to the web substrate each month; or (3) limit the total mass of organic HAP in your

coatings, or the total mass of organic HAP emitted, to no more than 20 mass percent of the total mass of coating solids applied to web substrates each month.

The three HAP emission limits for new affected sources are: (1) Limit emissions to no more than 2 percent of the mass of organic HAP applied each month (98 percent reduction); (2) limit the total mass of organic HAP in your coating materials, or the total mass of organic HAP emitted, to no more than 1.6 mass percent of the total mass of coating material applied to the web substrate each month; or (3) limit the total mass of organic HAP in your coatings, or the total mass of organic HAP emitted, to no more than 8 mass percent of the total mass of coating solids applied to web substrates each month.

Alternatively, the owners or operators of both existing and new affected sources using a thermal oxidizer to control organic HAP emissions may choose to operate the oxidizer such that an outlet HAP concentration of no greater than 20 parts per million by volume (ppmv) by compound on a dry basis is achieved. If 100 percent capture efficiency is achieved and this outlet concentration is achieved on a continuous basis, then the source will be deemed to be in compliance with the emission limit. Our rationale for including this alternative emission limit is included in section VII.B of this preamble.

If your facility is subject to today's rule, the General Provisions (40 CFR part 63, subpart A) also apply to you. The General Provisions codify procedures and criteria we use to carry out all part 63 NESHAP promulgated under the CAA. The General Provisions contain administrative procedures, preconstruction review procedures, and procedures for conducting compliance-related activities such as notifications, recordkeeping and reporting, performance testing, and monitoring. The rule refers to individual sections of the General Provisions that we believe will be of particular interest to you. However, unless specifically overridden in Table 2 of the rule, all of the General Provisions requirements apply to you.

B. Interaction With Other Regulations

You may be subject to both the Paper and Other Web Coating NESHAP and other future or existing rules, such as new source performance standards (NSPS) and State rules requiring reasonably available control technology limits on volatile organic compounds (VOC) emissions. You must comply with all applicable rules. Duplicative recordkeeping and reporting requirements and differences in emission limitations may be resolved through your title V permit.

IV. When Do I Show Initial Compliance With the Rule?

Existing affected sources must comply with the rule no later than 3 years after December 4, 2002. The effective date is December 4, 2002. New or reconstructed affected sources must comply upon start-up or December 4, 2002, whichever is later. Details of the compliance requirements can be found in the General Provisions, as outlined in Table 1 of today's rule.

Before your initial compliance demonstration, you must choose which of the three emission limit options you will use for your affected source. In your initial compliance certification, you must notify the Administrator of your choice and after that, you must monitor and report compliance results accordingly. If you decide to change to other emission limit options, you are also required to notify the Administrator, as with other changes at the facility, as discussed in section VI of this preamble.

V. What Testing and Monitoring Must I Do?

In addition to the specific testing and monitoring requirements specified below for the affected source, the rule adopts the testing requirements specified in § 63.7 of 40 CFR part 63.

A. Test Methods and Procedures

You may comply with the standards by applying materials meeting the organic HAP emission rate limits, by using capture and control equipment to reduce organic HAP emissions by 95 percent at existing affected sources and by 98 percent at new affected sources, or by using a combination of low-organic-HAP materials and capture and control equipment to meet the organic HAP emission rate limits.

If you demonstrate compliance based on the coating materials applied on your web coating lines, you must determine the organic HAP content of materials applied using either EPA Method 311 of appendix A of 40 CFR part 63, an alternative method for determining the organic HAP content (but only after obtaining EPA approval), or the volatile organic content of the coating materials applied as the value for the organic HAP content. The volatile organic content must be determined by EPA Method 24 of appendix A of 40 CFR part 60 (or an approved alternative method). If you are demonstrating compliance by applying coating materials that meet the emission limit based on coating solids applied, the coating solids content of the materials must be determined using EPA Method 24.

You may rely on formulation data to determine the organic HAP content, volatile matter content, or coating solids content as an alternative to performing Method 311 or Method 24 testing.

To demonstrate compliance, you must calculate the average mass of organic HAP in the coating materials applied on the web coating lines and show that it is less than the organic HAP emission limits specified.

If you use an emission capture and control system to comply with the standards, you must demonstrate that the overall control efficiency reduces total organic HAP emissions by at least 95 percent at existing sources and 98 percent at new sources. Alternatively, you may use capture and control equipment in combination with low-organic-HAP materials and demonstrate you meet one of the other organic HAP emission limits. To comply using this combined approach, you must determine the overall control efficiency of the capture and control equipment and the organic HAP content of the materials applied on the web coating lines. If you choose to demonstrate compliance with the emission limit based on coating solids applied, then you must also determine the coating solids content of each coating material used on the web coating lines. These values must be determined for each monthly period.

To determine the capture system efficiency, you must either confirm that your capture system is a permanent total enclosure using EPA Method 204 of 40 CFR part 51, appendix M, in which case you may assume 100 percent capture; or use EPA Methods 204A through F to measure capture efficiency. You may also use any capture efficiency protocol or test method that satisfies either the data quality objectives or lower confidence limit approach as described in appendix A of 40 CFR part 63, subpart KK.

You must determine the emission destruction or removal efficiency of a control device by conducting a performance test or using a continuous emission monitoring system (CEMS). If you use a CEMS, you must determine the inlet and outlet concentration to calculate the control efficiency. The CEMS must comply with performance specification 8 or 9 in 40 CFR part 60, appendix B.

If you conduct a performance test, the destruction or removal efficiency of a control device must be determined based on three runs, each run lasting 1

hour. Method 1 or 1A of 40 CFR part 60, appendix A, must be used for selection of the sampling sites. Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, must be used to determine the gas volumetric flow rate. Method 3, 3A, or 3B of 40 CFR part 60, appendix A, must be used for gas analysis to determine dry molecular weight. Method 4 of 40 CFR part 60, appendix A, must be used to determine stack moisture. Method 25 or 25A of 40 CFR part 60, appendix A, must be used to determine organic volatile matter concentration, although the use of Method 25A is limited as detailed in the rule. Alternatively, any other test method or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used if approved by the Administrator.

If you use a solvent recovery system to comply with the requirements of the rule, you may alternatively determine the overall control efficiency using a liquid-liquid material balance. If you demonstrate compliance by using the material balance, you must measure the amount of all coating materials applied during each month to the web coating lines and determine the volatile matter content of these materials. You must also measure the amount of volatile matter recovered by the solvent recovery system during the month and calculate the overall solvent recovery efficiency.

If you so choose, you may also take into account any amount of organic HAP retained in the coated web or otherwise not emitted to the atmosphere, as discussed in section VII.C of this preamble. The final rule requires you to develop a testing protocol for determining the mass of volatile matter retained or otherwise not emitted to the atmosphere. This protocol would have to be submitted and approved as part of your site-specific test plan.

The test methods we require, as discussed above, are existing EPA methods that are familiar to the industry, readily available, and appropriate to the device or the parameter being measured. The selected tests are expected to establish whether the facility is complying with the standards.

B. Monitoring Requirements

According to paragraph (a)(3) of section 114 of the CAA, monitoring of stationary sources is required to determine the compliance status of the sources, and whether compliance is continuous or intermittent. For affected sources complying with the standards by using capture and control systems, initial compliance is determined through an initial performance test and ongoing compliance through continuous monitoring. We specify the operating parameters that need to be monitored for certain control devices used in the paper and other web coating industry (thermal and catalytic oxidizers). You must set the values of these parameters, which demonstrate compliance with the standards, during your initial performance test. These values are your ''operating limits.'' If future monitoring shows that capture and control equipment is operating outside the range of values established during the initial performance test, then you are deviating from the operating limits.

If you use a capture and control system to meet the standards, you are required to develop and maintain a plan identifying the operating limit and monitoring procedures for the capture system. You must monitor in accordance with your plan.

If you use a thermal or catalytic oxidizer to comply with the standards, you must monitor temperature using a continuous parameter monitoring system. If you use a thermal oxidizer to comply with the standards, you must establish the average combustion temperature recorded during the performance test as the operating limit. If you use a catalytic oxidizer to comply with the standards , you must establish as the operating limits the average inlet gas temperature and temperature rise across the catalyst bed recorded during the performance test. Alternatively, you may establish as the operating limits for a catalytic oxidizer the average gas temperature at the inlet of the catalyst bed and the average catalyst activity level.

If you use a solvent recovery system to comply with the emission limits, you must conduct monthly liquid-liquid material balances or operate continuous emission monitors.

VI. What Notification, Recordkeeping, and Reporting Requirements Must I Follow?

The rule requires you to comply with notification, recordkeeping, and reporting requirements, generally as described in the General Provisions (*see* Table 2 of the rule) and specifically as designed to support demonstration of compliance with the rule. We believe that these requirements are necessary and sufficient to ensure that you comply with the requirements in the rule (40 CFR part 63 subpart JJJJ).

A. Initial Notification

If the NESHAP apply to you, you must send an initial notification to the EPA Regional Office in the region where your facility is located and to your State agency. If you have an existing affected source, you must submit the initial notification no later than 1 year before the compliance date, which is December 5, 2005. If you have a new or reconstructed affected source, you must submit the notification no later than 120 days after either the date of initial start-up or December 4, 2002, whichever is later.

The initial notification notifies us and your State agency that you have an existing affected source that is subject to the standards or that you have constructed a new affected source. Thus, it allows you and the Federal or State enforcement agency to plan for compliance activities. The General Provisions specify the information you must include in the initial notification and other reporting requirements for both existing affected sources and new or reconstructed affected sources.

B. Notification of Performance Tests

If the rule applies to you, you will have several options for demonstrating compliance. If you demonstrate compliance by using a capture and control system to reduce HAP emissions, you must conduct a performance test as described in the rule. Prior to conducting the performance test, you must notify us or the delegated State or local agency at least 60 calendar days before the performance test is scheduled to begin, as indicated in the General Provisions.

C. Notification of Compliance Status

You are required to send a notice of compliance status within 180 days after the compliance date as specified in the General Provisions. This report must include your compliance certification, the results of any performance tests and monitoring, and a description of how you will demonstrate continuing compliance.

In conformance with 40 CFR 63.9(h), the notification of compliance status must identify whether low-HAP materials, emission capture and control systems, or a combination of low-HAP materials and capture and control systems were used to comply with the standards. For capture and control systems, it must also identify the operating limits established during the performance test. Specific reporting requirements are dependent upon how you choose to comply with the standards.

D. Recordkeeping Requirements

Records of the organic HAP, volatile organic content and solids content of

each coating applied, and the amount of each coating applied on paper and other web coating lines each month must be maintained to comply with the standards based on organic HAP content or organic HAP emissions on a mass basis.

If capture and control technology is used, you are required to keep records of the equipment monitoring parameter measurements as specified in the final rule. You must also develop a start-up, shutdown, and malfunction plan. You would have to make the plan available for inspection if the Administrator requests to see it. It must stay in your records for the life of the affected source or until the source is no longer required to meet the standards.

E. Periodic Reports

Each reporting year is divided into two semiannual reporting periods. If no deviations occur during a semiannual reporting period, you would submit a semiannual compliance report stating that the affected source has been in compliance. A deviation is any instance in which you fail to meet any requirement or obligation of the standards or any term or condition adopted to meet the standards. The following information would be required in semiannual compliance reports when deviations occur:

- If you are complying by using add-on control devices, report all deviations from the control device operating parameters.
- If you are complying by using solvent recovery systems and liquid-liquid material balance, report material balance calculations for all months when the material balances deviated from the emission limit.
- If you are complying by using add-on controls or solvent recovery systems with continuous emission monitors, report all deviations from the operating parameter values established for the capture system and all deviations from the emission limit.
- If you are complying by using low-HAP coating materials, report all deviations from the emission limit.
- If you are complying by using a combination of capture and control systems with low-HAP coating materials, report all deviations from the emission limit and all deviations from operating parameters described above.

You would also have to send us reports for each semiannual reporting period in which the following occur:

- A change occurs at your facility or within your process that might affect its compliance status.
- A change from what was reported in the initial notice occurs at your facility or within your process.
- You decide to change to another emission limitation option.
- You had a startup, shutdown, or malfunction of an emission control device during the semiannual period and the actions taken were consistent with your startup, shutdown, and malfunction plan (SSMP).

VII. What Major Changes Have We Made to the Rule Since Proposal?

We requested comments from the public on the proposed rule in general, as well as several specific areas. We received 28 comment letters from industry representatives, industry trade groups, and individuals. In response to these comments, we made several changes for the final rule. Many of these changes are clarifications designed to make our intentions clearer. However, some of the changes affect the requirements specified in the proposed rule. The more significant changes to the proposed rule are summarized in the following sections. Our complete responses to public comments for the final rule are contained in the document ''National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Category: Paper and Other Web Coating, Summary of Public Comments and Responses on the Proposed Rule'' (EPA–453/R–02–005).

A. Applicability

Several comments were received on the potential applicability overlap between the proposed rule and other coating standards. The affected source section has been revised to exclude web coating lines subject to the Magnetic Tape Manufacturing NESHAP (40 CFR part 63, subpart EE) and the Printing and Publishing NESHAP (40 CFR part 63, subpart KK) from the requirements of the final rule (40 CFR part 63, subpart JJJJ). The affected source section has also been revised to exclude web coating lines that will be an affected source under the NESHAP for metal coil surface coating operations currently under development. The final rule has been revised to exclude web coating lines that are engaged in the coating of both fabric and other webs on the same fabric coating line and that will be an affected source under the NESHAP for fabric and other textiles printing, coating, and dyeing operations currently under development. Finally, the rule has been revised to clarify that certain web coating lines engaged in fabric coating for use in pressure sensitive tape and abrasive materials are part of the Paper and Other Web Coating source category. While most of these products are commonly produced using a paper web, product applications that require higher performance or unique characteristics may necessitate the use of a fabric web. The coating equipment, the coating solutions, and the emissions are essentially the same whether the coated web is fabric or paper. Therefore, we are regulating these web coating processes under today's final rule.

B. New Source Emission Limit

We received a comment expressing doubt that new sources could consistently achieve 98 percent control efficiency using an oxidizer. The commenter stated that the data we used to develop the new source emission limit were based on short-term performance tests. Over the long term, according to the commenter, oxidizer performance can vary due to coating process variabilities. The commenter requested that we adopt the existing source control efficiency requirement of 95 percent for new sources. While the commenter did not explain what was meant by ''coating process variabilities,'' we assumed that this was a reference to fluctuating organic HAP inlet concentrations during periods of reduced coating application. We recognize that oxidizer performance may decrease when the inlet concentration decreases. While we believe the 98 percent organic HAP overall control efficiency for new sources is achievable based on information provided by the paper and other web coating industry, we added an alternative emission limit based on outlet organic HAP concentration that should account for any variable or low inlet concentrations. The MACT floor analysis for the rule determined that the emission control of the best controlled source in this category was 98 percent. Therefore, we have retained the 98 percent overall control of organic HAP emissions for new affected sources. As stated in the preamble to the proposed rule (65 FR 55339), although some facilities reported more than 98 percent overall control of organic HAP emissions, this higher level of control may not be achievable on a continuous basis under all normal operating conditions applicable to new sources. In order to provide additional flexibility and ensure consistency with other coating-related NESHAP in development, we added an alternate emission limit based on outlet organic HAP concentration. Owners or operators of both existing and new affected sources using a thermal oxidizer to control organic HAP emissions may choose to operate the oxidizer such that

an outlet organic HAP concentration of no greater than 20 ppmv is achieved as long as 100 percent capture efficiency is achieved.

The 20 ppmv by compound organic HAP limit is based on previous EPA studies of available oxidizer technology, cost, and energy use. The dual requirement of meeting a minimum control efficiency value or a 20 ppmv by compound limit accounts for a fall-off of oxidizer efficiency at lower inlet concentrations. For example, if an inlet concentration is only 200 ppmv, even if an outlet concentration of 20 ppmv is achieved, the control efficiency is only 90 percent. This is less than the existing source limit of 95 percent and the new source limit of 98 percent. We recognize this problem for oxidizers with low inlet concentrations and, consequently, have included the alternate 20 ppmv by compound organic HAP emission limit.

Previous EPA studies have shown that new oxidizers can achieve the 20 ppmv by compound emission limit even when the inlet organic HAP concentration is low. We believe that most existing oxidizers could also reach the emission limit with moderate adjustments. The combustion temperature and residence time used in the previous EPA studies to achieve the 20 ppmv by compound emission limit (870 degrees Celsius (1600 degrees Fahrenheit) and 0.75 second) are typical of the necessary operating conditions. We believe these operating conditions are achievable by both new and existing sources.

