AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

6-21-90
Vol. 55 No. 120

federal register

Thursday
June 21, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

6-21-90
Vol. 55 No. 120
Pages 25297-25600

federal register

Thursday
June 21, 1990

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 90-055]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by removing and adding commuted traveltime allowances for locations in California and North Carolina. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime for these locations.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support Staff, PPQ, APHIS, USDA, room 623, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by removing and adding commuted traveltime allowances for locations in California and North Carolina. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

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

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Accordingly, 7 CFR part 354 is amended as follows:

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(c).

2. Section 354.2 is amended by removing or adding in the table, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from—	Metropolitan area	
		Within	Outside
Remove:			
North Carolina:			
• • • • •			
Cherry Point	Morehead City		1
• • • • •			
Add:			
• • • • •			
California:			
• • • • •			
San Diego	Los Angeles		6
• • • • •			
North Carolina:			
• • • • •			
Cherry Point	Morehead City		2
• • • • •			

Done in Washington, DC, this 15th day of June 1990.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-14376 Filed 6-20-90; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-235-AD; Amdt. 39-6638]

Airworthiness Directives; General Dynamics Models 340, 440 and C-131 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Dynamics Models 340, 440, and C-131 (Military) series airplanes, which requires inspection for unacceptable drilled holes in certain fuselage frames, and repair, if necessary. This amendment is prompted by reports from operators who have found numerous holes drilled in the fuselage beltframes, the result of repeated removal and reinstallation of the cargo or passenger compartment interiors. Excessive holes in the fuselage frames could compromise the structural integrity of the airplane. This condition, if not corrected could result in failure of the beltframes.

EFFECTIVE DATE: July 30, 1990.

ADDRESSES: The applicable service information may be obtained from General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Don Dirian, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-120L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5234.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to General Dynamics Models 340, 440, and C-131 (Military) series airplanes, which requires inspection for unacceptable drilled holes in certain fuselage frames, and repair, if necessary, was published in the **Federal Register** on January 30, 1990 (55 FR 3067).

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

Three commenters responded that the cost estimate presented in the preamble to the Notice was too low and did not take into account the cost of repair parts. The commenters stated that the required inspection would necessitate between 300 and 2,000 manhours, and the cost of repair parts may be as much as $15,000 per airplane, depending upon the configuration of the airplane (cargo or passenger) and the extent of damage. After considering the data presented by the commenters, the FAA concurs that the number of manhours required is higher than previously approximated; the economic impact analysis paragraph, below, has been revised to indicate this higher amount. The economic analysis, however, is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on condition" actions, i.e., "repair, if necessary," since those actions would be required to be accomplished, regardless of AD direction, in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

Four commenters stated that not all aircraft have numerous excess holes, as the total airframe hours are low and the interiors are either original or have been changed only once. Therefore, these commenters requested that such airplanes not be required to undergo the proposed inspection, since to do so would create yet another set of holes. The FAA agrees that not all aircraft have excess holes and does not intend to have operators strip out aircraft unnecessarily. If those aircraft can be identified, a request for an alternate method of inspection or adjustment of compliance time can be submitted in accordance with paragraph C. of the final rule. In addition, a provision has been made in the final rule to disregard any holes which are not degraded or cracked and are used to attach a FAA-approved interior, or are original Convair manufacturing holes and meet the criteria in the Service Bulletin.

Four commenters requested that the compliance time be extended in order that they may accomplish the inspection during some other regularly scheduled maintenance interval or in conjunction with other required inspections in the same area of the airplane. Based on the revised, and more accurate, number of manhours required to accomplish the inspections, the FAA concurs that the compliance time may be adjusted somewhat. The final rule has been changed to divide the required inspections into two parts, as specified in the relevant Convair service bulletin, and each inspection may be performed at a different interval: The Part I inspection is to be accomplished within 1,650 hours time-in-service or 18 months after the effective date of the rule, whichever occurs first; the Part II inspection is to be accomplished within 2,300 hours time-in-service or 24 months after the effective date of the rule, whichever occurs first. Additionally, operators may apply for an adjustment of the compliance time as provided by paragraph C. of the final rule.

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

There are approximately 350 General Dynamics Models 340, 440, and C-131 (Military) series airplanes of the

affected design in the worldwide fleet. It is estimated that 200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1,150 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,200,000.

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

General Dynamics (Convair): Applies to Models 340, 440, and C-131, B, C, D, E, F, and G (Military) series airplanes, including all airplanes converted to turbopropeller power, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent progressive damage to the airframe, accomplish the following:

A. Perform a visual inspection of the fuselage frames in accordance with General Dynamics, Convair Division, Service Bulletin 640 (340D) 53-15, Revision 1, dated December 1, 1989, in accordance with the schedule below. Any drilled holes found which do not conform to the limitations specified in the service bulletin, or any holes found which are cracked, must be repaired prior to further flight, in accordance with the service bulletin. Any holes specifically used for attaching an FAA-approved interior, or original Convair manufacturing holes, may be disregarded if they are not degraded or cracked, and if they meet the criteria specified in the service bulletin.

1. Within 1,650 hours time-in-service or 18 months after the effective date of this AD, whichever occurs first, accomplish the inspections specified in Part I of the service bulletin.

2. Within 2,300 hours time-in-service or 24 months after the effective date of this AD, whichever occurs first, accomplish the inspections specified in Part II of the service bulletin.

B. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

C. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles Aircraft Certification Office, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Los Angeles Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the General Dynamics, Convair Division, P.O. Box 85377, San Diego, California 92138, Attn: Chief, Aircraft Logistical Support, Mail Zone 92-2920. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective on July 30, 1990.

Issued in Seattle, Washington, on June 12, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-14331 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-33-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AC73

Entitlement as a Surviving Divorced Spouse After Remarriage

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: In this final regulation, we are removing from our current regulations the requirement that for a surviving divorced spouse who has remarried to be entitled to benefits on his or her former spouse's Social Security account, the remarriage must have occurred after the former insured spouse died. This action is based on the district court decision in *Pirus* v. *Bowen*, No. CV87-1141-IH (C.D. Cal., Nov. 19, 1987), which held that this requirement in our regulations is invalid and unenforceable.

EFFECTIVE DATE: This regulation is effective beginning June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-8471.

SUPPLEMENTARY INFORMATION: Sections 202 (e) and (f) of the Social Security Act (the Act) provide in paragraph (1) that a surviving divorced spouse is entitled to widow's or widower's insurance benefits if, among other things, he or she is not married and has attained a specified age. Paragraph (3) of section 202(e) and paragraph (4) of section 202(f) provide that if a surviving divorced spouse marries after attaining age 60, or age 50 in certain situations, the marriage is deemed not to have occurred.

Our current regulations provide in 20 CFR 404.336 that a person may be entitled to benefits as a surviving divorced wife or a surviving divorced husband if the person is unmarried. In addition, as explained in paragraphs (e)(1) through (e)(3) of § 404.336, a marriage may be deemed not to have occurred for these purposes where the person remarried after a specified age. Paragraph (4) of that section adds a further requirement that the remarriage must have occurred after the death of the insured former spouse.

On February 5, 1986, we published a final rule (51 FR 4480) which, among other things, added paragraph (4) to § 404.336. We explained in the

Supplementary Information of that publication that the addition of paragraph (4) reflected the intent of Congress as expressed in the language of section 131 of the Social Security Amendments of 1983 (Pubic Law 98–21) and in the related legislative history that the remarriage of a surviving divorced spouse after he or she had become entitled to benefits as such would not cause a termination of those benefits. Senate Rep. No. 98–23 at 6, House of Representatives Rep. No. 98–25, part I, at 56–57, House Conf. Rep. No. 98–47 at 129, 98th Cong. 1st Sess. (1983). Prior to the 1983 amendments, a divorced spouse who remarried before his or her former spouse died could not become entitled to benefits under the Act as a surviving divorced spouse. Because of this, we did not believe Congress' intent, expressed in the legislative history cited above, to avoid a termination of surviving divorced spouse's benefits on remarriage could have applied to such a divorced spouse who remarried before the death of the former spouse and thus had never become entitled to surviving divorced spouse's benefits on the earnings record of that former spouse.

In a judgment dated November 19, 1987, the U.S. District Court for the Central District of California held in *Pirus* v. *Bowen* that 20 CFR 404.336(e)(4) violates the Social Security Act and is invalid and unenforceable. The court in *Pirus* further enjoined the Secretary from denying claims for surviving divorced spouse's benefits solely because the remarriage had occurred prior to the death of the former spouse. Since this case had been certified as a nationwide class action, we took the necessary steps to pay benefits to surviving divorced spouses who were initially denied benefits on or after March 31, 1985, the date specified in the Order Certifying Class, because the remarriages occurred prior to the deaths of former spouses. We are now removing paragraph (e)(4) from 20 CFR 404.436 so that our regulations will conform to the *Pirus* decision and reflect our current policy.

We are publishing this removal action as a final rule instead of a proposed rule. Even when not required by statute, as a matter of policy we generally follow the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of our regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that in this instance these procedures are unnecessary and that good cause exists under 5 U.S.C. 553(b)(B) for waiver of notice of proposed rulemaking and public comment procedures. We reached this conclusion because we are merely deleting an existing rule that has been declared invalid in a nationwide class action lawsuit. Since the decision of the court was not appealed and was adopted by the Agency as a permissible interpretation of the applicable statute, we need to make this change so that our regulation will be consistent with the decision of the court.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under E.O. 12291 because it will result in negligible administrative costs or savings. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities since it affects only individuals. Therefore, a regulatory flexibility analysis as provided in Pubic Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This final rule imposes no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; 13.805 Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: March 12, 1990.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: April 19, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subpart D of part 404 of 20 CFR chapter III is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

1. The authority citation for subpart D continues to read as follows:

Authority: Secs. 202, 203 (a) and (b), 205(a), 216, 223, 228(a)–(e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 428(a)–(e), and 1302.

§ 404.336 [Amended]

2. In § 404.336, paragraph (e)(4) is removed.

[FR Doc. 90–14298 Filed 6–20–90; 8:45 am]

BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Milbemycin Oxime

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Ciba-Geigy Animal Health, Ciba-Geigy Corp. The NADA provides for use of milbemycin oxime tablets for prevention of heartworm disease and control of hookworm infections in dogs.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300, filed NADA 140–915 which provides for use of 2.3-, 5.75-, 11.5-, and 23.0-milligram milbemycin oxime (Interceptor®) tablets for use as an anthelmintic in dogs. The product is for prevention of heartworm disease caused by *Dirofilaria immitis* and control of hookworm infections caused by *Ancylostoma caninum*. The NADA is approved as of June 14, 1990, and the regulations are amended by adding new 21 CFR 520.1445 to reflect the approval. The basis of approval is discussed in the freedom of information summary. Additionally, the regulations are amended to revise the sponsor entries in 21 CFR 510.600(c)(1) and 510.600(c)(2).

As provided under the Generic Animal Drug and Patent Term Restoration Act of 1988 and section 512(c)(2)(F)(i) of the Federal Food, Drug,

and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning June 14, 1990, because milbemycin oxime is a new animal drug that has not been previously approved under section 512(b)(1) of the act. Under section 512(c)(2)(F)(iv) of the act, the sponsor may elect, within 10 days of receiving such approval, to waive clause (i), in which event this approval reverts to 3 years of marketing exclusivity as set forth in clause (ii) beginning June 14, 1990.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry "Ciba Pharmaceutical Co.," and alphabetically adding a new entry "Ciba-Geigy Animal Health" and in paragraph (c)(2) by removing the entry "000028" and numerically adding a new entry "058198" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300	058198
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
058198	Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419–8300.
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. New § 520.1445 is added to read as follows:

§ 520.1445 Milbemycin oxime tablets.

(a) *Specifications.* Each tablet contains 2.3, 5.75, 11.5, or 23.0 milligrams of milbemycin oxime.

(b) *Sponsor.* See 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 0.23 milligram per pound of body weight (0.5 milligram per kilogram).

(2) *Indications for use.* For prevention of heartworm disease caused by *Dirofilaria immitis* and control of hookworm infections caused by *Ancylostoma caninum* in dogs.

(3) *Limitations.* Administer once a month. First dose given within 1 month after first exposure to mosquitoes and continue regular use until at least 1 month after end of mosquito season. Prior to initiation of treatment, dogs over 6 months of age should be tested for existing heartworm infection. If positive, dogs should be converted to a negative status prior to use of drug. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 14, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90–14351 Filed 6–20–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N–90–1961; FR–2634–N–03]

Section 8 Housing Assistance Payments Program, Fair Market Rents for New Construction and Substantial Rehabilitation—All Market Areas Fiscal Year 1988 Amendment to Notes Regarding Special Category Computations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioners, HUD.

ACTION: Final Section 8 Housing, Amendment to all market areas.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to establish Fair Market Rents (FMRs) periodically, but not less frequently than annually. On December 1, 1989, at 54 FR 49886, the Department announced final Fiscal Year 1988 FMRs for the Section 8 New Construction Program and the Section 8 Substantial Rehabilitation Program. This notice announces an amendment to the notes regarding special category computations that were appended to the December 1, 1989 final notice.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 426–7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe, and sanitary housing. These programs, known collectively as the Section 8

Housing Assistance Payments Program, provide assistance payments for lower income families for a variety of housing options, including new construction and substantial rehabilitation.

Under these programs, HUD or public housing agencies (PHAs) make rental assistance payments to owners on behalf of eligible families. Total housing expense represents the total monthly cost of housing an eligible family, which is the sum of the contract rent and any utility allowance for the assisted unit occupied by the family. Where the unit is leased to an eligible family, the housing assistance payment represents the differnece between the total housing expense and the total family contribution. Initial contract rents plus any allowances for utilities generally may not exceed area-wide Fair market Rents (FMRs) established by the Department.

The Department published proposed Fiscal Year 1988 FMRs in the Federal Register on May 22, 1989, at 54 FR 21190, with a comment due date of June 21, 1989. On December 1, 1989, at 54 FR 49886, the Department published the final Fiscal Year 1988 FMRs in the Federal Register.

Appended to the December 1, 1989 final notice is a list of Notes pertaining to Special Category Computations. Note number 4 states that "One-bedroom FMRs may be applied only when the bedroom space plus the proportionate part of the common space totals at least 450 square feet, provided that the project conforms to the following criteria:

a. The project meets HUD's cost containment guidelines, and

b. Use of the one bedroom FMR must be necessary in order to assure the economic feasibility and financial soundness of the project."

This Notice

The minimum square footage requirement set forth above has been inadvertently included in recent FMR notices even though the policy was changed in 1985. The Department discovered then that it was unnecessary and contradictory to the purposes of the programs to which these FMRs are applied to continue the requirement of applying one-bedroom FMRs *only if the bedroom space plus the proportionate part of the common space totals at least 450 square feet* when the project meets the other necessary criteria (i.e., meets HUD's cost containment guidelines and use of the one bedroom FMR is necessary in order to assure the economic feasibility and financial soundness of the project).

The Department changed its policy from applying one-bedroom FMRs only if the bedroom space plus the proportionate part of the common space totals at least 450 square feet in the Funding Notice H 85-9 for Fiscal Year 1985 to allow the application of the one-bedroom FMRs only if the unit would be occupied by two persons. However, sponsors of Section 202 group homes and disability advocacy groups voiced concern that the result of the new requirement would be to limit single occupancy to zero-bedroom FMRs and that this would prevent economic feasibility for some projects. Therefore, this policy was further modified by a memorandum dated February 14, 1986, from the Acting General Deputy Assistant Secretary for Housing to HUD field offices to allow the application of the one-bedroom FMRs with single person occupancy when a project meets HUD's cost containment guidelines and the use of the one-bedroom FMR is necessary to assure economic feasibility. This later policy did not have a minimum square footage requirement because the Department discovered that it was contradictory to the purposes of cost containment.

Because the minimum square footage requirement was inadvertently included after the policy was changed, the Department finds itself having to grant a continuous number of requests for waivers. Therefore, in light of the benefits to be gained by the public in relieving it of the dalys due to requesting waivers of this outdated requirement, the Department has determined that notice and public procedure are unnecessary and contrary to the public interest and that it is in the best interest of the public to issue this amendment as a final notice.

Other Information

HUD regulations in 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities, and programs specified in § 50.20. Since the FMRs set forth in December 1, 1989 notice are within the exclusion set forth in § 50.20(1), no environmental assessment was required, and accordingly no environmental assessment is required for this technical correction to that notice.

The Catalog of Federal Domestic Assistance program number and title for the activities covered by this Notice are 14.156, Lower Housing Assistance Program (Section 8).

Accordingly, the Department amends number 4 of *Notes* to the Final Notice published on December 1, 1989, at 54 FR 49886, to read as set forth below.

Schedule A—Fair Market Rents for New Construction and Substantial Rehabilitation

Notes

Special Category Computations

* * * * *

4. FMRs for living units in a group home developed with a direct loan under Section 202 of the Housing Act of 1959 are those for zero-bedroom or a one-bedroom unit of the walkup structural type (or if the group home contains an elevator, of the 2- to 4-story structural type). Each living unit in a group home is composed of a bedroom plus a proportionate part of common living space ordinarily included in a living unit. One-bedroom FMRs may be authorized by the HUD Assistant Secretary for Housing, provided that the project conforms to the following criteria:

a. the project meets HUD's cost containment guidelines, and

b. use of the one bedroom FMR must be necessary in order to assure the economic feasibility and financial soundness of the project.

* * * * *

Authority: Sec. 8(c)(1), U.S. Housing Act of 1937, 42 U.S.C. 1437f; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 6, 1990.

Peter Monroe,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-14303 Filed 6-20-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286b

[OSD Administrative Instruction No. 81]

Privacy Program

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is publishing as a final rule a new general exemption ((j)(2)) that will allow the Office of the Secretary of Defense to exempt a new record system from certain provisions of the Privacy Act of 1974, as amended, (5 U.S.C. 552a). A general exemption is required to protect the information contained therein from certain disclosures.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg, Chief, Records Management and Privacy Act Branch,

Office of the Secretary of Defense, Room 5C315, Pentagon, Washington, DC 20301–1155. Telephone (202) 695–0970.

SUPPLEMENTARY INFORMATION: On May 15, 1990, at 55 FR 20168 of the **Federal Register**, the Office of the Secretary of Defense published a proposed exemption rule for a new record system identified as DWHS P42.0, entitled "DPS Incident Reporting and Investigations Case File" under the provisions of 5 U.S.C. 552a(j)(2) of the Privacy Act of 1974, as amended. No comments were received, therefore the Office of the Secretary of Defense is adopting the proposed exemption rule as a final rule.

List of Subjects in 32 CFR Part 286b

Privacy.

PART 286b—PRIVACY PROGRAM

For the reasons set forth in the preamble, 32 CFR part 286b is amended as follows:

1. The authority citation for 32 CFR part 286b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 286b.7 is amended to add paragraph (b) as follows:

§ 286b.7 Procedures for exemptions.

* * * * *

(b) *General exemptions.* The general exemption provided by 5 U.S.C. 552a(j)(2) may be invoked for protection of systems of records maintained by law enforcement activities. Certain functional records of such activities are not subject to access provisions of the Privacy Act of 1974. Records identifying criminal offenders and alleged offenders consisting of identifying data and notations of arrests, the type and disposition of criminal charges, sentencing, confinement, release, parole, and probation status of individuals are protected from disclosure. Other records and reports compiled during criminal investigations, as well as any other records developed at any stage of the criminal law enforcement process from arrest to indictment through the final release from parole supervision are excluded from release.

(1) *System Identification and Name*—DWHS P42.0, "DPS Incident Reporting and Investigations Case Files".

Exemption—Portions of this system that fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a, Sections (c) (3) and (4); (d)(1) through (d)(5); (e)(1) through (e)(3); (e)(5); (f)(1) through (f)(5); (g)(1) through (g)(5); and (h) of the Act.

Authority—5 U.S.C. 552a(j)(2).

Reason—The Defense Protective Service is the law enforcement body for the jurisdiction of the Pentagon and immediate environs. The nature of certain records created and maintained by the DPS requires exemption from access provisions of the Privacy Act of 1974. The general exemption, 5 U.S.C. 552a(j)(2), is invoked to protect ongoing investigations and to protect from access criminal investigation information contained in this record system, so as not to jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

* * * * *

Dated: June 18, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–14393 Filed 6–20–90; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–90–33]

Special Local Regulations for Marine Events; July 4th Fireworks Display; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the July 4th Fireworks Display. The event will be held in the Inner Harbor, Baltimore, Maryland on July 4, 1990. The special local regulations will govern vessel activities during the display. The regulations are necessary due to potential danger to waterway users, the confined nature of the waterway, and possible spectator craft congestion during the event.

EFFECTIVE DATE: These regulations are effective from 8:30 p.m. to 11 p.m., July 4, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 8:30 p.m. to 11 p.m., July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of **Federal Register** publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until June 5, 1990; leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Baltimore Office of Promotion has submitted an application dated May 24, 1990 to hold the July 4th Fireworks Display in the Inner Harbor, Baltimore, Maryland. The display will be launched from a barge anchored in the Inner Harbor. A portion of the Inner Harbor will be closed to waterborne traffic for a brief period during the actual firing of the fireworks. Traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–0533 is added to read as follows:

§ 100.35–0533 Patapsco River, Inner Harbor, Baltimore, Maryland.

(a) *Definitions*—(1) *Regulated area.* The waters of the Inner Harbor bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39°16'52.0" North, longitude 76°36'14.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective date.* These regulations are effective from 8:30 p.m. to 11:00 p.m., July 4, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 8:30 p.m. to 11 p.m., July 5, 1990.

Dated: June 13, 1990.

P.A. Welling,

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

[FR Doc. 90–14340 Filed 6–20–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 05–90–30]

Special Local Regulations for Marine Events; South County Fireworks Display; West River, Shady Side, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the South County fireworks display. The fireworks will be launched from a barge anchored approximately 420 yards northwest of Parish Creek Light 1 (LLNR 17675), on the West River, at Shady Side, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 8 p.m. to 10:30 p.m., July 4, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 8 p.m. to 10:30 p.m., July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received until May 31, 1990, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Kiwanis Club of Shady Side Inc. submitted an application dated April 4, 1990 to hold a fireworks display on July 4, 1990. The fireworks will be launched from a barge anchored approximately 420 yards northwest of Parish Creek Light 1 (LLNR 17675), West River, Shady Side, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Since the main shipping channel will not be closed for an extended period, commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in permanent regulations 33 CFR 100.515 rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations is amended as follows:

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–0530 is added to read as follows:

§ 100.35–0530 West River, Shady Side, Maryland

(a) *Definitions*—(1) Regulated area. The waters of the West River bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 38°51'14.0" North, longitude 76°30'38.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander,

no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Dates.* These regulations are effective from 8 p.m. to 10:30 p.m., July 4, 1990. If inclement weather causes the postponement of the event, the regulations are effective from 8 p.m. to 10:30 p.m., July 6, 1990.

Dated: June 13, 1990.

P.A. Welling,

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

[FR Doc. 90-14341 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-90-32]

Special Local Regulations for Marine Events; a City Celebrates Fireworks Displays; Patapsco River, Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the A City Celebrates Fireworks Displays. The events will be held in the Inner Harbor, Baltimore, Maryland on June 29, 1990 and on July 8, 1990. The special local regulations will govern vessel activities during the display. The regulations are necessary due to potential danger to waterway users, the confined nature of the waterway, and possible spectator craft congestion during the event.

EFFECTIVE DATE: These regulations are effective for the following periods:

8:30 p.m. to 10:30 p.m., June 29, 1990
7:15 p.m. to 9:30 p.m., July 8, 1990.

If inclement weather causes the postponement of the event on June 29, 1990, the regulations are effective from 8:30 p.m. to 10:30 p.m., June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of **Federal Register** publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the events was not received until June 5, 1990, leaving insufficient time to publish a notice of proposed rulemaking in advance of the events.

Drafting Information

The drafters of this notice are QM1 Keven R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Harborplace in Baltimore has submitted an application dated May 25, 1990 to hold the A City Celebrates Fireworks Displays in the Inner Harbor, Baltimore, Maryland. The displays will be launched from a barge anchored in the Inner Harbor. A portion of the Inner Harbor will be closed to waterborne traffic for a brief period during the actual firing of the fireworks. Traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations

PART 100—[AMENDED]

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0532 is added to read as follows:

§ 100.35-0532 Patapsco River, Inner Harbor, Baltimore, Maryland.

(a) *Definition*—(1) *Regulated area.* The waters of the Inner Harbor bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39°16'52.0" North, longitude 76°36'14.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective date.* These regulations are effective for the following periods:

8:30 p.m. to 10:30 p.m., June 29, 1990
7:15 p.m. to 9:30 p.m., July 8, 1990

If inclement weather causes the postponement of the event on June 29, 1990, the regulations are effective from 8:30 p.m. to 10:30 p.m., June 30, 1990.

Dated: June 13, 1990.

P.A. Welling,

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

[FR Doc. 90-14342 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-90-29]

Special Local Regulations for Marine Events; Fireworks Display; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.511.

SUMMARY: This notice implements 33 CFR 100.511 for the Annapolis Fourth of July Fireworks Display. The fireworks will be launched from barges anchored approximately 150 yards off Farragut Field, U.S. Naval Academy, from approximately 9 p.m. to 9:25 p.m. on July 4, 1990. The debris from the firework display will cover an area of approximately 350 feet from the launch site. The regulations in 33 CFR 100.511 are needed to control marine traffic within the debris fallout area. The regulations restrict general navigation in this area for the safety of life and property.

EFFECTIVE DATES: The regulations in 33 CFR 100.511 are effective from 8 p.m. to 10:30 p.m. on July 4, 1990. If inclement weather causes postponement of the event, the regulations are effective from 8 p.m. to 10:30 p.m., July 5, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The Annapolis Recreation and Parks Department, Annapolis, Maryland, submitted an application on March 12, 1990 to hold a fireworks display from 9 p.m. to 9:25 p.m. on July 4, 1990. The fireworks will be launched from barges anchored approximately 150 yards off Farragut Field, U.S. Naval Academy. The debris from the firework display will cover an area of approximately 350 feet from the launch site. The regulations in 33 CFR 100.511 are needed to control marine traffic within the regulated area and particularly within the debris fallout area for the safety of life and property. Since many spectator vessels are expected to be in the area to watch the fireworks display, the regulations in 33 CFR 100.511 are being implemented for this event. A portion of the regulated area will be closed during the fireworks display. Since the marked channels will not be closed for this event, marine traffic should not be severely disrupted.

Dated: June 12, 1990.

P.A. Welling,

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

[FR Doc. 90-14343 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD1 90-035]

Great Kennebec River Whatever Race, Gardiner, ME

AGENCY: Coast Guard; DOT.

ACTION: Notice of implementation of regulations.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.108, for the Great Kennebec River Whatever Race from 6:00 a.m. to 6:00 p.m. on July 1st, 1990.

FOR FURTHER INFORMATION CONTACT: Ensign Leslie J. Penney, (617) 223-8310.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1990 running of the Great Kennebec River Whatever Race in Augusta, Maine. The regulations, 33 CFR 100.108, will be in effect from 6:00 a.m. to 6:00 p.m. on July 1, 1990. The Great Kennebec River Whatever Race is a marine parade sponsored by the Kennebec Valley Chamber of Commerce and is held annually to celebrate the cleanup of the Kennebec River. Approximately 3,000 people and 150 unpowered watercraft of all description are expected to participate along with some 50 spectator craft. The only requirement placed on participants by the sponsor is that all entries be non-motor powered: Traditionally the event attracts a great number of homemade rafts of unique design. The race will start at the U.S. Route 201-202 bridge in Augusta, Maine and finish at the Maine Route 126 bridge connecting Randolph and Gardiner, Maine. The event will be patrolled by the Coast Guard, Coast Guard Auxiliary, state and local law enforcement organizations, and sponsor provided patrol craft. The regulations will serve to restrict the operating speed of vessels in the race area and require race participants (those persons on unregistered and undocumented vessels) to wear Coast Guard approved personal flotation devices.

Drafting Information

The drafters of these regulations are ENS L.J. Penney, project officer, First Coast Guard District Boating Affairs Branch and Lt. R.E. Korroch, project attorney, First Coast Guard District Legal Office.

Dated: June 4, 1990.

R.I. Rybacki,

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

[FR Doc. 90-14381 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 90-069]

Safety Zone Regulations; Rowayton Civic Association Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone at the mouth of Five Mile River approximately 100 yards west of Buoy #2. This safety zone is needed to protect marine traffic and spectator craft from the safety hazard associated with a fireworks display. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

EFFECTIVE DATE: This regulation becomes effective at 8:45 p.m. July 4, 1990, 15 minutes prior to the display. It terminates upon completion of the display at approximately 11:000 p.m., July 4, 1990, unless terminated sooner by the Captain of the Port. Rain date will be July 8th at the same times.

FOR FURTHER INFORMATION CONTACT: Captain of the Port, Long Island Sound, (203) 468-4464.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect any marine traffic from the potential hazards involved.

Drafting Information

The drafters of this regulation are BMC Cassin, project officer, Captain of the Port Long Island Sound, and Lt. Korroch, project attorney, First Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin at 8:45 p.m. on July 4, 1990 approximately 15 minutes prior to the fireworks display 100 yards west of Buoy #2 in Rowayton, CT. This Safety Zone is needed to protect any transiting commercial or recreational marine traffic from the possible hazards associated with the fireworks display in this entrance channel area.

This regulation is issued pursuant to U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

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

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

2. A new 33 CFR 165.T1069 is added to read as follows:

§ 165.T1069 Safety zone: Rowayton Civic Association fireworks.

(a) *Location.* The following area is a safety zone: All waters within a 1,000 ft radius of the Barge "C33" (the fireworks launching platform) approximately 100 yards west of Buoy #2 in Rowayton, CT. The launching platform will be moved into and then anchored in position (41–03'18" N, 073–26'41" W.). The safety zone will be closed to all marine traffic from 8:45 p.m. until the completion of the display at approximately 11:00 p.m.

(b) *Effective date.* This regulation becomes effective on July 4, 1990 at 8:45 p.m. approximately 15 minutes prior to the display. It terminates upon completion of the display at approximately 11:00 p.m. July 4, 1990, unless terminated sooner by the Captain of the Port. The rain date for this event is July 8, 1990 at the same time.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or his on scene representatives.

Dated: June 14, 1990.

T.H. Collins,

Captain, U.S. Coast Guard. Captain of the Port Long Island Sound.

[FR Doc. 90–14380 Filed 6–20–90; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1284

RIN 3095–AA47

Temporary Exhibition of Privately-Owned Material in the National Archives Building

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is publishing rules governing the temporary exhibition of privately-owned documents, paintings, and other objects at the National Archives Building that are not part of a NARA-produced exhibit. The policy embodied in these rules is being established because of limited space and other NARA resources for display of items at the National Archives Building.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard at 202–501–5110 (FTS 241–5110).

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on April 11, 1990 (55 FR 13553). No comments were received. Accordingly, the proposed rule is being adopted without change.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Part 1284

Archives and records.

For the reasons set forth in the preamble, chapter XII of title 36, Code of Federal Regulations, is amended by adding part 1284 to subchapter G to read as follows:

PART 1284—EXHIBITS

Sec.

1284.1 Scope of part.
1284.20 Temporary exhibition of privately-owned material.

Authority: 44 U.S.C. 2104(a).

§ 1284.1 Scope of part.

This part sets forth policies and procedures concerning the exhibition of materials at the National Archives Building.

§ 1284.20 Temporary exhibition of privately-owned material.

(a) Documents, paintings, or other objects belonging to private individuals or organizations normally will not be accepted for display at the National Archives Building except as part of a NARA-produced exhibit.

(b) NARA may accept for temporary special exhibit at the National Archives Building privately-owned documents or other objects under the following conditions:

(1) The material to be displayed relates to the institutional history of the National Archives and Records Administration or its predecessor organizations, the National Archives Establishment and the National Archives and Records Service;

(2) Exhibition space is available in the building that the NARA Office of Public Programs and the Document Conservation Branch judge to be appropriate in terms of security, light level, climate control, and available exhibition cases or other necessary fixtures; and

(3) NARA has resources (such as exhibit and security staff) available to produce the special exhibit.

(c) The Assistant Archivist for Public Programs (NE), in conjunction with the NARA General Counsel when appropriate, shall review all offers to display privately-owned material and shall negotiate the terms of exhibition for offers that can be accepted. The lender shall provide evidence of title to and authenticity of the item(s) to be displayed before any loan agreement is executed.

(d) The Assistant Archivist shall inform the offeror of NARA's decision within 60 days.

Dated: May 21, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90–14293 Filed 6–20–90; 8:45 am]

BILLING CODE 7515–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AC54 and 2900–AD14

Procedural Due Process; Appeals Regulations and Rules of Practice; Request for Change in Representation, Request for Personal Hearing, or Submission of Additional Evidence Following Certification of an Appeal to the Board of Veterans Appeals

AGENCY: Department of Veterans Affairs.

ACTION: Final rules: Correction.

SUMMARY: On April 11, 1990, on pages 13522–13529 of the **Federal Register**, the

Department of Veterans Affairs published a final rule on procedural due process for VA claimants and beneficiaries and the eligibility criteria for retroactive awards based on liberalizing laws or administrative issues. This final rule included a revision to 38 CFR part 3, § 3.103 (page 13527). A subsequent revision to § 3.103, paragraph (c), appearing in another final rule as described below was published in the **Federal Register** on May 15, 1990. Due to editorial errors it is necessary to publish a correction so as to avoid any confusion.

On May 15, 1990, on pages 20144–20150 of the **Federal Register**, the Department of Veterans Affairs published a final rule to amend its appeals regulations concerning the consideration of additional evidence, hearing requests and requests for changes in representation following the certification and transfer of an appeal to the Board of Veterans Appeals. The revision to 38 CFR part 3, § 3.103, paragraph (c) (page 21048) supersedes the revision published on April 11, 1990, but was incorrectly published.

In the amendatory language and the revision to 38 CFR part 3, § 3.103, paragraph (c) (page 20148), three editorial errors were made. The amendatory paragraph stated that the first sentence of paragraph (c) is revised. In fact, it is newly designated paragraph (c)(1), as published on page 13527 of the **Federal Register** dated April 11, 1990, that is being revised. In addition, the title of paragraph (c)(1) and the words in the first sentence "within the purview of this part" were inadvertently changed. The title is "The right to a hearing" and the words in the first sentence "within the purview of part 3 of this chapter" are correct as published on page 13527 of the **Federal Register** dated April 11, 1990. The title of § 3.103 is correct as it appears in both the **Federal Register** dated May 15, 1990, (page 20148), and in the current edition (revised as of September 1, 1989) of title 38, Code of Federal Regulations.

To avoid any confusion, VA is printing the correct newly designated paragraph (c)(1) to § 3.103.

VA regrets the errors that are corrected by this notice.

FOR FURTHER INFORMATION CONTACT: Don England, (202) 233–3005; Jan Donsbach, (202) 233–2978.

Dated: June 14, 1990.

Charles A. Fountaine, III,

Records Management Service.

PART 3—AMENDED

1. In 38 CFR part 3, § 3.103, newly designated paragraph (c)(1) as published on page 13527 of the **Federal Register** dated April 11, 1990, and as published as paragraph (c) on page 20148 of the **Federal Register** dated May 15, 1990, is correctly designated as paragraph (c)(1) and the first sentence is revised to read as follows:

§ 3.103 Due process—procedural and appellate rights with regard to disability and death benefits and related relief.

* * * * *

(c) *The right to a hearing.* (1) Upon request, a claimant is entitled to a hearing at any time on any issue involved in a claim within the purview of part 3 of this chapter, subject to the limitations described in § 19.174 of this chapter with respect to hearings in claims which have been certified to the Board of Veterans Appeals for appellate review. * * *

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[FR Doc. 90–14296 Filed 6–20–90; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6877]

List of Communities Eligible for Sale of Flood Insurance; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: Post Office Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street SW., room 417, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

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

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Alabama: Reece, city of, Etowah County	010253	Apr. 27, 1990	Feb. 21, 1975.
Ohio:			
Millersport, village of, Fairfield County	390689	May 8, 1990	Jan. 31, 1975.
Carroll County, unincorporated areas	390763	May 11, 1990	Nov. 4, 1977.
Alabama: Dozier, town of, Crenshaw County	010056	May 4, 1990	Sept. 20, 1974.
Oklahoma:			
Nash, town of, Grant County	400311	May 14, 1990	July 2, 1976.
Noble County, unincorporated areas	400132	do	
Washington: Yelm, town of, Thurston County	530310	May 21, 1990	Oct. 22, 1976.
Michigan:			
Byron, village of, Shiawassee County	260601	May 23, 1990	Sept. 19, 1975.
Chester, township of, Ottawa County	260829	do	
Arkansas:			
Garland County, unincorporated areas	050433	May 25, 1990	Aug. 2, 1977.
Chester, town of, Crawford County	050050	May 18, 1990	
New Eligibles—Regular Program			
Texas: Runaway Bay, city of, Wise County	481618	May 10, 1990	Mar. 19, 1990.
Tennessee: Henderson County, unincorporated areas	470088	May 17, 1990	Sept. 2, 1988.
Reinstatements			
Alabama: Rainsville, town of, DeKalb County	010368	July 16, 1975, Emerg.; May 1, 1980, Reg.; Sept. 30, 1988, Susp.; May 4, 1990, Rein.	May 1, 1980.
Maine: Blue Hill, town of, Hancock County	230274	Apr. 1, 1976, Emerg.; May 3, 1990, Reg.; May 3, 1990, Susp.; May 17, 1990, Rein.	May 3, 1990.
Missouri: Hopkins, city of, Nodaway County	290489	Feb. 18, 1975, Emerg.; Apr. 1, 1982, Reg.; Apr. 1, 1982, Susp.; June 11, 1986, Rein.; Mar. 5, 1990, Susp.; May 18, 1990, Rein.	Apr. 1, 1982.
New Hampshire:			
Portsmouth, city of, Rockingham County	330139	July 10, 1975, Emerg.; May 17, 1982, Reg.; May 3, 1990, Susp.; May 21, 1990, Rein.	May 17, 1982.
Keene, city of, Cheshire County	330023	Apr. 24, 1974, Emerg.; Sept. 30, 1983, Reg.; May 3, 1990, Susp.; May 29, 1990, Rein.	Feb. 1, 1985.
Alabama: Louisville, town of, Barbour County	010225	Nov. 25, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; May 30, 1990, Rein.	Sept. 1, 1987.
Regular Program Conversions—Region I			
Maine:			
Belfast, city of, Waldo County	230129	May 3, 1990, suspension withdrawn	May 3, 1990.
Carrabassett Valley, town of, Franklin County	230056	do	Do.
Clinton, town of, Kennebec County	230236	do	Do.
Greene, town of, Androscoggi County	230475	do	Do
Lincolnville, town of, Waldo County	230173	do	Do.
Livermore, town of, Androscoggi County	230173	do	Do.
Milbridge, town of, Washington County	230142	do	Do.
Winterport, town of, Waldo County	230271	do	Do.
New Hampshire: Durham, town of, Strafford County	330146	do	Do.
Region III			
Pennsylvania: Heidelberg, township of, Berks County	421069	do	Do.
Region IV			
Alabama:			
Woodville, town of, Jackson County	010114	do	Do.
Jackson County, unincorporated areas	010110	do	Do.
Mississippi:			
DeSoto County, unincorporated areas	280050	do	Do.
Horn Lake, city of, DeSoto County	280051	do	Do.
Southhaven, town of, DeSoto County	280331	do	Do.
Olive Branch, city of, DeSoto County	280286	do	Do.
Region V			
Minnesota: Thief River Falls, city of, Pennington County	270344	do	Do.
Wisconsin: Palmyra, village of, Jefferson County	550196	do	Do.
Region VI			
Louisiana: Beauregard Parish, unincorporated areas	220026	do	Do.
Region I			
Maine:			
Frankfort, town of, Waldo County	230254	May 17, 1990, suspension withdrawn	May 17, 1990.
Mechanic Falls, town of, Androscoggin County	230007	do	Do.
Peru, town of, Oxford County	230098	do	Do.
Vermont: Newbury, city of, Newport County	445403	do	Do.
Rhode Island: Newport, city of, Newport County	445403	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Region III			
Pennsylvania:			
Benson, borough of, Somerset County	420793	do	Do.
Scott, township of, Lacawanna County	421757	do	Do.
South Heidelberg, township of, Berks County	421107	do	Do.
West Virginia: Ronceverte, city of, Greenbrier County	540043	do	Do.
Virginia: Augusta County, unincorporated areas	510013	do	Do.
Region IV			
Mississippi:			
Picayune, city of, Pearl River County	280130	do	Do.
Pearl River County, unincorporated areas	280129	do	Do.
Region V			
Michigan: Armada, village of, Macomb County	260742	do	Do.
Ohio:			
Aurora, city of, Portage County	390454	do	Do.
Reminderville, village of, Summit County	390855	do	Do.
Seneca County, unincorporated areas	390779	do	Do.

Code for reading fourth column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: June 12, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-14399 Filed 6-18-90; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 900253-0142]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to implement Amendment 2 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This rule prohibits the harvest or possession of jewfish in or from the exclusive economic zone (EEZ) in the Gulf of Mexico. The intended effect of this rule is to reduce fishing mortality of jewfish so that the species may be protected and the stock rebuilt.

EFFECTIVE DATE: August 30, 1990.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP prepared by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The harvest and possession of jewfish in or from the EEZ in the Gulf of Mexico is currently banned through August 29, 1990, under an emergency rule (55 FR 8143, March 7, 1990) and an extension of that emergency rule (55 FR 23086, June 6, 1990). Amendment 2 to the FMP continues the ban on a permanent basis. The background and rationale for the ban were contained in the proposed rule (55 FR 12393, April 3, 1990) and are not repeated here.

The public comment period closed on May 14, 1990, and three comments were received on the proposed rule. All comments favored approval of Amendment 2 and its implementing regulations.

The Secretary has approved Amendment 2, and the proposed rule is adopted as final with minor clarifying changes. In this final rule, in § 641.7, the prohibition proposed as paragraph (v) is designated as paragraph (t). The former paragraphs (t) and (u) were removed effective April 24, 1990, by Amendment 1 to the FMP (55 FR 2078, January 22, 1990). No other changes have been made from the proposed rule.

Classification

The Secretary of Commerce determined that Amendment 2 is necessary for the conservation and management of the reef fish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review that analyzes the economic impacts of this rule and describes its effects on small business entities. A determination was made that the rule would not have a significant economic effect on a substantial number of small business entities under the Regulatory Flexibility Act. A summary of those impacts and effects was included in the proposed rule and is not repeated here.

The Council prepared an environmental assessment (EA) for Amendment 2 that discusses the impact on the environment as a result of this rule. Based on the EA, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concluded that there will be no significant adverse impact on the human environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Florida, Louisiana, and Mississippi agreed with the determination. Alabama did not comment within the statutory time period, and, therefore, consistency is automatically implied.

This rule does not contain a collection-of-information requirement

for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 15, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

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

2. In § 641.7, a new paragraph (t) is added to read as follows:

§ 641.7 Prohibitions.

* * * * *

(t) Harvest or possess a jewfish in or from the EEZ.

§ 641.21 [Amended]

3. In § 641.21, paragraph (a)(4) is removed and paragraphs (a)(5) through (a)(7) are redesignated as paragraphs (a)(4) through (a)(6).

4. In § 641.24, paragraph (b)(3) is revised and a new paragraph (b)(5) is added to read as follows:

§ 641.24 Bag and possession limits.

* * * * *

(b) * * *

(3) Groupers, excluding jewfish—5.

* * * * *

(5) Jewfish—0.

* * * * *

5. In § 641.25, a new paragraph (d) is added to read as follows:

§ 641.25 Commercial quotas.

* * * * *

(d) Jewfish—0 pounds.

[FR Doc. 90-14398 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening of a fishery.

SUMMARY: NOAA announces the reopening of the ocean commercial salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Cape Falcon, Oregon, for one day on June 14, 1990. This fishery was closed at midnight, June 11, 1990, based on projections that the 26,100 chinook salmon quota for the May 1 through June 15, 1990, fishing period has been reached. Evaluation of landing data following closure of the fishery indicates that sufficient chinook salmon remain to allow one additional day of fishing. This action is intended to maximize the harvest of chinook salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery.

DATES: *Effective:* Reopening of the EEZ to commercial salmon fishing between the U.S.-Canada border and Cape Falcon, Oregon, is effective 0001 hours through 2400 hours local time June 14, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until July 5, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(2) that "If a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours."

In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced that the 1990 commercial fishery for all salmon except coho in the subarea from the U.S.-Canada border to Cape Falcon, Oregon, would begin on May 1 and continue through the earlier of June 15 or the attainment of a quota of 26,100 chinook salmon. This fishery has been open May 1 through May 14, May 18 through May 27, May 31 through June 2, and June 8 through June 11. Each closure was based on projections that the quota would be reached by that date. However, subsequent evaluation of landing data indicated that the closures were based on overestimates of the catch, and the quota had not been reached.

According to the best available information, commercial catches through June 11 totaled 25,300 chinook salmon, leaving 800 chinook salmon available for harvest in the subarea chinook quota. This amount of available chinook salmon has been determined to be sufficient for one additional day of fishing, on June 14. This action is being taken in as timely a manner as possible to allow commercial salmon fishermen full opportunity to catch the chinook salmon quota prior to the scheduled end of the fishing season on June 15, 1990. The Regional Director has determined that the reopening of the commercial fishery in this subarea is consistent with the management objectives for chinook salmon in this subarea. As in the original season (May 1 through June 15), Conservation Zone 1, the Columbia River mouth, is closed (55 FR 18894, May 7, 1990).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, June 14, 1990, by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of the reopening of the commercial salmon fishery in the EEZ from the U.S.-Canada border to Cape Falcon, Oregon, which is effective 0001 hours through 2400 hours local time, June 14, 1990. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this reopening. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public

comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through July 5, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: June 15, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-14324 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 120
Thursday, June 21, 1990

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 90-001]

Hot Water Dip Treatments for Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Plant Protection and Quarantine regulations to allow the importation of all varieties of mangoes form all of South America, Central America, and the West Indies that have been treated with an approved hot water dip treatment, and by slightly modifying the current hot water dip treatment for mangoes from the West Indies islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago. These treatments would be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by refernce in the regulations at 7 CFR 300.1. This proposal is based on results of research undertaken by the Agricultural Research Service, U.S. Department of Agriculture. It would provide the first approved treatment for mangoes from South America and Panama since 1987, when, as a result of action taken by the Environmental Protection Agency, ethylene dibromide fumigation was disallowed as a treatment for mangoes imported into the United States.

DATES: Consideration will be given only to comments received on or before July 23, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90-001. Comments may be inspected at room 1141 of the South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fons, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8295.

SUPPLEMENTARY INFORMATION:

Background

Chapter III of title 7, Code of Federal Regulations (regulations), contains the regulations of Plant Protection and Quarantine (PPQ) of the Animal and Plant Health Inspection Service. Section 300.1 of the regulations incorporates by reference the Plant Protection and Quarantine Treatment Manual (PPQ Treatment Manual). The PPQ Treatment Manual contains procedures and schedules for treating various regulated articles.

The PPQ Treatment Manual currently lists a hot water dip as the only approved treatment for mangoes. The mango treatment in the PPQ Treatment Manual was revised in a final rule published in the Federal Register on February 15, 1990 (55 FR 5433-5436, Docket No. 89-224), to allow use of a hot water dip treatment for mangoes from certain additional areas and to slightly lower the required temperature of the hot water dip for "Francis"-type mangoes. However, the hot water dip is approved only for mangoes from Central America north of and including Costa Rica, Mexico, and the West Indies. America north of and including Costa Rica, Mexico, and the West Indies. Approval was based on research that showed the hot water dip to be an effective treatment against *Anastrepha* species of fruit flies and the Mediterranean fruit fly (*Ceratitis capitata* (Wied.)) in the varieties of mangoes imported from these places.

Confirming research has shown that a hot water dip treatment is effective against *Anastrepha* species of fruit flies and the Mediterranean fruit fly in additional varieties of mangoes from other places. Specifically, research has shown a hot water dip to be effective for mangoes of the varieties found in all of South America and Panama. The same research has shown that for a hot water dip treatment to be effective for mangoes of the varieties found in the West Indies islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago, the size, time and temperature requirements currently listed in the treatment schedule for these mangoes should be adjusted slightly.

There are several versions of the proposed hot water dip treatment; however, the only difference among them is the length of time the fruit must be submerged under water, since smaller and flatter fruit requires less time than larger fruit.

Based on this new information, we are proposing to revise the PPQ Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1, and the fruit and vegetable import regulations, which are contained in "Subpart—Fruits and Vegetables" in 7 CFR 319.56. The PPQ Treatment Manual, as revised, would show the following treatment schedules for mangoes:

Hot Water Dip Treatment for Mangoes

All mangoes must be at a temperature of 21.1 °C or higher before treatment begins. The mangoes must be submerged 4 inches below the surface of water that is heated to 46.1 °C. The water temperature must be kept at 46.1 °C, except that it may fall as low as 45.4 °C for no more than 10 minutes in any treatment lasting 65 or 75 minutes, and for no more than 15 minutes in any treatment lasting 90 minutes. The water temperature must not be allowed to fall below 45.4 °C at any time during the treatment.

Type of mango	Submersion time
"Francis" and similarly shaped mangoes (elongate, flattened types, including the "Carrot" variety) from Puerto Rico, the U.S. Virgin Islands, and the West Indies, excluding the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(Maximum weight 570 g each) 75 minutes; (Maximum weight 400 g each) 65 minutes.

Type of mango	Submersion time
Other varieties of mangoes from Puerto Rico, the U.S. Virgin Islands, and the West Indies, excluding the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago; and all mango varieties from Mexico and from Central America north of and including Costa Rica.	(Maximum weight 700 g each) 90 minutes; (Maximum weight 500 g each) 75 minutes.
"Francis" and similarly shaped mangoes (elongate, flattened types) from Panama, South America, and the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(Maximum weight 570 g each) 75 minutes; (Maximum weight 375 g each) 65 minutes.
Other varieties of mangoes (Tommy Atkins, Kent, Keitt, Haden and similarly shaped) from Panama, South America, and the islands of Aruba, Bonaire, Curacao, Margarita, Tortuga, and Trinidad and Tobago.	(Maximum weight 650 g each) 90 minutes; (Maximum weight 425 g each) 75 minutes.

We are also proposing to add a provision to § 319.56–2i in "Subpart—Fruits and Vegetables" that treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of mangoes from Central America, South America, and the West Indies. We previously determined that a hot dip treatment was an effective treatment for mangoes from Mexico and amended the PPQ Treatment Manual to permit such treatment (55 FR 5433, February 15, 1990). Therefore, we propose to add a provision that treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of all mangoes from Mexico, and that Manila mangoes from Mexico may also be imported into the United States in accordance with § 319.56–2f of this subpart.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million, would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and would

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities.

We are proposing to allow hot water dip treatments for specified varieties and sizes of mangoes from certain areas where *Anastrepha* species of fruit flies and the Mediterranean fruit fly exist. These treatments would be included in the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference in the regulations at 7 CFR 300.1 It would provide the first approved treatment for mangoes from Panama and South America since 1987, when as a result of action taken by the Environmental Protection Agency, ethylene dibromide (EDB) fumigation was disallowed as a treatment for mangoes moved into the United States.

In accordance with the Federal Plant Pest Act and the Plant Quarantine Act, the Secretary of Agriculture is authorized to promulgate regulations concerning the importation or interstate movement of fruits and other plant products to prevent the spread of injurious plant pests.

This proposed rule would affect domestic mango producers. Mangoes are a minor agricultural crop in the United States, which has few areas with suitable growing conditions for the fruit. In the continental United States, mango production is limited to about 2,300 acres on approximately 270 farms in Florida, all small entities. Most of these small entities do not produce mangoes as their major crop. Production of mangoes in Florida between 1985 and 1988 ranged from 30,250,000 pounds in 1987 to 19,250,000 pounds in 1988.

By comparison, imports of mangoes into the United States during that same time period ranged from 66,073,940 pounds in 1985 to 43,171,269 pounds in 1988, consistently accounting for more than two-thirds of the mangoes marketed in the continental United States. This proposed rule would have a beneficial economic effect on importers of mangoes, by increasing the number of sources from which mangoes may be imported. Based on available information, most mangoes are imported by a small number of importers which are not small entities.

Mangoes imported into the United States come primarily from Mexico (85 to 90 percent during 1985–1988), with Haiti providing most of the others. In 1987, the last year that mangoes treated with ethylene dibromide could be imported into the United States from the countries that would be affected by this proposed rule, countries other than Mexico and Haiti provided only about 2.2 percent of those mangoes. In 1985 and 1986, they provided between 1 and 2 percent. We anticipate that a resumption of mango imports from these countries would not result in a significant increase in the amount of mangoes imported into the United States, and therefore would not result in a significant economic impact on a substantial number of small entities.

This proposed rule would not result in any significant increase in reporting, recordkeeping, or compliance requirements.

As an alternative to this proposed rule, we considered retaining the current treatment schedule in the PPQ Treatment Manual. This alternative was rejected because given the existence of additional effective treatments for mangoes, there is no pest risk basis for not allowing use of these treatments.

We encourage the submission of written comments on our Initial Regulatory Flexibility Analysis. Comments should be submitted as indicated under "**DATE**" and "**ADDRESSES.**" All comments received on this issue will be considered in the preparation of the Final Regulatory Analysis for this rulemaking.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases, Plant pests.