C. Solvent Retained in the Web

Numerous commenters provided information concerning volatile materials that may be retained in the coated web even after the drying/curing operation. Most of these commenters were concerned that a source using solvent recovery and demonstrating compliance by means of a liquid-liquid material balance would be at a disadvantage because the compliance demonstration procedures in the proposed rule assumed that all volatile materials in the coatings are emitted. Thus, the emissions would be overestimated when volatile material is retained in the coated web. The commenters requested that an ''as-emitted'' compliance option be added to the final rule.

Volatile HAP may be retained in the web due to reactive coatings in which the volatiles are consumed or changed in a chemical reaction during the drying/curing operation, or where a portion of the volatiles is physically retained within the coated web. Volatile HAP may also be recovered from the web coating process and recycled, therefore, not being emitted to the atmosphere. Under the proposed rule, sources using solvent recovery devices and demonstrating compliance through the use of a liquid-liquid material balance would have no means of accounting for the volatile HAP retained in the coated web and not emitted to the atmosphere. Even a small percentage of volatile HAP retained in the coated web would restrict the ability of such a source to comply with the emission limitations in the proposed rule.

In response to these comments, we have added paragraph (g) to § 63.3360, the performance testing section of the final rule. This paragraph allows a source to take into account the mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere. It also requires the source to develop a testing protocol for determining the mass of volatile matter retained or otherwise not emitted to the atmosphere. This protocol would have to be submitted and approved as part of a site-specific test plan. This added paragraph applies to any means of demonstrating compliance, not just liquid-liquid material balances.

In conjunction with the new paragraph in § 63.3360, we revised Equations 4, 5, 6, 7, 8, 12, 14, and 15 of § 63.3370 by adding a term (M_{vret}) to account for volatile matter not emitted from the coating operation. This term may be used to account for reactive coatings, volatile matter chemically bound in the dried coating, incomplete curing, or other situations. These modifications have the same effect as the commenters' request for adding an ''as-emitted'' compliance option.

D. Monitoring

We received numerous comments indicating that the performance specifications (PS) for parameter monitoring of control devices were overly burdensome, particularly the temperature monitor requirements for oxidizers. While we believe the requirements in the proposed rule were appropriate, we have reviewed these requirements and made modifications where continuous compliance assurance will not be compromised. For example, the temperature monitor requirements for oxidizers no longer require monthly inspection of the electrical connections of the temperature monitoring system because we believe the industry adequately performs such monitoring in the absence of specific requirements as part of their routine maintenance. If you wish to monitor an alternative parameter for an oxidizer, or choose to use a control device other than an oxidizer, then you must apply for and receive approval of an alternative monitoring method under § 63.8(f) of the General Provisions. Through this procedure, you have the option of selecting monitoring appropriate to your specific facility that is the most efficient for your needs while still assuring that continuous compliance is maintained.

A related change concerns control devices equipped with an automatic system that shuts down the control device when the temperature falls below the minimum set point. We received comments requesting that hourly averages of temperature readings not be required when such a system is installed. We agree that such a system is an adequate monitor of control device performance and will assure continuous compliance. The final rule specifies that you have the option of using such a system after receiving approval under § 63.8(f) of the General Provisions.

We clarified the minimum data availability requirements for calculating a valid hourly value from continuous monitoring system data, as well as for calculating values for the 3-hour averages derived from the hourly values. These changes were in response to comments indicating that the proposed rule did not clearly indicate what constituted a valid set of data for an hourly reading.

As an alternative to measuring the inlet temperature and temperature rise across the catalyst bed of a catalytic oxidizer to demonstrate continuous compliance, the rule includes a provision that allows you to monitor the temperature at the inlet to the catalyst bed and the catalyst activity level.

The proposed rule did not take into account that some existing facilities may already have CEMS in place. In order to allow such a facility to use the CEMS for compliance purposes, a provision was added to the final rule which allows the use of CEMS to monitor the organic HAP concentration in an exhaust stream from an emission source that is controlled by means other than solvent recovery. However, in order to use the CEMS data for compliance purposes, the emission source must also be operated within a permanent total enclosure.

VIII. What Are the Environmental, Energy, and Economic Impacts of the Rule?

We developed model facilities to represent the paper and other web coating industry based on the data we collected. We estimated environmental, energy, and economic impacts based upon what these modeled facilities must do to meet the rule. There are several options for demonstrating compliance

with these standards, and each facility has flexibility to adopt the compliance option which has the least economic impact for their individual situation. Most of the existing major source facilities in this industry apply solvent-based coatings and utilize thermal oxidation to reduce HAP emissions. Therefore, in estimating the impacts associated with the rule, we assumed that most facilities would install a permanent total enclosure and either install a new thermal oxidizer or upgrade the mechanical components of an existing one. If, instead, a facility complies with the rule by applying coatings that meet the emission limitation, the capital and operating costs and other impacts would be lower than estimated. Hence, the estimates presented below may overestimate the costs and other impacts as some facilities may comply with the rule by applying low-HAP coatings.

A. Emission Reductions

For existing affected sources in the paper and other web coating industry (approximately 203 major sources), the nationwide baseline organic HAP emissions are estimated to be 35,000 Mg/yr (39,000 tpy). We estimate that implementation of the final rule would reduce emissions from existing major sources by approximately 29,000 Mg/yr (32,000 tpy), or approximately 80 percent.

We have projected the growth of the paper and other web coating industry and anticipate that 32 new affected sources (individual facilities with one or more web coating lines) will be constructed over the next 5 years. In the absence of this rule, these new sources would be required to comply with the NSPS in 40 CFR part 60 for VOC. Because nearly all the VOC used by the paper and other web coating industry are also organic HAP, the NSPS would reduce organic HAP emissions as well as VOC emissions. Based on the analysis performed to develop model plants to assess the impacts of the proposed rule on the industry, it was determined that the NSPS represents a 90 percent reduction of organic HAP emissions. Therefore, this level of control was used to estimate the baseline organic HAP emissions for new sources (*i.e.*, the level of emissions from new sources in the absence of this rule). We estimated that nationwide organic HAP baseline emissions from new sources will be about 2,800 Mg/yr (3,000 tpy). We estimate that implementation of the final rule will reduce emissions from new affected sources by about 2,300 Mg/yr (2,535 tpy), or approximately 80 percent.

B. Secondary Environmental Impacts

Secondary environmental impacts are considered to be any air, water, or solid waste impacts, positive or negative, associated with the implementation of the final standards. These impacts are exclusive of the direct organic HAP air emissions reductions discussed in the previous section.

We estimate that more than 99 percent of the organic HAP emissions from paper and other web coating are VOC. Therefore, the capture and control of organic HAP that are presently emitted will result in a decrease in VOC emissions. Consequently, we estimate the current nationwide VOC emissions from the paper and other web coating source category to be at least 35,000 mg/yr (39,000 tpy), the nationwide organic HAP estimate. The emission controls for organic HAP will reduce non-HAP VOC emissions as well.

Emissions of VOC have been associated with a variety of health and welfare impacts. The VOC emissions, together with nitrogen oxides, are precursors to the formation of ground-level ozone, or smog. Exposure to ambient ozone is responsible for a series of public health impacts, such as alterations in lung capacity and aggravation of existing respiratory disease. Ozone exposure can also damage forests and crops.

The use of newly installed or upgraded control devices to meet the standards would result in greater electricity consumption. Increases in emissions of nitrogen oxides, sulfur dioxide, carbon monoxide, and carbon dioxide, as well as certain HAP, from electric utilities could result. The operation of newly installed or upgraded control devices would also require combustion of supplemental fuel, typically natural gas, resulting in additional emissions of nitrogen oxides, carbon monoxide, and carbon dioxide.

It is expected that some paper and other web coating facilities will comply with the standards by substituting non-HAP materials for organic HAP presently in use. In some cases, the non-HAP materials may be VOC, however, in other cases, non-VOC materials (*e.g.*, water) may be used. Facilities converting to waterborne materials as a means or partial means of compliance may have reduced Resource Conservation and Recovery Act hazardous waste disposal if the status of the waste material changes from hazardous to nonhazardous. An increase in wastewater discharge may then occur if this waste material and waterborne wash up materials are discharged to publicly owned treatment works. However, we do not expect any significant increases in wastewater discharge to result from the standards.

New and upgraded catalytic oxidizers will require catalysts. Catalyst life is estimated to be more than 10 years. Spent catalysts will represent a small amount of solid waste, and sometimes the spent catalyst will be regenerated by the manufacturer for reuse. Activated carbon used in solvent recovery systems is typically returned to the manufacturer at the end of its useful life and converted to other products. Little solid waste impact is expected from this.

C. Energy Impacts

The operation of new and upgraded control devices will require additional energy. Capture of previously uncontrolled solvent-laden air will require fan horsepower. Operation of oxidizers, particularly thermal oxidizers, may require supplemental fuel (typically natural gas) to increase the combustion temperature and improve destruction efficiency.

The total additional electrical energy required to meet the standards is estimated to be 313 million kilowatt-hours per year. Additional fuel requirements total 3.7 billion British thermal units per year. These fuel impacts are based on the use of thermal oxidizers at all facilities, which is the control scenario expected to result in the highest energy impacts.

D. Cost Impacts

The total nationwide capital and annualized costs (1998 dollars) attributable to compliance with the standards have been estimated for existing and new affected sources. Costs are based on the use of permanent total enclosures, thermal oxidizers, and monitoring equipment (*i.e.*, CEMS for solvent recovery systems). The capital costs with other methods of control (*e.g.*, applying low-HAP coatings) are expected to be significantly lower.

It is expected that any new facility using solvent-based coatings will install control systems to comply with applicable State and Federal regulations for reducing VOC emissions from this source category (*e.g.*, the standards of performance for new stationary sources in 40 CFR part 60). The data we gathered on this industry indicate that thermal oxidation is the most common control technology installed to meet the requirements of these existing State and Federal regulations. Thermal oxidation is capable of achieving a 98 percent reduction of HAP emissions. Therefore, the additional costs to a new facility resulting from the standards were estimated based on the costs of

constructing a permanent total enclosure to deliver all HAP emissions to the existing thermal oxidizer.

Capital costs would be incurred by installing capture and control systems at existing facilities presently without capture and control systems, and upgrading capture and control systems at existing facilities that do not meet the standards. Additionally, we estimated the cost for the purchase of monitoring equipment needed as a capital investment to meet the monitoring, recordkeeping, and reporting requirements of the standards. Total nationwide capital costs are estimated to be $222 million with the cost for existing sources and new sources estimated to be $204 million and $18 million, respectively.

Total nationwide annualized costs of the standards have been estimated at $69 million with the annualized cost for existing and new sources estimated to be $64 million and $5 million, respectively. These costs include capital recovery over a 10-year period, operating costs for the newly installed and upgraded capture and control systems, and costs for monitoring, recordkeeping, and reporting. These are net costs after taking into account the costs presently being incurred for the baseline control level.

E. Economic Impacts

The economic impact analysis (EIA) shows that the expected price increases for affected output would range from only 0.1 to 1.1 percent as a result of the standards. The expected change in production of affected output is a reduction of 0.1 to 1.1 percent as a result of the standards. The economic impact analysis predicts three plant closures among the facilities included in the analysis. Although any facility closure is cause for concern, it should be noted that the baseline economic condition of the facilities predicted to close affects the closure estimate provided by the economic model. Facilities which are already experiencing adverse economic conditions for reasons unconnected to the final rule are more vulnerable to the impact of any new costs than those that are not. The facilities predicted to close appear to currently have low profitability levels. While the final rule may adversely impact the three facilities predicted to close, we do not predict an adverse economic impact to the industry as a whole.

IX. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by 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 technology performance and not on an assessment of health or safety risks. Furthermore, the rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

C. Executive Order 13132, Federalism

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

The 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. Thus, Executive Order 13132 does not apply to the rule. Although section 6 of Executive Order 13132 does not apply to the rule, EPA did consult with State and local officials to enable them to provide timely input in the development of the rule.

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 9, 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.'' The final rule does not have tribal implications, as specified in Executive Order 13175. No tribal governments own or operate paper and other web coating lines. Thus, Executive Order 13175 does not apply to the rule.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, and Use

The 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.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public

Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the rule does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the rule for any year has been estimated to be about $69 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the standards 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 rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601, et seq.

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business ranging from 500 to 750 employees, according to Small Business Administration size standards established under the NAICS for the industries affected by today's rule; (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 final rule on small entities, EPA has concluded that this action will not have a significant impact on a substantial number of small entities. We have determined that 50 of the 103 companies owning affected facilities are small businesses. Although small businesses represent 49 percent of the companies within the source category, they are expected to incur 25 percent of the total industry compliance costs of $64 million. There are six small firms with compliance costs equal to or greater than 3 percent of their sales. In addition, there are four small firms with cost-to-sales ratios between 1 and 3 percent.

We performed an EIA to estimate the changes in product price and production quantities for the firms affected by the final rule. The analysis shows that of the 54 facilities owned by affected small firms, one would be expected to shut down rather than incur the cost of compliance with the final rule. Although any facility closure is cause for concern, it should be noted that the baseline economic condition of the facility predicted to close affects the closure estimate provided by the economic model. Facilities which are already experiencing adverse economic conditions for reasons unconnected to the rule are more vulnerable to the impact of any new costs than those that are not. The facility predicted to close appears to have low profitability levels currently. The EPA also notes that, while economies of scale will require individual small firms to pay a somewhat higher proportion of revenues than large firms for compliance, the burden on most small firms is quite low nevertheless. The median compliance cost is well below 1 percent of sales for both small and large firms affected by these standards (0.16 and 0.03 percent of sales for small and large firms, respectively).

In summary, while a few small firms may experience significant impacts, there will not be a substantial number incurring such a burden. For more information, consult the docket for this project.

H. Paperwork Reduction Act

The information collection requirements in the rule have been submitted for approval to 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. 1951.02) and a copy may be obtained from Susan Auby by mail at the Collection Strategies Division (2822T), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov,* or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The annual monitoring, recordkeeping, and reporting burden for this collection (averaged over the first 3 years after the effective date of the rule) for existing web coating facilities is estimated to be 38,708 labor hours at a total annual cost of $2,914,796. For new sources, the annual burden for the same 3-year period is estimated to be 2,754 labor hours at a total annual cost of $206,283. This estimate covers all monitoring, recordkeeping, and reporting activities, including a one-time submission of a SSMP with semiannual reports for any event when the procedures in the plan were not followed; semiannual compliance reports; notifications; and recordkeeping. The total annual capital/startup cost component (including purchase of services component) for

existing sources over the 3-year period is estimated to be $2,015,800. The annual operation and maintenance costs component for existing sources is estimated to be $649,779. For new sources, the estimated annual capital/startup cost component is $233,500 and the estimated annual operation and maintenance cost component is $28,520. 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. The OMB control number for the information collection requirements in this rule will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR.

I. 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 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

The final rule involves technical standards. The EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 24, 25, 25A, 204, 204A through F, and 311; and PS 6, 8, and 9. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods/PS. No applicable VCS were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204A through F, and 311, and PS 6, 8, and 9. The search and review results have been documented and are placed in docket A–99–09 for the rule.

The VCS described below was identified as an acceptable alternative to EPA test methods for the purposes of the rule.

The VCS ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' is cited in the rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19.10–1981–Part 10 is an acceptable alternative to Method 3B.

Six VCS are already incorporated by reference (IBR) in EPA Method 24: ASTM D1475–90, ASTM D2369–95, ASTM D3792–91, ASTM D4017–96a, ASTM D4457–85 (Reapproved 1991), and ASTM D5403–93. Five VCS are IBR in EPA Method 311: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94.

In addition to the VCS EPA uses in the rule, the search for emissions measurement procedures identified 14 other VCS. The EPA determined that 11 of these 14 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the rule were impractical alternatives to EPA test methods for the purposes of the rule. Therefore, EPA does not intend to adopt these standards for this purpose. Three of the 14 VCS identified in this search were not available at the time the review was conducted for the purposes of the final rule.

The VCS ASTM D3154–00, ''Standard Method for Average Velocity in a Duct (Pitot Tube Method),'' is impractical as an alternative to EPA Methods 1, 2, 2C, 3, 3B, and 4 for the purposes of the final rule since the standard appears to lack in quality control and quality assurance requirements. Specifically, ASTM D3154–00 does not include the following: (1) Proof that openings of standard pitot tube have not plugged during the test; (2) if differential pressure gauges other than inclined manometers (*e.g.*, magnehelic gauges) are used, their calibration must be checked after each test series; and (3) the frequency and validity range for calibration of the temperature sensors.

The VCS ASTM D3464–96 (2001), ''Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer,'' is impractical as an alternative to EPA Method 2 for the purposes of the final rule primarily because applicability specifications are not clearly defined, *e.g.*, range of gas composition, temperature limits. Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit EPA's ability to make a definitive comparison of the method in these areas.