7 CFR Part 319

Agricultural commodities, Imports, Incorporation by reference, Plant diseases, Plant pests, Plants

(Agriculture), Quarantine, Transportation.

PART 300—INCORPORATION BY REFERENCE

Accordingly, we propose to amend title 7, chapter III, of the Code of Federal Regulations as follows:

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

4. In Subpart—Fruits and Vegetables, a new § 319.56–2i is added to read as follows:

§ 319.56–2i Administrative instructions prescribing treatments for mangoes from Central America, Mexico, South America, and the West Indies.

(a) *Authorized treatments.* (1) Treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of mangoes from Central America, South America, and the West Indies. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

(2) Treatment with an authorized treatment listed in the Plant Protection and Quarantine Treatment Manual will meet the treatment requirements imposed under § 319.56–2 as a condition for the importation into the United States of mangoes from Mexico. Manila mangoes from Mexico may also be imported into the United States in accordance with § 319.56–2f of this subpart. The Plant Protection and Quarantine Treatment Manual is incorporated by reference. For the full identification of this standard, see § 300.1 of this chapter, "Materials incorporated by reference."

(d) *Department not responsible for damage.* The treatments for mangoes prescribed in § 319.56–2f of this subpart and in the Plant Protection and Quarantine Treatment Manual are judged from experimental tests to be safe. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment.

Done in Washington, DC, this 15th day of June 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–14375 Filed 6–20–90; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–NM–106–AD]

Airworthiness Directives: Boeing Model 474–400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, which would require modification of the routing of the cabin-to-wing emergency escape strap. This proposal is prompted by a report that the escape strap is not long enough to reach the attach fitting on the wing. This condition, if not corrected, could result in the escape strap not being attached on the wing during ditching, which would impede evacuation onto the wing.

DATES: Comments must be received no later than August 14, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–106–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway, South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jayson B. Claar, Airframe Branch, ANM–120S; telephone (206) 431–1932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–106–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There has been a recent report that the cabin-to-wing emergency escape strap does not reach the attach fitting on the wing of Boeing Model 747–400 series airplanes. The cabin-to-wing emergency escape strap is used as a hand rail from door 3 to the wing in the event of a ditching. One end of the escape strap is attached to the sidewall structure of the airplane and then is routed inboard of the stowage bin structure, causing the strap to be too short to be attached properly to the wing. This condition, if not corrected, could result in escape strap not being attached on the wing

during ditching, which would impede evacuation onto the wing.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–25A2847, dated March 29, 1990, which describes rerouting of the cabin-to-wing emergency escape strap behind the stowage bin structure. When the strap is rerouted in this manner, it is long enough to reach the attach fitting on the wing.

Since this condition is likely to exist on other airplanes of this same type design, an AD is proposed which would require rerouting of the cabin-to-wing emergency escape strap in accordance with the service bulletin previously described.

There are approximately 20 Model 747–400 series airplanes of the affected design in the worldwide fleet. It is estimated that 7 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $560.

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291, (1) 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 evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

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

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§39.13 [Amended]

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

Boeing: Applies to Model 747–400 series airplanes, listed in Boeing Alert Service Bulletin 747–25A2847, dated March 29, 1990, certificated in any category. Compliance required within the next 30 days after the effective date of this AD, unless previously accomplished.

To ensure that the escape strap is long enough so that it can be attached to be fitting on the wing, accomplish the following:

A. Reroute the escape strap behind the stowage bin structure in accordance with Boeing Alert Service Bulletin 747–25A2847, dated March 29, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 12, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–14332 Filed 6–20–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–NM–50–AD]

Airworthiness Directives; McDonnell Douglas Model DC–10–40 Series Airplanes Equipped With Engines Installed In Accordance With Rohr Supplemental Type Certificate (STC) SA3139WE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–40 series airplanes, which would require the inspection and replacement of the Rohr Common Nacelle System (CNS) forward engine mount cross beam with an improved part. This proposal is prompted by a report of a flaw found during routine maintenance, which has been attributed to a forging lap flaw and improper heat treatment. This condition, if not corrected, could result in the losss of structural integrity of the CNS forward engine mount cross beam.

DATES: Comments must be received no later than August 14, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM–103, Attention: Airworthiness Rules Docket No. 90–NM–50–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Rohr Industries, Inc., P.O. Box 878, Chula Vista, California 92012. This information may be examined at the FAA, Northeast Mountain Region, Transport Airplane Direcorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Dorenda Baker, Aerospace Engineer, Los Angeles Aircraft Certification Office, Airframe Branch (ANM–120L), FAA, Transport Airplane Directorate, 3229, East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5231.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to

the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90–NM–50–AD." The post card will be date/time stamped and returned to the commenter.

Discussion

Recently, the FAA has received a report of a flaw found in the Rohr Common Nacelle System (CNS) forward engine mount cross beam on a McDonnell Douglas Model DC–10–40 series airplane equipped with engines installed in accordance with Rohr STC SA3139WE. This flaw, found during routine maintenance, has been attributed to a forging lap flaw and improper heat treatment. Further analysis of the part by Rohr indicated a higher than predicted stress concentration and lower than expected material fatigue strength. Testing of the article indicated a life of 12,000 cycles. This condition, if not corrected, could result in the loss of structural integrity of the CNS forward engine mount cross beam.

The FAA has reviewed and approved Rohr Alert Service Bulletin No. MDC–CNS A71–33, Revision, 1, dated April 27, 1988, which provides instruction for the inspection and modification of the CNS forward engine mount cross beam; and Rohr Service Bulletin No. MDC–CNS 71–33, dated July 25, 1988, which provides instructions for the removal of the CNS forward engine mount cross beam and replacement with an improved part. Fatigue testing of the improved part has established a life of 46,667 cycles.

Since this condition is likely to exist or develop on other airplanes of this type design, an AD is proposed which would require the inspection, removal, and replacement of the CNS forward engine mount cross beam in accordance with the service bulletins previously described.

There are approximately 20 Model DC–10–40 series airplanes of the affected design in the worldwide fleet. Currently, there are no airplanes of this model and design on the U.S. Register; therefore, there would be no cost impact of this AD on U.S. operators. However, should an affected airplane be placed on the U.S. Register in the future, it would require approximately 5.2 manhours to accomplish the required actions, at an average labor charge of $40 per manhour. Required parts would be supplied by Rohr Industries at no charge to operators. Based on these figures the total cost impact of this AD would be $208 per airplane.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (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 substanial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

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 as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

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

McDonnell Douglas: Applies to all Model DC–10–40 airplanes equipped with engines installed in accordance with Rohr STC SA3139WE, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of structural integrity of the Rohr Common Nacelle System (CNS) forward engine mount cross beam, accomplished the following:

A. Prior to the accumulation of 10,000 cycles or within 1,500 cycles after the effective date of this amendment, whichever occurs later, inspect and rework the CNS forward engine mount cross beam, Rohr part number 196–0328–1 or 196–0328–501, and replace, as specified below, in accordance with Rohr Alert Service Bulletin No. MDC–CNS A71–33, Revision 1, dated April 27, 1988.

1. If no cracks are found and the harness is equal to or greater than C40 on the Rockwell hardness scale:

a. Within 3,000 cycles after the initial inspection, and thereafter at intervals not to exceed 3,000 cycles, conduct repetitive magnetic particle inspections in accordance with Rohr Alert Service Bulletin MDC–CNS A71–33, Revision 1, dated April 27, 1988; and

b. Prior to the accumulation of 35,000 cycles on the part, remove the CNS forward engine mount cross beam, Rohr part number 196–0328–1 or 196–0328–501, and replace it with Rohr part number 196–1300–501, in accordance with Rohr Service Bulletin No. MDC–CNS 71–33, dated July 25, 1988.

2. If a crack is found or the hardness is below C40 on the Rockwell hardness scale, prior to further flight, remove the CNS forward engine mount cross beam, Rohr part number 196–0328–1 or 196–0328–501, and replace it with Rohr part number 196–1300–501, in accordance with Rohr Service Bulletin No. MDC–CNS 71–33, dated July 25, 1988.

B. The CNS forward engine mount cross beam, Rohr part number 196–1300–501, is life-limited and must be replaced prior to the accumulation of 46,667 cycles on the part.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Maintenance Inspector (PMI). The PMI will then forward comments or concurrence to the Los Angeles ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Rohr Industries, Inc., P.O. Box

878, Chula Vista, California 92012. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on June 12, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-14333 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-13-M

Research and Special Programs Administration

14 CFR Part 241

[Docket No. 46101; Notice No. 90-22; Docket No. 46710 is consolidated into Docket No. 46101]

RIN 2137-AB01

Aviation Economic Regulations; Confidentiality of Schedule T-100 Submitted By U.S. Large Certificated Air Carriers

AGENCY: Department of Transportation, Research and Special Programs Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Transportation (DOT or the Department) proposes to terminate the restrictions on disclosure of U.S. air carriers' domestic Schedule T-100 data, making the data immediately available to the public after DOT editing. Detailed international Schedule T-100 data submitted by U.S. and foreign air carriers will continue to be withheld from public disclosure for a 3-year period. At the present time, 14 CFR 241.19-6 requires the Department to maintain a 3-year confidentiality period for all T-100 market data submitted by U.S. and foreign air carriers. Also, DOT proposes to eliminate §§ 241.19-6(a)(4), (b), and (c) which allow release of restricted T-100 data before the end of the three years if the Department determines it to be in the public interest.

DATES: Because of the urgency expressed by carriers, the comment period is limited to 30 days; thus, comments must be received on or before July 23, 1990.

ADDRESS: Comments should be directed to the Docket Clerk, Docket 46101, Room 4107, Office of Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Comments should identify the regulatory docket number and be submitted in duplicate. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed postcard on which the following statement is made: Comments on Docket 46101. The postcard will be date/timed stamped and returned to the commenter. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Jack Calloway, Office of Aviation Information Management, DAI-10, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-4387 or 366-4383, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued a final rule on November 16, 1988 (53 FR 46284), implementing a new T-100 reporting system, effective January 1, 1989 for foreign air carriers and January 1, 1990 for U.S. air carriers, and adopting a 3-year confidentiality period for detailed nonstop segment and on-flight market data.

Several foreign carriers filed petitions for reconsideration of the final rule or, in the alternative, delay of its implementation date. Alitalia Linee Aeree Italiane, S.p.A (Alitalia) objected to the rule, however, in part because DOT offered no assurance that it plans to or can protect the highly sensitive proprietary data. Section 241.19-6(a) states that, "the Department may release nonstop segment and on-flight market detail data by carrier before the end of the 3 years as follows: . . . (4) To such other persons and in such other circumstances as the Department determines to be in the public interest, consistent with regulatory functions and responsibilities, upon submission by the requesting party of a written statement of significant need." Alitalia alleged that it would be at a disadvantage because under a broad interpretation of the public interest provision, DOT could share the data with U.S. air carriers, but not make the data available to foreign air carriers.

American Airlines, Inc. (American) commented on Alitalia's motion, but contended that the way to alleviate Alitalia's concerns, that competitors may gain access to its data while it lacks access to its competitors' data, is to make the data publicly available. In this context, American filed a petition for rulemaking on February 6, 1989, to eliminate or shorten the 3-year confidentiality period (see section on petitions for rulemaking).

In response to the petitions for reconsideration, the Department issued an amendment to the final rule (54 FR 31810, August 2, 1989) which changed the effective date from January 1, 1989 to January 1, 1990 for foreign air carrier reporting. This amendment also re-affirmed DOT's commitment to the current disclosure policy as stated in 14 CFR 241.19-6, but expressed its intentions to re-examine the confidentiality policy for U.S. carrier domestic data.

Section 241.19-6 Public Disclosure of Traffic Data currently reads as follows:

(a) Detailed air carrier on-flight market and nonstop service segment data in Schedule T-100 and T-100(f) reports submitted to the Department shall no be publicly available for a period of 3 years, although industry and carrier summary data may be made public provided there are three or more carriers in the summary data disclosed. Further, at any time, the Department may publish T-100 international summary statistics without carrier detail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the 3 years as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and U.S. Government for exchange of on-flight market/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country;

(2) To parties to any proceeding before the Department under Title IV of the FAAct as required by the Administrative Law Judge or other decision-maker of the Department. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility of evidence;

(3) To agencies and other components of the U.S. Government for their internal use only;

(4) To such other persons and in such other circumstances as the Department determines to be in the public interest, consistent with regulatory functions and responsibilities, upon submission by the requesting party of a written statement of significant need.

(b) Before it makes a decision on requests for access to detail carrier information under section (a)(4), the Department shall contact the carrier whose data have been requested, and determine whether the carrier will consent to the release of its data. The Department's determination regarding confidential information will be made in writing, and a copy of this written determination will be made publicly available. The Department intends to give considerable weight to the reporting carrier's views in making determinations whether to release its data before the end of the 3-year restricted release period.

(c) Where access to restricted data is approved, the Department may release the requested nonstop segment and on-flight

market data through firms of data service providers who agree to abide by these disclosure restrictions.* * *

Petitions for Rulemaking

In place of the 3-year confidentiality period, American's petition for rulemaking requests that domestic on-flight market and nonstop segment data be publicly available 45 days after the reporting period. For international on-flight market and nonstop segment data, American wants a one-year confidentiality period for the general public with the data releasable to carriers participating in the T–100 System within 45 days, unless there are extraordinary circumstances related to bilateral negotiations or relationships between countries. In no event, however, would U.S. air carriers not have access to other U.S. air carriers' data after the 45-day period.

American made the following points in favor of making domestic on-flight market and nonstop segment data publicly available 45 days after the calendar month to which the data relates:

(1) Release of domestic data is unduly restrictive when compared to past policies which provided for immediate release of all domestic data except downline deplaning and belly cargo data which was withheld from disclosure for 1 year.

(2) These data are valuable resources to airline planners, consumers, academics and others interested in the functioning of air transport markets.

(3) Exchanges of these types of information are viewed as procompetitive (see *Maple Flooring Manufacturer's Association* v. *United States,* 268 U.S. 563, 582–583, (1924); *United States* v. *United States Gypsum Co.,* 438 U.S. 422, 441 (1978)).

(4) The Department has consistently favored the release of information.

(5) A three-year withholding period is excessive rendering the data obsolete and useless.

(6) The Department must give significant and compelling justification for withholding data from public release.

(7) Administering a restricted release program is costly and would strain the Department's limited resources.

(8) Full disclosure assures reciprocal access, and avoids the worst case scenario of some users gaining access to the data while the data is withheld from others.

(9) Parties seeking T–100 data are likely to obtain it under the Freedom of Information Act (FOIA) despite the Department's restricted release period.

British Airways Plc. (British Airways), who originally supported a restricted release period, filed in support of American's petition stating the exchange of T–100 data is procompetitive. It contended that restricted release of T–100 data under the fourth exception (14 CFR 241.19–6(a)(4) would be inconsistent since "public interest" and "significant need" are elastic terms which can be defined very differently by different decisionmakers. Also, the extremely competitive fast-changing climate of the airline industry makes T–100 data worthless after 3 years.

United Air Lines, Inc. (United) supports American's petition, asserting that unrestricted release of market data promotes competition and is consistent with FOIA, which favors the release of all data filed with the Department.

MarkAir, Inc. (MarkAir) supports American's petition as the 3-year confidentiality period would deny carriers the data needed to analyze the size of various markets and to project market shares; to determine optimal flight schedules and aircraft type selection; to measure market growth trends; to develop market seasonality curves; etc. Any additional burden that the Department would encounter separating domestic and international data would be outweighed by the usefulness of timely domestic flight data.

Alaska Airlines, Inc. (Alaska) supports the position of American contending that the value of current on-flight market and nonstop service segment data cannot be overstated, that it uses the data extensively for route studies, passenger traffic forecasts, market share analyses and other planning activities, and that the failure of the Department to permit release of this data will greatly impede the ability of carriers to enter new markets and to continue efficient and responsive operations in existing markets. Alaska also believes that the unavailability of this data may very likely result in the misapplication of carrier resources, may decrease the number of carriers entering new markets and may decrease the level of competition among carriers, as market decisions are made on imperfect and incomplete information. Alaska does not understand why, after 13 years of prompt release of service segment data, the Department has decided to restrict the release of such data.

Thai Airways International Limited (Thai) opposes American's petition. Thai believes that the information submitted by foreign air carriers is commercially sensitive data which should not be publicly available for 3 years.

Alaska also petitioned for a rulemaking (Docket No. 46710) on February 6, 1990 to amend the Department's regulations so that all U.S. carriers providing international service segment data will once again have access to U.S. carrier on-flight and nonstop service segment data which existed until January 1, 1990. Alaska is not seeking access to foreign air carrier data.

American answered Alaska's petition by stating there is no valid justification for discontinuing access to information that serves as a valuable analytical tool, that allows carriers to perceive and meet the needs of air travelers. American believes the availability of international T–100 data is procompetitive stating, "There is little merit in the argument that foreign carriers will suffer competitive harm if this information is made available."

International T–100 Disclosure

We are denying Alaska's petition and that portion of American's petition for rulemaking pertaining to international Schedule T–100 on-flight market and nonstop segment data. U.S. and foreign carriers' T–100 data will remain restricted for 3 years. It was determined in the amendment to parts 217 and 241 issued in August 1989 (54 FR 31812, August 2, 1989) that international data would be withheld from public disclosure under exemptions 3 and 4 of the FOIA, and in some cases under exemption 1 (where foreign air carriers are owned by foreign governments). The amendment explained that the Department believes that premature release of international data would be likely to impair the government's ability to obtain necessary information in the future. The amendment further stated that section 1104 of the Federal Aviation Act (49 U.S.C. 1504) requires that information be withheld from public disclosure if the release of the information would prejudice the formulation and presentation of positions of the United States in international negotiations or adversely affect the competitive position of any air carrier in foreign air transportation. The amendment concluded that these requirements made section 1104 an exemption 3 statute under FOIA.

Since it was necessary to grant a 3-year confidential period to foreign carriers' T–100 data to encourage their reporting compliance, protection of U.S. carrier T–100 data also is required. Access by foreign air carriers or other foreign users to U.S. carriers' T–100 data could subject U.S.-flag carriers to competitive disadvantage so long as

comparable data are not available to the U.S. carriers with respect to the operations of foreign air carriers. The Department believes the premature release of U.S. carrier T–100 data, especially the foreign carriers, would produce the harm specified in section 1104.

The Department considered the option of some type of restricted release procedures as suggested by Alaska and American, such as limited release of U.S. carrier T–100 data to participating U.S. carriers and U.S. airport operators. This option was discredited on the basis that prior disclosure of data by an agency could constitute a waiver of FOIA exemptions 3 and 4 (*Cooper* v. *Department of the Navy*, 594 F.2d 484, 487–88 (5th Cir. 1979); and *State of North Dakota ex rel. Olson* v. *Andrus*, 581 F.2d 177, 182 (8th Cir. 1978). Moreover, "selective disclosure" was found to constitute a waiver of FOIA exemptions (*Educational/Instructions, Inc.* v. *HUD*, 471 F. Supp. 1074, 1081–82 (D. Mass. 1979). The Department would then be forced to release the compromised data to everyone, thereby placing U.S. carriers at a competitive disadvantage; foreign air carrier competitors would have access to U.S. carrier data, but U.S. air carriers would not have access to comparable foreign air carrier data. International data is too important to the Department's programs to risk noncompliance of the reporting requirement by foreign air carriers. If we granted Alaska's and American's petitions of international data, we do not believe we could withhold the data from a FOIA request, because the exemption 3 and 4 status would have been compromised.

Furthermore, the Department cannot justify withholding the data from the general public while U.S. carriers are exchanging data with their U.S. airline competitors.

Immediate Release of U.S. Carriers' Domestic T–100 Data

The axiom of the Freedom of Information Act (FOIA) is government's information belongs to the people, unless there is a justifiable reason to withhold. While it is recognized that the Government may withhold "commercial or financial information obtained from a person and privileged or confidential" [5 U.S.C. Sec. 552(b)(4)], the Act contains no provisions forbidding disclosure [K. Davis, Administrative Law Treatise Sec. 3A.5 (1970 Supp)]. A private party which submits data to the Government has an enforceable interest under FOIA in confidentiality of such data only to the extent that this interest is endorsed by the agency collecting the information *Chrysler Corp.* v. *Brown*, 441 U.S. 281 (1979). FOIA exemptions are discretionary in that federal agencies may, but need not, deny public release of otherwise qualifying information. Generally, release of information is within an agency's discretion, and only an abuse of discretion can bar disclosure, *Charles River Park "A", Inc.* v. *Department of Housing and Urban Development;* 519 F.2d 935 (D.C. Cir. 1975). For example, a discretionary disclosure which violates the Trade Secrets Act (18 U.S.C. Section 1905) would be an abuse of discretion. Before a discretionary release of commercial data may be made, an agency must either find that the information is not within the scope of the Trade Secrets Act or that disclosure is authorized by law. Commercial and financial information is confidential under exemption 4 of FOIA if disclosure is likely to (1) Impair the government's ability to obtain necessary information in the future; (2) cause substantial harm to the competitive position of the person from whom the information was obtained, *National Parks & Conservation Ass'n* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974). The data must be the type which would customarily not be released to the public by the person from whom it was obtained.

In examining U.S. carriers' domestic T–100 data under exemption 4, there is no argument that the data are obtained from a person outside the government, and are commercial and proprietary in nature. However, there may be a question on whether disclosure would cause substantial competitive harm to the air carrier from which the information was obtained. Since 1976, CAB and DOT have taken the position that the free exchange of market/segment data does not cause competitive harm to the submitter as long as the submitter has access to comparable data (41 FR 10627 March 9, 1976). The CAB initially made this determination after more than 40 separate releases of service segment data by administrative law judges without any resultant harm. The comments made by American, United, Alaska and MarkAir acknowledge that the release of market/segment data is beneficial to the air transportation industry, individual carriers, and the traveling public in general by providing carrier management with the information needed for allocating capacity in response to market requirements. The public is better served and benefits from informed air carrier management decisions.

The Trade Secrets Act prohibits the disclosure of confidential information that an agency is not otherwise "authorized by law" to release. Release of U.S. Carriers' domestic T–100 is outside the scope of the Trade Secrets Act, since the release of this data is authorized by the Civil Aeronautics Board Sunset Act of 1984 (Pub. L. 98–443). However, there is no such authority to release international T–100 data, and the discretionary release of this data could run afoul of the Trade Secrets Act.

The Civil Aeronautics Board Sunset Act of 1984, which took effect on January 1, 1985, amended section 329(b)(1) of title 49 U.S.C. by requiring DOT:

> (1) To collect and disseminate information on civil aeronautics (other than that collected and disseminated by the National Transportation Safety Board under title VII of the Federal Aviation Act of 1958 (49 U.S.C. 1441 et seq.) including, at a minimum, information on (A) the origin and destination of passengers in interstate and overseas air transportation (as those terms are used in such Act), and (B) the number of passengers traveling by air between any two points in interstate and overseas air transportation; except that in no case shall the Secretary require an air carrier to provide information on the number of passengers or the amount of cargo on a specific flight if the flight and flight number under which such flight operates are used solely for interstate or overseas air transportation and are not used for providing essential air transportation under section 419 of the Federal Aviation Act of 1958.

A review of the Conference Report of the Civil Aeronautics Sunset Act of 1984 reveals that the prohibition on collecting information by flight number was to reduce carrier reporting burden. However, it went on to say "that data will be collected on a summary basis by carrier, by market."

DOT interprets this statute as providing authority to promulgate regulations for the public release of nonstop segment data concerning interstate and overseas air transportation on a carrier basis. The Department has met this obligation through Form 41, Schedule T–9 and Service Segment Data. These data collections were replaced and refined by the T–100 Reporting System. The statute is silent on the collection and dissemination of international market data.

Section 101(24) of the Federal Aviation Act of 1958 defines interstate and overseas air transportation as follows:

> "Interstate air transportation", "overseas air transportation", * * *respectively, mean

the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) A place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) A place in any State of the United States, or the District of Columbia; and any place in a Territory or possession of the United States; or between a place in a Territory or possession of the United States, and a place in any other Territory or possession of the United States; * * *

We will use the definition for interstate and overseas air transportation in section 101[24] of the Federal Aviation Act of 1958, as amended, to determine if the T–100 data is domestic. T–100 nonstop segment and on-flight market data that relate to U.S.-Canada operations reported by U.S. air carriers are considered international data, even though those operations are reported in the "Domestic" entity by scheduled service carriers. On the other hand, operations to a U.S. Territory or possession, such as Guam, Saipan, Rota, or Tinian, from another U.S. point by U.S. air carriers are considered domestic even though they may be reported in the "Pacific" or "International" entities.

The Department recognizes "as a general principle, the increased availability of market information should promote competition when * * * all competitors can obtain the data." (DOT Order 88–12–35). The easy accessibility of segment and market data should benefit carriers and the traveling public. Restrictions, which were placed on the release of downline service segment data, are no longer necessary, as the reporting disparities between T–9 and service segment carriers are voided in the T–100 system. Also, the Department agrees with American that the restricted release of belly cargo data should be eliminated. Originally, the restriction on this data was placed by CAB (Order 81–12–9) to ease American's fears that it was at a competitive disadvantage against section 418 operators of all-cargo aircraft, which did not report market data. While section 418 all-cargo carriers still do not report detailed domestic market data, we do not anticipate participating carriers will suffer substantial competitive harm from the release of their domestic cargo data flown in combination aircraft. Generally, cargo service is an adjunct to a combination carrier's passenger service. As such, the combination carrier has the advantage of marginal costing. Given this advantage, the Department does not believe that combination carriers' domestic cargo data need to be withheld from all-cargo carriers. Moreover, given the Department's obligations under the Civil Aeronautics Board Sunset Act of 1984, DOT believes that domestic T–100 data does not qualify to be withheld from public disclosure under exemption 4 of the FOIA.

Accordingly, DOT proposes immediate release of U.S. air carriers' domestic T–100 data, following Departmental processing of the data. This means the data should be available approximately 60 days after the applicable month. Carriers are given 30 days to submit the data and it should take the Department about 30 days to process the data. American petitioned for release after 45 days. This only allows 15 days for processing the data which is entirely too short. Further, we do not want to specify an exact date of release, since some months may take longer to process than others because of errors or omission in carrier data. This course of action has been followed in the past on the release of data, and it has worked well. Normally, we should have the data processed within 30 days after receipt. Foreign air carriers' and U.S. air carriers' detailed international T–100 data will continue to be withheld from public inspection for a 3-year period.

Rescission of Section 241.19–6

DOT proposes to eliminate §§ 241.19–6(a)[4], (b), and (c) which allow restricted release of T–100 data before the end of the three years to certain parties when release is found to be in the public interest. DOT believes the discretionary release of international data, that is being held confidential, could also compromise the validity of FOIA exemptions 3 and 4. Requests for access to the restricted data will be handled under FOIA. If it is determined that the data can be released, then the data will be open for public inspection. The public interest provision is unnecessary for domestic data, since we are proposing to make it public after DOT editing.