The VCS ISO 10780:1994, ''Stationary Source Emissions–Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts,'' is impractical as an alternative to EPA Method 2 in the final rule. The standard recommends the use of an L-shaped pitot which historically has not been recommended by EPA. The EPA specifies the S-type design which has large openings that are less likely to plug up with dust.

The VCS CAN/CSA Z223.2–M86(1986), ''Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams,'' is unacceptable as a substitute for EPA Method 3A since it does not include quantitative specifications for measurement system performance, most notably the calibration procedures and instrument performance characteristics. The instrument performance characteristics that are provided are nonmandatory and also do not provide the same level of quality assurance as the EPA methods. For example, the zero and span/calibration drift is only checked weekly, whereas the EPA methods require drift checks after each run.

Two very similar standards, ASTM D5835–95, ''Standard Practice for Sampling Stationary Source Emissions for Automated Determination of Gas Concentration,'' and ISO 10396:1993, ''Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations,'' are impractical alternatives to EPA Method 3A for the purposes of the final rule because they lack in detail and quality assurance/quality control requirements. Specifically, these two standards do not include the following: (1) Sensitivity of the method; (2) acceptable levels of analyzer calibration error; (3) acceptable levels of sampling system bias; (4) zero drift and calibration drift limits, time span, and required testing frequency; (5) a method to test the interference response of the analyzer; (6) procedures to determine the minimum sampling time per run and minimum measurement time; and (7) specifications for data recorders in terms of resolution (all types) and recording intervals (digital and analog recorders, only).

The VCS ISO 12039:2001, ''Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods,'' is not acceptable as an alternative to EPA Method 3A. This ISO standard is similar to EPA Method 3A, but is missing some key features. In terms of sampling, the hardware required by ISO 12039:2001 does not include a 3-way calibration valve assembly or equivalent to block the sample gas flow while calibration gases are introduced. In its calibration procedures, ISO 12039:2001 only specifies a two-point calibration while EPA Method 3A specifies a three-point calibration. Also, ISO 12039:2001 does not specify performance criteria for calibration error, calibration drift, or sampling system bias tests as in the EPA method, although checks of these quality control features are required by the ISO standard.

The VCS ISO 11890–1 (2000) part 1, ''Paints and Varnishes—Determination of Volatile Organic Compound (VOC) Content-Difference Method,'' is impractical as an alternative to EPA Method 24 because measured nonvolatile matter content can vary with experimental factors such as temperature, length of heating period, size of weighing dish, and size of sample. The standard ISO 11890–1 allows for different dish weights and sample sizes than the one size (58 millimeters in diameter and sample size of 0.5 gram) of EPA Method 24. The standard ISO 11890–1 also allows for different oven temperatures and heating times depending on the type of coating, whereas EPA Method 24 requires 60 minutes heating at 110 degrees Celcius at all times. Because the EPA Method 24 test conditions and procedures ''define'' volatile matter, ISO 11890–1 is unacceptable as an alternative because of its different test conditions.

The VCS ISO 11890–2 (2000) part 2, ''Paints and Varnishes—Determination of Volatile Organic Compound (VOC) Content-Gas Chromatographic Method,'' is impractical as an alternative to EPA Method 24 because ISO 11890–2 only measures the VOC added to the coating and would not measure any VOC generated from the curing of the coating. The EPA Method 24 does measure ''cure'' VOC which can be significant in some cases and, therefore, ISO 11890–2 is not an acceptable alternative to this EPA method.

Two VCS, EN 12619:1999 ''Stationary Source Emissions—Determination of the Mass Concentration of Total Gaseous Organic Carbon at Low Concentrations in Flue Gases—Continuous Flame Ionization Detector Method'' and ISO 14965:2000(E) ''Air Quality-Determination of Total Nonmethane Organic Compounds—Cryogenic Preconcentration and Direct Flame Ionization Method,'' are impractical alternatives to EPA Method 25 and 25A for the purposes of the final rule because the standards do not apply to solvent process vapors in concentrations greater than 40 parts per million (ppm) (EN 12619) and 10 ppm carbon (ISO 14965). Methods whose upper limits are this low are too limited to be useful in measuring source emissions, which are expected to be much higher.

Three of the 14 VCS identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a VCS body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2; and ISO/CD 17895, ''Paints and Varnishes-Determination of the Volatile Organic Compound Content of Water-based Emulsion Paints,'' for EPA Method 24.

Sections 63.3320 and 63.3360 of the final rule list the EPA testing methods and PS included in the final rule. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, PS, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the rule and other required information to the United States Senate, the United States 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). The rule will be effective December 4, 2002.

List of Subjects in 40 CFR Part 63

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

Dated: November 8, 2002.

Christine T. Whitman,

Administrator.

For reasons set out 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 revising § 63.14(i). The revision reads as follows:

§ 63.14 Incorporations by reference.

* * * * *

(i) The following material is available for purchase from at least one of the following addresses: ASME International, Orders/Inquiries, P.O. Box 2300, Fairfield, NJ 07007–2300; or Global Engineering Documents, Sales Department, 15 Inverness Way East, Englewood, CO 80112: ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' IBR approved for § 63.3360(e)(1)(iii), § 63.4166(a)(3), and § 63.5160(d)(1)(iii).

* * * * *

3. Part 63 is amended by adding subpart JJJJ to read as follows:

Subpart JJJJ—National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating

Sec.

What This Subpart Covers

63.3280 What is in this subpart?
63.3290 Does this subpart apply to me?
63.3300 Which of my emission sources are affected by this subpart?
63.3310 What definitions are used in this subpart?

Emission Standards and Compliance Dates

63.3320 What emission standards must I meet?
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General Requirements for Compliance With the Emission Standards and for Monitoring and Performance Tests

63.3340 What general requirements must I meet to comply with the standards?
63.3350 If I use a control device to comply with the emission standards what monitoring must I do?
63.3360 What performance tests must I conduct?

Requirements for Showing Compliance

63.3370 How do I demonstrate compliance with the emission standards?

Notifications, Reports, and Records

63.3400 What notifications and reports must I submit?
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Delegation of Authority

63.3420 What authorities may be delegated to the States?

Tables to Subpart JJJJ of Part 63

Table 1 to Subpart JJJJ of Part 63. Operating Limits if Using Add-On Control Devices and Capture System
Table 2 to Subpart JJJJ of Part 63. Applicability of 40 CFR Part 63 General Provisions to Subpart JJJJ

What This Subpart Covers

63.3280 What is in this subpart?

This subpart describes the actions you must take to reduce emissions of organic hazardous air pollutants (HAP) from paper and other web coating operations. This subpart establishes emission standards for web coating lines and specifies what you must do to comply if you own or operate a facility with web coating lines that is a major source of HAP. Certain requirements apply to all who are subject to this subpart; others depend on the means you use to comply with an emission standard.

§ 63.3290 Does this subpart apply to me?

The provisions of this subpart apply to each new and existing facility that is a major source of HAP, as defined in § 63.2, at which web coating lines are operated.

§ 63.3300 Which of my emission sources are affected by this subpart?

The affected source subject to this subpart is the collection of all web coating lines at your facility. This includes web coating lines engaged in the coating of metal webs that are used in flexible packaging, and web coating lines engaged in the coating of fabric substrates for use in pressure sensitive tape and abrasive materials. Web coating lines specified in paragraphs (a) through (g) of this section are not part of the affected source of this subpart.

(a) Any web coating line that is stand-alone coating equipment under subpart KK of this part (national emission standards for the printing and publishing industry) which the owner or operator includes in the affected source under subpart KK.

(b) Any web coating line that is a product and packaging rotogravure or wide-web flexographic press under subpart KK of this part (national emission standards for the printing and publishing industry) which is included in the affected source under subpart KK.

(c) Web coating in lithography, screenprinting, letterpress, and narrow-web flexographic printing processes.

(d) Any web coating line subject to subpart EE of this part (national emission standards for magnetic tape manufacturing operations).

(e) Any web coating line that will be subject to the national emission standards for hazardous air pollutants (NESHAP) for surface coating of metal coil currently under development.

(f) Any web coating line that will be subject to the NESHAP for the printing, coating, and dyeing of fabric and other textiles currently under development. This would include any web coating line that coats both a paper or other web substrate and a fabric or other textile substrate, except for a fabric substrate used for pressure sensitive tape and abrasive materials.

(g) Any web coating line that is defined as research or laboratory equipment in § 63.3310.

§ 63.3310 What definitions are used in this subpart?

All terms used in this subpart that are not defined in this section have the meaning given to them in the Clean Air Act (CAA) and in subpart A of this part.

Always-controlled work station means a work station associated with a dryer from which the exhaust is delivered to a control device with no provision for the dryer exhaust to bypass the control device unless there is an interlock to interrupt and prevent continued coating during a bypass. Sampling lines for analyzers, relief valves needed for safety purposes, and periodic cycling of exhaust dampers to ensure safe operation are not considered bypass lines.

Applied means, for the purposes of this subpart, the amount of organic HAP, coating material, or coating solids (as appropriate for the emission standards in § 63.3320(b)) used by the affected source during the compliance period.

As-applied means the condition of a coating at the time of application to a substrate, including any added solvent.

As-purchased means the condition of a coating as delivered to the user.

Capture efficiency means the fraction of all organic HAP emissions generated by a process that is delivered to a control device, expressed as a percentage.

Capture system means a hood, enclosed room, or other means of collecting organic HAP emissions into a closed-vent system that exhausts to a control device.

Car-seal means a seal that is placed on a device that is used to change the position of a valve or damper (*e.g.*, from open to closed) in such a way that the position of the valve or damper cannot be changed without breaking the seal.

Coating material(s) means all inks, varnishes, adhesives, primers, solvents, reducers, and other coating materials applied to a substrate via a web coating line. Materials used to form a substrate are not considered coating materials.

Control device means a device such as a solvent recovery device or oxidizer which reduces the organic HAP in an exhaust gas by recovery or by destruction.

Control device efficiency means the ratio of organic HAP emissions recovered or destroyed by a control device to the total organic HAP emissions that are introduced into the control device, expressed as a percentage.

Day means a 24-consecutive-hour period.

Deviation means any instance in which an affected source, subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including any operating limit) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) or work practice standard in this subpart during start-up, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Existing affected source means any affected source the construction or reconstruction of which is commenced on or before September 13, 2000, and has not undergone reconstruction as defined in § 63.2.

Fabric means any woven, knitted, plaited, braided, felted, or non-woven material made of filaments, fibers, or yarns including thread. This term includes material made of fiberglass, natural fibers, synthetic fibers, or composite materials.

Facility means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

Flexible packaging means any package or part of a package the shape of which can be readily changed. Flexible packaging includes, but is not limited to, bags, pouches, labels, liners

and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

Formulation data means data on the organic HAP mass fraction, volatile matter mass fraction, or coating solids mass fraction of a material that is generated by the manufacturer or means other than a test method specified in this subpart or an approved alternative method.

HAP means hazardous air pollutants.

HAP applied means the organic HAP content of all coating materials applied to a substrate by a web coating line at an affected source.

Intermittently-controlled work station means a work station associated with a dryer with provisions for the dryer exhaust to be delivered to or diverted from a control device through a bypass line, depending on the position of a valve or damper. Sampling lines for analyzers, relief valves needed for safety purposes, and periodic cycling of exhaust dampers to ensure safe operation are not considered bypass lines.

Metal coil means a continuous metal strip that is at least 0.15 millimeter (0.006 inch) thick which is packaged in a roll or coil prior to coating. After coating, it may or may not be rewound into a roll or coil. Metal coil does not include metal webs that are coated for use in flexible packaging.

Month means a calendar month or a pre-specified period of 28 days to 35 days to allow for flexibility in recordkeeping when data are based on a business accounting period.

Never-controlled work station means a work station that is not equipped with provisions by which any emissions, including those in the exhaust from any associated dryer, may be delivered to a control device.

New affected source means any affected source the construction or reconstruction of which is commenced after September 13, 2000.

Overall organic HAP control efficiency means the total efficiency of a capture and control system.

Pressure sensitive tape means a flexible backing material with a pressure-sensitive adhesive coating on one or both sides of the backing. Examples include, but are not limited to, duct/duct insulation tape and medical tape.

Research or laboratory equipment means any equipment for which the primary purpose is to conduct research and development into new processes and products where such equipment is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce except in a *de minimis* manner.

Rewind or cutting station means a unit from which substrate is collected at the outlet of a web coating line.

Uncontrolled coating line means a coating line consisting of only never-controlled work stations.

Unwind or feed station means a unit from which substrate is fed to a web coating line.

Web means a continuous substrate (*e.g.*, paper, film, foil) which is flexible enough to be wound or unwound as rolls.

Web coating line means any number of work stations, of which one or more applies a continuous layer of coating material across the entire width or any portion of the width of a web substrate, and any associated curing/drying equipment between an unwind or feed station and a rewind or cutting station.

Work station means a unit on a web coating line where coating material is deposited onto a web substrate.

Emission Standards and Compliance Dates

§ 63.3320 What emission standards must I meet?

(a) If you own or operate any affected source that is subject to the requirements of this subpart, you must comply with these requirements on and after the compliance dates as specified in § 63.3330.

(b) You must limit organic HAP emissions to the level specified in paragraph (b)(1), (2), (3), or (4) of this section.

(1) No more than 5 percent of the organic HAP applied for each month (95 percent reduction) at existing affected sources, and no more than 2 percent of the organic HAP applied for each month (98 percent reduction) at new affected sources; or

(2) No more than 4 percent of the mass of coating materials applied for each month at existing affected sources, and no more than 1.6 percent of the mass of coating materials applied for each month at new affected sources; or

(3) No more than 20 percent of the mass of coating solids applied for each month at existing affected sources, and no more than 8 percent of the coating solids applied for each month at new affected sources.

(4) If you use an oxidizer to control organic HAP emissions, operate the oxidizer such that an outlet organic HAP concentration of no greater than 20 parts per million by volume (ppmv) by compound on a dry basis is achieved and the efficiency of the capture system is 100 percent.

(c) You must demonstrate compliance with this subpart by following the procedures in § 63.3370.

§ 63.3321 What operating limits must I meet?

(a) For any web coating line or group of web coating lines for which you use add-on control devices, unless you use a solvent recovery system and conduct a liquid-liquid material balance, you must meet the operating limits specified in Table 1 to this subpart or according to paragraph (b) of this section. These operating limits apply to emission capture systems and control devices, and you must establish the operating limits during the performance test according to the requirements in § 63.3360(e)(3). You must meet the operating limits at all times after you establish them.

(b) If you use an add-on control device other than those listed in Table 1 to this subpart or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of alternative monitoring under § 63.8(f).

§ 63.3330 When must I comply?

(a) If you own or operate an existing affected source subject to the provisions of this subpart, you must comply by the compliance date. The compliance date for existing affected sources in this subpart is December 5, 2005. You must complete any performance test required in § 63.3360 within the time limits specified in § 63.7(a)(2).

(b) If you own or operate a new affected source subject to the provisions of this subpart, your compliance date is immediately upon start-up of the new affected source or by December 4, 2002, whichever is later. You must complete any performance test required in § 63.3360 within the time limits specified in § 63.7(a)(2).

(c) If you own or operate a reconstructed affected source subject to the provisions of this subpart, your compliance date is immediately upon startup of the affected source or by December 4, 2002, whichever is later. Existing affected sources which have undergone reconstruction as defined in § 63.2 are subject to the requirements for new affected sources. The costs associated with the purchase and installation of air pollution control equipment are not considered in determining whether the existing affected source has been reconstructed. Additionally, the costs of retrofitting and replacing of equipment that is installed specifically to comply with this subpart are not considered reconstruction costs. You must

complete any performance test required in § 63.3360 within the time limits specified in § 63.7(a)(2).

General Requirements for Compliance With the Emission Standards and for Monitoring and Performance Tests

§ 63.3340 What general requirements must I meet to comply with the standards?

Table 2 to this subpart specifies the provisions of subpart A of this part that apply if you are subject to this subpart, such as startup, shutdown, and malfunction plans (SSMP) in § 63.6(e)(3) for affected sources using a control device to comply with the emission standards.

§ 63.3350 If I use a control device to comply with the emission standards, what monitoring must I do?

(a) A summary of monitoring you must do follows:

If you operate a web coating line, and have the following:	Then you must:
(1) Intermittently-controlled work stations	Record parameters related to possible exhaust flow bypass of control device and to coating use (§ 63.3350(c)).
(2) Solvent recovery unit	Operate continuous emission monitoring system and perform quarterly audits or determine volatile matter recovered and conduct a liquid-liquid material balance (§ 63.3350(d)).
(3) Control Device	Operate continuous parameter monitoring system (§ 63.3350(e)).
(4) Capture system	Monitor capture system operating parameter (§ 63.3350(f)).