Except to the extent granted herein, we deny all other motions, petitions and requests in Docket Number 46101.

Department Regulatory Policies and Procedures

Executive Orders 12291, 12612 and 12630; Department's Regulatory Policies and Procedures; Regulatory Flexibility Act; and Paperwork Reduction Act of 1980.

This proposed rule has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographical regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets. The objective of the rule is to release on-flight market and nonstop segment data of U.S. carriers' domestic operations. This proposed regulation has no impact on reporting burden. Accordingly, a regulatory impact analysis is not required.

This action has been analyzed in accordance with the principles and criteria contained in Executive Orders 12612 and 12630 and it has been determined that the proposed rule: (1) Does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment and (2) does not pose the risk of a taking of constitutionally protected private property.

This proposed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Department policies concerning access to commerical data. However, its economic impact should be minimal and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. The proposed amendments would affect only large certificated air carriers.

The proposed action is subject to the Paperwork Reduction Act, Public Law 511, 44 U.S.C. chapter 35; and will be submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the release of U.S. air carrier T–100 data to OMB. Comments should be directed to Wayne Brough, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. The

Department requests that a copy of any comments sent to OMB also be sent to the DOT rules docket. The Department anticipates that this rule would not chnage the Department's fiscal year 1990 Information Collection Budget for OMB No. 2138–0040, Report of Traffic and Capacity Statistics, the T–100 System.

List of Subjects in 14 CFR Part 241

Air carriers Uniform system of accounts and reports.

Proposed Rule

PART 241—[AMENDED]

Accordingly, the Department of Transportation proposes to amend 14 CFR part 241 Uniform System of Accounts and Reports for Large Certificated Air Carriers, as follows:

1. The authority for part 241 continues to read as follows:

Authority: Secs. 101, 204, 401, 402, 403, 404, 407, 411, 416, 417, 901, 902, 1002, 1601, Pub. L. 85–726, as amended, 72 Stat. 737, 743, 754, 758, 766, 769, 774, 783, 788; 76 Stat. 145; 92 Stat. 1744; 49 U.S.C. 1301, 1324, 1371, 1372, 1373, 1374, 1377, 1381, 1472, 1482, 1551; sec. 43, Pub. L. 95–504, 92 Stat. 1750, 49 U.S.C. 1552.

2. Section 91–6 *Public disclosure to traffic data* is revised to read:

Sec. 19–6 Public disclosure to traffic data:

(a) Detailed domestic on-flight market and nonstop segment data in Schedule T–100 shall be made publicly available after proceessing.

(b) Detailed international on-flight market and nonstop segment data in Schedule T–100 and Schedule T–100(f) reports shall not be publicly available for a period of 3 years, although industry and carrier summary data may be made public provided there are three or more carriers in the summary data disclosed. Further, at any time, the Department may publish international summary statistics without carrier datail. Further, the Department may release nonstop segment and on-flight market detail data by carrier before the end of the 3 years as follows:

(1) To foreign governments as provided in reciprocal arrangements between the foreign country and U.S. Government for exchange of on-flight market and/or nonstop segment data submitted by air carriers of that foreign country and U.S. carriers serving that foreign country;

(2) To parties to any proceeding before the Department under Title IV of the FAAct as required by the Administrative Law Judge or other decision-maker of the Department. Parties may designate agents or consultants to receive the data in their behalf, provided the agents or consultants agree to abide by the disclosure restrictions. Any data to which access is granted pursuant to this provision may be introduced into evidence, subject to the normal rules of admissibility of evidence.

(3) To agencies and other components of the U.S. Government for their internal use only.

Issued in Washington, DC on June 18, 1990.

Robin A. Caldwell,

Director, Office of Aviation Information Management.

[FR Doc. 90–14447 Filed 6–20–90; 8:45 am]

BILLING CODE 4910–62–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. 33–6868, 34–28124, IC–17534, IA–1234, International Series Release No. 128, File No. S7–11–90]

Request for Comments on Reform of the Regulation of Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Request for comments.

SUMMARY: The Commission is soliciting comments on reform of the regulation of investment companies under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Act of 1933, and the Securities Exchange Act of 1934. Developments in the financial markets require reexamination of how pooled investment vehicles are regulated, particularly since the laws governing investment companies have not been amended significantly since 1970. Accordingly, the Commission is requesting comment from investors, investment companies, investment advisers, the financial services industry generally, regulators, and the public generally on a number of specific issues summarized in this release and on any other issues that commenters believe relevant.

DATES: Comments are to be received on or before September 4, 1990.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. All comment letters should refer to File No. S7–11–90. All comments received will be available for public inspection and copying in the Commission's Public Reference room, 450 5th Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: With respect to the study generally, Matthew A. Chambers, Assistant Director, or Nancy M. Morris, Associate Chief Counsel, at (202) 272–2048. With respect to the following specific topics: Internationalization of the Securities Markets—Regina Hamilton, Attorney; Alternative Pooled Investment Structures—Paul Goldman, Branch Chief, Diane Blizzard, Special Counsel, or Stuart Horwich, Senior Attorney; Asset-Backed Arrangements under the Investment Company Act—Rochelle Kauffman, Senior Attorney; Distribution of Open-End Companies—Karen L. Skidmore, Assistant Director; Closed-End Companies and Repurchases of Shares—Stuart Horwich; Transactions in Options and Futures Contracts—Karen L. Skidmore; Securities Act Issues—Diane Blizzard or Ann Glickman, Special Counsel; Insurance Products under the Federal Securities Laws—Wendell Faria, Attorney; and Bank Involvement with Investment Companies—Ann Glickman (all at (202) 272–2048).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is reexamining the regulation of investment companies under the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a–1 *et seq.*), the Investment Advisers Act of 1940 ("Advisers Act") (15 U.S.C. 80b–1 *et seq.*), the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a–1 *et seq.*), and the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a–1 *et seq.*), in light of the significant changes in the securities markets in recent years. As a part of this reexamination, the Commission requests comments on whether or how investment company regulation should be amended, either by legislation or rulemaking.

This release begins by summarizing the existing regulatory framework for investment companies. Commenters are urged to address the overall regulatory structure for investment companies. The release also discusses briefly a number of specific topics on which the Commission is seeking comment. The topic discussions are summary and are intended to serve as starting points. In addition to addressing the specific topics, commenters are urged to address any other topics or issues relating to investment company regulation that they believe merit examination. Where possible, commenters are asked to

provide specific statutory or rulemaking language to implement their recommendations.

II. The Existing Regulatory Structure

In section 30 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z–4, Congress directed the Commission to study the unregulated investment company industry and report its findings. The Commission's multi-volume report on investment trusts and investment companies [1] laid the foundation for the Investment Company Act of 1940, which imposes significant substantive requirements on the formation, financial affairs, and operation of investment companies and requires investment companies to disclose information about their activities.

At the time the Investment Company Act was enacted, there were only 68 investment companies with assets of $488 million. By 1970, the industry had grown to 400 investment companies with about $40 billion in assets. In the last two decades, the industry has grown dramatically, in part due to the introduction of money market funds. Today there are over 3,500 investment companies with over $1.2 trillion in assets. Investment companies are fast becoming the primary investment and savings vehicle for a significant portion of the investing public, many of whom invest in investment companies not only directly but also indirectly through their employers' retirement plans. The growth of investment company industry assets has created a major national financial intermediary, giving the investment company industry parity with banks, savings, and loan associations, brokerage houses, and insurance companies.

The investment Company Act generally defines investment companies as issuers primarily engaged in the business of investing in, holding, or trading securities.[2] There are three types of investment companies: face-amount certificate companies,[3] unit invesments trusts ("UITs"),[4] and management invesment companies.[5] By Definition, the terms are mutually exclusive. The Commission requests comment on whether it continues to make sense to divide investment companies into three types, or whether different typologies would make more sense, or whether all investment companies should be treated more or less the same.

Depending on the type of investment company, the Investment Company Act imposes requirements regarding, among other things, composition and election of boards of directors, exchange offers, pyramiding, investment policies and types of investments, investment advisory and underwriting contracts, transactions with affiliates, capital structure, custodial arrangements, portfolio evaluation, fidelity bonds, codes of ethics, disclosure of the source of dividends and distributions, proxies, loans, sales and redemptions, repurchases, use of fund assets for distribution, reorganizations, reports to shareholders and the Commission, books and records, and accountants and auditors.[6] Underlying each of these Investment Company Act requirements are basic policy objectives. For example, section 12(d)(1) (15 U.S.C. 80a–12(d)(1)) was designed to prevent, among other thigs, a multiplicity of costs and fees from being imposed on shareholders through the practice of pyramiding the ownership and control of investment companies. Section 17 (15 U.S.C. 80a–17) was intended to protect investment company shareholders from loss in the value of their shares as a result of self-dealing by investment companies' insiders. Section 18(f) (15 U.S.C. 80a–18(f)) addressed the dilution of shareholder value through excessive leveraging. The Commission requests comment as to the current validity of these and other policy objectives underlying the Act's provisions. If the policies remain valid, can any of them be implemented in an alternative manner? Would a different overall regulatory structure be appropriate? Are there additional policies or requirements that the Commission should consider?

At the time of enactment, Congress and the Commission believed that most companies not appropriately subject to the Investment Company Act would be excepted from its provisions or otherwise excluded from the definition of investment company. However, to protect against the possibility that some companies would inadvertently be subject to its provisions, the Investment Company Act provides a procedure for a company to demonstrate that it is primarily engaged in a business other than that of being an investment company.[7] Additional flexibility is provided by section 6(c) of the Investment Company Act (15 U.S.C. 80a–6(c)), which authorizes the Commission by rule or order to exempt persons conditionally or unconditionally from any or all provisions of the Act if the exemption is "in the public interest" and "consistent with the protection of investors" and the Act's purposes. The Commission requests comment on whether additional flexibility is needed, whether further or different exemptive procedures are needed,[8] and whether more specific exemptive standards are needed.

Investment companies are required to register with the Commission under the Investment Company Act unless otherwise exempt.[9] The vast majority of investment companies registered with the Commission are management investment companies. The more common type of management investment companies is the open-end

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[1] *The Nature, Classification, and Origins of Investment Trusts and Investment Companies*, H.R. Doc. No. 707, 75th Cong., 2d Sess. (1938); SEC, *Statistical Survey of Investment Trusts and Investment Companies*, H.R. Doc. No. 70, 76th Cong., 1st Sess. (1939); SEC, *Abuses and Deficiencies in the Organization and Operation of Investment Trusts and Investment Companies*, H.R. Doc. No. 279, 76th Cong., 1st Sess. (1939) (hereinafter cited as *"Investment Trusts and Investment Companies"*).

[2] Investment Company Act section 3(a) (15 U.S.C. 80a–3(a)).

[3] A face-amount certificate company issues debt securities which investors purchase by periodic installments or by a lump sum payment. Investment Company Act section 4(1) (15 U.S.C. 80a–4(1)).

[4] A UIT is a company organized under a trust indenture or similar instrument that invests in a largely fixed portfolio of securities, does not have a board of directors, and issues redeemable securities. Investment Company Act section 4(2) (15 U.S.C. 80a–4(2)). UITs typically offer units in successive "series," each a representing interests in a separate portfolio of securities.

[5] A mangement investment company is any investment company that is not a face-amount certificate company or a unit investment trust. Investment Company Act section 4(3) (15 U.S.C. 80a–4(3)). The distinguishing feature of a management investment company is that its investment portfolio is "manged," usually by an external investment adviser who is paid a fee based on a percentage of the company's assets.

[6] The Commission is empowered to adopt rules under the Invesment Company Act, Investment Company Act section 38(a) (15 U.S.C. 80a–37(a)), and to enforce compliance by invesment companies and their associated persons. Investment Company Act sections 9(b), 36(a), (41 (15 U.S.C. 80a–9(b), –35(a), –40). In order to determine compliance, the Commission conducts periodic inspections of investment companies, examining books and records. Investment Company Act section 31(b) (15 U.S.C. 80a–30(b)).

[7] Investment Company Act section 3(b)(2) (15 U.S.C. 80a–3(b)(2)).

[8] For example, in 1984, the Task Group on Regulation of Financial Services recommended amendments to the exemptive procedures.

The process of granting exemptions under the Investment Company Act should be streamlined to remove the requirement for public notice and comment in every case. Most exemptions are not controversial and are amply supported by precedent. Publication of notice seldom elicits any responses. Removing the notice requirements would eliminate unnecessary delays in the regulatory process and reduce paperwork burdens.

Blueprint for Reform: the Report of the Task Group on Regulation of Financial Services 115–16 (1984).

[9] Section 6(a) (15 U.S.C. 80a–6(a)) exempts certain investment companies from all provisions of the Investment Company Act, including the registration requirement.

company. Open-end companies, known as mutual funds, issue redeemable securities and generally offer their shares to the public on a continuous basis. In recent years, however, the number of closed-end management investment companies registered with the Commisson has increased dramatically. Unlike open-end companies, closed-end companies do not issue redeemable securities and in most cases do not offer their shares to the public on a continuous basis. Rather, a closed-end company issues, in a traditional underwritten offering, a fixed number of shares that are subsequently traded on a securities exchange or in the over-the-counter market.

The sale of investment company shares is subject to the Securities Act. Certain other investment company activities, such as proxy solicitation, are subject to the Exchange Act and the rules thereunder. Investment advisers to investment companies are subject to the Investment Advisers Act, the companion statute to the Investment Company Act. Investment companies also must comply with state securities laws in those states in which they sell their shares. Finally, investment companies that wish to take advantage of favorable tax treatment afforded certain kinds of investment companies are subject to various provisions of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*), in particular those of subchapter M (26 U.S.C. 851–855).

III. Specific Topics to be Addressed

A. Internationalization of the Securities Markets

The globalization of securities markets has resulted in increased interest in marketing United States investment company services abroad and in opening United States markets to foreign investment company services. Twenty-four hour worldwide trading and growing investor demand for poolted investment opportunities demonstrate the need to address barriers to cross-border sales of investment company Services.[10]

This section of the release seeks comments on how best to facilitate competition between United States investment companies and advisers and foreign investment companies and advisers, both domestically and abroad. First, it summarizes barriers to sales of investment company services abroad by United States investment companies and advisers. Second, it discusses barriers to sales of investment company services in the United States by foreign entities. Third, it reviews recent developments to promote the growth of international markets in investment company services. Fourth, it sets forth several issues on which the Commission seeks comment.

United States investment companies encounter a number of legal impediments in marketing their products overseas. In order to reach a sufficiently large market abroad, they must comply with the varied requirements of several countries. Moreover, many countries impose greater restrictions on foreign investment companies than on domestic companies. Also, some countries have imposed currency and other restrictions that provide a disincentive to foreign securities investments by citizens of those countries.

Even when foreign host laws seemingly place the marketing of United States securities on a par with domestic securities, practical problems may arise. For instance, a host country may require both domestic and foreign securities to be sold only by the host country's banks or licensed broker-dealers. Yet, in such a case, it may be difficult for foreign investment companies to get "shelf space" for their securities because the host country's banks or broker-dealers have their own competing products to sell.

United States tax law may also impede cross-border sales of the securities of United States investment companies. Certain distribution requirements and differing withholding standards provide an incentive for foreign investors to invest in foreign funds rather than in United States investment companies.[11]

Under subchapter M of the Internal Revenue Code, in order to avoid federal taxation at the investment company level, a United States registered investment company must, among other things, distribute to its shareholders at least 90% of its gross income derived from sources such as dividends and interest. Subchapter M also imposes a tax on an investment company's undistributed taxable income, and Internal Revenue Code section 4982 imposes and additional excise tax on an investment company if the investment company does not distribute to its shareholders 98% of its ordinary income and capital gains.[12] Thus, under subchapter M, if an investment company owning a portfolio of securities distributes all of its income to its shareholders, United States shareholders receive the same tax treatment as if they owned their proportionate share of that same portfolio of securities directly.

Foreign investors, however, may not receive the same tax treatment under the Internal Revenue Code for owning shares directly as for owning shares of a United States investment company holding those same securities. Foreign investors, when paid the distributions from an investment company effectively mandated by subchapter M, have 15% to 30% of the amount of ordinary income and short-term capital gains withheld from the distributions they receive.[13] Under certain circumstances, if foreign investors owned the underlying securities directly, short-term capital gains and certain portfolio debt investment interest would not be subject to this withholding tax.[14] Thus, foreign investors may incur a smaller United States federal tax liability by investing in securities directly rather than by investing in a United States investment company. Moreover, unlike the United States investment company. Moreover, unlike the United States, many foreign jurisdictions do not require current distributions of earnings by investment companies and do not tax these earnings at the investment company level. Consequently, the overall effect of subchapter M and the foreign withholding tax provisions may be to discourage foreign investment in United States investment companies.

United States investment advisers conducting business abroad may be subject to more restrictive regulation than they encounter in the United States. For example, unlike the United

[10] As of December 31, 1985, 68 United States investment companies invested primarily in foreign securities, with total assets of about $11.9 billion. As of December 31, 1989, the number of United States investment companies investing primarily in foreign securities had increased to 193, with total assets of about $27 billion. Of these companies, 149 were open-end companies with total assets of about $17.8 billion and 44 were closed-end companies with total assets of about $9 billion. Also, 50 other open-end companies had at least 25% of their portfolios invested in securities traded outside of the United States, with total assets of about $15.1 billion.

[11] See, *e.g.*, Hearings before the House Comm. on Ways and Means, 101st Cong., 2d Sess. (Jan. 30, 1990) (statement of D. Silver on behalf of the Investment Company Institute, "The Implications of 'Europe 1992' for the U.S. Mutural Fund Industry") (unpublished).

[12] These provisions treat investment companies as conduits of income and tax them only on their undistributed income. See S. Rep. No. 1622, 83d Cong., 2d Sess. 59 (1954).

[13] I.R.C. sections 871(a) 881(a). This tax is often referred to as a "withholding tax."

[14] I.R.C. section 871(a)(2) imposes a withholding tax on capital gains of aliens only if they are present in the United States for 183 days or more during the taxable year. I.R.C. section 871(h) exempts from the withholding tax certain portfolio debt investment interest.

States, foreign jurisdictions may require investment advisers to meet certain capital standards.[15]

Foreign regulators may also have greater discretion than United States regulators to determine whether to permit investment advisers to enter their respective markets. For example, under the minimum standards provided in the European Community ("EC") Council Directive of 20th December 1985 on the Co-ordination of Laws, Regulations and administrative Provisions Relating to Undertakings for Collective Investment in Transferable Securities ("UCITS Directive"),[16] the laws of EC member states ("Member States") may give regulators greater latitude than the commission to prevent advisers from entering the investment company business. To qualify as a UCITs manager in a Member State, the Member State must determine that the manager is of "good repute" and has the experience required to perform its duties.

United States law may inhibit cross-border sales of shares of foreign investment companies. An investment company not organzied under United States law is prohibited by section 7(d) of the Investment company Act (15 U.S.C. 80a–7(d)) from publicly offering its securities in the United States unless the Commission by order finds that "it is both legally and practically feasible effectively to enforce the provisions of (the Investment Company Act) against such company." In effect, the Commission is required by section 7(d) to determine that investors in foreign investment companies have the same protections as investors in domestic investment companies. Although the Commission has granted exemptions for funds organized in certain common law countries, and, in the case of Canadian investment companies, has adopted rule 7d–1 (17 CFR 270.7d–1) to facilitate their registration, section 7(d) continues to present difficulties for foreign investment companies, especially those organized in civil law countries.

In 1984, the Commission recommended amending section 7(d) to make it easier for foreign investment companies to register with the Commission.[17] The amendment would have authorized the Commission to exempt certain foreign investment companies from any provision of the Investment Company Act if it found that compliance with the provision would be unduly burdensome and either that the foreign law under which the company operated would provide comparable investor protections or the company would agree to conditions providing those protections.[18] The proposal was never introduced in Congress.[19]

A foreign investment company may also be required to register its proposed public offering under the securities or "blue sky" laws of one or more states.[20] In some states, those laws require a merit review of the offering, giving state regulators discretionary authority to reject offerings as too speculative.[21]

A foreign investment adviser may register with the Commission under the Advisers Act merely by filing an application and paying a $150 fee. While a foreign investment adviser need not maintain an office or staff in the United States, a non-resident adviser must furnish a consent to service of process with the Commission and undertake to furnish books and records to the Commission upon request.[22] The Division of Investment Management takes the view that, once registered, a foreign adviser is subject to all of the provisions of the Advisers Act with respect to both its United States clients and its foreign clients.

To avoid Advisers Act regulation with respect to foreign clients, many foreign advisers create a separate and independent United States registered subsidiary or affiliate to service United States clients. In determining whether a domestically registered advisory subsidiary or affiliate of a foreign adviser operates as a separate independent entity, one of the factors the Division of Investment Management considers is whether the registered subsidiary or affiliate shares advisory personnel with the foreign entity. If they share personnel, the Division may "look through" the registered entity and apply the provisions of the Advisers Act to the foreign entity.[23]

Commenters have suggested that the Division's position may affect adversely the ability of advisory organizations to conduct international advisory activities. For example, it may force investment advisory firms to create separate United States subsidiaries or affiliates with distinct personnel to service only United States clients. This may divide scarce advisory personnel with expertise in specialized markets and reduce capital resources available to each entity, thus diminishing services to both United States and foreign advisory clients.

Moreover, foreign governments may perceive application of the Advisers Act to their investment advisers' activities with respect to non-United States clients as contrary to principles of international comity and might react by reciprocating the treatment. Thus, United States investment advisers might find their overseas operations subject to increased restrictions and their United States operations subject to the laws and regulations of foreign host countries.

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[15] See, *e.g.*, the Financial Resources Requirements set forth in the Investment Management Regulatory Organization's Financial Resources Rules, Rule 4.01 and app. 6 (United Kingdom).

[16] For a discussion of the UCITS Directive, see *infra* notes 25–28 and accompanying text.

[17] See Letter from John S.R. Shad, Chairman, SEC, to the Honorable Thomas P. O'Neill, Jr., Speaker, United States House of Representatives (Jan. 31, 1984) (transmitting proposed Foreign Investment Company Amendments Act of 1984 and Memorandum of the SEC in Support of the Foreign Investment Company Amendments Act of 1984).

[18] In addition, the Commission would have been required to find that the exemption would be consistent with the protection of investors and the purposes intended by the policy of the Investment Company Act, and that the foreign company would not be operated for the purpose of evading the provisions of that Act. The Commission also would have been required to find that it was both legally and practically feasible effectively to enforce against the company those provisions of the Investment Company Act from which exemptions were not granted.

[19] Some foreign investment companies have avoided section 7(d) by forming "mirror funds." A mirror fund invests in virtually the same securities as an existing foreign investment company, but is organized under United States law and registered under the Investment Company Act. See Investment Company Act Release No. 13691 (Dec. 23, 1983).

[20] Some public offerings of closed-end companies are exempt from many blue sky laws because their shares are listed on national securities exchanges registered with the Commission. Offerings of open-end investment companies and unit investment trusts generally must be registered in accordance with state blue sky laws, although seven states currently have "blue chip" investment company exemptions. See, *e.g.*, N.J. Rev. Stat. section 49:3–50(a)(12) (1987).

[21] Many states currently provide for registration by "coordination" to reduce the regulatory burden of this dual structure. An issuer can "coordinate" its blue sky filing with its required filing under the Securities Act by filing with the state the registration statement provided to the Commission and certain documents specified by the state. Coordination simplifies the state review process and can result in concurrent effectiveness on both regulatory levels.

[22] See rules 0–2 and 204–2 under the Advisers Act (17 CFR 275.0–2, 275.204–2).

[23] See Richard Ellis, Inc. (pub. avail. Sept. 17, 1981) (an advisory subsidiary is viewed as having a separate, independent existence and to be functioning independently if it: (1) Is adequately capitalized; (2) has a buffer, such as a board of directors a majority of whose members are independent of the parent, between the subsidiary's personnel and the parent; (3) has employees, officers, and directors, who, if engaged in providing advice in the day-to-day business of the subsidiary entity, are not otherwise engaged in an investment advisory business of the parent; (4) makes the decisions as to what investment advice is to be communicated to, or is to be used on behalf of, its clients and has and uses sources of investment information not limited to its parent; and (5) keeps its investment advice confidential until communicated to its clients).

In addition to meeting Advisers Act requirements, foreign investment advisers may have to register with state securities regulators. A majority of states require an investment adviser to secure a license by furnishing satisfactory evidence of its trustworthiness and competency to engage in the advisory business. Most states exclude or exempt investment advisers that are broker-dealers registered in the particular state, or have no office located in the state and advise only a *de minimis* number of clients or institutional clients.[24]

Access by United States investment companies and advisers to European markets may improve with the recent implementation of the UCITS Directive. The Directive prescribes a common denominator approach to investor protection designed to coordinate laws and regulations governing collective investment undertakings in EC Member States.[25] A qualifying UCITS from one Member State may sell its shares in any other Member State, subject only to the host country's marketing, advertising, and tax laws.[26] Each Member State must adopt domestic legislation to implement the UCITS Directive, but each is free to choose a form and method of implementation consistent with its legal system. The Directive generally permits a Member State to impose more stringent requirements on its own UCITS than on UCITS from other EC Member States being sold within its borders.[27] While a Member State is free to apply stricter marketing regulations to its own UCITS than those applied to foreign UCITS, the Directive prohibits the use of marketing regulations to discriminate against UCITS originating in other Member States.

Compared with United States regulation of investment companies, the UCITS Directive may be more or less restrictive on any given issue. For example, the Directive requires regulators in a home country to approve not only an investment company's manager, but also the investment company's rules, and its choice of a depositary. On the other hand, the Directive does not directly address other concerns such as affiliated transactions, pricing, and the use of fund assets for distribution.[28]

Japan has taken a step toward permitting foreign entities limited participation in its investment company market. Only investment trust management companies licensed by the Japanese Ministry of Finance ("MOF") may manage Japanese investment trusts. Fewer than twenty of these licenses have ever been issued, all to Japanese entities. Last December, the MOF announced new guidelines for the licensing of investment trust management companies, which apply to both foreign and domestic applicants.[29] One commenter has suggested that, while the new application guidelines purport to improve the ability of foreign money managers to compete in Japan, it is unclear whether foreign firms will be able to comply with the guidelines to compete effectively in the Japanese investment company market.[30]

Efforts by government agencies [31] and industry self-regulatory organizations,[32] among others, are underway to identify and eliminate barriers to cross-border sales of investment company services. While each effort represents a further step toward the internationalization of investment company services, it also underscores the problems that must be addressed.

The Commission requests that commenters address how best to permit cross-border sales of investment company and adviser services, consistent with investor protection. Commenters are requested to identify unnecessary barriers to effective competition among United States investment companies and advisers and foreign investment companies and advisers, both in the United States and abroad, that are created by domestic or foreign securities, tax, or other laws, and any other significant barriers. In this regard, commenters are asked to assess the effect of the Investment Company Act and the Advisers Act, and of existing interpretations, on the ability of investment companies and investment advisory organizations to conduct international activities. Commenters are also asked to recommend, as specifically as possible, the most effective way to eliminate unnecessary barriers to effective competition, including amending or reinterpreting domestic law, entering into multinational or bilateral treaties, harmonizing conflicting regulation, or applying concepts of comity and mutual recognition. Commenters should address how any proposal to eliminate unnecessary barriers to effective competition would affect the Commission's enforcement efforts.

B. Alternative Pooled Vehicles

In 1982, the Commission requested comment on the advisability of a legislative proposal advanced by industry observers to create an alternative type of open-end investment company—a unitary investment fund ("UIF").[33] As summarized in the

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[24] See *e.g.*, N.J. Rev. Stat. section 40:3-49(g), -56(c) (1987).

[25] Not all investment companies are covered by the UCITS Directive. Qualifying UCITS are similar to open-end management investment companies that invest in exchange-listed securities. Closed-end investment companies generally do not qualify as UCITS; companies investing in money market instruments in Member States in which the instruments are not regarded as having the characteristic of transferable securities would also not qualify as UCITS.

[26] Because the UCITS Directive does not offer a unitary system of marketing, advertising, or taxation, it may not eliminate all potential disincentives for investment in UCITS of other Member States.

[27] For example, a Member State may define "transferable securities" to be held by UCITS it authorizes, or it may retain the general definition provided in the UCITS Directive.

[28] Other differences between UCITS and investment companies under the United States securities laws include voting and disclosure requirements. Unlike the Investment Company Act, the UCITS Directive does not provide for voting by shareholders and directors on any matter, but authorizes the home Member State to approve the choice and replacement of a UCITS' management company and depositary (which, like a custodian, holds a UCITS's assets) and to adopt and amend a UCITS' rules or organizational documents. Similarly, although UCITS must provide some disclosure, the requirements under the Securities Act and the Investment Company Act are more extensive.

[29] Pozen, *For Foreign Funds, Japan Barely Opens Door*, Pensions & Investments, Mar. 19, 1990, at 14.

[30] *Id.*

[31] For example, under the Financial Reports Act of 1988 (22 U.S.C. 5352), the Commission, the Departments of Treasury and State, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency are required to submit to Congress an updated version of the 1986 edition of *The National Treatment Study*. Like earlier editions, the updated study, due December 1, 1990, will examine the extent to which foreign countries deny United States commercial banking and securities organizations equality of competitive opportunity with domestic institutions in similar circumstances. It will also describe specific examples of discrimination by foreign countries against United States financial firms.

[32] In June 1989, the United Kingdom's Investment Management Regulatory Organization Limited ("IMRO"), a self-regulatory organization, completed the first stage of a comparative study of the regulation of investment management in the United Kingdom and the United States. Commission staff prepared a similar study and received detailed comments from IMRO. Last September, IMRO proposed that, because United States registered advisers and IMRO members are required to submit very similar information, the two countries might agree to mutually recognize registration under the Advisers Act and membership in IMRO. However, IMRO noted that, because of differing regulatory standards, registration with the Commission and IMRO membership should not be automatically interchangeable.

[33] Investment Company Act Release No. 12888 (Dec. 10, 1982) ("Release 12888"), 47 FR 56509 (Dec. 17, 1982). The UIF concept had been proposed as a way of streamlining and reducing operating costs of open-end companies. See generally speech by Stephen K. West, General Meeting of the Investment Company Institute (May 1, 1980) (hereinafter cited as "West Speech").

Commission's release, a UIF would have had neither voting shareholders nor a board of directors; rather, a UIF would have been sponsored and managed by an investment manager.[34] The investment manager, including a bank acting in that capacity, would have been required to register under the Advisers Act.[35] A management contract between the investment manager and the UIF would have set forth, among other things, the UIF's investment objectives, management fees, and shareholder account charges.[36] The investment manager could not have amended these provisions during an initial start-up period (suggested to be five years) unless the Commission had approved an application for an order permitting the amendment. After the initial period, the provisions could be changed at any time upon adequate notice to shareholders. Under the proposal, a UIF investment manager would not have had a fiduciary duty regarding the receipt of compensation by the manager and its affiliates.

The UIF proposal envisioned the Commission taking an active role regulating UIFs. For example, a UIF's registration statement under both the Securities Act and the Investment Company Act would had to have been declared effective by the Commission before shares could have been sold, thereby giving the Commission the opportunity to review the management contract as well as proposed prospectus disclosure.[37]

Commenters generally opposed the UIF concept when it was proposed in 1982. Numerous changes have occurred in the investment company industry since that time, however, that may make alternative pooled vehicles such as the UIF more attractive and practical. Most significantly, securities markets have become increasingly global, and investment companies are seeking opportunities to expand into foreign markets where an alternative structure may enhance competitiveness. In addition, some states now permit investment companies to forego annual shareholder meetings.[38] Also, fee structures and methods of paying for distribution have grown increasingly complex.[39] A UIF-type structure may be more attractive to investors because it would operate under a relatively simple fee structure.

Commenters are asked to consider whether these and other developments in the investment company industry, including anticipated future trends, create the need for alternative pooled vehicles, including, but not limited to, a UIF-type vehicle. Commenters should refer to Release 12888 for a more detailed discussion of issues raised in connection with the UIF proposal. Commenters who previously responded to Release 12888 are invited to update their responses.

Comment is also invited on the feasibility of other alternatives. For example, some commenters have suggested altering the UIT vehicle to provide the sponsor with greater latitude to manage its portfolio or to issue securities that are not redeemable. Others have suggested that closed-end investment companies be allowed to provide a redemption-like mechanism and to use company assets to finance distribution costs.[40]

Would an investment company's ability to avail itself of an alternative structure, such as a UIF, significantly improve the competitiveness of United States investment companies both at home and abroad? Would an alternative pooled vehicle initiative complement international initiatives to regulate similar pooled investment vehicles under a common set of principles?[41]

A significant issue involved in evaluating alternative structures is the extent to which operating expenses would be reduced. For example, investment companies may incur significant costs to solicit proxies and to pay directors' fees and expenses. Commenters are asked to furnish information both with respect to costs presently incurred in complying with the Investment Company Act and costs which would be incurred under an alternative structure. Specifically, how much less would it cost an average investment company to operate in UIF or alternative forms compared to present forms, and how would the cost savings be created?

As noted in the 1982 release, the UIF concept is premised, in part, on an assumption that, in the open-end management investment company context, voting shareholders and directors are "redundant."[42] Some, however, have asserted that directors are sensitive to their responsibilities as board members[43] and that voting rights benefits shareholders in a number of ways.[44] With this in mind, comment is sought on what, if any, investor protection concerns are raised by a management investment company that does not have shareholder voting or a board of directors? Are these concerns reduced for some types of investment companies? For example, it has been suggested that money market funds would be prime candidates for a UIF

[34] Both shareholder voting and boards of directors are currently required under the Investment Company Act for open-end investment companies. Investment companies in EC Member States and Japan generally do not have boards of directors or shareholder voting.

[35] The Commission has proposed that bank advisers to investment companies be subject to the Advisers Act. See *infra* notes 126–127 and accompanying text.

[36] The management fee would be calculated as a percentage of net assets, excluding expenses incurred for brokerage, interest, taxes, and extraordinary items. Shareholder accounts would be separately charged for sales or redemption fees, if any, and for shareholder servicing and transfer agent fees.

[37] Currently, a domestic investment company is automatically registered under the Investment Company Act upon filing a notification of registration on Form N–8A. Investment Company Act section 8(a) (15 U.S.C. 80a–8(a)). Typically, a Securities Act registration statement for shares of an investment company includes a delaying amendment and is declared effective by the Commission only after review and comment by the staff. If, however, a Securities Act registration statement were filed without a delaying amendment, it would become effective automatically in twenty days. Securities Act section 8(a) (15 U.S.C. 77h(a)) and rule 473 thereunder (17 CFR 230.473).

[38] In 1986, the Division of Investment Management took the position that section 16(a) of the Investment Company Act (15 U.S.C. 80a–16(a)) does not require investment companies to hold shareholders' meetings to elect directors (or those persons holding equivalent positions) on an annual basis. The Division concluded that, aside from two situations set forth in section 16(a) (*i.e.*, electing the initial board of directors and electing directors to fill existing vacancies on the board in the event that less than a majority of directors are elected by shareholders), applicable state law governs the timing of shareholders' meetings to elect investment company directors. John Nuveen & Co. Incorporated (pub. avail. Nov. 18, 1986). Subsequently, Maryland amended its state corporation law to remove the requirement that investment companies hold annual meetings. Md. Code Ann. section 2–501(B) (1987). Many investment companies operating in corporate form are Maryland corporations, and, consistent with state law, they have acted to dispense with annual shareholders' meetings. See also Minn. Stat. section 302A.431 (1986) (regular meetings of shareholders need not be held unless required by the corporation's articles or bylaws or by demand of shareholders). In addition, under Massachusetts law, investment companies organized as Massachusetts business trusts are not required to hold annual meetings.

[39] For a discussion of current distribution arrangements, see *infra* notes 61–72 and accompanying text.

[40] See *infra* notes 73–82 and accompanying text.

[41] For a discussion of some of these initiatives, see *supra* notes 25–32 and accompanying text.

[42] Release 12888 quoting West Speech, *supra* note 33, at 10.

[43] Phillips, *Deregulation Under the Investment Company Act—A Reevaluation of the Corporate Paraphernalia of Shareholder Voting and Boards of Directors*, 37 Bus. Law. 903, 910–11 (1982)

[44] For example, the availability of voting rights may deter management from acting in a manner contrary to shareholder interests. See Wharton School of Finance and Commerce, *A Study of Mutual Funds*, H.R. Rep. No. 2274, 87th Cong., 2d Sess. (1962); see also Release 12888.

structure.[45] If management could take action without shareholder approval, what provision should be made to inform shareholders of management actions? Should shareholders be provided with a procedure to challenge such actions?

A number of provisions of the Investment Company Act and the rules thereunder rely on boards of directors to safeguard investor interests.[46] Some require directors to evaluate the reasonableness of number of different and, in some cases, overlapping fees and charges for investment advice, distribution, administration, and shareholder services. Others permit various types of transactions and activities to take place without prior Commission review of individual applications, which otherwise would be required. These provisions and rules comtemplate that the board of directors of an investment company will establish, oversee, and monitor procedures designed to protect investor interests. Often, the disinterested directors are required to determine that an action will be in the best interests of the company and its shareholders. Commenters are asked to consider whether these provisions or rules should be modified to allow UIFs or other alternative vehicles to rely on them. If so, what mechanism, if any, would be needed in place of the directors' review? Would new types of sanctions be needed for an investment manager of a UIF or other vehicle who violated these provisions or rules?

The UIF concept relies on the idea that competition and consumer choice are adequate substitutes for director oversight and shareholder voting, particularly in controlling the ability of an investment company sponsor/manager to set fees that could be regarded as excessive. The ability of the market to regulate investment company fees may depend, however, on the extent to which investors make active purchase and redemption decisions, give significant consideration to cost in making those decisions, and are able easily to compare the total cost of investing in alternative funds. With this in mind, should a UIF or other alternative pooled vehicle be permitted to impose front-end sales charges, contingent deferred sales charges, redemption fees, or rule 12b-1 fees? What conditions or limitations should be imposed on charges? Should selling costs be imposed only on a shareholder's account and not on funds assets? Should shareholder account charges be limited to a front-end sales charge?

Comment is also requested on whether the need for a board of directors to stand as an intermediary between shareholders and the investment company in evaluating the reasonableness of multiple fees could be obviated by a single, all-inclusive fee to be charged for all costs incurred in selling and operating an alternative pooled vehicle.[47] If all expenses and charges were included in a single fee, would investors be in a better position to compare total costs to be incurred by investing in different vehicles? Should a single fee also include agency transaction costs? If not, would the investment manager of an alternative pooled vehicle have an incentive to use "soft dollars" to pay for as many fund expenses as possible?

Finally, in the context of an alternative pooled structure like the UIF, should all service contracts between the investment company and affiliated persons be exempt from the requirements of rule 17d-1 under the Investment Company Act?[48] Should section 36(b)[49] be amended to provide that the investment manager of a UIF-type vehicle does not have a fiduciary duty regarding the receipt of compensation by the manager and its affiliates? Are alternative management fee controls, such as a statutory maximum fee, warranted?

C. Asset-Backed Arrangements Under the Investment Company Act

A structured financing or asset-backed arrangement ("ABA") typically consists of a limited purpose entity whose primary business activity is acquiring and holding financial assets and issuing non-redeemable debt obligations or equity interests. The principal and interest payments on the pledged assets are used to make payment on the securities issued by the ABA, which usually are rated not lower than AA by one or two nationally recognized statistical rating organizations.[50] Issures that have more assets or collateral than needed to make full payment on their debt securities may sell equity or "residual" interests in the residual cash flow or value of the collateral.

The structured finance market is huge, global, and still evolving. In 1989, the volume of new issues was $158 billion; in 1990, volume is projected to be $175.5 billion.[51] The most prevalent ABA to data is the collateralized mortgage obligation ("CMO"). A CMO is a debt obligation collateralized by various types of mortgage loans or by mortgage-backed securities usually issued or guaranteed by the Government National Mortgage Association, Federal National Mortgage Association ("FNMA"), or Federal Home Loan Mortgage Corporation ("FHLMC").[52] The CMO structure allows the cash flows on the underlying mortgage pool to be carved up into separate, marketable securities. CMOs are issued in a series of classes, each of a specified coupon and stated maturity. Scheduled payments and prepayments from the collateral are prioritized to retire the earliest class of CMOs before retiring later classes in the order of stated maturities.

More recently, other types of ABAs have been issued, including

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[45] Both the West Speech and Release 12888 made this suggestion, based, in part, on the belief that money market funds may be the fund type most likely to be the subject of comparison shopping by investors. It has been noted that investors perceive the money market fund to be a relatively homogeneous product for which yield is a major purchase criterion and that the level of fund expenses is a major determinant of yield. Phillips, *supra* note 43, at 913.

[46] See, *e.g.*, Investment Company Act section 2(a)(41), 15(c) [15 U.S.C. 80a-2(a)(41), -15(c)], rules 2a-7, 10f-3, 12b-1, 17a-7, 17a-8, 17d-1(d)(7), 17e-1, 17f-5 [17 CFR 270.2a-7, 270.10f-3, 270.12b-1, 270.17a-7, 270.17a-8, 270.17d-1(d)(7), 270.17e-1, 270.17f-5].

[47] This approach would require the investment manager to set its fee at a rate high enough to compensate for all costs incurred in selling and operating an alternative pooled vehicle, whether services are performed "in house" or by outside contractors. The fee would include all distribution-related expenses, investment advice, shareholder accounting, and pricing services), and insurance.

[48] In brief, rule 17d-1 prohibits joint transactions among investment companies and their affiliated persons or principal underwriters, or any affiliated person of an affiliated person or principal underwriter, without a Commission order.

[49] Section 36(b) imposes a fiduciary duty regarding compensation paid by an investment company to its investment adviser and affiliated persons of the adviser.

[50] The ratings are based solely upon each rating agency's assessment of the likelihood of timely distribution of principal and interest. Highly rated structures usually have some type of credit enhancement, *e.g.*, reserve funds, subordinated classes, insurance, letters or credit, or overcollateralization.

Certain trends may have increased credit risk; in fact, $4.6 billion of structured finance securities was downgraded during 1989. Most notably, heightened competition among transaction participants may have increased the pressure on credit standards. The average credit quality of structured securities is expected to continue to decline in 1990. *Structured Finance, Annual Report: 1989 Review and 1990 Outlook* 3-6, Moody's Structured Finance Research & Commentary (Jan. 1990) (hereinafter cited as "Moody's *Annual Report*").

[51] See Moody's *Annual Report*, *supra* note 50, at 3.

[52] In the 1970s, approximately $100 billion in mortgage-backed securities was issued; in 1989 alone, over $94.5 billion in CMOs was issued. In 1989, there was a dramatic shift from private issuer CMOs to FNMA and FHLMC issuance, with agency CMOs accounting for 85% of the market, up from 34% in 1988. Moody's *Annual Report*, *supra* note 50, at 3, 7.

collateralized bond obligations, using corporate bonds as collateral; consumer loan-backed securities, including so-called "plastic bonds" collateralized by credit card receivables; securities collateralized by pools of federal agnecy loans; and securities issued by "bad banks," which are entities chartered as banks that usually hold only non-performing assets and issue debt much like a CMO issure.[53]

ABAs generally are investment companies under section 3(a) of the Investment Company Act because they issue securities to the public (typically in the form of bonds or equity interests), and invest in, own, hold or trade securities within the meaning of the Act (*e.g.*, open acconts receivable, mortgage notes, mortgage-backed securities, government loans). Most ABAs, however, would have great difficulty operating under the Act's requirements. For example, many ABAs have complicated multiclass structures that would be prohibited under section 18, which makes it unlawful for any registered investment company to have more than one class of senior security outstanding and requires certain levels of asset coverage.

Some ABAs have avoided regulation under the Investment Company Act by relying on one of the three statutory exceptions to the definition of an investment company in section 3(c)(5) (15 U.S.C. 80a–3(c)(5)). The exceptions are available only to issuers that are not issuing "redeemable" securities.[54] First, section 3(c)(5)(A) (15 U.S.C. 80a–3(c)(5)(A)) excepts issuers primarily engaged in "acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services." Second, section 3(c)(5)(B) (15 U.S.C. 80a–3(c)(5)(B)) excepts issuers primarily engaged in "making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of specified merchandise, insurance, and services." Finally, section 3(c)(5)(C) (15 U.S.C. 80a–3(c)(5)(C)) excepts issuers primarily engaged in "acquiring mortgages and other liens on and interests in real estate." Most CMO issuers have relied on this exception.

Some ABA issuers unable to rely on section 3(c)(5) have organized outside the United States and offered their securities publicly only outside the United States to foreign investors. Others have offered their securities in private placements to not more than one hundred investors, relying on the exception in section 3(c)(1) of the Investment Company Act (15 U.S.C. 80a–3(c)(1)).[55] Finally, a number of CMO issuers and a few governments loan pools that were unable to rely on a statutory exception have sought and received individual exemptions from some or all provisions of the Investment Company Act.[56]

Given the emergence of ABAs, which developed subsequents to the enactment of the section 3(c)(5) exceptions and arguably were not specifically envisioned by Congress in 1940,[57] it may be appropriate to reevaluate the treatment of ABAs under the Investment Company Act. The Commission requests comments on the subject of ABAs generally and on the following specific issues and questions:

Should all ABAs, regardless of the assets being collateralized, be given the same regulatory treatment or do the different assets collateralizing the securities require or justify different regulatory treatment for each type of structured financing? [58] Similarly, should ABAs that are sold to accredited or institutional investors be given different regulatory treatment from those sold to other investors? Should all ABAs be excepted from the Act? Should an exception be conditional or unconditional? If a conditional exception is appropriate, what types of conditions would be necessary? That is, are structured financings susceptible to abuse and what conditions would address those abuses? Should distinctions be drawn based upon the level of structural complexity or credit risk of the ABA, or upon the types of securities the ABA issues? What is the appropriate role, if any, of the rating agencies in the regulatory framework? [59]

Proponents of regulation of ABAs have argued that the Investment Company Act was designed for complex financial structures, like ABAs, where, in the proponents' view, investor protection concerns cannot adequately be resolved by disclosure alone.[60] If regulation under the Investment Company Act is appropriate, what provisions should apply to ABAs? For example, should ABAs be subject to section 17 (15 U.S.C. 80a–17), which restricts transactions with affiliated persons? What alternatives to the requirements of section 17 would be available to deal with potential conflicts of interest? Are the restrictions of section 18 (15 U.S.C. 80a–18) on leverage appropriate for ABAs, or can the policy concerns underlying this section be addressed in an alternative manner?

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[53] See Mayer, *Slicing the Mellon: Behind the Good Bank/Bad Bank Scheme*, Barron's Aug. 15, 1988, at 100.

[54] Issues important to the availability of any of the three exceptions under section 3(c) are the interpretation of the terms "redeemable securities" and "primarily engaged," which have been analyzed by the Division of Investment Management in a variety of contexts. See, *e.g.*, Prudential Mortgage Bankers & Investment Corp. (pub. avail. Dec. 14, 1977); Salomon Brothers, Inc. (pub. avail. June 17, 1985); California Dentists' Guild Real Estate Mortgage Fund II (pub. avail. Jan 4, 1990). The redeemable securities prohibition was added by amendments to the Investment Company Act in 1970 and was intended to reach certain entities such as real estate investmnet trusts that attempted to capitalize on the popularity of open-end investment company securities. See S. Rep. No. 184, 91st Cong., 1st Sess. 37 (1970); H.R. Rep. No. 1382, 91st Cong., 2nd Sess. 17 (1970).

[55] Section 3(c)(1) of the Investment Company Act (15 U.S.C. 80a–3(c)(1)) is somewhat analogous to the private offering exemption in section 4(2) of the Securities Act (15 U.S.C. 77d(2)). Section 3(c)(1) provides an exception for any issure "whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities." See *infra* note 128 and accompanying text for a discussion of possible amendments to this exception.

[56] See, *e.g.*, *Trident Mortgage Securities Company*, Investment Company Act Release Nos. 16228 (Jan. 15, 1988), 53 FR 1874 (Jan. 22, 1988) (notice) and 16268 (Feb. 11, 1988) (order); *Community Program Loan Trust No. 1987 A*, Investment Company Act Release Nos. 15900 (July 29, 1987), 52 FR 28628 (July 31, 1987) (notice) and 15948 (Aug. 24, 1987) (order); *College and University Facility Loan Trust One*, Investment Company Act Release Nos. 15903 (July 31, 1987), 52 FR 28890 (Aug. 4, 1987) (notice) and 15990 (Sept. 18, 1987) (order). With both CMOs and governments loan sales, the legislative history of related legislation indicates a congressional expectation that such issuers be exempted. See The Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99–509, Section 7095, 100 Stat. 1874 (1986); 132 Cong. Rec. 33303 (1986); 4 *Hearings on the Concurrent Resolution on the Budget for Fiscal Year 1988 before the Senate Comm. on the Budget*, 100th Cong., 1st Sess. 99 (1987) (statement of John S.R. Shad, Chairman, SEC); The Secondary Mortgage Market Enhancement Act of 1984, Pub. L. No. 98–440, 98 Stat. 1689 (1984); S. Rep. No. 293, 98th Cong. 2d Sess. 9 (1983).

[57] See *Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency*, 76th Cong., 3d Sess. 181–82 (1940) (statement of David Schenker, Chief Counsel, SEC investment trusts study) (companies engaged in purchasing mortgages or automobile paper and refrigerator paper excepted). See *also* T. Frankel, 1 *The Regulation of Money Managers*, 442–449 (1978).

[58] See Letter from the Investment Company Institute to Richard C. Breeden, Chairman, SEC (Feb. 2, 1990) (arguing that passive credit card receivables should not be deemed exempt under section 3(c)(5)). But see Letter from Thomas C. Smith, Jr., on behalf of a group of securities firms, to Kathryn B. McGrath, Director, Division of Investment Management, SEC (Feb. 27, 1990).

[59] Generally, the CMO and government loan sales offerings exempted by the Commission have been conditioned, in part, on the publicly-offered securites' being rated in the top two investment grades.

[60] See, e.g., Letter from Tamar Frankel, Professor of Law, Boston University, to Kathryn B. McGrath, Director, Division of Investment Management, SEC (Jan. 26, 1990).

Should ABAs be regulated under a statute or rule designed for this specific type of pooled investment vehicle, much as business development companies and flexible premium variable life insurance have been accommodated under the Act? Should changes be made in the Investment Company Act, the rules thereunder, or interpretive positions?

D. Distribution of Open-End Companies

The methods by which open-end investment companies have financed the distribution of their shares have changed a great deal in the last ten years, with many companies now using arrangements that did not exist when the Investment Company Act was enacted. Traditionally, most open-end companies financed the expenses associated with the sale of shares by passing these costs on to investors in the form of a sales charge or "sales load" paid at the time of purchase. All investors typically paid the same sales load when buying a company's share because section 22(d) of the Investment Company Act (15 U.S.C. 80a–22(d)) prohibits retail negotiation of sales loads.[61] Other open-end companies sold their shares to the public without a sales load, with the distribution costs being paid by the companies' investment advisers or principal underwriters out of their own resources.

Under section 22(b) of the Investment Company Act (15 U.S.C. 80a–22(b)), the National Association of Securities Dealers, Inc. ("NASD") may prescribe rules governing sales loads that allow for reasonable compensation for sales personnel, broker-dealers, and underwriters, and for reasonable sales loads to investors. The NASD has adopted a rule that generally permits a maximum front-end sales charge of not more than 8.5% of the share's offering price.[62] Although many open-end companies continue to use front-end sales loads, a large number now use them coupled with other distribution arrangements. In addition, investors in an investment company no longer necessarily pay the same sales load. Under rule 22d–1 (17 CFR 270.22d–), investment companies may offer scheduled variations in, or the elimination of, a front-end sales load to specified classes of shareholders or in connection with specified classes of transactions, provided that the variation is applied uniformly to all investors in the class and certain disclosure requirements are met.[63] Negotiation of sales loads, however, continues to be prohibited by statute.

In 1980, after many years of debate, the Commission adopted rule 12b–1 under the Investment Company Act (17 CFR 270.12b–1).[64] The rule permits an open-end investment company to use company assets under a distribution plan ("12b–1 plan") to pay sales and promotional expenses associated with the sale of its shares. The rule places the principal responsibility for making decisions relating to the use of company assets for distribution in the hands of the company directors, particularly those directors who are not interested persons of the company.

Since the adoption of rule 12b–1, more than half of all open-end companies have enacted 12b–1 plans. Many of these companies use 12b–1 fees either alone or with sales loads as the primary means of financing distribution.

In 1988, the Commission proposed amendments to the rule.[65] The proposed amendments would, among other things, require that payments under a 12b–1 plan be made on a current basis and for specific distribution services actually provided to the plan, clarify the duties of directors in adopting and continuing 12b–1 plans, define payments made under a 12b–1 plan as "asset-based sales loads," and prohibit investment companies that adopt or continue distribution plans from being held out to the public as "no-load" or from being otherwise offered in a misleading manner using similar terminology.

In response to the proposal, the Commission has received over 1,900 letters from individual investors, 40 letters from individuals affiliated with the financial services industry (such as financial planners), and 40 letters from entities affiliated with the investment company industry. Virtually all individual investors and a large majority of the individuals from the financial services industry favor the proposed amendments or support changes to rule 12b–1. Many of the letters from individuals urge that 12b–1 fees be abolished. Most industry commenters, however, strongly oppose the proposed amendments, with many arguing that they are unnecessary and would curtail or eliminate 12b–1 plans as an alternative method of financing distribution.