(b) Following the date on which the initial performance test of a control device is completed to demonstrate continuing compliance with the standards, you must monitor and inspect each capture system and each control device used to comply with § 63.3320. You must install and operate the monitoring equipment as specified in paragraphs (c) and (f) of this section.

(c) *Bypass and coating use monitoring.* If you own or operate web coating lines with intermittently-controlled work stations, you must monitor bypasses of the control device and the mass of each coating material applied at the work station during any such bypass. If using a control device for complying with the requirements of this subpart, you must demonstrate that any coating material applied on a never-controlled work station or an intermittently-controlled work station operated in bypass mode is allowed in your compliance demonstration according to § 63.3370(n) and (o). The bypass monitoring must be conducted using at least one of the procedures in paragraphs (c)(1) through (4) of this section for each work station and associated dryer.

(1) *Flow control position indicator.* Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow control position indicator that provides a record indicating whether the exhaust stream from the dryer was directed to the control device or was diverted from the control device. The time and flow control position must be recorded at least once per hour as well as every time the flow direction is changed. A flow control position indicator must be installed at the entrance to any bypass line that could divert the exhaust stream away from the control device to the atmosphere.

(2) *Car-seal or lock-and-key valve closures.* Secure any bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism must be performed at least once every month to ensure that the valve or damper is maintained in the closed position, and the exhaust stream is not diverted through the bypass line.

(3) *Valve closure continuous monitoring.* Ensure that any bypass line valve or damper is in the closed position through continuous monitoring of valve position when the emission source is in operation and is using a control device for compliance with the requirements of this subpart. The monitoring system must be inspected at least once every month to verify that the monitor will indicate valve position.

(4) *Automatic shutdown system.* Use an automatic shutdown system in which the web coating line is stopped when flow is diverted away from the control device to any bypass line when the control device is in operation. The automatic system must be inspected at least once every month to verify that it will detect diversions of flow and would shut down operations in the event of such a diversion.

(d) *Solvent recovery unit.* If you own or operate a solvent recovery unit to comply with § 63.3320, you must meet the requirements in either paragraph (d)(1) or (2) of this section depending on how control efficiency is determined.

(1) *Continuous emission monitoring system (CEMS).* If you are demonstrating compliance with the emission standards in § 63.3320 through continuous emission monitoring of a control device, you must install, calibrate, operate, and maintain the CEMS according to paragraphs (d)(1)(i) through (iii) of this section.

(i) Measure the total organic volatile matter mass flow rate at both the control device inlet and the outlet such that the reduction efficiency can be determined. Each continuous emission monitor must comply with performance specification 6, 8, or 9 of 40 CFR part 60, appendix B, as appropriate.

(ii) You must follow the quality assurance procedures in procedure 1, appendix F of 40 CFR part 60. In conducting the quarterly audits of the monitors as required by procedure 1, appendix F, you must use compounds representative of the gaseous emission stream being controlled.

(iii) You must have valid data from at least 90 percent of the hours during which the process is operated.

(2) *Liquid-liquid material balance.* If you are demonstrating compliance with the emission standards in § 63.3320 through liquid-liquid material balance, you must install, calibrate, maintain, and operate according to the manufacturer's specifications a device that indicates the cumulative amount of volatile matter recovered by the solvent recovery device on a monthly basis. The device must be certified by the manufacturer to be accurate to within ±2.0 percent by mass.

(e) *Continuous parameter monitoring system (CPMS).* If you are using a control device to comply with the emission standards in § 63.3320, you must install, operate, and maintain each CPMS specified in paragraphs (e)(9) and (10) and (f) of this section according to the requirements in paragraphs (e)(1) through (8) of this section. You must install, operate, and maintain each CPMS specified in paragraph (c) of this section according to paragraphs (e)(5) through (7) of this section.

(1) Each CPMS must complete a minimum of one cycle of operation for each successive 15-minute period. You must have a minimum of four equally spaced successive cycles of CPMS operation to have a valid hour of data.

(2) You must have valid data from at least 90 percent of the hours during which the process operated.

(3) You must determine the hourly average of all recorded readings according to paragraphs (e)(3)(i) and (ii) of this section.

(i) To calculate a valid hourly value, you must have at least three of four equally spaced data values from that hour from a continuous monitoring system (CMS) that is not out-of-control.

(ii) Provided all of the readings recorded in accordance with paragraph (e)(3) of this section clearly demonstrate continuous compliance with the standard that applies to you, then you are not required to determine the hourly average of all recorded readings.

(4) You must determine the rolling 3-hour average of all recorded readings for each operating period. To calculate the average for each 3-hour averaging period, you must have at least two of three of the hourly averages for that period using only average values that are based on valid data (*i.e.*, not from out-of-control periods).

(5) You must record the results of each inspection, calibration, and validation check of the CPMS.

(6) At all times, you must maintain the monitoring system in proper working order including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(7) Except for monitoring malfunctions, associated repairs, or required quality assurance or control activities (including calibration checks or required zero and span adjustments), you must conduct all monitoring at all times that the unit is operating. Data recorded during monitoring malfunctions, associated repairs, out-of-control periods, or required quality assurance or control activities shall not be used for purposes of calculating the emissions concentrations and percent reductions specified in § 63.3370. You must use all the valid data collected during all other periods in assessing compliance of the control device and associated control system. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(8) Any averaging period for which you do not have valid monitoring data and such data are required constitutes a deviation, and you must notify the Administrator in accordance with § 63.3400(c).

(9) *Oxidizer.* If you are using an oxidizer to comply with the emission standards, you must comply with paragraphs (e)(9)(i) through (iii) of this section.

(i) Install, calibrate, maintain, and operate temperature monitoring equipment according to the manufacturer's specifications. The calibration of the chart recorder, data logger, or temperature indicator must be verified every 3 months or the chart recorder, data logger, or temperature indicator must be replaced. You must replace the equipment whether you choose not to perform the calibration or the equipment cannot be calibrated properly.

(ii) For an oxidizer other than a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device must have an accuracy of ±1 percent of the temperature being monitored in degrees Celsius, or ±1° Celsius, whichever is greater. The thermocouple or temperature sensor must be installed in the combustion chamber at a location in the combustion zone.

(iii) For a catalytic oxidizer, install, calibrate, operate, and maintain a temperature monitoring device equipped with a continuous recorder. The device must be capable of monitoring temperature with an accuracy of ±1 percent of the temperature being monitored in degrees Celsius or ± 1 degree Celsius, whichever is greater. The thermocouple or temperature sensor must be installed in the vent stream at the nearest feasible point to the inlet and outlet of the catalyst bed. Calculate the temperature rise across the catalyst.

(10) *Other types of control devices.* If you use a control device other than an oxidizer or wish to monitor an alternative parameter and comply with a different operating limit, you must apply to the Administrator for approval of an alternative monitoring method under § 63.8(f).

(f) *Capture system monitoring.* If you are complying with the emission standards in § 63.3320 through the use of a capture system and control device for one or more web coating lines, you must develop a site-specific monitoring plan containing the information specified in paragraphs (f)(1) and (2) of this section for these capture systems. You must monitor the capture system in accordance with paragraph (f)(3) of this section. You must make the monitoring plan available for inspection by the permitting authority upon request.

(1) The monitoring plan must:

(i) Identify the operating parameter to be monitored to ensure that the capture efficiency determined during the initial compliance test is maintained; and

(ii) Explain why this parameter is appropriate for demonstrating ongoing compliance; and

(iii) Identify the specific monitoring procedures.

(2) The monitoring plan must specify the operating parameter value or range of values that demonstrate compliance with the emission standards in § 63.3320. The specified operating parameter value or range of values must represent the conditions present when the capture system is being properly operated and maintained.

(3) You must conduct all capture system monitoring in accordance with the plan.

(4) Any deviation from the operating parameter value or range of values which are monitored according to the plan will be considered a deviation from the operating limit.

(5) You must review and update the capture system monitoring plan at least annually.

§ 63.3360 What performance tests must I conduct?

(a) The performance test methods you must conduct are as follows:

If you control organic HAP on any individual web coating line or any group of web coating lines by:	You must:
(1) Limiting organic HAP or volatile matter content of coatings.	Determine the organic HAP or volatile matter and coating solids content of coating materials according to procedures in § 63.3360(c) and (d). If applicable, determine the mass of volatile matter retained in the coated web or otherwise not emitted to the atmosphere according to § 63.3360(g).

If you control organic HAP on any individual web coating line or any group of web coating lines by:	You must:
(2) Using a capture and control system.	Conduct a performance test for each capture and control system to determine: the destruction or removal efficiency of each control device other than solvent recovery according to § 63.3360(e), and the capture efficiency of each capture system according to § 63.3360(f). If applicable, determine the mass of volatile matter retained in the coated web or otherwise not emitted to the atmosphere according to § 63.3360(g).

(b) If you are using a control device to comply with the emission standards in § 63.3320, you are not required to conduct a performance test to demonstrate compliance if one or more of the criteria in paragraphs (b)(1) through (3) of this section are met.

(1) The control device is equipped with continuous emission monitors for determining inlet and outlet total organic volatile matter concentration and capture efficiency has been determined in accordance with the requirements of this subpart such that an overall organic HAP control efficiency can be calculated, and the continuous emission monitors are used to demonstrate continuous compliance in accordance with § 63.3350; or

(2) You have met the requirements of § 63.7(h) (for waiver of performance testing; or

(3) The control device is a solvent recovery system and you comply by means of a monthly liquid-liquid material balance.

(c) *Organic HAP content.* If you determine compliance with the emission standards in § 63.3320 by means other than determining the overall organic HAP control efficiency of a control device, you must determine the organic HAP mass fraction of each coating material ''as-purchased'' by following one of the procedures in paragraphs (c)(1) through (3) of this section, and determine the organic HAP mass fraction of each coating material ''as-applied'' by following the procedures in paragraph (c)(4) of this section. If the organic HAP content values are not determined using the procedures in paragraphs (c)(1) through (3) of this section, the owner or operator must submit an alternative test method for determining their values for approval by the Administrator in accordance with § 63.7(f). The recovery efficiency of the test method must be determined for all of the target organic HAP and a correction factor, if necessary, must be determined and applied.

(1) *Method 311.* You may test the coating material in accordance with Method 311 of appendix A of this part. The Method 311 determination may be performed by the manufacturer of the coating material and the results provided to the owner or operator. The organic HAP content must be calculated according to the criteria and procedures in paragraphs (c)(1)(i) through (iii) of this section.

(i) Include each organic HAP determined to be present at greater than or equal to 0.1 mass percent for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and greater than or equal to 1.0 mass percent for other organic HAP compounds.

(ii) Express the mass fraction of each organic HAP you include according to paragraph (c)(1)(i) of this section as a value truncated to four places after the decimal point (for example, 0.3791).

(iii) Calculate the total mass fraction of organic HAP in the tested material by summing the counted individual organic HAP mass fractions and truncating the result to three places after the decimal point (for example, 0.763).

(2) *Method 24.* For coatings, determine the volatile organic content as mass fraction of nonaqueous volatile matter and use it as a substitute for organic HAP using Method 24 of 40 CFR part 60, appendix A. The Method 24 determination may be performed by the manufacturer of the coating and the results provided to you.

(3) *Formulation data.* You may use formulation data to determine the organic HAP mass fraction of a coating material. Formulation data may be provided to the owner or operator by the manufacturer of the material. In the event of an inconsistency between Method 311 (appendix A of 40 CFR part 63) test data and a facility's formulation data, and the Method 311 test value is higher, the Method 311 data will govern. Formulation data may be used provided that the information represents all organic HAP present at a level equal to or greater than 0.1 percent for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and equal to or greater than 1.0 percent for other organic HAP compounds in any raw material used.

(4) *As-applied organic HAP mass fraction.* If the as-purchased coating material is applied to the web without any solvent or other material added, then the as-applied organic HAP mass fraction is equal to the as-purchased organic HAP mass fraction. Otherwise, the as-applied organic HAP mass fraction must be calculated using Equation 1a of § 63.3370.

(d) *Volatile organic and coating solids content.* If you determine compliance with the emission standards in § 63.3320 by means other than determining the overall organic HAP control efficiency of a control device and you choose to use the volatile organic content as a surrogate for the organic HAP content of coatings, you must determine the as-purchased volatile organic content and coating solids content of each coating material applied by following the procedures in paragraph (d)(1) or (2) of this section, and the as-applied volatile organic content and coating solids content of each coating material by following the procedures in paragraph (d)(3) of this section.

(1) *Method 24.* You may determine the volatile organic and coating solids mass fraction of each coating applied using Method 24 (40 CFR part 60, appendix A.) The Method 24 determination may be performed by the manufacturer of the material and the results provided to you. If these values cannot be determined using Method 24, you must submit an alternative technique for determining their values for approval by the Administrator.

(2) *Formulation data.* You may determine the volatile organic content and coating solids content of a coating material based on formulation data and may rely on volatile organic content data provided by the manufacturer of the material. In the event of any inconsistency between the formulation data and the results of Method 24 of 40 CFR part 60, appendix A, and the Method 24 results are higher, the results of Method 24 will govern.

(3) *As-applied volatile organic content and coating solids content.* If the as-purchased coating material is applied to the web without any solvent or other material added, then the as-applied volatile organic content is equal to the as-purchased volatile content and the as-applied coating solids content is equal to the as-purchased coating solids content. Otherwise, the as-applied volatile organic content must be

calculated using Equation 1b of § 63.3370 and the as-applied coating solids content must be calculated using Equation 2 of § 63.3370.

(e) *Control device efficiency.* If you are using an add-on control device other than solvent recovery, such as an oxidizer, to comply with the emission standards in § 63.3320, you must conduct a performance test to establish the destruction or removal efficiency of the control device according to the methods and procedures in paragraphs (e)(1) and (2) of this section. During the performance test, you must establish the operating limits required by § 63.3321 according to paragraph (e)(3) of this section.

(1) An initial performance test to establish the destruction or removal efficiency of the control device must be conducted such that control device inlet and outlet testing is conducted simultaneously, and the data are reduced in accordance with the test methods and procedures in paragraphs (e)(1)(i) through (ix) of this section. You must conduct three test runs as specified in § 63.7(e)(3), and each test run must last at least 1 hour.

(i) Method 1 or 1A of 40 CFR part 60, appendix A, must be used for sample and velocity traverses to determine sampling locations.

(ii) Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A, must be used to determine gas volumetric flow rate.

(iii) Method 3, 3A, or 3B of 40 CFR part 60, appendix A, must be used for gas analysis to determine dry molecular weight. You may also use as an alternative to Method 3B the manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas in ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus],'' (incorporated by reference, see § 63.14).

(iv) Method 4 of 40 CFR part 60, appendix A, must be used to determine stack gas moisture.

(v) The gas volumetric flow rate, dry molecular weight, and stack gas moisture must be determined during each test run specified in paragraph (f)(1)(vii) of this section.

(vi) Method 25 or 25A of 40 CFR part 60, appendix A, must be used to determine total gaseous non-methane organic matter concentration. Use the same test method for both the inlet and outlet measurements which must be conducted simultaneously. You must submit notice of the intended test method to the Administrator for approval along with notification of the performance test required under § 63.7(b). You must use Method 25A if any of the conditions described in paragraphs (e)(1)(vi)(A) through (D) of this section apply to the control device.

(A) The control device is not an oxidizer.

(B) The control device is an oxidizer but an exhaust gas volatile organic matter concentration of 50 ppmv or less is required to comply with the emission standards in § 63.3320; or

(C) The control device is an oxidizer but the volatile organic matter concentration at the inlet to the control system and the required level of control are such that they result in exhaust gas volatile organic matter concentrations of 50 ppmv or less; or

(D) The control device is an oxidizer but because of the high efficiency of the control device the anticipated volatile organic matter concentration at the control device exhaust is 50 ppmv or less, regardless of inlet concentration.

(vii) Except as provided in § 63.7(e)(3), each performance test must consist of three separate runs with each run conducted for at least 1 hour under the conditions that exist when the affected source is operating under normal operating conditions. For the purpose of determining volatile organic compound concentrations and mass flow rates, the average of the results of all the runs will apply.

(viii) Volatile organic matter mass flow rates must be determined for each run specified in paragraph (e)(1)(vii) of this section using Equation 1 of this section:

$$M_f = Q_{sd} C_c [12][0.0416]\left[10^{-6}\right] \quad \text{Eq. 1}$$

Where:

M_f = Total organic volatile matter mass flow rate, kilograms (kg)/hour (h).

Q_{sd} = Volumetric flow rate of gases entering or exiting the control device, as determined according to § 63.3360(e)(1)(ii), dry standard cubic meters (dscm)/h.

C_c = Concentration of organic compounds as carbon, ppmv.

12.0 = Molecular weight of carbon.

0.0416 = Conversion factor for molar volume, kg-moles per cubic meter (mol/m^3) (@ 293 Kelvin (K) and 760 millimeters of mercury (mmHg)).