On April 16, 1990, the NASD published for comment an amendment to its sales charge rule that, if adopted, would subject 12b–1 fees to the rule.[66] The proposed amendment is intended to ensure, to the extent possible, that a majority of shareholders that own shares of companies with 12b–1 plans pay no more for distribution expenses than is permitted by the provisions of the current rule.[67]

A number of open-end companies now also assess deferred sales loads. In 1981, the Commission first issued an exemptive order permitting the deduction of contingent deferred sales loads ("CDSLs") upon redemption of company shares.[68] Since then, the Commission has received and granted numerous applications for exemptions permitting CDSLs. To pay for distribution expenses, many open-end companies use CDSLs in conjunction with 12b–1 plans in lieu of charging investors front-end sales loads.

In 1988, the Commission proposed for comment rule 6c–10.[69] The proposed rule would permit open-end companies and certain related persons to impose deferred sales loads, both contingent and non-contingent, subject to specified

[61] Under section 22(d), investment companies, their principal underwriters, and dealers in their shares may sell the company's redeemable securities only "at a current public offering price described in the prospectus." For a discussion of the legislative and administrative history of section 22(d), see Investment Company Act Release No. 13183 (Apr. 22, 1983), 27 SEC Docket 1353 (May 10, 1983) at the appendix (proposing rule 22d–6, which was later adopted as revised rule 22d–1).

[62] See Article III, section 26(d) of the NASD's Rules of Fair Practice.

[63] Investment Company Act Release No. 14390 (Feb. 22, 1985), 50 FR 7909 (Feb. 27, 1985) (adopting revised rule 22d–1). The rule superseded more limited rules previously adopted by the Commission in this area.

[64] Investment Company Act Release No. 11414 (Oct. 28, 1980), 45 FR 73898 (Nov. 7, 1980). Before the adoption of rule 12b–1, the Commission opposed the use of company assets to pay for the distribution of company shares. Since the adviser's compensation is typically based on the size of the company, the Commission believed that the adviser might be inclined to spend excessive amounts on the distribution of shares in an effort to increase company assets and its own compensation. See Investment Company Act Release No. 16431 (June 13, 1988), 53 FR 23258 (June 21, 1988) ("Release 16431") (discussing earlier Commission positions).

[65] Release 16431, *supra* note 64.

[66] NASD Notice to Members No. 90–26 (Apr. 16, 1990).

[67] Under the proposal, however, some long-term shareholders of these companies may still pay more than the economic equivalent of a maximum front-end sales charge. To address this, the proposed amendment also would require that this fact be disclosed adjacent to the fee table in the front section of the prospectus.

[68] *E.F. Hutton Investment Series, Inc.*, Investment Company Act Release Nos. 12079 (Dec. 4, 1981), 46 FR 60703 (Dec. 11, 1981) (notice) and 12135 (Jan. 4, 1982) (order). The NASD has taken the position that its sales load rule applies to deferred sales loads.

[69] Investment Company Act Release No. 16619 (Nov. 2, 1988), 53 FR 45275 (Nov. 9, 1988). The Commission had previously adopted rules 6c–8 (17 CFR 270.6c–8) and 6e–3(T) (17 CFR 270.6e–3(T)) which permit certain investment company separate accounts to impose deferred sales loads. See Investment Company Act Release Nos. 13406 (July 28, 1983), 48 FR 36097 (Aug. 9, 1983) (adopting rule 6c–8); 14234 (Nov. 14, 1984), 49 FR 47208 (Dec. 3, 1984) (adopting rule 6e–3(T)); and 15651 (Mar. 30, 1987), 52 FR 11187 (Apr. 8, 1987) (adopting amendments to rule 6e–3(T)).

conditions. The proposed rule generally would codify the standards that the Commission has developed in issuing exemptive orders concerning the use of CDSLs and also would permit for the first time other types of deferred sales loads, such as sales loads deducted in installments.

Commenters on the proposed rule generally support codifying the exemptive orders permitting CDSLs. Commenters' reactions are mixed, however, on whether the Commission should expand these exemptions to permit the use of deferred sales loads not subject to a contingency. Commenters opposing the expansion, many of whom are affiliated with the investment company industry, are particularly concerned about deferred sales loads payable in installments. Some of these commenters argue that investment companies would not be interested in using installment sales loads because of the costs and operational difficulties that would be incurred in implementing such a load structure.

Finally, the Commission has issued a number of exemptive orders permitting the issuance of multiple classes of securities representing interests in a single portfolio of investments where the classes are subject to different distribution arrangements.[70] The orders contain a number of conditions to address concerns regarding the complexity of the arrangement, including a condition that an independent expert render an initial and annual report on the allocation of expenses between the two classes and the accounting for the expenses.

The Commission requests comment on whether the present regulatory approach to financing distribution costs should be revisited.[71] Commenters are encouraged to consider any alternative approaches, including distribution arrangements used by other pooled investment vehicles, both in the United States and abroad, such as commodity pools and real estate partnerships. One area of comparison may be with possible fee structures for UIFs.[72] Another may be with UCITS. The Commission understnads that the UCITS Directive would not prohibit price competition among brokers and dealers or the use of assets to finance distribution with appropriate disclosure. Host Member States, however, may impose restrictions on the use of assets to finance distribution. Commenters are requested to address specific changes in the Investment Company Act, the rules thereunder, and any interpretive positions.

The Commission requests comments on how open-end investment companies should be allowed to finance distribution. Should the use of company assets to finance distribution be permitted, and if so, subject to what, if any, conditions? Should there be limits on the amounts that may be expended for such purposes? Should the limits be expressed as percentages of net assets or as percentages of the offering price? Should distribution be financed only on a shareholder account basis by means of front-end sales loads or other fees? What types of sales loads should be permitted? Would direct retail price negotiation between brokers and dealers or the existence of a secondary market in investment company shares increase price competition, reducing the need for regulatory limitations? Would price competition adversely affect investment companies? Should retail price negotiation be permitted for distribution fees taken out of company assets? That is, should customers be able to negotiate for rebates of distribution fees from sales personnel?

In commenting on whether the present regulatory approach should be changed, commenters should address the potential for investor confusion resulting from a variety of distribution arrangements, the operational ability of the investment company industry to implement various types of financing arrangements, the conflicts of interest inherent when company assets are used to finance distribution and the role, if any, that directors should have in monitoring those conflicts, the amount shareholders should be required to pay and whether such amounts should be capped, and the competitive effects any regulatory revisions would have.

E. Closed-end Funds and Repurchases of Shares

As noted earlier, closed-end companies typically do not issue redeemable securities or continuously offer their shares to the public.[73] Investors in closed-end companies must instead trade their shares on a securities exchange or in the over-the-counter market at a price determined by the market, which is typically lower than the shares' net asset value.

A study of the Commission's Office of Economic Analysis demonstrated that a substantial decrease in the value of closed-end fund shares often occurs shortly after the initial public offering.[74] While some of the decrease is attributable to sales loads, there appears to be a further reduction in share value below net asset value that cannot be explained by the sales load. It has been observed that the practical effect of this "discount phenomenon" is that a shareholder who purchases shares of a closed-end fund at the initial public offering and subsequently sells those shares in the open market incurs two separate and substantial costs. At the time of the initial public offering, the investor pays a premium over the fund's initial net asset value to cover underwriting expenses.[75] Upon the sale of these securities, the shareholder also absorbs the discount at which the fund shares may trade in the open market.

On reason for the existence of the discount may be that brokers have a greater financial incentive to sell shares of closed-end investment companies in the initial public offering than in the secondary market, because broker compensation for sales made during the initial public offering is higher than commission rates for secondary market

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[70] See *e.g., Merrill Lynch California Municipal Bond Trust*, Investment Company Act Release Nos. 16503, (July 28, 1988), 53 FR 29294 (Aug. 3, 1988) (notice), and 16535 (Aug. 23, 1988) (order) (investors given the option of purchasing shares either with a front-end sales load, or subject to a CDSL and a rule 12b–1 fee); *Prudential-Bache California Municipal Fund*, Investment Company Act Release Nos. 17277 (Dec. 20, 1989), 54 FR 53414 (Dec. 28, 1989) (notice), and 17308 (Jan. 18, 1990) (order) (investors given the option of purchasing shares either with a front-end sales load and a low 12b–1 fee, or with a CDSL and a higher 12b–1 fee). See also *Alliance Short-Term Multi-Market Trust, Inc.*, Investment Company Act Release Nos. 17295 (Jan. 8, 1990), 55 FR 1300 (Jan. 12, 1990) (notice), and 17330 (Feb. 2, 1990) (order) (arrangement similar to Prudential-Bache's, *supra*, except that, after a specified time, the shares of the class with the higher 12b–1 fee would convert into the other class of shares without payment of any additional load, thereby limiting payments borne by each investor and placing a ceiling on the underwriter's compensation).

[71] The Commission's reconsideration of the present regulatory approach is not an indication of a change in the Commission's views regarding the proposed amendments to rule 12b–1 or proposed rule 6c–10, both of which remain pending. Comments already received regarding these proposals will be considered as part of the general reexamination of the regulation of investment companies under the Investment Company Act.

[72] See supra notes 47–49 and accompanying text.

[73] A redeemable security is "any security * * * under the terms of which the holder, upon its presentation * * * is entitled * * * to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof." Investment Company Act section 2(a)(32) (15 U.S.C. 80a–2(a)(32)).

[74] Office of Economic Analysis of the Securities and Exchange Commission, *The Post-Offering Price Performance of Closed-end Funds* (July 21, 1989).

[75] The Commission proposed amendments to Form N–2, the registration form for closed-end investment companies, that would change the caption on the fee table from the present term "underwriting discount" to "sales load." Investment Company Act Release No. 17091 (July 28, 1989), 54 FR 32993 (Aug. 11, 1989) ("Release 17091").

transactions.[76] In addition, few analysts choose to follow closed-end funds after the initial offering has been completed. Some observers have suggested that it might be appropriate for closed-end companies to use fund assets to attempt to address the problem of discounts.[77] For example, a closed-end fund could provide brokers with additional compensation for secondary market transactions in fund shares. Alternatively, closed-end companies could provide analysts with reports and other information in order to increase the number of analysts that follow them and stimulate retail interest.

A number of funds have sought to minimize the discount at which their shares trade by employing a variety of other methods, including guaranteeing minimum distributions and reinvesting shareholder dividends in additional fund shares. Other closed-end investment companies have considered either conversion to open-end status or liquidating fund assets.

Perhaps most significantly, a number of closed-end companies have repurchased their shares in the secondary market in reliance on section 23(c)(1) of the Investment Company Act (15 U.S.C. 80a–23(c)(1)), which allows repurchases on an exchange, or have made tender offers for their shares at prices approximating net asset value. A closed-end company, however, cannot give shareholders an unlimited right to have their shares repurchased by the fund at a price approximating net asset value. Under rule 23c–2 (17 CFR 270.23c–2), a closed-end company may call or redeem any securities of which it is the issuer, in accordance with the terms of the securities, but the Division of Investment Management has interpreted the rule to require that the calls or redemptions be at the option of the issuer and not the shareholder.[78] The Division also has interpreted the Act to limit the ability of closed-end companies to state their intention to make future tender offers at definite times or intervals.[79]

If the shareholders of a closed-end company were given the option to redeem their shares at a price approximating net asset value, the closed-end company would become functionally similar to an open-end company.[80] Closed-end companies, however, are not subject to all of the provisions that govern the operation of open-end companies.[81] For example, section 22 of the Investment Company Act (15 U.S.C. 80a–22), which applies only to open-end companies, imposes certain requirements on the sale and redemption of securities. Also, under section 18, closed-end companies, unlike open-end companies, may issue separate classes of senior securities that leverage the company's other securities. This leverage may confuse shareholders as to the value of the securities that are periodically redeemable. It also may make a company's net asset value more sensitive to market movements and, in a declining market, make redemptions of the company's securities more difficult or impossible. In addition, shareholders may become confused as to the limited availability of redemptions and may believe that they have the right to redeem their shares at any time.

The Commission invites comments regarding possible amendments to the Investment Company Act, the rules thereunder, or any interpretive positions that would give closed-end investment companies additional means to attempt to reduce the discount associated with their shares, or provide shareholders with additional flexibility in selling their shares, consistent with investor protection. Commenters are requested to address whether closed-end companies should be permitted to use their assets to pay for activities designed to lower the share price discount from net asset value, as well as the relative costs and benefits to shareholders from such activities, the conflicts of interest inherent when company assets are used to pay sales-related expenses, and whether only closed-end companies engaged in a continuous public offering should be permitted to use their assets for sales-related expenses.

Commenters are also requested to address whether closed-end companies should be permitted to issue securities that offer holders limited rights of redemption and what safeguards would be necessary to prevent any possible investor confusion between this type of company and open-end companies, such as requiring this type of closed-end company's advertising and name to indicate that the company is offering only limited redemption rights. Commenters also may wish to consider whether closed-end companies should be allowed to make periodic redemptions at a price approximating net asset value, or whether closed-end companies should be allowed to redeem their shares after a certain number of days' notice given to the companies by shareholders.[82] Commenters are also requested to address what safeguards, if any, would be necessary to protect both those shareholders choosing to redeem their shares and those shareholders to retain their shares. Finally, what effect, if any, would periodic redemptions of closed-end funds have on the market generally, and what, if anything, should be done to lessen that effect?

F. Transactions in Options and Futures Contracts

Investment company transactions in futures contracts, options on futures, and options on stock and stock indices continue to increase. Because the Investment Company Act was written long before futures contracts and options gained widespread acceptance, the Act does not address expressly investment company transactions in these instruments. These transactions, however, may raise a number of concerns under the Act. For example,

[76] See, *e.g.*, *id.* (separate statement of Commissioner Grundfest); B. Malkiel, *The Valuation of Closed-end Investment Company Shares*, 32 J. Fin. 847, 857–58 (June 1977).

[77] At present, closed-end investment companies do not use fund assets to pay for distribution of their shares. Rule 17d–3 (17 CFR 270.17d–3), which exempts certain distribution arrangements between affiliates of open-end investment companies, is not applicable to closed-end funds. Rule 12b–1, which permits open-end management investment companies to use their assets to finance distribution-related activities under certain circumstances, does not apply to closed-end investment companies.

[78] Dimensional Fund Advisors, Inc. (pub. avail. Nov. 21, 1988); J. & W. Seligman & Co. (Pub. avail. Nov. 13, 1989).

[79] In the staff guidelines accompanying Release 17091, *supra* note 75, the Division stated that a closed-end company may agree to consider periodically whether to make a tender offer, but that the board of directors may breach its fiduciary duty by affirmatively stating that the fund will make tender offers at definite times or intervals in the future. *Id.* at app. C. Accordingly, the Division cautioned that a registrant contemplating repurchasing shares on a regular or frequent basis should neither state nor imply in its prospectus that the repurchase will be automatic.

[80] The legislative history of the Investment Company Act and early Commission action indicates that the drafters of the Act regarded the redeemability of shares for open-end companies as the distinction between closed-end and open-end investment companies. *Hearings on H.R. 10065 Before a Subcomm. of the House Comm. on Interstate and Foreign Commerce*, 76th Cong., 3d Sess. 56 (1940) (statement of Robert C. Healy, Commissioner, SEC); *Wisconsin Investment Company*, 10 S.E.C. 555, 557 (1941). Depending on the nature of the redemption rights offered to the shareholders of a closed-end company, the company might be issuing "redeemable securities" and therefore fall within the definition of an open-end company.

[81] See *Wisconsin Investment Company*, *supra* note 80, at 557 (Commission granted exemption allowing closed-end investment company to redeem its securities, but required the company to comply with Investment Company Act sections dealing with open-end investment companies).

[82] Commenters should address whether closed-end companies may redeem or repurchase for an amount slightly less than net asset value to reflect the brokerage and other costs associated with the transaction.

the Division of Investment Management believes that entering into options and futures commitments may result in the leveraging of investment company assets. Section 18 places limitations on the leveraging of investment companies by limiting the amount of "senior securities" an investment company may issue.[83] Section 18 is designed, in part, to protect junior security holders from the speculative effects of leveraging.[84] Under section 18(f), open-end investment companies may not issue senior securities except that they may borrow from banks if they have asset coverage of at least 300%. Section 18(a) allows closed-end investment companies to issue senior securities, including debt, provided that borrowing companies have asset coverage of at least 300%.[85] The Division of Investment Management has taken the position that, unless a fund that engages in options and futures transactions meets certain segregation requirements or "covers" positions to eliminate any potential leveraging, those transactions may constitute the issuances of senior securities.[86]

Commenters are requested to address whether the Investment Company Act should be amended to facilitate the use of options and futures contracts by investment companies for hedging purposes and, if so, what limitations or requirements should be placed on those transactions. Alternatively, should the Commission consider rulemaking or interpretive positions? How should the status of entities that invest in both securities and futures contracts be analyzed under the Act? Do any liquidity or other concerns arise from the use of fund portfolio holdings to cover option positions,

C. Securities Act Issues

An investment company that continuously offers new shares to the public is generally regarded to be engaged in a continuous distribution subject to the registration and prospectus delivery requirements of section 5 of the Securities Act (15 U.S.C. 77e), unless an exemption from registration is available. As a result, these investment companies (as well as the underwriters, brokers, and dealers that distribute their shares) are limited in their ability to advertise.[87] Because an investment company rarely, if ever, advertises except in connection with the sale of its shares (typically its only "product"), an investment company advertisement generally is deemed to be a prospectus that must comply with statutory requirements. In addition, the investment company must maintain an updated or "evergreen" prospectus that must precede or accompany delivery of the securities under section 5(b)(2) of the Securities Act, both for sales by the issuer or by a dealer.[88]

1. Rule 482 Advertisements as "Omitting Prospectuses"

The Commission in 1979 adopted a rule permitting investment companies to publish advertisements containing any information the substance of which is included in the full statutory prospectus.[89] Rule 482 was adopted under the rulemaking authority contained in section 10(b) of the Securities Act, which permits the use of a prospectus for purposes of section 5(b)(1) that omits in part or summarizes information in the prospectus specified in section 10(a). Thus, rule 482 advertisements are styled "omitting prospectuses."[90] Some have suggested that the requirement that the substance of the information in a rule 482 ad be included in the prospectus is awkward and lengthens the prospectus with information that may not be of interest to the individual investor.

Comment is requested on whether the Securities Act or the investment Company Act should be amended to deal specifically with investment company advertisements and, if so, how it should be amended. For example, section 10(b) of the Securities Act could be amended to permit certain types of investment company advertisements, including advertisements containing performance information, under such requirements as the Commission may prescribe, but not require that the substance of the information be contained in the prospectus of the investment company.[91] Of course, if the amendment were added to section 10(b), the advertisements would continue to carry prospectus liability for false or misleading statements of material fact.[92] However, comment is requested on whether investment company advertisements should continue to carry prospectus liability.

Another approach would be to amend rule 482 to allow investors to purchase fund shares directly from an advertisement, by completing an application form included in the ad, similar to the so-called "off the page" advertisements permitted in the United Kingdom.[93] Rule 482 currently prohibits this practice. Commenters should consider whether rule 482 should be amended, or another rule adopted, to permit investment company advertisements to include an applicaiton or order form to purchase fund shares, and if so, whether the ad should be required to contain certain information (*e.g.*, fund policies, risks, charges).

Finally, commenters are requested to provide information on how other countries regulate investment company advertising and to consider whether some comparable regulatory approach

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[83] Section 18(g) (15 U.S.C. 80a-18(g)) defines "senior security" to mean "any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividend."

[84] See Investment Company Act section 1(b)(7); *Investment Trusts and Investment Companies, supra* note 1, at 1708.

[85] With respect to the issuance of preferred stock, section 18(a)(2)(A) requires asset coverage of only 200%.

[86] See, e.g., Dreyfus Strategic Investing (pub. avail. June 22, 1987); Putnam Option Income Trust II (pub. avail. Aug. 23, 1985).

[87] Section 5(b)(1) of the Securities Act makes it unlawful to use jurisdictional means to transmit or carry any "prospectus" relating to any security with respect to which a registration statement has been filed unless the prospectus complies with section 10 of the Securities Act (15 U.S.C. 77j). A written communication or advertisement design to procure orders for a security could, unless a safe harbor is available, be a "prospectus" as that term is broadly defined in section 2(10) of the Securities Act (15 U.S.C. 77b(10)). See In the Matter of Carl M. Loeb, Rhoades & Co., 38 S.E.C. 843, 848 (1950). As such, the advertisement or written communication must comply with section 10 or be preceded or accompanied by a full statutory prospectus that meets the requirements of section 10(a).

[88] Section 24(d) of the Investment Company Act (15 U.S.C. 80a-24(d)) effectively eliminates the so-called "dealer exception" in section 4(3) of the Securities Act (15 U.S.C. 77d(3)) with respect to the sale of investment company securities of the type continuously offered to the public. See infra notes 96–99 and accompanying text.

[89] See Securities Act Release No. 6116 (Aug. 31, 1979), 44 FR 52816 (Sept. 10, 1979) (adopting rule 434(d), later renumbered as rule 482 (17 CFR 230.482)). In contrast, rule 134 under the Securities Act (17 CFR 230.134) limits so-called "tombstone" advertisements to the specific types of information set forth in the rule (*e.g.*, the name of the issuer, the title of the security, the amount being offered). Prior to adoption of rule 482, rule 134 was amended several times to permit investment company tombstones to include a broader range of information than can be included in the tombstones of other issuers. See, *e.g.*, Securities Act Release No. 5536 (Nov. 4, 1974), 39 FR 39868 (Nov. 12, 1974) (adopting amendments to rule 134).

[90] An "omitting" prospectus may be used prior to delivery of the full statutory prospectus that must precede or accompany delivery of the security or confirmation of the sale.

[91] Commenters should consider whether it would be necessary to amend section 10(b) because, as earlier noted, section 10(b) currently only authorizes the Commission to adopt rules permitting the use of a prospectus for purposes of section 5(b)(1) that "omits in part" or "summarizes" information in the full statutory prospectus.

[92] Although section 10(b) specifically states that a prospectus permitted under that subsection is not deemed part of the registraiton statement for purposes of section 11 of the Securities Act (15 U.S.C. 77k), civil liability would attach under section 12(2) of that Act.

[93] See Securities and Investments Board (United Kingdom), the Financial Services (Conduct of Business) Rules 1987, rule 7.25.

should be adopted, in whole or in part, in the United States.

2. UIT Secondary Market Sales

Sponsors of UITs, although not required to do so, generally maintain a secondary market in trust units as an alternative to the UITs' having to redeem shares. Maintenance of a secondary market benefits unit holders because it increases liquidity and may prevent the premature liquidation of the trust.[94]

The registration statement of each series of a UIT for which the sponsor maintains a secondary market must be kept current because the sponsor, as the trust's depositor, is an "issuer" under section 2(4) of the Securities Act (15 U.S.C. 77b(4)). Although secondary market sales of registered securities are usually not subject to the Securities Act once the offering has "come to rest," all securities offered or sold by an issuer, (*i.e.*, the sponsor) unless otherwise exempt, are subject to the registration requirements of the Securities Act, notwithstanding the fact that the securities may have been sold previously under an effective registration statement.[95] As a result, sponsors maintaining a secondary market are required to file annual post-effective amendments for each UIT series and comply with filing and fee requirements under section 24(f) of the Investment Company Act (15 U.S.C. 80a–24(f)). In addition, a prospectus generally must be delivered to investors in connection with each secondary market sale, including sales by dealers who are not sponsors, because section 24(d) of the Investment Company Act eliminates the "dealer exception" in section 4(3) of the Securities Act.[96]

Commenters are asked to consider whether the requirement that sponsors and third party dealers deliver a prospectus in connection with secondary market sales of UITs should be eliminated, and if so, how best to accomplish that objective. Commenters should specifically address whether UITs should be treated differently in this regard from other issuers.[97] If the prospectus delivery requirement were eliminated, how would secondary market purchasers of UITs be able to obtain adequate information about their investment? Should sponsors and third party dealers be required to deliver the most recent annual report of the UIT's trustee or a similar document in connection with secondary market sales of UITs?

One option would be to revise section 2(4) of the Securities Act so that the depositor (sponsor) of a UIT is not an "issuer," [98] or is only an "issuer" until the initial public offering of the series is completed. Thereafter, the depositor could be deemed to be a dealer with respect to secondary market sales. If section 2(4) were so amended, section 24(d) of the Investment Company Act would no longer apply, and section 4(3) would then operate to exempt most dealer sales in the secondary market from the prospectus delivery requirements. Commenters should address whether means exist to make such changes through the rulemaking process rather than by statutory amendment. Commenters should also address whether dealers should be required to deliver prospectuses for secondary market sales under other circumstances, such as, for example, trades occurring any time before the initial public offering of the series is completed.[99]

3. Delivery of Prospectuses of Open-End Companies Prior to Sale

Open-end management investment companies are subject to the same prospectus delivery requirements as other issuers. A full statutory prospectus must be delivered to purchasers no later than delivery of the security or receipt of confirmation of the sale.[100] The circumstances of the sale of open-end company shares differs from that of other issuers, however, because a full statutory prospectus is typically available beforehand.[101] In addition, mutual fund shares may be sold on the basis of fairly extensive advertising (*i.e.*, rule 482 advertisements), whereas non-investment company issuers are limited to tombstone advertisements.

Rule 482 advertisements must state from whom a prospectus may be obtained and that investors should read the prospectus before investing. However, in the case of dealer sales of securities issued by open-end companies, it may be unrealistic to assume that potential investors will take the time to request and review a prospectus before investing. Rather, investors may be purchasing based not on the prospectus, but solely on the basis of an advertisement or oral representation of the salesperson.

Commenters are requested to address whether section 5(b)(2) of the Securities Act or section 24 of the Investment Company Act should be revised to require the delivery of mutual fund prospectuses prior to sale. In 1941, the Commission proposed amending the Securities Act to require delivery of a form of prospectus to all investors (not just mutual fund investors) a reasonable time before purchase, but the proposal was not adopted.[102] This proposal was followed by numerous efforts to improve dissemination of prospectuses to investors, including the development and formalizing of preliminary prospectus procedures as well as certain

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[94] Redeeming shares might require the UIT to sell off a portion of its underlying portfolio and, eventually, liquidate.

[95] See *First MultiFund for Daily Income* v. *United States* 602 F.2d 332 (Ct. Cl. 1979), *cert. denied* 445 U.S. 916 (1980); *SEC* v. *Stanwood Oil Corp.*, 516 F. Supp. 1181 (W.D. Pa. 1981). See also Securities Act Release No. 5817 (Mar. 15, 1977), 42 FR 15922 (Mar. 24, 1977) (proposing Investment Company Act rule 24e–2).

[96] Section 24(d) provides, in pertinent part:

The exemption provided by * * * section 4(3) of the Securities Act of 1933, as amended, shall not apply to any transaction in a security issued by a * * * unit investment trust, if any other security of the same class is currently being offered or sold by the issuer or by or through an underwriter in a distribution which is not exempted from section 5 of said Act, except to such extent and subject to such terms and conditions as the Commission, having due regard for the public interest and the protection of investors, may prescribe by rules or regulations with respect to any class of persons, securities, or transactions.