(ix) For each run, emission control device destruction or removal efficiency must be determined using Equation 2 of this section:

$$E = \frac{M_{fi} - M_{fo}}{M_{fi}} \times 100 \quad \text{Eq. 2}$$

Where:

E = Organic volatile matter control efficiency of the control device, percent.

M_{fi} = Organic volatile matter mass flow rate at the inlet to the control device, kg/h.

M_{fo} = Organic volatile matter mass flow rate at the outlet of the control device, kg/h.

(x) The control device destruction or removal efficiency is determined as the average of the efficiencies determined in the test runs and calculated in Equation 2 of this section.

(2) You must record such process information as may be necessary to determine the conditions in existence at the time of the performance test. Operations during periods of startup, shutdown, and malfunction will not constitute representative conditions for the purpose of a performance test.

(3) *Operating limits.* If you are using one or more add-on control device other than a solvent recovery system for which you conduct a liquid-liquid material balance to comply with the emission standards in § 63.3320, you must establish the applicable operating limits required by § 63.3321. These operating limits apply to each add-on emission control device, and you must establish the operating limits during the performance test required by paragraph (e) of this section according to the requirements in paragraphs (e)(3)(i) and (ii) of this section.

(i) *Thermal oxidizer.* If your add-on control device is a thermal oxidizer, establish the operating limits according to paragraphs (e)(3)(i)(A) and (B) of this section.

(A) During the performance test, you must monitor and record the combustion temperature at least once every 15 minutes during each of the three test runs. You must monitor the temperature in the firebox of the thermal oxidizer or immediately downstream of the firebox before any substantial heat exchange occurs.

(B) Use the data collected during the performance test to calculate and record the average combustion temperature maintained during the performance test. This average combustion temperature is the minimum operating limit for your thermal oxidizer.

(ii) *Catalytic oxidizer.* If your add-on control device is a catalytic oxidizer, establish the operating limits according to paragraphs (e)(3)(ii)(A) and (B) or paragraphs (e)(3)(ii)(C) and (D) of this section.

(A) During the performance test, you must monitor and record the temperature just before the catalyst bed and the temperature difference across

the catalyst bed at least once every 15 minutes during each of the three test runs.

(B) Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed and the average temperature difference across the catalyst bed maintained during the performance test. These are the minimum operating limits for your catalytic oxidizer.

(C) As an alternative to monitoring the temperature difference across the catalyst bed, you may monitor the temperature at the inlet to the catalyst bed and implement a site-specific inspection and maintenance plan for your catalytic oxidizer as specified in paragraph (e)(3)(ii)(D) of this section. During the performance test, you must monitor and record the temperature just before the catalyst bed at least once every 15 minutes during each of the three test runs. Use the data collected during the performance test to calculate and record the average temperature just before the catalyst bed during the performance test. This is the minimum operating limit for your catalytic oxidizer.

(D) You must develop and implement an inspection and maintenance plan for your catalytic oxidizer(s) for which you elect to monitor according to paragraph (e)(3)(ii)(C) of this section. The plan must address, at a minimum, the elements specified in paragraphs (e)(3)(ii)(D)(*1*) through (*3*) of this section.

(*1*) Annual sampling and analysis of the catalyst activity (*i.e.*, conversion efficiency) following the manufacturer's or catalyst supplier's recommended procedures,

(*2*) Monthly inspection of the oxidizer system including the burner assembly and fuel supply lines for problems, and

(*3*) Annual internal and monthly external visual inspection of the catalyst bed to check for channeling, abrasion, and settling. If problems are found, you must take corrective action consistent with the manufacturer's recommendations and conduct a new performance test to determine destruction efficiency in accordance with this section.

(f) *Capture efficiency.* If you demonstrate compliance by meeting the requirements of § 63.3370(e), (f), (g), (h), (i)(2), (k), (n)(2) or (3), or (p), you must determine capture efficiency using the procedures in paragraph (f)(1), (2), or (3) of this section, as applicable.

(1) You may assume your capture efficiency equals 100 percent if your capture system is a permanent total enclosure (PTE). You must confirm that your capture system is a PTE by demonstrating that it meets the requirements of section 6 of EPA Method 204 of 40 CFR part 51, appendix M, and that all exhaust gases from the enclosure are delivered to a control device.

(2) You may determine capture efficiency according to the protocols for testing with temporary total enclosures that are specified in Methods 204 and 204A through F of 40 CFR part 51, appendix M. You may exclude never-controlled work stations from such capture efficiency determinations.

(3) You may use any capture efficiency protocol and test methods that satisfy the criteria of either the Data Quality Objective or the Lower Confidence Limit approach as described in appendix A of subpart KK of this part. You may exclude never-controlled work stations from such capture efficiency determinations.

(g) *Volatile matter retained in the coated web or otherwise not emitted to the atmosphere.* You may choose to take into account the mass of volatile matter retained in the coated web after curing or drying or otherwise not emitted to the atmosphere when determining compliance with the emission standards in § 63.3320. If you choose this option, you must develop a testing protocol to determine the mass of volatile matter retained in the coated web or otherwise not emitted to the atmosphere and submit this protocol to the Administrator for approval. You must submit this protocol with your site-specific test plan under § 63.7(f). If you intend to take into account the mass of volatile matter retained in the coated web after curing or drying or otherwise not emitted to the atmosphere and demonstrate compliance according to § 63.3370(c)(3), (c)(4), (c)(5), or (d), then the test protocol you submit must determine the mass of organic HAP retained in the coated web or otherwise not emitted to the atmosphere. Otherwise, compliance must be shown using the volatile organic matter content as a surrogate for the HAP content of the coatings.

(h) *Control devices in series.* If you use multiple control devices in series to comply with the emission standards in § 63.3320, the performance test must include, at a minimum, the inlet to the first control device in the series, the outlet of the last control device in the series, and all intermediate streams (*e.g.*, gaseous exhaust to the atmosphere or a liquid stream from a recovery device) that are not subsequently treated by any of the control devices in the series.

Requirements for Showing Compliance

§ 63.3370 How do I demonstrate compliance with the emission standards?

(a) A summary of how you must demonstrate compliance follows:

If you choose to demonstrate compliance by:	Then you must demonstrate that:	To accomplish this:
(1) Use of ''as-purchased'' compliant coating materials.	(i) Each coating material used at an existing affected source does not exceed 0.04 kg organic HAP per kg coating material, and each coating material used at a new affected source does not exceed 0.016 kg organic HAP per kg coating material as-purchased; or.	Follow the procedures set out in § 63.3370(b).
	(ii) Each coating material used at an existing affected source does not exceed 0.2 kg organic HAP per kg coating solids, and each coating material used at a new affected source does not exceed 0.08 kg organic HAP per kg coating solids as-purchased.	Follow the procedures set out in § 63.3370(b).
(2) Use of ''as-applied'' compliant coating materials.	(i) Each coating material used at an existing affected source does not exceed 0.04 kg organic HAP per kg coating material, and each coating material used at a new affected source does not exceed 0.016 kg organic HAP per kg coating material as-applied; or.	Follow the procedures set out in § 63.3370(c)(1). Use either Equation 1a or b of § 63.3370 to determine compliance with § 63.3320(b)(2) in accordance with § 63.3370(c)(5)(i).

If you choose to demonstrate compliance by:	Then you must demonstrate that:	To accomplish this:
	(ii) Each coating material used at an existing affected source does not exceed 0.2 kg organic HAP per kg coating solids, and each coating material used at a new affected source does not exceed 0.08 kg organic HAP per kg coating solids as-applied; or.	Follow the procedures set out in § 63.3370(c)(2). Use Equations 2 and 3 of § 63.3370 to determine compliance with § 63.3320(b)(3) in accordance with § 63.3370(c)(5)(i).
	(iii) Monthly average of all coating materials used at an existing affected source does not exceed 0.04 kg organic HAP per kg coating material, and monthly average of all coating materials used at a new affected source does not exceed 0.016 kg organic HAP per kg coating material as-applied on a monthly average basis; or.	Follow the procedures set out in § 63.3370(c)(3). Use Equation 4 of § 63.3370 to determine compliance with § 63.3320(b)(2) in accordance with § 63.3370(c)(5)(ii).
	(iv) Monthly average of all coating materials used at an existing affected source does not exceed 0.2 kg organic HAP per kg coating solids, and monthly average of all coating materials used at a new affected source does not exceed 0.08 kg organic HAP per kg coating solids as-applied on a monthly average basis.	Follow the procedures set out in § 63.3370(c)(4). Use Equation 5 of § 63.3370 to determine compliance with § 63.3320(b)(3) in accordance with § 63.3370(c)(5)(ii).
(3) Tracking total monthly organic HAP applied	Total monthly organic HAP applied does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(d). Show that total monthly HAP applied (Equation 6 of § 63.3370) is less than the calculated equivalent allowable organic HAP (Equation 13a or b of § 63.3370).
(4) Use of a capture system and control device	(i) Overall organic HAP control efficiency is equal to 95 percent at an existing affected source and 98 percent at a new affected source on a monthly basis; or oxidizer outlet organic HAP concentration is no greater than 20 ppmv by compound and capture efficiency is 100 percent; or operating parameters are continuously monitored; or.	Follow the procedures set out in § 63.3370(e) to determine compliance with § 63.3320(b)(1) according to § 63.3370(i) if using a solvent recovery device, or § 63.3370(j) if using a control device and CPMS, or § 63.3370(k) if using an oxidizer.
	(ii) Overall organic HAP emission rate does not exceed 0.2 kg organic HAP per kg coating solids for an existing affected source or 0.08 kg organic HAP per kg coating solids for a new affected source on a monthly average as-applied basis;.	Follow the procedures set out in § 63.3370(f) to determine compliance with § 63.3320(b)(3) according to § 63.3370(i) if using a solvent recovery device, or § 63.3370(k) if using an oxidizer.
	(iii) Overall organic HAP emission rate does not exceed 0.04 kg organic HAP per kg coating material for an existing affected source or 0.016 kg organic HAP per kg coating material for a new affected source on a monthly average as-applied basis; or.	Follow the procedures set out in § 63.3370(g) to determine compliance with § 63.3320(b)(2) according to § 63.3370(i) if using a solvent recovery device, or § 63.3370(k) if using an oxidizer.
	(iv) Overall organic HAP emission rate does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(h). Show that the monthly organic HAP emission rate is less than the calculated equivalent allowable organic HAP emission rate (Equation 13a or b of § 63.3370). Calculate the monthly organic HAP emission rate according to § 63.3370(i) if using a solvent recovery device, or § 63.3370(k) if using an oxidizer.
(5) Use of multiple capture and/or control devices.	(i) Overall organic HAP control efficiency is equal to 95 percent at an existing affected source and 98 percent at a new affected source on a monthly basis; or.	Follow the procedures set out in § 63.3370(e) to determine compliance with § 63.3320(b)(1) according to § 63.3370(e)(1) or (2).
	(ii) Average equivalent organic HAP emission rate does not exceed 0.2 kg organic HAP per kg coating solids for an existing affected source or 0.08 kg organic HAP per kg coating solids for a new affected source on a monthly average as-applied basis; or.	Follow the procedures set out in § 63.3370(f) to determine compliance with § 63.3320(b)(3) according to § 63.3370(n).
	(iii) Average equivalent organic HAP emission rate does not exceed 0.04 kg organic HAP per kg coating material for an existing affected source or 0.016 kg organic HAP per kg coating material for a new affected source on a monthly average as-applied basis; or.	Follow the procedures set out in § 63.3370(g) to determine compliance with § 63.3320(b)(2) according to § 63.3370(n).

If you choose to demonstrate compliance by:	Then you must demonstrate that:	To accomplish this:
	(iv) Average equivalent organic HAP emission rate does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(h). Show that the monthly organic HAP emission rate is less than the calculated equivalent allowable organic HAP emission rate (Equation 13a or b of § 63.3370) according to § 63.3370(n).
(6) Use of a combination of compliant coatings and control devices.	(i) Average equivalent organic HAP emission rate does not exceed 0.2 kg organic HAP per kg coating solids for an existing affected source or 0.08 kg organic HAP per kg coating solids for a new affected source on a monthly average as-applied basis; or.	Follow the procedures set out in § 63.3370(f) to determine compliance with § 63.3320(b)(3) according to § 63.3370(n).
	(ii) Average equivalent organic HAP emission rate does not exceed 0.04 kg organic HAP per kg coating material for an existing affected source or 0.016 kg organic HAP per kg coating material for a new affected source on a monthly average as-applied basis; or.	Follow the procedures set out in § 63.3370(g) to determine compliance with § 63.3320(b)(2) according to § 63.3370(n).
	(iii) Average equivalent organic HAP emission rate does not exceed the calculated limit based on emission limitations.	Follow the procedures set out in § 63.3370(h). Show that the monthly organic HAP emission rate is less than the calculated equivalent allowable organic HAP emission rate (Equation 13a or b of § 63.3370) according to § 63.3370(n).

(b) *As-purchased ''compliant'' coating materials.*

(1) If you comply by using coating materials that individually meet the emission standards in § 63.3320(b)(2) or (3), you must demonstrate that each coating material applied during the month at an existing affected source contains no more than 0.04 mass fraction organic HAP or 0.2 kg organic HAP per kg coating solids, and that each coating material applied during the month at a new affected source contains no more than 0.016 mass fraction organic HAP or 0.08 kg organic HAP per kg coating solids on an as-purchased basis as determined in accordance with § 63.3360(c).

(2) You are in compliance with emission standards in § 63.3320(b)(2) and (3) if each coating material applied at an existing affected source is applied as-purchased and contains no more than 0.04 kg organic HAP per kg coating material or 0.2 kg organic HAP per kg coating solids, and each coating material applied at a new affected source is applied as-purchased and contains no more than 0.016 kg organic HAP per kg coating material or 0.08 kg organic HAP per kg coating solids.

(c) *As-applied ''compliant'' coating materials.* If you comply by using coating materials that meet the emission standards in § 63.3320(b)(2) or (3) as-applied, you must demonstrate compliance by following one of the procedures in paragraphs (c)(1) through (4) of this section. Compliance is determined in accordance with paragraph (c)(5) of this section.

(1) *Each coating material as-applied meets the mass fraction of coating material standard (§ 63.3320(b)(2)).* You must demonstrate that each coating material applied at an existing affected source during the month contains no more than 0.04 kg organic HAP per kg coating material applied, and each coating material applied at a new affected source contains no more than 0.016 kg organic HAP per kg coating material applied as determined in accordance with paragraphs (c)(1)(i) and (ii) of this section. You must calculate the as-applied organic HAP content of as-purchased coating materials which are reduced, thinned, or diluted prior to application.

(i) Determine the organic HAP content or volatile organic content of each coating material applied on an as-purchased basis in accordance with § 63.3360(c).

(ii) Calculate the as-applied organic HAP content of each coating material using Equation 1a of this section:

$$C_{ahi} = \frac{\left(C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij}\right)}{M_i + \sum_{j=1}^{q} M_{ij}} \qquad \text{Eq. 1a}$$

Where:

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = number of different materials added to the coating material.

C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

or calculate the as-applied volatile organic content of each coating material using Equation 1b of this section:

$$C_{avi} = \frac{\left(C_{vi}M_i + \sum_{j=1}^{q} C_{vij}M_{ij}\right)}{M_i + \sum_{j=1}^{q} M_{ij}} \qquad \text{Eq. 1b}$$

Where:

C_{avi} = Monthly average, as-applied, volatile organic content of coating material, i, expressed as a mass fraction, kg/kg.

C_{vi} = Volatile organic content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{vij} = Volatile organic content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(2) *Each coating material as-applied meets the mass fraction of coating solids standard (§ 63.3320(b)(3)).* You must demonstrate that each coating material applied at an existing affected source contains no more than 0.20 kg of organic HAP per kg of coating solids applied and each coating material applied at a new affected source contains no more than 0.08 kg of organic HAP per kg of coating solids applied. You must demonstrate compliance in accordance with paragraphs (c)(2)(i) and (ii) of this section.

(i) Determine the as-applied coating solids content of each coating material following the procedure in § 63.3360(d). You must calculate the as-applied coating solids content of coating materials which are reduced, thinned, or diluted prior to application, using Equation 2 of this section:

$$C_{asi} = \frac{\left(C_{si}M_i + \sum_{j=1}^{q} C_{sij}M_{ij}\right)}{M_i + \sum_{j=1}^{q} M_{ij}} \qquad \text{Eq. 2}$$

Where:

C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{sij} = Coating solids content of material, j, added to as-purchased coating material, i, expressed as a mass-fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(ii) Calculate the as-applied organic HAP to coating solids ratio using Equation 3 of this section:

$$H_{si} = \frac{C_{ahi}}{C_{asi}} \qquad \text{Eq. 3}$$

Where:

H_{si} = As-applied, organic HAP to coating solids ratio of coating material, i.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

C_{asi} = Monthly average, as-applied, coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

(3) *Monthly average organic HAP content of all coating materials as-applied is less than the mass percent limit (§ 63.3320(b)(2)).* Demonstrate that the monthly average as-applied organic HAP content of all coating materials applied at an existing affected source is less than 0.04 kg organic HAP per kg of coating material applied, and all coating materials applied at a new affected source are less than 0.016 kg organic HAP per kg of coating material applied, as determined by Equation 4 of this section:

$$H_L = \frac{\sum_{i=1}^{p} C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij} - M_{vret}}{\sum_{i=1}^{p} M_i + \sum_{j=1}^{q} M_{ij}} \qquad \text{Eq. 4}$$

Where:

H_L = Monthly average, as-applied, organic HAP content of all coating materials applied, expressed as kg organic HAP per kg of coating material applied, kg/kg.

p = Number of different coating materials applied in a month.

C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.

(4) *Monthly average organic HAP content of all coating materials as-applied is less than the mass fraction of coating solids limit (§ 63.3320(b)(3)).* Demonstrate that the monthly average as-applied organic HAP content on the basis of coating solids applied of all coating materials applied at an existing affected source is less than 0.20 kg organic HAP per kg coating solids applied, and all coating materials applied at a new affected source are less than 0.08 kg organic HAP per kg coating solids applied, as determined by Equation 5 of this section:

$$H_S = \frac{\sum_{i=1}^{p} C_{hi}M_i + \sum_{j=1}^{q} C_{hij}M_{ij} - M_{vret}}{\sum_{i=1}^{p} C_{Si}M_i + \sum_{j=1}^{q} C_{Sij}M_{ij}} \qquad \text{Eq. 5}$$

Where:

H_s = Monthly average, as-applied, organic HAP to coating solids ratio, kg organic HAP/kg coating solids applied.

p = Number of different coating materials applied in a month.

C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.
M_i = Mass of as-purchased coating material, i, applied in a month, kg.
q = Number of different materials added to the coating material.
C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.
M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.
M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.
C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.
C_{sij} = Coating solids content of material, j, added to as-purchased coating material, i, expressed as a mass-fraction, kg/kg.

(5) The affected source is in compliance with emission standards in § 63.3320(b)(2) or (3) if:

(i) The organic HAP content of each coating material as-applied at an existing affected source is no more than 0.04 kg organic HAP per kg coating material or 0.2 kg organic HAP per kg coating solids, and the organic HAP content of each coating material as-applied at a new affected source contains no more than 0.016 kg organic HAP per kg coating material or 0.08 kg organic HAP per kg coating solids; or

(ii) The monthly average organic HAP content of all as-applied coating materials at an existing affected source are no more than 0.04 kg organic HAP per kg coating material or 0.2 kg organic HAP per kg coating solids, and the monthly average organic HAP content of all as-applied coating materials at a new affected source is no more than 0.016 kg organic HAP per kg coating material or 0.08 kg organic HAP per kg coating solids.

(d) *Monthly allowable organic HAP applied.* Demonstrate that the total monthly organic HAP applied as determined by Equation 6 of this section is less than the calculated equivalent allowable organic HAP as determined by Equation 13a or b in paragraph (l) of this section:

$$H_m = \sum_{i=1}^{p} C_{hi} M_i + \sum_{j=1}^{q} C_{hij} M_{ij} - M_{vret} \qquad \text{Eq. 6}$$

Where:
H_m = Total monthly organic HAP applied, kg.
p = Number of different coating materials applied in a month.
C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.
M_i = Mass of as-purchased coating material, i, applied in a month, kg.
q = Number of different materials added to the coating material.
C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.
M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.
M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.

(e) *Capture and control to reduce emissions to no more than allowable limit (§ 63.3320(b)(1)).* Operate a capture system and control device and demonstrate an overall organic HAP control efficiency of at least 95 percent at an existing affected source and at least 98 percent at a new affected source for each month, or operate a capture system and oxidizer so that an outlet organic HAP concentration of no greater than 20 ppmv by compound on a dry basis is achieved as long as the capture efficiency is 100 percent as detailed in § 63.3320(b)(4). Unless one of the cases described in paragraph (e)(1), (2), or (3) of this section applies to the affected source, you must either demonstrate compliance in accordance with the procedure in paragraph (i) of this section when emissions from the affected source are controlled by a solvent recovery device, or the procedure in paragraph (k) of this section when emissions are controlled by an oxidizer or demonstrate compliance for a web coating line by operating each capture system and each control device and continuous parameter monitoring according to the procedures in paragraph (j) of this section.

(1) If the affected source has only always-controlled work stations and operates more than one capture system or more than one control device, you must demonstrate compliance in accordance with the provisions of either paragraph (n) or (p) of this section.

(2) If the affected source operates one or more never-controlled work stations or one or more intermittently-controlled work stations, you must demonstrate compliance in accordance with the provisions of paragraph (n) of this section.

(3) An alternative method of demonstrating compliance with § 63.3320(b)(1) is the installation of a PTE around the web coating line that achieves 100 percent capture efficiency and ventilation of all organic HAP emissions from the total enclosure to an oxidizer with an outlet organic HAP concentration of no greater than 20 ppmv by compound on a dry basis. If this method is selected, you must demonstrate compliance by following the procedures in paragraphs (e)(3)(i) and (ii) of this section. Compliance is determined according to paragraph (e)(3)(iii) of this section.

(i) Demonstrate that a total enclosure is installed. An enclosure that meets the requirements in § 63.3360(f)(1) will be considered a total enclosure.

(ii) Determine the organic HAP concentration at the outlet of your total enclosure using the procedures in paragraph (e)(3)(ii)(A) or (B) of this section.

(A) Determine the control device efficiency using Equation 2 of § 63.3360 and the applicable test methods and procedures specified in § 63.3360(e).

(B) Use a CEMS to determine the organic HAP emission rate according to paragraphs (i)(2)(i) through (x) of this section.

(iii) You are in compliance if the installation of a total enclosure is demonstrated and the organic HAP concentration at the outlet of the incinerator is demonstrated to be no

greater than 20 ppmv by compound on a dry basis.

(f) *Capture and control to achieve mass fraction of coating solids applied limit (§ 63.3320(b)(3)).* Operate a capture system and control device and limit the organic HAP emission rate from an existing affected source to no more than 0.20 kg organic HAP emitted per kg coating solids applied, and from a new affected source to no more than 0.08 kg organic HAP emitted per kg coating solids applied as determined on a monthly average as-applied basis. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, then you must demonstrate compliance in accordance with the provisions of paragraph (n) of this section. Otherwise, you must demonstrate compliance following the procedure in paragraph (i) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (k) of this section when emissions are controlled by an oxidizer.

(g) *Capture and control to achieve mass fraction limit (§ 63.3320(b)(2)).* Operate a capture system and control device and limit the organic HAP emission rate to no more than 0.04 kg organic HAP emitted per kg coating material applied at an existing affected source, and no more than 0.016 kg organic HAP emitted per kg coating material applied at a new affected source as determined on a monthly average as-applied basis. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, then you must demonstrate compliance in accordance with the provisions of paragraph (n) of this section. Otherwise, you must demonstrate compliance following the procedure in paragraph (i) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (k) of this section when emissions are controlled by an oxidizer.

(h) *Capture and control to achieve allowable emission rate.* Operate a capture system and control device and limit the monthly organic HAP emissions to less than the allowable emissions as calculated in accordance with paragraph (l) of this section. If the affected source operates more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, then you must demonstrate compliance in accordance with the provisions of paragraph (n) of this section. Otherwise, the owner or operator must demonstrate compliance following the procedure in paragraph (i) of this section when emissions from the affected source are controlled by a solvent recovery device or the procedure in paragraph (k) of this section when emissions are controlled by an oxidizer.

(i) *Solvent recovery device compliance demonstration.* If you use a solvent recovery device to control emissions, you must show compliance by following the procedures in either paragraph (i)(1) or (2) of this section:

(1) *Liquid-liquid material balance.* Perform a monthly liquid-liquid material balance as specified in paragraphs (i)(1)(i) through (v) of this section and use the applicable equations in paragraphs (i)(1)(vi) through (ix) of this section to convert the data to units of the selected compliance option in paragraphs (e) through (h) of this section. Compliance is determined in accordance with paragraph (i)(1)(x) of this section.

(i) Determine the mass of each coating material applied on the web coating line or group of web coating lines controlled by a common solvent recovery device during the month.

(ii) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating material applied, or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each coating material as-applied during the month following the procedure in § 63.3360(c).

(iii) Determine the volatile organic content of each coating material as-applied during the month following the procedure in § 63.3360(d).

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, determine the coating solids content of each coating material applied during the month following the procedure in § 63.3360(d).

(v) Determine and monitor the amount of volatile organic matter recovered for the month according to the procedures in § 63.3350(d).

(vi) *Recovery efficiency.* Calculate the volatile organic matter collection and recovery efficiency using Equation 7 of this section:

$$R_V = \frac{M_{vr} + M_{vret}}{\sum_{i-1}^{p} C_{vi} M_i + \sum_{i=1}^{q} C_{vij} M_{ij}} \times 100 \quad \text{Eq. 7}$$

Where:

R_v = Organic volatile matter collection and recovery efficiency, percent.

M_{vr} = Mass of volatile matter recovered in a month, kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.

p = Number of different coating materials applied in a month.

C_{vi} = Volatile organic content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{vij} = Volatile organic content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(vii) *Organic HAP emitted.* Calculate the organic HAP emitted during the month using Equation 8 of this section:

$$H_e = \left[1 - \frac{R_v}{100}\right]\left[\sum_{i=1}^{p} C_{hi} M_i + \sum_{j=1}^{q} C_{hij} M_{ij} - M_{vret}\right] \quad \text{Eq. 8}$$

Where:

H_e = Total monthly organic HAP emitted, kg.

R_v = Organic volatile matter collection and recovery efficiency, percent.

p = Number of different coating materials applied in a month.

C_{hi} = Organic HAP content of coating material, i, as-purchased, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{hij} = Organic HAP content of material, j, added to as-purchased coating material, i, expressed as a mass fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in § 63.3370.

(viii) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied using Equation 9 of this section:

$$L = \frac{H_e}{\sum_{i=1}^{p} C_{si} M_i + \sum_{j=1}^{q} C_{sij} M_{ij}} \qquad \text{Eq. 9}$$

Where:

L = Mass organic HAP emitted per mass of coating solids applied, kg/kg.

H_e = Total monthly organic HAP emitted, kg.

p = Number of different coating materials applied in a month.

C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

C_{sij} = Coating solids content of material, j, added to as-purchased coating material, i, expressed as a mass-fraction, kg/kg.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(ix) *Organic HAP emission rate based on coating materials applied.* Calculate the organic HAP emission rate based on coating material applied using Equation 10 of this section:

$$S = \frac{H_e}{\sum_{i=1}^{p} M_i + \sum_{j=1}^{q} M_{ij}} \qquad \text{Eq. 10}$$

Where:

S = Mass organic HAP emitted per mass of material applied, kg/kg.

H_e = Total monthly organic HAP emitted, kg.

p = Number of different coating materials applied in a month.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

q = Number of different materials added to the coating material.

M_{ij} = Mass of material, j, added to as-purchased coating material, i, in a month, kg.

(x) You are in compliance with the emission standards in § 63.3320(b) if:

(A) The volatile organic matter collection and recovery efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(B) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(C) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(D) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (l) of this section.

(2) *Continuous emission monitoring of capture system and control device performance.* Demonstrate initial compliance through a performance test on capture efficiency and continuing compliance through continuous emission monitors and continuous monitoring of capture system operating parameters following the procedures in paragraphs (i)(2)(i) through (vii) of this section. Use the applicable equations specified in paragraphs (i)(2)(viii) through (x) of this section to convert the monitoring and other data into units of the selected compliance option in paragraphs (e) through (h) of this section. Compliance is determined in accordance with paragraph (i)(2)(xi) of this section.

(i) *Control device efficiency.* Continuously monitor the gas stream entering and exiting the control device to determine the total organic volatile matter mass flow rate (*e.g.*, by determining the concentration of the vent gas in grams per cubic meter and the volumetric flow rate in cubic meters per second such that the total organic volatile matter mass flow rate in grams per second can be calculated) such that the control device efficiency of the control device can be calculated for each month using Equation 2 of § 63.3360.

(ii) *Capture efficiency monitoring.* Whenever a web coating line is operated, continuously monitor the operating parameters established in accordance with § 63.3350(f) to ensure capture efficiency.

(iii) Determine the percent capture efficiency in accordance with § 63.3360(f).

(iv) *Control efficiency.* Calculate the overall organic HAP control efficiency achieved for each month using Equation 11 of this section:

$$R = \frac{(E)(CE)}{100} \qquad \text{Eq. 11}$$

Where:

R = Overall organic HAP control efficiency, percent.

E = Organic volatile matter control efficiency of the control device, percent.

CE = Organic volatile matter capture efficiency of the capture system, percent.

(v) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating materials applied, or emission of less than the calculated allowable organic HAP, determine the mass of each coating material applied on the web coating line or group of web coating lines controlled by a common control device during the month.

(vi) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating material applied, or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each coating material as-applied during the month following the procedure in § 63.3360(c).

(vii) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, determine the coating solids content of each coating material as-applied during the month following the procedure in § 63.3360(d).

(viii) *Organic HAP emitted.* Calculate the organic HAP emitted during the month for each month using Equation 12 of this section:

$$H_e = (1 - R)\left(\sum_{i=1}^{p} C_{ahi} M_i\right) - M_{vret} \qquad \text{Eq. 12}$$

Where:

H_e = Total monthly organic HAP emitted, kg.

R = Overall organic HAP control efficiency, percent.

p = Number of different coating materials applied in a month.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in this section.

(ix) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied using Equation 9 of this section.

(x) *Organic HAP emission rate based on coating materials applied.* Calculate the organic HAP emission rate based on coating material applied using Equation 10 of this section.

(xi) *Compare actual performance to the performance required by compliance option.* The affected source is in compliance with the emission standards in § 63.3320(b) for each month if the capture system is operated such that the average capture system operating parameter is greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3350(f); and

(A) The organic volatile matter collection and recovery efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(B) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(C) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(D) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (l) of this section.

(j) *Capture and control system compliance demonstration procedures using a CPMS.* If you use an add-on control device, you must demonstrate initial compliance for each capture system and each control device through performance tests and demonstrate continuing compliance through continuous monitoring of capture system and control device operating parameters as specified in paragraphs (j)(1) through (3) of this section. Compliance is determined in accordance with paragraph (j)(4) of this section.

(1) Determine the control device destruction or removal efficiency using the applicable test methods and procedures in § 63.3360(e).

(2) Determine the emission capture efficiency in accordance with § 63.3360(f).

(3) Whenever a web coating line is operated, continuously monitor the operating parameters established according to § 63.3350(e) and (f).

(4) You are in compliance with the emission standards in § 63.3320(b) if the control device is operated such that the average operating parameter value is greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3360(e) for each 3-hour period, and the capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3350(f); and

(i) The overall organic HAP control efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(ii) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(iii) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(iv) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (l) of this section.

(k) *Oxidizer compliance demonstration procedures.* If you use an oxidizer to control emissions, you must show compliance by following the procedures in paragraph (k)(1) of this section. Use the applicable equations specified in paragraph (k)(2) of this section to convert the monitoring and other data into units of the selected compliance option in paragraph (e) through (h) of this section. Compliance is determined in accordance with paragraph (k)(3) of this section.

(1) Demonstrate initial compliance through performance tests of capture efficiency and control device efficiency and continuing compliance through continuous monitoring of capture system and control device operating parameters as specified in paragraphs (k)(1)(i) through (vi) of this section:

(i) Determine the oxidizer destruction efficiency using the procedure in § 63.3360(e).

(ii) Determine the capture system capture efficiency in accordance with § 63.3360(f).

(iii) *Capture and control efficiency monitoring.* Whenever a web coating line is operated, continuously monitor the operating parameters established in accordance with § 63.3350(e) and (f) to ensure capture and control efficiency.

(iv) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating materials applied, or emission of less than the calculated allowable organic HAP, determine the mass of each coating material applied on the web coating line or group of web coating lines controlled by a common oxidizer during the month.

(v) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied, organic HAP emission rate based on coating material applied, or emission of less than the calculated allowable organic HAP, determine the organic HAP content of each coating material as-applied during the month following the procedure in § 63.3360(c).

(vi) If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, determine the coating solids content of each coating

material applied during the month following the procedure in § 63.3360(d).

(2) Convert the information obtained under paragraph (p)(1) of this section into the units of the selected compliance option using the calculation procedures specified in paragraphs (k)(2)(i) through (iv) of this section.