[97] Section 24(d) of the Investment Company Act was amended in 1954 to eliminate the dealer's exception with respect to securities issued by mutual funds and UITs on the theory that, because those issuers continuously offered their securities to the public, all dealers should be compelled to use the statutory prospectus. H.R. Rep. No. 1542, 83d Cong., 2d Sess. 29–30 (1954).

[98] Of course, any depositor who also acts as an underwriter of trust units would be subject to liability for its underwriting activities under the Securities Act.

[99] Under section 4(3), dealers must deliver a prospectus in connection with original sales by the dealer of securities obtained from or through an underwriter, and resales by the dealer occurring prior to 40 days (90 days for first-time issuers) after the effective date of the registration statement (or, under certain circumstances, a different date). See also rule 174 under the Securities Act (17 CFR 230.174), which provides an exception from the requirement in section 4(3) that a prospectus be delivered prior to the expiration of the applicable 40-day or 90-day period.

[100] Thus, investors may see the prospectus for the first time with receipt of the confirmation or the security itself.

[101] Preliminary prospectuses are not often used for sales of mutual fund securities because the fund usually does not commence marketing until its registration statement is effective, and, thereafter, uses its final prospectus.

[102] *SEC Report on Proposals for Amendments to the Securities Act of 1933 and the Securities Exchange Act of 1934*, H.R. Comm. Print, Comm. on Interstate and Foreign Commerce, 77th Cong., 1st Sess. 9–12 (1941). See also *Hearings on Proposed Amendments to the Securities Act of 1933 and to the Securities Exchange Act of 1934 Before the House Comm. on Interstate and Foreign Commerce*, 77th Cong., 1st Sess. 320 (1942) (statement of Ganson Purcell, Commissioner, SEC).

types of summary prospectuses.[103] Because open-end companies do not widely distribute a preliminary prospectus prior to sale, and because full statutory prospectuses for open-end companies are almost always available, it may be appropriate to require delivery of prospectuses before sale.

H. Insurance Products Under the Federal Securities Laws

In the 1950s, insurance companies began to offer insurance contracts that blurred the distinction between traditional insurance and securities and raised questions under federal securities laws. In *SEC* v. *Variable Annuity Life Insurance Co.*, 359 U.S. 65 (1959), the Supreme Court held that the first of these new contracts, the variable annuity,[104] was a security not entitled to the exemption in section 3(a)(8) of the Securities Act (15 U.S.C. 77c(a)(8)).[105] The Court's decision placed primary emphasis on the notion that all of the investment risk was on the contractholder, rather than on the issuer.[106] The Court also held that an issuer of variable annuity contracts was an investment company not entitled to the exception in the Investment Company Act for insurance companies.[107]

After protracted administrative proceedings, the Commission determined that another new type of contract, variable life insurance,[108] was a security required to be registered under the Securities Act. The Commission pointed to the variable death benefit and cash value features of the variable life contract, and concluded that variable life insurance contractholders would assume a substantial investment risk. The Commission also concluded that a variable life insurance separate account [109] that funds such contracts would be an investment company, but said that "this [was] a close question." [110]

In addition to variable insurance contracts, insurance companies also began to offer through their general account a type of interest-sensitive product called a guaranteed investment contract ("GIC").[111] The Commission took the position that some of these contracts were securities required to be registered under the Securities Act. In order to provide assistance in determining the status of these contracts under the Securities Act, the Commission issued a number of interpretive releases. Most recently, the Commission issued rule 151 (17 CFR 230.151), which provides a safe harbor for GICs meeting the requirements of the rule.[112]

1. Variable Insurance Contracts

As an initial matter, commenters are asked to consider whether variable insurance contracts should continue to be regulated as securities under the Securities Act, or whether the statute should be amended to exempt such contracts, in whole or in part, from the requirements of that Act. In considering this question generally, comenters are asked to consider whether Securities Act regulation of variable insurance contracts is appropriate, and whether the differences between variable life insurance and variable annuities warrant differing treatment for these two types of contracts under that Act.[113]

Assuming variable insurance contracts should continue to be registered under the Securities Act, should the separate accounts that fund them be excluded from the definition of investment company in the Investment Company Act? Is the basis for Investment Company Act regulation of separate accounts still valid? In determining whether an insurance company itself should be required to register under the Investment Company Act, how should the Commission interpret the company's "primary and predominant business activity?" [114] Should the Commission consider the assets held by separate accounts and the assets held by the general account that are attributable to GICs that are required to be registered under Securities Act?

Because variable insurance contracts have both insurance and investment features, neither they nor the separate accounts that fund them fit comfortably under investment company regulation. The interplay between the insurance

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[103] See *Report of the Securities and Exchange Commission, Disclosure to Investors* (1969) 106–11. See also Rule 431 under the Securities Act (17 CFR 230.431) governing summary prospectuses.

[104] A variable annuity generally is any accumulation or annuity contract, the value of which varies with the investment experience of an insurance company separate account.

[105] Section 3(a)(8) of the Securities Act exempts from that Act any insurance or endowment policy or annuity contract issued by a corporation subject to the supervision of state insurance regulators.

[106] Justice Brennan, in his concurring opinion, examined the differences between state and federal law that Congress set up in 1933 to see whether variable annuity contracts were the type of investment that Congress was willing to leave exclusively to state insurance commissioners. Justice Brennan concluded that state insurance regulation, which was concerned with such matters as contract terms, reserves, and solvency, was not relevant where people entrusted their money to others to be invested on an equity basis. *SEC* v. *Variable Annuity Life Ins. Co.*, 359 U.S. at 78–79 (Brennan, J. concurring).

[107] Section 3(c)(3) of the Investment Company Act (15 U.S.C. 80a–3(c)(3)) excepts insurance companies from the definition of investment company.

[108] A variable life insurance contract may be described generally as a contract that guarantees a minimum death benefit, but also provides a variable death benefit and variable cash value that reflects the investment experience of an insurance company separate account.

[109] "Separate account" is defined in section 2(a)(37) of the Investment Company Act (15 U.S.C. 80a–2(a)(37)) as "an account established and maintained by an insurance company * * * under which income, gains and losses, whether or not realized, from assets allocated to such account, are * * * credited to or charged against such account without regard to other income, gains, or losses of the insurance company."

The Court of Appeals for the Third Circuit had previously held that a separate account used to fund the reserves under a variable annuity contract was separable from the insurance company and required to register under the Investment Company Act. *Prudential Ins. Co.* v. *SEC*, 326 F.2d 383 (Cir.), *cert. denied*, 377 U.S. 953 (1964).

[110] The Commission then adopted rule 3c–4, which exempted from the Investment Company Act certain separate accounts established to fund variable life insurance contracts. The Commission's decision to adopt rule 3c–4 was based, in part, on the expectation that the states would develop regulations with resepct to variable life insurance that would provide protections to purchasers substantially equivalent to those afforded by the Investment Company Act. The Commission indicated that it would monitor the development of state law, and that, if regulatory deficiencies were not remedied, it would consider modifying or rescinding the rule. Investment Company Act Release No. 7644 (Jan. 31, 1973), 38 FR 4315 (Feb. 13, 1973). The Commission subsequently rescinded rule 3c–4 because it "would not assure the necessary investor protections." Investment Company Act Release No. 8826 (June 18, 1975), 40 FR 27644 (July 1, 1975).

[111] A GIC is a type of annuity contract under which the purchaser agrees to pay money to an insurer and the insurer promises to pay interest at some guaranteed rate for the life of the contract, and, in some contracts, the insurer may periodically pay discretionary excess interest over and above the guaranteed rate. In addition, all of these contracts generally allow the purchaser to buy an annuity with the monies accumulated under the contract. See Securities Act Release No. 5838 (June 22, 1977), 42 FR 32861 (June 28, 1977) ("Release 5838") for a more detailed discussion of GICs.

[112] Securities Act Release No. 6645 (May 29, 1986), 51 FR 20254 (June 4, 1986) ("Release 6645"). Rule 151 is discussed *infra* notes 120–121 and accompanying text.

[113] Commenters have suggested that the Commission should adopt a "predominance test" for all insurance products with an investment component, including variable life insurance. Under this test, consideration is given to the significant mortality component under the contracts. See, *e.g.*, Kroll & Cohen, *The Insurance-Security Identity Crisis*, 46 Geo. Wash. L. Rev. 790 (1978).

[114] Section 2(a)(17) of the Investment Company Act (15 U.S.C. 80a–2(a)(17)) defines "insurance company" as "a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State * * *."

and investment elements of variable insurance products has required several Commission rules providing extensive exemptions from various provisions of the Investment Company Act.[115] Assuming variable products should continue to be regulated under the federal securities laws, commenters are asked to consider whether a separate statute for variable insurance products would result in a more efficient regulatory framework, or whether the existing framework should be retained but amended, through rulemaking or interpretation.

If a new statutory approach is preferable, should it be premised on Securities Act-type disclosure principles, Investment Company Act-type regulatory requirements, or some combination of both?[116] What "security" should be registered? In the case of variable annuities, should it be the contract, or only the accumulation and annuity representing payments allocated to the separate account? Similarly, what should be deemed to be the "security" registered by the issuer of variable life insurance contracts? Who should be considered the "issuer" of variable insurance contracts: the insurance company sponsoring the separate account, or the separate account itself? When should a sale be deemed to occur for a variable insurance contract that requires the remittance of periodic payments over its life?[117] Do the differences between variable life insurnace and variable annuities warrant different regulatory approaches? In addition to considering whether variable annuities and variable life insurance warrant different treatment, commenters also should consider whether sectionn 3(a)(2) of the Securities Act and section 3(c)(11) of the Investment Company Act and rules 22d–1 and 22d–2 thereunder adequately take account of the different regulatory issues that arise in the context of group insurance contracts.[118]

On the other hand, if the existing regulatory framework should be retained, but amended, what are the specific regulatory provisions that should be amended, and how should they be amended? Commenters are asked, in particular, to address the topics discussed below.

First, variable contracts are subject to the limitations imposed by section 27 (15 U.S.C. 80a–27), which was designed for periodic payment plans. Section 27 regulates the sales charges and administrative expenses under variable insurance contracts, requires the contracts to be redeemable, and prescribes certain refund and withdrawal rights depending on the sales load design. Although the Commission has exercised its rulemaking authority to accommodate the insurance element of variable contracts, issues continue to arise in this area.[119] Commenters are asked to comment on whether section 27 imposes unnecessary or burdensome constraints on the design of variable contracts, and if so, to suggest alternative approaches consistent with investor protection.

Second, the Commission regulates the level of administrative charges under variable insurnace contracts through the application of section 26 and section 27(c)(2) of the Investment Company Act (15 U.S.C. 80a–26, –27(c)(2)), which were designed to regulate the expenses of UITs and periodic payment plans. For the most part, these sections limit deductions for administrative expenses to the costs incurred in providing such services. Comments are requested on whether this is an appropriate standard.

Third, commenters may also wish to address problems associated with the unique disclosure issues raised by variable insurance products. For example, should variable life insurnace prospectuses include a fee table, and if so, how might it present the unique aspects of life insurance charges? Should contract holders be presented with information on the rate of return on the savings component of variable life insurance contracts? How may illustrations be standardized to enhance comparability among competing products? Should illustrations be used by issuers of variable annuities?

2. Guaranteed Investment Contracts

As noted above, a GIC cannot always be readily characterized as "insurance" or as a "security" for purposes of section 3(a)(8) of the Securities Act. To provide greater certainty regarding the availability of section 3(a)(8), the Commission adopted rule 151, which provides a non-exclusive safe habor for GICs that satisfy all of the rule's conditions.[120] Significantly, rule 151 dispenses with the requirement that a GIC contain a mortality component, although this remains a factor in a section 3(a)(8) analysis.[121]

Comments are requested generally on whether investor protection concerns suggest that GICs should be subject to the federal securities laws.[122] In the absence of actuarial considerations (the pooling mechanism), should an insurance company's guarantee under a GIC be treated differently from a guarantee provided by any other person?

I. Bank Involvement with Investment Companies

The Commission has previously recommended that if banks are permitted to sponsor, distribute, and underwrite investment companies, the Investment Company Act and the

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[115] See, *e.g.*, rules 0–1(e), 6e–2, 6e–3(T) (17 CFR 270.0–1(e), 270.6e–2, 270.6e–3(T)).

[116] One observer has urged, in the context of variable life insurance, that any attempt at drafting a statute be premised on the principle of disclosure, at least with respect to selling practices and limits on charges currently provided for in the Investment Company Act and the rules thereunder. See Latto, *A Proposed Federal Varialbe Contracts Act of 1990?*, ALI–ABA Conference on Life Insurance Company Products (Nov. 1989). It may be difficult, however, to implement controls over some charges (*e.g.*, some or all investment-related charges) and not others (*e.g.*, imposing a disclosure standard for insurnace-related charges). A system structured on both disclosure and regulatory principles might present opportunities for an insurer to shift excessive amounts of a regulated charge (*i.e.*, amounts in excess of some regulatory ceiling) to a charge that is not so regulated.

[117] Should the sale be deemed to occur at the time of initial purchase only or each time a payment is made (scheduled or unscheduled) under the contract?

[118] See generally Mason & Roth, *SEC Regulation of Life Ins. Products—On the Brink of the Universal*, 15 Conn. L. Rev. 505, 522–25 (1983); see also Frankel, 4 *The Regulation of Money Managers* 356–58 (1980).

[119] For example, the guideline annual premium concept was introduced to permit issuers of flexible premium variable life insurance to comply with sales loads limitations given the flexibility in premium payments, the indeterminate length of the contracts, and the desire of issuers to impose sales loads in excess of nine percent in the early years of the contract. Rule 6e–3 (T)(b)(13)(i)

[120] Under rule 151, an annuity contract will be deemed to fall within section 3(a)(8) if it is issued by an insurer subject to the supervision of a state insurance commissioner, the insurer assumes the investment risk under the contract, and the contract is not marketed primarily as an investment. To assume the investment risk, the insurer must guarantee the principal amount of purchase payments and interest credited thereto, credit a minimum specified rate of interest, and guarantee that any excess interest (above the required minimum) will not be modified more often than annually.

[121] Release 6645, *supra* note 112.

[122] In this regard, what significance should be accorded mortality risks in analyzing the status of GICs under section 3(a)(8)? The Commission determined not to include a mortality risk assumption requirement as a separate element of rule 151. The Commission noted that when Congress created the insurance exclusion under the Securities Act, there were certain "traditional" annuity contracts in effect that involved no assumption of mortality or longevity risks by the insurer. However, the Commission concluded that the presence or absence of a mortality risk assumption may be an appropriate factor to consider in a section 3(a)(8) analysis of annuity contracts outside the "safe harbor." Release 6645, *supra* note 112. For an argument that the *sine qua non* of insurance is the pooling of mortality risks, see Kroll and Cohen, *supra* note 113, at 799. For a criticism of the current regulation of GICs, see Neuenschwander, The Inadequacy of Current Regulation of Financial Products: The Case of the Single-Premium Deferred Annuity, 26 Am. Bus. L.J. 183, 217 (1988).

Advisers Act should be amended.[123] Because the two Acts were drafted in the context of the separation between banking and securities mandated by the Glass-Steagall Act,[124] they do not adequately address the conflicts of interest and other investor protection concerns presented by bank involvement in the investment company business. Although banks generally are not allowed to underwrite investment company securities, they now engage in a wide range of investment company activities, including advising investment companies and selling investment company shares as agent. In addition, the Office of the Comptroller of the Currency has proposed to amend its regulation of common trust funds to eliminate, among other things, the prohibition on common trust fund advertising.[125] These activities raise many of the concerns that would be created by repeal of the Glass-Steagall Act. Accordingly, the Commission requests comment on the regulatory changes necessitated by bank entry into the investment company industry.

In 1988, in response to legislative proposals to allow greater bank securities activities, the Commission proposed several amendments to the Investment Company Act and the Advisers Act.[126] Commenters are asked to comment on those proposals, as well as any other matters that they believe should be addressed. The Commission's 1988 proposals are briefly summarized below.

First, the Commission recommended amending the Investment Company Act to clarify and strengthen the Commission's authority to regulate how banks may serve as custodians of affiliated management investment companies and as trustees of affiliated UITs.[127] Second, to avoid the potential abuse of ovrreaching by a bank affiliate in a loan transaction with an investment company, the Commission recommended amending the Investment Company Act to prohibit a bank-affiliated investment company from borrowing from its affiliated bank or banks, except in accordance with Commission rules. Third, the Commission recommended amending the Advisers Act to remove the current exclusion from the definition of "investment adviser" for those banks that serve as advisers to registered investment companies. Fourth, the Commission recommended amending the Investment Company Act to regulate potential conficts of interest arising from the relationships between banks and their borrowers, such as where a bank-affiliated investment company might invest in a corporation to further the bank's interest as a creditor of the corporation. Fifth, the Commission recommended amending the Investment Company Act to provide that no registered investment company may have a majority of its board of directors consisting of persons who are officers, directors, or emploees of any one bank holding company or any company affiliated with it, and amending the definition of "interested person" in section 2(a)(19) of the Investment Company Act (15 U.S.C. 80A–2(a)(19)) to include persons with significant relationships to a bank affiliated with an investment company. Sixth, the Commission recommended amending section 35(d) of the Investment Company Act (15 U.S.C. 80a–34(d)) to prevent investor confusion between bank deposit instruments and investment company securities, by giving the Commission additional authority to require disclosure that the securities of a bank-affilated investment company are not backed by federal deposit insurance.

J. Miscellaneous

1. Institutional Funds

The Investment Company Act does not distinguish between investment companies that are sold to retail investors and those that are sold to institutional investors, with a limited exception. Section 3(c)(1) of the Investment Company Act provides an exception for "private" investment companies, but, to qualify for that exception, a company can have no more than 100 shareholders. Commenters are asked to discuss whether the exception should be expanded to include entities that sell their securities to an unlimited number of institutional investors.[128] Alternatively, should investment companies with more than 100 institutional shareholders be required to register under the Investment Company Act, but be exempted from some of its provisions, either by statute or by rule? From what provisions should such entities be exempted? Finally, if an expanded exemption is appropriate, should it be available to entities that sell their securities publicly overseas, but sell their securities in the United States only to institutional investors?

2. Regulation of Series Companies

The Investment Company Act allows investment companies to issue series of stock each representing interests in distinct portfolios of securities. Many investment companies have chosen to organize in this fashion because the series structure may result in certain economies. Because the Investment Company Act generally does not specify the provisions for which a series should be deemed a separate investment company, a number of questions exist concerning the application of many of the Act's provisions.[129] Commenters are asked to address the appropriate resolution of these questions. In addition, the use of one prospectus by an investment company with a number of different portfolios may result in a long, confusing prospectus. Should the number of series of any one investment company, or the number of series described in one prospectus, be limited?

3. Fund Complexes

Since the passage of the Investment Company Act, the industry has developed to consist primarily of various money manager organizations each offering a number of different types of open-end companies. Many of these so-called "complexes" are large with some consisting of as many as 100 open-end investment companies sharing a common adviser and underwriter, with liberal exchange privileges among the companies. The Investment Company Act, however, focuses on individual

[123] See, *e.g.*, *Hearings for the Reform of the Nation's Banking and Financial System Before the Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Finance and Urban Affairs* 540–41, 100th Cong., 1st Sess. (1987) (statement of David S. Ruder, Chairman, SEC).

[124] The Banking Act of 1933, commonly referred to as the Glass-Steagall Act, 48 Stat. 162, is codified at various sections of title 12 of the United States Code, as amended. 12 U.S.C. 24, 78, 278, 377.

[125] Notice of Proposed Rulemaking Fiduciary Powers of National Banks and Collective Investment Funds, 55 FR 4184 (Feb. 7, 1990).

[126] Memorandum of the SEC to the Subcomm. on Telecommunications and Finance of the House Comm. on Energy and Commerce concerning Financial Services Deregulation and Repeal of the Glass-Steagall Act (Apr. 11, 1988). The Commission also proposed amendments to the Exchange Act, including amending the definitions of "broker" and "dealer" to include banks that engage in certain activities. Those amendments are not discussed here because they do not relate solely to investment company regulation.

[127] The Commission said it should be given explicit rulemaking authority to prescribe appropriate requirements for investor protection where a bank affiliated with a management investment company seeks to act as its custodian or where a bank affiliated with a UIT seeks to serve as its trustee. *Id.*

[128] Such an exception might also have significance for the treatment of asset-backed securities under the Investment Company Act. See *supra* notes 50–60 and accompanying text.

[129] For a detailed discussion of these questions, see Fleming, *Regulation of Series Investment Companies Under the Investment Company Act of 1940*, 44 Bus. Law. 1179 (1989).

investment companies. Commenters should address whether and how the Act and the Commission's rules should be amended to focus on issues raised under the Act by investment company complexes. For example, should prospectuses for funds in a complex also contain summary information for the other funds offered by that complex?

4. Transactions with Affiliated Persons

Section 17(a) of the Investment Company Act prohibits affiliated persons, promoters of, and principal underwriters for registered investment companies, and affiliated persons of such persons from engaging in certain principal transactions with the investment companies without first seeking an order of the Commission. Rule 17d–1, adopted under section 17(d) of the Investment Company Act, prohibits certain joint enterprises among registered investment companies and their affiliated persons and principal underwriters or affiliated persons of such persons or underwriters absent an order of the Commission approving such enterprises. Sections 17(a) and 17(d) were designed to protect investment companies from self-dealing and overreaching by insiders.[130]

Commenters have suggested that section 17(a) and rule 17d–1 provide unduly cumbersome procedures for approval of transactions involving investment companies and their affiliates.[131] Others have criticized rule 17d–1 as being unclear and inconsistent with the purpose of section 17(d).[132]

The Commission seeks comment on whether section 17(a) and rule 17d–1 should be amended to permit increased transactions involving investment companies and their affiliates. Are there classes of transactions now subject to either the section or the rule that do not present the dangers of overreaching? Are there classes of affiliated persons that should not be subject to either the section or the rule? Should the definition of "affiliated person" in section 2(a)(3) of the Investment Company Act (15 U.S.C. 80a–2(a)(3)) be revised?

Should transactions with affiliates generally be permitted, subject to the review of the independent directors? If so, should such transactions be subject to section 36(b)? [133]

How may the scope of rule 17d–1 best be clarified? Should rule 17d–1 be amended to prohibit only those joint transactions where an investment company participates on a different or less advantageous basis or otherwise involves overreaching? If so, how should overreaching be defined?

5. Size of Investment Companies

Section 14(a)(1) of the Investment Company Act generally requires an investment company to have a net worth of at least $100,000 before commencing a public offering of its securities. The legislative history of the section indicates that Congress imposed a minimum net worth requirement for registered investment companies to prevent organizers from forming and later abandoning the company to the detriment of investors.[134] While the $100,000 minimum net worth requirement may have been adequate in 1940 to ensure that a minimum risk capital was committed to the investment company's operations, the requirement now appears to be low. Comment is requested on whether the net worth requirement in section 14(a)(1) should be increased and by what amount. Should provision be made to adjust automatically the minimum net capital requirement, and, if so, what criteria should govern any readjustment?

IV. Administrative Policy During the Period of Reexamination

The underlying reason for reexamination of the regulation of investment companies and other pooled investment vehicles at this time is the extent of developments in the financial markets during the fifty years since enactment of the Investment Company Act and the Advisers Act and particularly during the twenty years since the last significant amendments of the laws governing investment companies other than business development companies. Many of the specific topics on which the Commission seeks comments in section III of this release arise as a result of the proliferation of new vehicles, the development of new markets, and the creation of new financial interests which, by virtue of the scope and expansiveness of the operative phrases "primarily in the business of investing, reinvesting, or trading in securities," and in "the business of investing, reinvesting, owning, holding, or trading in securities," are within the reach of the Investment Company Act. Many of the vehicles and interests, and the markets in which they are traded, are adapted only with great difficulty to regulation under the Investment Company Act; some appear as a practical matter to be prohibited under that regulatory pattern. In many instances, the vehicles and interests implicate only to a minor extent certain of the core problems to which various provisions of the Investment Company Act are addressed.

Congress bestowed upon the Commission a broad power to exempt persons, securities, and transactions from any provision or provisions of the Investment Company Act "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]." [135] That exemptive power has been historically exercised by the Commission "with circumspection and with full regard to the public interest and the purposes of the Act * * *." [136] Over the decades, the Commission has granted exemptions in situations where the Investment Company Act by its terms clearly applied, and has rejected the argument that simply because a provision prohibited certain conduct any exemption from that provision was contrary to the intent of the Act.

The Commission is aware that section 6(c) is analogous to section 3(d) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79c(d)) and the Commission is sensitive to the constitutional dimension inherent in any interpretation of exemptive authority that seeks to justify such a delegation in the absence of standards for the exercise of the authority delegated. During the pendency of the review of comments elicited by this release, and while awaiting adoption of such legislative or administrative amendments as may result therefrom, the Commission intends to follow the interpretation of its section 6(c) authority evidenced in its prior exemptive orders. The Commission

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[130] In addition, section 10(f) of the Investment Company Act prohibits an investment company from knowingly purchasing or otherwise acquiring during the existence of any underwriting or selling syndicate any security a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the investment company or any person of which such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person.

[131] See, *e.g.*, Rosenblat and Lybecker, *Some Thoughts on the Federal Securities Laws Regulating External Investment Management Arrangements and the ALI Federal Securities Code Project*, 124 U. Pa. L. Rev. 587, 639, 649 (1976).

[132] See, *e.g.*, Bartlett & Dowd, *Section 17 of the Investment Company Act—An Example of Regulation by Exemption*, 8 Del. J. Corp. L. 449 (1983).

[133] Section 36(b)(4) provides that the provisions of section 36(b) shall not apply to compensation in connection with transactions subject to section 17.

[134] See *Investment Trusts and Investment Companies: Hearings on H.R. No. 10065 Before a Subcomm. of the Comm. on Interstate and Foreign Commerce*, 76th Cong. 3rd Sess. 116 (1940).

[135] Investment Company Act section 6(c).

[136] *Great American Life Underwriters, Inc.*, 41 S.E.C. 1, 5 (1960).

believes that the tripartite test set forth in section 6(c) provides the Commission with standards that, applied with circumspection, allow it to exempt particular vehicles and particular interests from those provisions of the Investment Company Act that inhibit competitive development of new products and new markets offered and sold in or from the United States.

V. Conclusion

In reexamining the regulation of investment companies, the Commission is seeking comment on a number of specific regulatory issues. Commenters are encouraged, however, to address any other matters that they believe merit reexamination.

By the Commission.

Dated: June 15, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-14325 Filed 6-20-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA16

Safety Standards for Explosives and Blasting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule to amend the safety standards for explosives and blasting in underground coal mines.