(i) *Control efficiency.* Calculate the overall organic HAP control efficiency achieved using Equation 11 of this section.

(ii) *Organic HAP emitted.* Calculate the organic HAP emitted during the month using Equation 12 of this section.

(iii) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied for each month using Equation 9 of this section.

(iv) *Organic HAP based on coating materials applied.* Calculate the organic HAP emission rate based on coating material applied using Equation 10 of this section.

(3) You are in compliance with the emission standards in § 63.3320(b) if the oxidizer is operated such that the average operating parameter value is greater than the operating parameter value established in accordance with § 63.3360(e) for each 3-hour period, and the capture system operating parameter is operated at an average value greater than or less than (as appropriate) the operating parameter value established in accordance with § 63.3350(f); and

(i) The overall organic HAP control efficiency is 95 percent or greater at an existing affected source and 98 percent or greater at a new affected source; or

(ii) The organic HAP emission rate based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(iii) The organic HAP emission rate based on coating material applied is no more than 0.04 kg organic HAP per kg coating material applied at an existing affected source and no more than 0.016 kg organic HAP per kg coating material applied at a new affected source; or

(iv) The organic HAP emitted during the month is less than the calculated allowable organic HAP as determined using paragraph (l) of this section.

(l) *Monthly allowable organic HAP emissions.* This paragraph provides the procedures and calculations for determining monthly allowable organic HAP emissions for use in demonstrating compliance in accordance with paragraph (d), (h), (i)(1)(x)(D), (i)(2)(xi)(D), or (k)(3)(iv) of this section. You will need to determine the amount of coating material applied at greater than or equal to 20 mass percent coating solids and the amount of coating material applied at less than 20 mass percent coating solids. The allowable organic HAP limit is then calculated based on coating material applied at greater than or equal to 20 mass percent coating solids complying with 0.2 kg organic HAP per kg coating solids at an existing affected source or 0.08 kg organic HAP per kg coating solids at a new affected source, and coating material applied at less than 20 mass percent coating solids complying with 4 mass percent organic HAP at an existing affected source and 1.6 mass-percent organic HAP at a new affected source as follows:

(1) Determine the as-purchased mass of each coating material applied each month.

(2) Determine the as-purchased coating solids content of each coating material applied each month in accordance with § 63.3360(d)(1).

(3) Determine the as-purchased mass fraction of each coating material which was applied at 20 mass percent or greater coating solids content on an as-applied basis.

(4) Determine the total mass of each solvent, diluent, thinner, or reducer added to coating materials which were applied at less than 20 mass percent coating solids content on an as-applied basis each month.

(5) Calculate the monthly allowable organic HAP emissions using Equation 13a of this section for an existing affected source:

$$H_a = 0.20\left[\sum_{i=1}^{p} M_i G_i C_{si}\right] + 0.04\left[\sum_{i=1}^{p} M_i (1 - G_i) + \sum_{j=1}^{q} M_{L_j}\right] \qquad \text{Eq. 13a}$$

Where:

H_a = Monthly allowable organic HAP emissions, kg.

p = Number of different coating materials applied in a month.

M_i = mass of as-purchased coating material, i, applied in a month, kg.

G_i = Mass fraction of each coating material, i, which was applied at 20 mass percent or greater coating solids content, on an as-applied basis, kg/kg.

C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

q = Number of different materials added to the coating material.

M_{Lj} = Mass of non-coating-solids-containing coating material, j, added to coating-solids-containing coating materials which were applied at less than 20 mass percent coating solids content, on an as-applied basis, in a month, kg.

or Equation 13b of this section for a new affected source:

$$H_a = 0.08\left[\sum_{i=1}^{p} M_i G_i C_{si}\right] + 0.016\left[\sum_{i=1}^{p} M_i \left(1 - G_i\right) + \sum_{j=1}^{q} M_{L_j}\right] \qquad \text{Eq. 13b}$$

Where:

H_a = Monthly allowable organic HAP emissions, kg.

p = Number of different coating materials applied in a month.

M_i = Mass of as-purchased coating material, i, applied in a month, kg.

G_i = Mass fraction of each coating material, i, which was applied at 20 mass percent or greater coating solids content, on an as-applied basis, kg/kg.

C_{si} = Coating solids content of coating material, i, expressed as a mass fraction, kg/kg.

q = Number of different materials added to the coating material.

M_{Lj} = Mass of non-coating-solids-containing coating material, j, added to coating-solids-containing coating materials which were applied at less than 20 mass percent

coating solids content, on an as-applied basis, in a month, kg.

(m) [Reserved]

(n) *Combinations of capture and control.* If you operate more than one capture system, more than one control device, one or more never-controlled work stations, or one or more intermittently-controlled work stations, you must calculate organic HAP emissions according to the procedures in paragraphs (n)(1) through (4) of this section, and use the calculation procedures specified in paragraph (n)(5) of this section to convert the monitoring and other data into units of the selected control option in paragraphs (e) through (h) of this section. Use the procedures specified in paragraph (n)(6) of this section to demonstrate compliance.

(1) *Solvent recovery system using liquid-liquid material balance compliance demonstration.* If you choose to comply by means of a liquid-liquid material balance for each solvent recovery system used to control one or more web coating lines, you must determine the organic HAP emissions for those web coating lines controlled by that solvent recovery system either:

(i) In accordance with paragraphs (i)(1)(i) through (iii) and (v) through (vii) of this section, if the web coating lines controlled by that solvent recovery system have only always-controlled work stations; or

(ii) In accordance with paragraphs (i)(1)(ii), (iii), (v), and (vi) and (o) of this section, if the web coating lines controlled by that solvent recovery system have one or more never-controlled or intermittently-controlled work stations.

(2) *Solvent recovery system using performance test compliance demonstration and CEMS.* To demonstrate compliance through an initial test of capture efficiency, continuous monitoring of a capture system operating parameter, and a CEMS on each solvent recovery system used to control one or more web coating lines, you must:

(i) For each capture system delivering emissions to that solvent recovery system, monitor the operating parameter established in accordance with § 63.3350(f) to ensure capture system efficiency; and

(ii) Determine the organic HAP emissions for those web coating lines served by each capture system delivering emissions to that solvent recovery system either:

(A) In accordance with paragraphs (i)(2)(i) through (iii), (v), (vi), and (viii) of this section, if the web coating lines served by that capture and control system have only always-controlled work stations; or

(B) In accordance with paragraphs (i)(2)(i) through (iii), (vi), and (o) of this section, if the web coating lines served by that capture and control system have one or more never-controlled or intermittently-controlled work stations.

(3) *Oxidizer.* To demonstrate compliance through performance tests of capture efficiency and control device efficiency, continuous monitoring of capture system, and CPMS for control device operating parameters for each oxidizer used to control emissions from one or more web coating lines, you must:

(i) Monitor the operating parameter in accordance with § 63.3350(e) to ensure control device efficiency; and

(ii) For each capture system delivering emissions to that oxidizer, monitor the operating parameter established in accordance with § 63.3350(f) to ensure capture efficiency; and

(iii) Determine the organic HAP emissions for those web coating lines served by each capture system delivering emissions to that oxidizer either:

(A) In accordance with paragraphs (k)(1)(i) through (vi) of this section, if the web coating lines served by that capture and control system have only always-controlled work stations; or

(B) In accordance with paragraphs (k)(1)(i) through (iii), (v), and (o) of this section, if the web coating lines served by that capture and control system have one or more never-controlled or intermittently-controlled work stations.

(4) *Uncontrolled coating lines.* If you own or operate one or more uncontrolled web coating lines, you must determine the organic HAP applied on those web coating lines using Equation 6 of this section. The organic HAP emitted from an uncontrolled web coating line is equal to the organic HAP applied on that web coating line.

(5) Convert the information obtained under paragraphs (n)(1) through (4) of this section into the units of the selected compliance option using the calculation procedures specified in paragraphs (n)(5)(i) through (iv) of this section.

(i) *Organic HAP emitted.* Calculate the organic HAP emissions for the affected source for the month by summing all organic HAP emissions calculated according to paragraphs (n)(1), (2)(ii), (3)(iii), and (4) of this section.

(ii) *Coating solids applied.* If demonstrating compliance on the basis of organic HAP emission rate based on coating solids applied or emission of less than the calculated allowable organic HAP, the owner or operator must determine the coating solids content of each coating material applied during the month following the procedure in § 63.3360(d).

(iii) *Organic HAP emission rate based on coating solids applied.* Calculate the organic HAP emission rate based on coating solids applied for each month using Equation 9 of this section.

(iv) *Organic HAP based on materials applied.* Calculate the organic HAP emission rate based on material applied using Equation 10 of this section.

(6) *Compliance.* The affected source is in compliance with the emission standards in § 63.3320(b) for the month if all operating parameters required to be monitored under paragraphs (n)(1) through (3) of this section were maintained at the values established under §§ 63.3350 and 63.3360; and

(i) The total mass of organic HAP emitted by the affected source based on coating solids applied is no more than 0.20 kg organic HAP per kg coating solids applied at an existing affected source and no more than 0.08 kg organic HAP per kg coating solids applied at a new affected source; or

(ii) The total mass of organic HAP emitted by the affected source based on material applied is no more than 0.04 kg organic HAP per kg material applied at an existing affected source and no more than 0.016 kg organic HAP per kg material applied at a new affected source; or

(iii) The total mass of organic HAP emitted by the affected source during the month is less than the calculated allowable organic HAP as determined using paragraph (l) of this section; or

(iv) The total mass of organic HAP emitted by the affected source was not more than 5 percent of the total mass of organic HAP applied for the month at an existing affected source and no more than 2 percent of the total mass of organic HAP applied for the month at a new affected source. The total mass of organic HAP applied by the affected source in the month must be determined using Equation 6 of this section.

(o) *Intermittently-controlled and never-controlled work stations.* If you have been expressly referenced to this paragraph by paragraphs (n)(1)(ii), (n)(2)(ii)(B), or (n)(3)(iii)(B) of this section for calculation procedures to determine organic HAP emissions for your intermittently-controlled and never-controlled work stations, you must:

(1) Determine the sum of the mass of all coating materials as-applied on intermittently-controlled work stations operating in bypass mode and the mass of all coating materials as-applied on

never-controlled work stations during the month.

(2) Determine the sum of the mass of all coating materials as-applied on intermittently-controlled work stations operating in a controlled mode and the mass of all coating materials applied on always-controlled work stations during the month.

(3) *Liquid-liquid material balance compliance demonstration.* For each web coating line or group of web coating lines for which you use the provisions of paragraph (n)(1)(ii) of this section, you must calculate the organic HAP emitted during the month using Equation 14 of this section:

$$H_e = \left[\sum_{i=1}^{p} M_{Ci} C_{ahi}\right]\left[1 - \frac{R_v}{100}\right] + \left[\sum_{i=1}^{p} M_{Bi} C_{ahi}\right] - M_{vret} \qquad \text{Eq. 14}$$

Where:

H_e = Total monthly organic HAP emitted, kg.

p = Number of different coating materials applied in a month.

M_{ci} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in controlled mode and the mass of coating material, i, as-applied on always-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

R_v = Organic volatile matter collection and recovery efficiency, percent.

M_{Bi} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in bypass mode and the mass of coating material, i, as-applied on never-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in this section.

(4) *Performance test to determine capture efficiency and control device efficiency.* For each web coating line or group of web coating lines for which you use the provisions of paragraph (n)(2)(ii)(B) or (n)(3)(iii)(B) of this section, you must calculate the organic HAP emitted during the month using Equation 15 of this section:

$$H_e = \left[\sum_{i=1}^{p} M_{Ci} C_{ahi}\right]\left[1 - \frac{R}{100}\right] + \left[\sum_{i=1}^{p} M_{Bi} C_{ahi}\right] - M_{vret} \qquad \text{Eq. 15}$$

Where:

H_e = Total monthly organic HAP emitted, kg.

p = Number of different coating materials applied in a month.

M_{ci} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in controlled mode and the mass of coating material, i, as-applied on always-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

R = Overall organic HAP control efficiency, percent.

M_{Bi} = Sum of the mass of coating material, i, as-applied on intermittently-controlled work stations operating in bypass mode and the mass of coating material, i, as-applied on never-controlled work stations, in a month, kg.

C_{ahi} = Monthly average, as-applied, organic HAP content of coating material, i, expressed as a mass fraction, kg/kg.

M_{vret} = Mass of volatile matter retained in the coated web after curing or drying, or otherwise not emitted to the atmosphere, kg. The value of this term will be zero in all cases except where you choose to take into account the volatile matter retained in the coated web or otherwise not emitted to the atmosphere for the compliance demonstration procedures in this section.

(p) *Always-controlled work stations with more than one capture and control system.* If you operate more than one capture system or more than one control device and only have always-controlled work stations, then you are in compliance with the emission standards in § 63.3320(b)(1) for the month if for each web coating line or group of web coating lines controlled by a common control device:

(1) The volatile matter collection and recovery efficiency as determined by paragraphs (i)(1)(i), (iii), (v), and (vi) of this section is at least 95 percent at an existing affected source and at least 98 percent at a new affected source; or

(2) The overall organic HAP control efficiency as determined by paragraphs (i)(2)(i) through (iv) of this section for each web coating line or group of web coating lines served by that control device and a common capture system is at least 95 percent at an existing affected source and at least 98 percent at a new affected source; or

(3) The overall organic HAP control efficiency as determined by paragraphs (k)(1)(i) through (iii) and (k)(2)(i) of this section for each web coating line or group of web coating lines served by that control device and a common capture system is at least 95 percent at an existing affected source and at least 98 percent at a new affected source.

Notifications, Reports, and Records

§ 63.3400 What notifications and reports must I submit?

(a) Each owner or operator of an affected source subject to this subpart must submit the reports specified in paragraphs (b) through (g) of this section to the Administrator:

(b) You must submit an initial notification as required by § 63.9(b).

(1) Initial notification for existing affected sources must be submitted no later than 1 year before the compliance date specified in § 63.3330(a).

(2) Initial notification for new and reconstructed affected sources must be submitted as required by § 63.9(b).

(3) For the purpose of this subpart, a title V or part 70 permit application may be used in lieu of the initial notification required under § 63.9(b), provided the same information is contained in the permit application as required by § 63.9(b) and the State to which the permit application has been submitted has an approved operating permit program under part 70 of this chapter and has received delegation of authority from the EPA to implement and enforce this subpart.

(4) If you are using a permit application in lieu of an initial notification in accordance with paragraph (b)(3) of this section, the permit application must be submitted by the same due date specified for the initial notification.

(c) You must submit a semiannual compliance report according to paragraphs (c)(1) and (2) of this section.

(1) Compliance report dates.

(i) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.3330 and ending on June 30 or December 31, whichever date is the first date following the end of the calendar half immediately following the compliance date that is specified for your affected source in § 63.3330.

(ii) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the calendar half immediately following the compliance date that is specified for your affected source in § 63.3330.

(iii) 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.

(iv) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(v) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and the permitting authority has established dates for submitting semiannual reports pursuant to § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (c)(1)(i) through (iv) of this section.

(2) The compliance report must contain the information in paragraphs (c)(2)(i) through (vi) of this section:

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature certifying the accuracy of the content of the report.

(iii) Date of report and beginning and ending dates of the reporting period.

(iv) If there are no deviations from any emission limitations (emission limit or operating limit) that apply to you, a statement that there were no deviations from the emission limitations during the reporting period, and that no CMS was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(v) For each deviation from an emission limitation (emission limit or operating limit) that applies to you and that occurs at an affected source where you are not using a CEMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(2)(i) through (iii) of this section, and:

(A) The total operating time of each affected source during the reporting period.

(B) Information on the number, duration, and cause of deviations (including unknown cause), if applicable, and the corrective action taken.

(C) Information on the number, duration, and cause for CPMS downtime incidents, if applicable, other than downtime associated with zero and span and other calibration checks.

(vi) For each deviation from an emission limit occurring at an affected source where you are using a CEMS to comply with the emission limit in this subpart, you must include the information in paragraphs (c)(2)(i) through (iii) and (vi)(A) through (J) of this section.

(A) The date and time that each malfunction started and stopped.

(B) The date and time that each CEMS and CPMS, if applicable, was inoperative except for zero (low-level) and high-level checks.

(C) The date and time that each CEMS and CPMS, if applicable, was out-of-control, including the information in § 63.8(c)(8).

(D) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(E) A summary of the total duration (in hours) of each deviation during the reporting period and the total duration of each deviation as a percent of the total source operating time during that reporting period.

(F) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(G) A summary of the total duration (in hours) of CEMS and CPMS downtime during the reporting period and the total duration of CEMS and CPMS downtime as a percent of the total source operating time during that reporting period.

(H) A breakdown of the total duration of CEMS and CPMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes.

(I) The date of the latest CEMS and CPMS certification or audit.

(J) A description of any changes in CEMS, CPMS, or controls since the last reporting period.

(d) You must submit a Notification of Performance Tests as specified in §§ 63.7 and 63.9(e) if you are complying with the emission standard using a control device and you are required to conduct a performance test of the control device. This notification and the site-specific test plan required under § 63.7(c)(2) must identify the operating parameters to be monitored to ensure that the capture efficiency of the capture system and the control efficiency of the control device determined during the performance test are maintained. Unless EPA objects to the parameter or requests changes, you may consider the parameter approved.

(e) You must submit a Notification of Compliance Status as specified in § 63.9(h).

(f) You must submit performance test reports as specified in § 63.10(d)(2) if you are using a control device to comply with the emission standard and you have not obtained a waiver from the performance test requirement or you are not exempted from this requirement by § 63.3360(b). The performance test reports must be submitted as part of the notification of compliance status required in § 63.3400(e).

(g) You must submit startup, shutdown, and malfunction reports as specified in § 63.10(d)(5), except that the provisions in subpart A of this part pertaining to startups, shutdowns, and malfunctions do not apply unless a control device is used to comply with this subpart.

(1) If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source

(including actions taken to correct a malfunction) are not consistent with the procedures specified in the affected source's SSMP required by § 63.6(e)(3), the owner or operator must state such information in the report. The startup, shutdown, or malfunction report must consist of a letter containing the name, title, and signature of the responsible official who is certifying its accuracy and must be submitted to the Administrator.

(2) Separate startup, shutdown, and malfunction reports are not required if the information is included in the report specified in paragraph (c)(2)(vi) of this section.

§ 63.3410 What records must I keep?

(a) Each owner or operator of an affected source subject to this subpart must maintain the records specified in paragraphs (a)(1) and (2) of this section on a monthly basis in accordance with the requirements of § 63.10(b)(1):

(1) Records specified in § 63.10(b)(2) of all measurements needed to demonstrate compliance with this standard, including:

(i) Continuous emission monitor data in accordance with the requirements of § 63.3350(d);

(ii) Control device and capture system operating parameter data in accordance with the requirements of § 63.3350(c), (e), and (f);

(iii) Organic HAP content data for the purpose of demonstrating compliance in accordance with the requirements of § 63.3360(c);

(iv) Volatile matter and coating solids content data for the purpose of demonstrating compliance in accordance with the requirements of § 63.3360(d);

(v) Overall control efficiency determination using capture efficiency and control device destruction or removal efficiency test results in accordance with the requirements of § 63.3360(e) and (f); and

(vi) Material usage, organic HAP usage, volatile matter usage, and coating solids usage and compliance demonstrations using these data in accordance with the requirements of § 63.3370(b), (c), and (d).

(2) Records specified in § 63.10(c) for each CMS operated by the owner or operator in accordance with the requirements of § 63.3350(b).

(b) Each owner or operator of an affected source subject to this subpart must maintain records of all liquid-liquid material balances performed in accordance with the requirements of § 63.3370. The records must be maintained in accordance with the requirements of § 63.10(b).

Delegation of Authority

§ 63.3420 What authorities may be delegated to the States?

(a) In delegating implementation and enforcement authority to a State under 40 CFR part 63, subpart E, the authorities contained in paragraph (b) of this section must be retained by the Administrator and not transferred to a State.

(b) Authority which will not be delegated to States: § 63.3360(c), approval of alternate test method for organic HAP content determination; § 63.3360(d), approval of alternate test method for volatile matter determination.

If you are required to comply with operating limits by § 63.3321, you must comply with the applicable operating limits in the following table:

Tables to Subpart JJJJ of Part 63

TABLE 1 TO SUBPART JJJJ OF PART 63.—OPERATING LIMITS IF USING ADD-ON CONTROL DEVICES AND CAPTURE SYSTEM

For the following device:	You must meet the following operating limit:	And you must demonstrate continuous compliance with operating limits by:
1. Thermal oxidizer	a. The average combustion temperature in any 3-hour period must not fall below the combustion temperature limit established according to § 63.3360(e)(3)(i).	i. Collecting the combustion temperature data according to § 63.3350(e)(9); ii. Reducing the data to 3-hour block averages; and iii. Maintain the 3-hour average combustion temperature at or above the temperature limit.
2. Catalytic oxidizer	a. The average temperature at the inlet to the catalyst bed in any 3-hour period must not fall below the combustion temperature limit established according to § 63.3360(e)(3)(ii).	i. Collecting the catalyst bed inlet temperature data according to § 63.3350(e)(9); ii. Reducing the data to 3-hour block averages; and iii. Maintain the 3-hour average catalyst bed inlet temperature at or above the temperature limit.
	b. The temperature rise across the catalyst bed must not fall below the limit established according to § 63.3360(e)(3)(ii).	i. Collecting the catalyst bed inlet and outlet temperature data according to § 63.3350(e)(9); ii. Reducing the data to 3-hour block averages; and iii. Maintain the 3-hour average temperature rise across the catalyst bed at or above the limit.
3. Emission capture system	Submit monitoring plan to the Administrator that identifies operating parameters to be monitored according to § 63.3350(f).	Conduct monitoring according to the plan (§ 63.3350(f)(3)).

You must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART JJJJ OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ

General provisions reference	Applicable to subpart JJJJ	Explanation
§ 63.1(a)(1)–(4)	Yes.	

TABLE 2 TO SUBPART JJJJ OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ—Continued

General provisions reference	Applicable to subpart JJJJ	Explanation
§ 63.1(a)(5)	No	Reserved.
§ 63.1(a)(6)–(8)	Yes.	
§ 63.1(a)(9)	No	Reserved.
§ 63.1(a)(10)–(14)	Yes.	
§ 63.1(b)(1)	No	Subpart JJJJ specifies applicability.
§ 63.1(b)(2)–(3)	Yes.	
§ 63.1(c)(1)	Yes.	
§ 63.1(c)(2)	No	Area sources are not subject to emission standards of subpart JJJJ.
§ 63.1(c)(3)	No	Reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Reserved.
§ 63.1(e)	Yes.	
§ 63.1(e)(4)	No.	
§ 63.2	Yes	Additional definitions in subpart JJJJ.
§ 63.3(a)–(c)	Yes.	
§ 63.4(a)(1)–(3)	Yes.	
§ 63.4(a)(4)	No	Reserved.
§ 63.4(a)(5)	Yes.	
§ 63.4(b)–(c)	Yes.	
§ 63.5(a)(1)–(2)	Yes.	
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Reserved.
§ 63.5(b)(3)–(6)	Yes.	
§ 63.5(c)	No	Reserved.
§ 63.5(d)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)	Yes.	
§ 63.6(a)	Yes	Applies only when capture and control system is used to comply with the standard.
§ 63.6(b)(1)–(5)	No.	
§ 63.6(b)(6)	No	Reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)–(2)	Yes.	
§ 63.6(c)(3)–(4)	No	Reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Reserved.
§ 63.6(e)	Yes	Provisions pertaining to SSMP, and CMS do not apply unless an add–on control system is used to comply with the emission limitations.
§ 63.6(f)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart JJJJ does not require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(14)	Yes.	
§ 63.6(i)(15)	No	Reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7	Yes.	
§ 63.8(a)(1)–(2)	Yes.	
§ 63.8(a)(3)	No	Reserved.
§ 63.8(a)(4)	No.	
§ 63.8(b)	Yes.	
§ 63.8(c)(1)–(3)	Yes	§ 63.8(c)(1)(i) & (ii) only apply if you use capture and control systems and are required to have a start-up, shutdown, and malfunction plan.
§ 63.8(c)(4)	Yes.	
§ 63.8(c)(5)	No	Subpart JJJJ does not require COMS.
§ 63.8(c)(6)–(c)(8)	Yes	Provisions for COMS are not applicable.
§ 63.8(d)–(f)	Yes	§ 63.8(f)(6) only applies if you use CEMS.
§ 63.8(g)	Yes	Only applies if you use CEMS.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Except § 63.3400(b)(1) requires submittal of initial notification for existing affected sources no later than 1 year before compliance date.
§ 63.9(b)(3)–(5)	Yes.	

TABLE 2 TO SUBPART JJJJ OF PART 63.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART JJJJ—Continued

General provisions reference	Applicable to subpart JJJJ	Explanation
§ 63.9(c)–(e)	Yes.	
§ 63.9(f)	No	Subpart JJJJ does not require opacity and visible emissions observations.
§ 63.9(g)	Yes	Provisions for COMS are not applicable.
§ 63.9(h)(1)–(3)	Yes.	
§ 63.9(h)(4)	No	Reserved.
§ 63.9(h)(5)–(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)–(3)	Yes	§ 63.10(b)(2)(i) through (v) only apply if you use a capture and control system.
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2)–(4)	No	Reserved.
§ 63.10(c)(5)–(8)	Yes.	
§ 63.10(c)(9)	No	Reserved.
§ 63.10(c)(10)–(15)	Yes.	
§ 63.10(d)(1)–(2)	Yes.	
§ 63.10(d)(3)	No	Subpart JJJJ does not require opacity and visible emissions observations.
§ 63.10(d)(4)–(5)	Yes.	
§ 63.10(e)(1)–(2)	Yes	Provisions for COMS are not applicable.
§ 63.10(e)(3)–(4)	No.	
§ 63.10(f)	Yes.	
§ 63.11	No.	
§ 63.12	Yes.	
§ 63.13	Yes.	
§ 63.14	Yes	Subpart JJJJ includes provisions for alternative ASME test methods that are incorporated by reference.
§ 63.15	Yes.	

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 4, 2002

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards, etc.:
- Paper and other web coating facilities; published 12-4-02

Air quality implementation plans; approval and promulgation; various States:
- Alabama; published 11-4-02

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Pyrithiobac sodium; published 12-4-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- Canadian border ports; Blaine and Lyden, WA; removal as ports of entry; comments due by 12-9-02; published 11-8-02 [FR 02-28476]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Oriental fruit fly; comments due by 12-9-02; published 10-8-02 [FR 02-25537]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:
- Principal and interest; payment extensions; comments due by 12-9-02; published 10-8-02 [FR 02-25209]

COMMERCE DEPARTMENT

Census Bureau

Foreign trade statistics:
- Commerce Control List and U.S. Munitions List; items requiring Shipper's Export Declaration; Automated Export System mandatory filing; comments due by 12-9-02; published 10-9-02 [FR 02-25667]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:
- Sea turtle conservation—
  - Shrimp trawling requirements; waters off Louisiana and Alabama; limited tow times use as alternative to turtle excluder devices; comments due by 12-9-02; published 11-7-02 [FR 02-28281]
  - Shrimp trawling requirements; waters off Mississippi; limited tow times use as alternative to turtle excluder devices; comments due by 12-9-02; published 11-7-02 [FR 02-28280]

Fishery conservation and management:
- Northeastern United States fisheries—
  - Northeast multispecies and monkfish; comments due by 12-10-02; published 11-25-02 [FR 02-29895]
  - Summer flounder, scup, and black sea bass; comments due by 12-12-02; published 11-27-02 [FR 02-30229]
- West Coast States and Western Pacific fisheries—
  - Coastal pelagic species; comments due by 12-10-02; published 11-25-02 [FR 02-29894]

Marine mammals:
- National Marine Mammal Tissue Bank; access to tissue specimen samples; protocol; comments due by 12-12-02; published 11-12-02 [FR 02-28512]

COMMODITY FUTURES TRADING COMMISSION

Commodity pool operators and commodity trading advisors:
- Commodity pool operators; otherwise regulated persons excluded from term definition; comments due by 12-12-02; published 10-28-02 [FR 02-27309]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Government Printing Office; printing and duplicating procurement; comments due by 12-13-02; published 11-13-02 [FR 02-28668]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):
- Small generator interconnection agreements and procedures; standardization; comments due by 12-9-02; published 11-21-02 [FR 02-29401]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Benzene waste operations; comments due by 12-12-02; published 11-12-02 [FR 02-28499]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Benzene waste operations; comments due by 12-12-02; published 11-12-02 [FR 02-28500]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Pennsylvania; comments due by 12-12-02; published 11-12-02 [FR 02-28495]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Pennsylvania; comments due by 12-12-02; published 11-12-02 [FR 02-28496]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- South Carolina; comments due by 12-13-02; published 11-13-02 [FR 02-28698]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
- South Carolina; comments due by 12-13-02; published 11-13-02 [FR 02-28699]
- Virginia; comments due by 12-12-02; published 11-12-02 [FR 02-28695]

Air quality planning purposes; designation of areas:
- District of Columbia et al.; comments due by 12-13-02; published 11-13-02 [FR 02-28845]

Radiation protection programs:
- Disposal regulations; Waste Isolation Pilot Plant compliance; certification and recertification criteria—
  - Alternative provisions; comments due by 12-9-02; published 8-9-02 [FR 02-19796]

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- Water quality standards—
  - Michigan; Federal water quality criteria withdrawn; comments due by 12-9-02; published 11-8-02 [FR 02-28497]

ENVIRONMENTAL PROTECTION AGENCY

Water pollution control:
- Water quality standards—
  - Michigan; Federal water quality criteria withdrawn; comments due by 12-9-02; published 11-8-02 [FR 02-28498]

Water pollution; effluent guidelines for point source categories:
- Concentrated aquatic animal production facilities; comments due by 12-11-02; published 9-12-02 [FR 02-21673]

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Common carrier services:
- International Settlements Policy reform and international settlement rates; comments due by 12-10-02; published 10-25-02 [FR 02-27312]
- Telephone Consumer Protection Act; implementation—
  - Unsolicited advertising; comments due by 12-9-02; published 11-29-02 [FR 02-30252]

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- Private land mobile services—

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Radio stations; table of assignments:
Louisiana; comments due by 12-9-02; published 10-31-02 [FR 02-27694]

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Government Printing Office; printing and duplicating procurement; comments due by 12-13-02; published 11-13-02 [FR 02-28668]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

FHA programs; introduction:
Federal Housing Administration Inspector Roster; comments due by 12-9-02; published 10-10-02 [FR 02-25730]

INTERIOR DEPARTMENT

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Ventura marsh milk-vetch; comments due by 12-9-02; published 10-9-02 [FR 02-25372]

INTERIOR DEPARTMENT

Minerals Management Service

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Health care services; fees; comments due by 12-9-02; published 10-10-02 [FR 02-25850]

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Government Printing Office; printing and duplicating procurement; comments due by 12-13-02; published 11-13-02 [FR 02-28668]

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TRANSPORTATION DEPARTMENT

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Cirrus Design Corp.; comments due by 12-10-02; published 10-16-02 [FR 02-26052]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Rockwell Collins, Inc.; comments due by 12-12-02; published 10-16-02 [FR 02-25717]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness standards:
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Alcohol, Tobacco and Firearms Bureau

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Labeling and advertising; organic claims; comments due by 12-9-02; published 10-8-02 [FR 02-25265]

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcoholic beverages:
Labeling and advertising; organic claims; comments due by 12-9-02; published 10-8-02 [FR 02-25264]

TREASURY DEPARTMENT

Customs Service

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Reimbursable Customs services; hourly percentage of rate charge increase; comments due by 12-9-02; published 10-9-02 [FR 02-25655]

TREASURY DEPARTMENT

Internal Revenue Service

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Administrative summonses; designated IRS officer or employee; cross-reference; comments due by 12-9-02; published 9-10-02 [FR 02-22926]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. 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. 2621/P.L. 107–307

Product Packaging Protection Act of 2002 (Dec. 2, 2002; 116 Stat. 2445)

H.R. 3908/P.L. 107–308

North American Wetlands Conservation Reauthorization Act (Dec. 2, 2002; 116 Stat. 2446)

H.R. 3988/P.L. 107–309

To amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion. (Dec. 2, 2002; 116 Stat. 2449)

H.R. 4727/P.L. 107–310

Dam Safety and Security Act of 2002 (Dec. 2, 2002; 116 Stat. 2450)

H.R. 5590/P.L. 107–311

Armed Forces Domestic Security Act (Dec. 2, 2002; 116 Stat. 2455)

H.R. 5708/P.L. 107–312

To reduce the preexisting PAYGO balances, and for other purposes. (Dec. 2, 2002; 116 Stat. 2456)

H.R. 5716/P.L. 107–313

Mental Health Parity Reauthorization Act of 2002 (Dec. 2, 2002; 116 Stat. 2457)

H.R. 4546/P.L. 107–314

Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Dec. 2, 2002; 116 Stat. 2458)

H.J. Res. 117/P.L. 107–315

Approving the location of the commemorative work in the District of Columbia honoring former President John Adams. (Dec. 2, 2002; 116 Stat. 2763)

S. 3156/P.L. 107–316

Paul and Sheila Wellstone Center for Community Building Act (Dec. 2, 2002; 116 Stat. 2764)

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