DATES: Written comments must be received on or before June 29, 1990.

ADDRESSES: Send comments to the Office of Standards, Regulations and Variances, MSHA, room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

SUPPLEMENTARY INFORMATION: On December 8, 1989, (54 FR 50714) MSHA published proposed amendments to update and clarify certain provisions in its safety standards for explosives and blasting. A public hearing was held in Lexington, Kentucky, on May 30, 1990, to hear testimony on the issues. The post hearing comment period was scheduled to close on June 15, 1990. In response to requests from the mining community, the Agency is extending the comment period to June 29, 1990. All interested parties are encouraged to submit comments prior to the closing of the written comment period.

Dated: June 15, 1990.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 90-14408 Filed 6-20-90; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900-AE68

Claims Based on Service in Vietnam

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its adjudication regulations to establish criteria to be followed in considering claims for service connection for non-Hodgkin's lymphoma (NHL) by veterans who served in Vietnam. VA is also proposing to amend the Schedule for Rating Disabilities to add a specific diagnostic code for NHL as well as evaluation criteria. These changes are necessary to implement a decision by the Secretary based on the results of a study of the association of selected cancers with service in the U.S. military in Vietnam by the Centers for Disease Control (CDC). The intended effect will be to establish a rule for making determinations regarding service connection for NHL for veterans with Vietnam service and specific criteria for rting NHL.

DATES: Comments must be received on or before July 23, 1990. The change to part 3 is proposed to be effective August 5, 1964. The change to part 4 is proposed to be effective on the date that the final regulation is published. Comments will be available for public inspection until July 31, 1990.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Don England, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration (202) 233-3005.

SUPPLEMENTARY INFORMATION: On March 29, 1990, CDC released a study entitled "The Association of Selected Cancers with Service in the U.S. Military in Vietnam." That study found that Vietnam veterans have a roughly 50 percent increased risk of developing NHL after service in Vietnam. A similar increased risk was not shown among veterans who served in other locations during the Vietnam Era. The Secretary has determined that there is a relationship between Vietnam service and NHL. We propose to add a section to 38 CFR part 3 to set forth the criteria to be used in considering claims for service connection for NHL by Vietnam veterans. We also propsoe to amend 38 CFR part 4 to add a specific diagnostic code for NHL as well as evaluation criteria.

A VA General Counsel advisory opinion dated May 1, 1990, held that in making a liberalizing amendment to VA regulations the Secretary may establish an effective date earlier than the date of publication in the **Federal Register**. That opinion further held that having done so, the Secretary may authorize payment to claimants whose claims were previously denied based on the dates that the prior claims were submitted to VA. We propose to make the amendment to 38 CFR part 3 effective retroactively to August 5, 1964, the beginning date of the Vietnam era.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 4

Handicapped, Pensions, Veterans.

(Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109, and 64.110)

Approved: May 24, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 3—[AMENDED]

1. The authority citation for part 3 continues to read as follows:

Authority: 72 Stat. 1114; 38 U.S.C. 210.

2. 38 CFR part 3, Adjudication, is proposed to be amended by adding § 3.313 to read as follows:

§ 3.313 Claims based on service in Vietnam.

(a) *Service in Vietnam.* "Service in Vietnam" includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam.

(b) *Service connection based on service in Vietnam.* Service in Vietnam during the Vietnam Era together with the development of non-Hodgkin's lymphoma manifested subsequent to such service is sufficient to establish service connection for that disease.

(Authority: 38 U.S.C. 210(c)(1))

PART 4—[AMENDED]

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

Authority: 72 Stat. 1125; 38 U.S.C. 355.

4. In 38 CFR part 4, Schedule for Rating Disabilities, § 4.117 is proposed to be amended by adding diagnostic code 7715 after diagnostic code 7714 as follows:

§ 4.117 Schedule of ratings—hemic and lymphatic systems.

* * * * *

7715 Non-Hodgkin's lymphoma.
Rate as for lymphogranulomatosis (Hodgkin's disease).

* * * * *

(Authority: 38 U.S.C. 355)

[FR Doc. 90-14297 Filed 6-20-90; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

Petitions for Rulemaking, Defect and Noncompliance Orders

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition filed by Mr. W.A. Barr under 49 CFR part 552. Mr. Barr sought to have the agency commence a proceeding to determine whether to issue an order concerning the notification and remedy of an alleged defect in the design of the park system in automatic transmissions. The defect in the design of the park system, Mr. Barr claimed, is that the vehicle manufacturers place all of the responsibility of assuring the safe performance of the system on the driver each time the driver moves the selector lever into the park position. Although the petition stated that the alleged defect is present in the automatic transmissions of many manufacturers, including all three major U.S. manufacturers, Mr. Barr used the 1970–79 Ford cars as an example of the alleged problem. He stated that the design of the park system should be changed so that the driver is not made solely responsible for the safety of the system. The petition suggested a mechanical solution to this problem in the form of a mechanism which would ensure engagement of the transmission parking pawl when the vehicle shift lever is in the park position. In January 1987, NHTSA notified the petitioner that it was treating the petition as one for rulemaking.

The petition is denied. The petitioner failed to demonstrate how his proposed remedy would cure the problem resulting from the failure of drivers to properly place the vehicle in "Park." The petitioner and the agency also failed to establish that the extent of the alleged safety problem is great enough to warrant Federal intervention.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. (202) 366–5276.

SUPPLEMENTARY INFORMATION: In an undated petition recieved by the agency in December 1986, Mr. W.A. Barr (also referred to below as "petitioner") requested that NHTSA initiate a proceeding to determine whether to issue an order concerning the notification and remedy of an alleged defect in automatic transmissions. Mr. Barr's petition was not directed toward any particular manufacturer or toward any particular model of automatic transmisison. He alleged instead that the park systems on automatic transmissions in general were defective in that they make the driver responsible for assuring that the park mechanism becomes properly engaged each time the driver attempts to place the automatic transmission selector lever in the "Park" position. Mr. Barr stated that the design of the system should be changed so that the driver is not solely responsible for assuring the safe performance of the system.

(For the benefit of persons not familiar with the operation of the park system in a conventional automatic transmission, NHTSA notes that it operates by pushing a pawl between two gear teeth of the park gear in the transmission, which prevents that gear (and hence the transmission output shaft) from turning. This locks the transmission and prevents the vehicle from moving when the system operates as intended.)

The petitioner advocated that NHTSA require manufacturers to design a park system for automatic transmissions that would eliminate the force which he alleges urges the transmisison toward "reverse." The petitioner claimed that his solution would create a force that would urge the transmission toward the "Park" position when the driver attempts to place the selector lever in the "Park" position.

The petitioner claimed that the pawl of a contemporary park mechanism will strike the top of a gear tooth, instead of between two teeth of the park gear, 85 to 90 percent of the time the selector is moved and properly located in the park position, and that in these cases, park lock-up does not occur. He stated that, in order to cure this alleged problem, the park mechanism must be moved further into the park position to close the reverse hydraulic circuit so that the

transmission can be locked, thus preventing vehicle movement.

Treatment of the Petition as a Petition for Rulemaking

In January 1987, the agency notified the petitioner that it would treat the petition as one to commence rulemaking instead of one to commence a defect investigation. NHTSA took this step because of: (1) The absence of any allegation by the petitioner of the existence of a defect in a particular vehicle or model of automatic transmission, and (2) the suitability of the petitioner's requested solution as a potential safety improvement for automatic transmission to be installed in future vehicles, but not for automatic transmissions in existing vehicles.

Agency's Response to the Petition

For the reasons stated below, the agency does not find sufficient merit in this petition to grant it.

First, the petitioner did not substantiate his claim about the frequency of the phenomenon, i.e., the landing of the park mechanism on the top tooth of the park gear, which he states is the cause of park lock-up not occurring, with the resulting potential for inadvertent vehicle movement. This information is necessary for the agency to consider a rulemaking proceeding. Without data suggesting current Federal motor safety standards are allowing or not addressing an unreasonable safety risk, the agency will not commence such a proceeding.

Second, the agency notes that a final determination of the existence of a safety-related defect was never made regarding the agency's investigation of 1970–1979 Ford cars which were alleged to have a defect that resulted in inadvertent vehicle movement; instead, the matter was settled as a result of an agreement in December 1980 between the Department of Transportation and Ford.

Third, the petitioner himself appears to have some uncertainty about the real cause of the problem, given that he states in his petition that he agrees with the following conclusions (2) through (4) from Ford's Task Force Report about the 1970–79 Fords that were the subject of NHTSA's defect investigation:

(1) There is no evidence that properly operated Ford automatic transmissions will "jump out of Park" or "slip into Reverse," except when there is a grossly maladjusted transmission or control system. Incidents of broken or grossly maladjusted transmissions or control systems are extremely rare, and there is no evidence that there is a higher rate of this occurrence in Ford-built vehicle than in the vehicles of its competitors.

(2) In all other circumstances, unexpected rearward movement is caused by mispositioning of the gearshift lever between "Park" and "Reverse."

(3) There is no indication that any of the Ford transmission systems have a greater propensity to induce driver error than the transmission systems of any of its competitors.

Fourth, the agency's review of available data on incidents of inadvertent vehicle movement indicated that the potential for this problem is relatively small. The July 3, 1985 NHTSA Office of Defects Investigation (ODI) Staff Report on Ford Transmission incidents states that it is impossible to arrive at a count of fatalities which can be regarded with certainty as being attributed to the alleged defect. After that report, a review of the ODI defect files showed only 87 reported injury cases in calendar years 1982–1988 (or about 12 per year) for all model year 1981–1988 domestic models and only 16 cases of injury involving foreign vehicles occurred during this same period. Moreover, these are not confirmed incidents. Instead, they are based upon telephone calls to the agency in which vehicle owners expressed their belief that inadvertent vehicle movement was a causal factor. Thus, the data may be subject to error. In any event, the relative size of the problem appears small.

In conclusion, although Mr. Barr's petition is being denied, NHTSA will continue to monitor complaints that are submitted to ODI. If a trend toward increased incidents of inadvertent vehicle movement associated with shifting automatic transmission into "Park" is found, additional actions will be considered. These efforts might involve in-depth crash investigations and a more detailed review of reports of such incidents received by the agency. If warranted by the results of these efforts, the agency will examine specific countermeasures for various types of automatic transmissions.

For the preceding reaons, NHTSA denies Mr. Barr's petition.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718, (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50)

Issued: June 15, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–14326 Filed 6–20–90; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB42

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Louisiana Black Bear. Proposed Designation of Threatened by Similarity of Appearance of all Bears of the Species Ursus americanus Within the Historic Range of U. a. luteolus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the Louisiana black bear (*Ursus americanus luteolus*) as a threatened species within its historic range and to designate other bears of the species *U. americanus* within the same range as threatened by similarity of appearance under the authority of the Endangered Species Act of 1973, as amended (Act). Its historic range includes southern Mississippi, Louisiana, and east Texas. The Louisiana black bear is vulnerable to habitat loss and illegal killing. This proposal, if made final, would implement protections of the Act. The Service requests comments and relevant data from the public on this proposal.

DATES: Comments from all interested parties must be received by August 20, 1990. Public hearing requests must be received by August 6, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Jackson Field Office, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wendell A. Neal (See **ADDRESSES** section), telephone 601/965–4900, FTS 490–4900.

SUPPLEMENTARY INFORMATION:

Background

The American black bear (*Ursus americanus*) was formerly widespread in North America from northern Alaska and northern Canada, including Newfoundland, south to central northern Mexico (Lowery 1981). Hall (1981) lists 16 subspecies of *U. americanus*. The black bear is a huge, bulky mammal with long black hair, with brownish or cinnamon color phases often found in

western parts of its range. The tail on the black bear is short and well haired. The facial profile is rather blunt, the eyes small and the nose pad broad with large nostrils. The muzzle is yellowish brown and a white patch is sometimes present on the lower throat and chest. There are five toes on the front and hind feet with short curved claws. Large males may weigh more than 600 pounds, but weight varies considerably throughout their range.

In 1821, Edward Griffith in his work "Carnivora" called the bear from Louisiana the "yellow bear," according it a full species rank, i.e., *U. luteolus.* The first formal citation of the Louisiana black bear as a subspecies (*U. a. luteolus*) was by Miller and Kellog (1955), cited by Lowery (1981). In 1893, C. H. Merriam described the Louisiana black bear using five skulls from a Mer Rouge locality in Morehouse Parish in northeastern Louisiana. The distinctiveness of these skulls, when contrasted with other black bears, is that they are relatively long, narrow, and flat, and have proportionately large molar teeth (Nowak 1986).

According to Hall (1981), *U. a. luteolus* once occurred throughout southern Mississippi, all of Louisiana and eastern Texas. The historic range according to Hall (1981) included all Texas counties east of and including Cass, Marion, Harrison, Upshur, Rusk, Cherokee, Anderson, Leon, Robertson, Burleson, Washington, Lavaca, Victoria, Refugio, and Aransas; all of Louisiana, and the southern Mississippi counties south of and including Washington, Humphreys, Holmes, Attala, Neshoba, and Lauderdale. While Hall (1981) included the southernmost counties in Arkansas as part of the range, there were no Arkansas specimens to support doing so. Accordingly, Arkansas is not considered as part of the historic range for purposes of this proposed rule.

The Louisiana black bear was included in category 2 in the Service's notices of review on December 30, 1982 (47 FR 58454); September 18, 1985 (50 FR 37958); and January 6, 1989 (54 FR 554). Cateogry 2 includes taxa for which information then in possession of the Service indicates that proposing to list the species was possibly appropriate but for which available data were not judged sufficient to support a proposed rule.

The Fish and Wildlife Service was petitioned on March 6, 1987, under section 4(b)(3)(A) of the Act to list the Louisiana black bear as an endangered species. The Service has made two 12-month findings (August 19, 1988, 53 FR 31723 and August 10, 1989, 54 FR 32833) indicating that the action requested (listing) has been determined to be warranted but precluded by other actions to amend the lists. This proposal constitutes the final finding for the petitioned action.

To clarify taxonomic questions, the Service undertook a study in cooperation with the Louisiana Department of Wildlife and Fisheries to obtain and analyze genetic materials and cranial characters to answer questions on the taxonomic issue. The results of these investigations, which included blood protein electrophoresis, mitochondrial DNA and skull measurements, were received by the Service on July 21, 1989 (Pelton 1989).

A peer review of this report generated a variety of comments, which allow general conclusions on genetics and morphology. Although circumstantial evidence remains that native bears have interbred with introduced Minnesota bears, a morphological distinctiveness remains. There was disagreement on the taxon *U. a. luteolus* as being validated by the multi-character morphological approach. However, it was concluded that, notwithstanding conflicting opinions about accepted mammaltian taxonomic criteria, available evidence, while not overwhelming, did not invalidate the taxon. As a subspecies, *U. a. luteolus* qualifies for consideration as a listed species. This action presupposes bears within the historic range of *U. a. luteolus* possess those cranial features characterizing *U. a. luteolus.* Accordingly, threats to this population of bears threatens the taxon and thereby any unique genetic material possibly possessed by the taxon.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Louisiana black bear (*Ursus americanus luteolus*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range. The habitat of *U. a. luteolus* has suffered extensive modification with suitable habitat having been reduced by more than 80 percent as of 1980. The remaining habitat has been reduced in quality by fragmentation due to intrusion of man and his structures (e.g., proximity to man's disturbing activities, multilane highways, etc.), thereby stressing the remaining population of bears. According to Rieben (1980) as cited by Nowak (1986), the original 25,000,000 acres of bottomland forests of the lower Mississippi River Valley had been reduced to 5,000,000 acres, and another 165,000 acres are being cleared each year. Some of the Mississippi River Delta counties in the lower Yazoo River Basin may have as little as 5 percent of the original bottomland hardwood.

Presently occupied bear habitat in Louisiana consists of two core areas, the Tensas and Atchafalaya River Basins. Within the basins, only wooded areas (bottomland hardwoods) are considered as bear habitat, although marshes along the lower rim of the Atchafalaya Basin and agricultural lands (sugarcane, soybeans) in other areas are also used. The once extensive bottomland forests of the Tensas Basin no longer exist, with only 15 percent (about 100,000 acres) of the original stands remaining (Gosselink, Louisiana State University, *in litt.* 1988). Of this, only about 15 percent is in public ownership or under plans for public acquisition.

The entire Atchafalaya Basin contained 718,500 acres of bottomland hardwoods as of 1975 (O'Neil et al. 1975). In the lower Atchafalaya River Basin (south of U.S. Highway 190), there are presently approximately 518,000 acres of bottomland hardwoods, with a projected amount of 537,000 by the year 2030 due to accretion (LeBlanc et al. 1981). In the lower Basin, there is a recently established Atchafalaya National Wildlife Refuge of about 15,000 acres and a State owned area (Sheburne Wildlife Management Area) of about 12,000 acres that is to be increased by 23,000 acres. The purchase of 367,000 acres of habitat protection easements are planned. Dow Chemical has donated 30,000 acres to the State and there are 61,000 acres of accreted State lands with land use controls.

Much of the northern portion of the Basin (considered as north of U.S. Highway 190 and which contains the better drained areas) has been cleared for agriculture. As of the 1975 O'Neil report, there were about 200,000 acres of forestland north of U.S. Highway 190. Today there are 100,000 to 128,000 acres of forested lands remaining (Simmering, U.S. Department of Agriculture, *in litt.* 1989). The privately owned lands of the Atchafalaya River Basin may remain exposed to threat from clearing. Privately owned woodlands for both river basins were estimated to be in the range of 115,000 to 143,000 acres of occupied bear habitat out of a total woodland base of 633,000 to 651,000

acres. This means approximately one fifth of the occupied bear habitat is privately owned, and under no plans for protection through conservation easements or acquisition. Clearing forested wetlands for accommodating crop use may forgo USDA farm program benefits for the landowner. This, in the short term, should protect these lands. In the long term, a substantial upturn in commodity prices may make it economically feasible to clear forested wetlands and farm without USDA program benefits. Since the 1985 Food Security Act is re-written every 5 years, there is no guarantee of continued protection of privately owned forested wetlands. In addition, catfish farming, now about a 13,000-acre industry in Louisiana, is rapidly expanding. This, along with crayfish farming and pastureland are other possible uses that would not be limited by the Food Security Act.

Past losses of habitat quantity and quality have been severe (ranging from 95 percent in some lower Mississippi Delta counties to 63 percent in the Atchafalaya River Basin). Protection of privately owned woodlands in the north Atchafalaya and the Tensas River Basins is not assured. Long-term protection of these bear habitats may depend upon factors the Service neither controls nor can adequately predict. The Louisiana bear has exhibited a past vulnerability to habitat loss. Further loss of privately owned occupied habitats as an increment to past losses would represent a threat to this subspecies in a significant portion of its range. Such loss could theoretically breach the minimum population size necessary to ensure continued survival of the Louisiana bear.

B. Overutilization for commercial, recreational, scientific, or educational purposes. Black bear populations range in density from one to two bears per square mile. The Great Smoky Mountain National Park carries 500 to 600 bears on 512,000 acres (Pelton pers. comm. 1989). The White River National Wildlife Refuge in Arkansas carries 130 bears on 113,000 acres (Smith 1983). Through trapping and extrapolation of untrapped bears and known family groups of bears, Weaver (pers. comm. 1989) is able to account for 49 bears in about 70,000 acres of timberland of the Tensas River Basin, which contains about 100,000 acres of woods. What fraction 49 is of the total bears in the Tensas Basin is unknown.

In the Atchafalaya River Basin, there are approximately 718,500 acres of timberland, about 518,000 of which are below U.S. Highway 190. For this vast tract, there is essentially no population data. The population estimates that are available for *U. a. luteolus* range in accuracy from crude to little more than intuition, as the estimates quoted by Nowak (1986). All that is known for certain is that bears exist in the Atchafalaya River Basin, and that due to bear movements it would be difficult to separate bears from the lower, middle, or upper basin.

There are rumors of individuals killing bears for depredating sugar cane and for robbing trap lines. Bears are also killed incidentally to other forms of hunting. It may well be that bear numbers in the Atchafalaya are far greater than most believe, and that illegal kill is not a threat. The White River National Wildlife Refuge in Arkansas has sustained heavy hunting pressure and has maintained a mid-range bear density. A rule of thumb the Virginia Department of Natural Resources uses is that their bear population can withstand a 20 percent annual loss to hunting without affecting the population's ability to sustain itself. As a population of bears approaches the minimum viable number threshold, the more significant is any loss to that population. While illegal killing of bears occurs (Weaver 1988), and that illegal kill can be a threat are both true, the effects of that illegal kill remain speculative.

The appearance of an abnormally low density of *U. a. luteolus* in the Atchafalaya Basin may be an artifact of the poor quality of population data or it may indicate considerable illegal kill is occurring on private and public lands. Should the latter be the case, and at this time it cannot be ruled out, illegal kill of that magnitude would unequivocally be a threat to the continued existence of a viable population of Louisiana black bears.

C. Disease or predation. While *U. a. luteolus*, like all other forms of vertebrate wildlife, suffers from disease, or possible predation (young bears being killed by older males), this is not considered limiting or threatening to the population.

D. The inadequacy of existing regulatory mechanisms. The dramatic losses of bottomland hardwood forests, including the loss of forested wetlands, as discussed in factor A, portray the inadequacy of existing regulatory mechanisms for protection of such habitats. If illegal killing is a threat, the possibility of prosecution under the Act as opposed to State laws or regulations, may serve as a deterrent in some instances.

E. Other natural or manmade factors affecting its continued existence. The introduction of 161–163 bears of the subspecies *U. a. americanus* from Minnesota into the Atchafalaya and Tensas River Basins in the mid-60's is considered by some (Nowak 1986) to represent a manmade threat to the native subspecies, *U. a. luteolus*. This threat was considered as one of "hybridization," in this instance cross breeding between the introduced subspecies and the native subspecies. Other researchers contended that little genetic difference would be found. In gathering data on this question, the Fish and Wildlife Service, in close consultation with the Louisiana Department of Wildlife and Fisheries, instituted a plan in July 1988 to obtain genetic samples from bears in Louisiana for comparison with bears from the original Minnesota trapping locale and other bear populations, including the Florida subspecies, *U. a. floridanus*. Skull measurements from various bear populations, including Louisiana bears taken before and after the introduction of Minnesota bears, were also compared.

The genetic analyses did not show significant differences between the various subspecies (Pelton 1989). Some interbreeding between subspecies is a normal and expected occurrence simply based on opportunity. The mobile nature of bears, plus the fact there was a more or less continuous distribution in relatively recent times (in an evolutionary sense), was the basis for the assertions by some that little genetic difference would be found. It appears that in a biological sense, hybridization as a threat at this taxonomic level may not be a significant cause for concern, unless there are real genetic differences that were undetected. Hybridization as a threat has neither been discounted or proven and remains unsettled. Since the genetic profile of a known *U. a. luteolus* is unavailable, the issue is unlikely to be settled. The greatest likelihood is that the population of bears inhabiting the Atchafalaya and Tensas River Basins is a mixture; that in a definitional sense, the population is probably intraspecifically hybridized. In a biological sense, *U. a. luteolus* is likely pretty much unchanged (genetically) because of the low probability of reproductive isolation that would be necessary for an extended period in order for the evolutionary process of genetic differentiation to operate.

However, to the extent the genetic investigations did not identify real differences, or to the extent a pure genetic heritage is a realistic concept when applied to subspecies not likely to be reproductively isolated, the threat

may (have) exist(ed). Since *U. a. luteolus* and *U. a. americanus* are so similar as to be difficult to distinguish even by experts, the only practical means available for protecting any possibly remaining unique genetic material originally belonging to the native *U. a. luteolus* would be through listing and protecting the taxon now distinguished by cranial features as *U. a. luteolus*.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Louisiana black bear as threatened, defined under the Act as likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The preferred action is chosen because of the continued exposure of privately owned occupied bear habitats to clearing, the Louisiana black bear's demonstrated past vulnerability to such loss, and the significance of these unprotected habitats to the overall well-being and health of the subject bear populations. Endangered status is not chosen because the threats are not believed to place the Louisiana black bear in imminent danger of extinction. For law enforcement purposes, the Service proposes to list all bears of the species *U. americanus* within the historic range of *U. a. luteolus* as threatened by similarity of appearance. Critical habitat is not being proposed as discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. All Federal and State agencies likely to be involved have been notified of the location and importance of protecting this species' habitat. No additional benefits would accrue from a critical habitat designation that would not accrue from the listing. Locality data are available to appropriate agencies through the Service office described in the **ADDRESSES** section. Protection of this species' habitat will be addressed through the recovery process and through Section 7 of the Act. Therefore, it would not now be prudent to determine critical habitat for the Louisiana black bear.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangerd Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Possible Federal actions may include Corps of Engineers wetland permits, Soil Conservation Service watershed projects or the Service's activities or National Wildlife Refuges within the species' occupied habitat. Formal consultation and the resulting biological opinion issued by the Service may preclude or modify Federal actions depending on the nature and extent of the impact on listed species.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commerical activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propaganda or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Similarity of Appearance

Section 4(e) of the Act authorizes the treatment of a species (or subspecies or group of wildlife in common spatial arrangement) as an endangered or threatened species even though it is not otherwise listed as endangered or threatened if: (a) The species so closely resembles in appearances an endangered or threatened species that enforcement personnel would have substantial difficulty in differentiating between listed and unlisted species; (b) the effect of this substantial difficulty is an additional threat to the endangered or threatened species; and (c) that such treatment will substantially facilitate the enforcement and further the policy of the Act.

Introductions of bears from Minnesota in the mid-60's of the subspecies *U. a. americanus* gives rise to the possibility (however remote) that bears remain somewhere with the historic range of *U. a. luteolus* which are of *U. a. americanus* ancestry. Evidence of *U. a. americanus* in southern Arkansas just north of the Louisiana line has been recently documented. This theoretically could present an enforcement and taxonomic problem because both subspecies may now or later inhabit the same range, and they cannot always be differentiated from each other by enforcement personnel or expert. For these reasons, the Service intends to treat bears of the species *U. americanus* other than *U. a. luteolus* as threatened by similarity of appearance within the historic range of *U. a. luteolus*.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will

be accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation of this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Weaver, K.M. 1988. Louisiana Status Report. Ninth Eastern Workshop on Black Bear Research and Management, Ontario, Canada. 14 pp.

Author

The primary author of this proposed rule is Wendell A. Neal (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; (Pub. L. 99–625), 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species			Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name	Historic range					
MAMMALS							
*	*	*	*	*			
Bear, Louisiana black	*Ursus americanus*	USA (LA, MS, TX)	Entire	T		NA	NA
*	*	*	*	*			
Bear, American black	*Ursus americanus*	North America	USA (LA, MS, TX).	T(S/A)		NA	NA
*	*	*	*	*			

Dated: May 31, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Services.

[FR Doc. 90–14413 Filed 6–20–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 669

RIN 0648-AD47

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan, and request for comments.

SUMMARY: NOAA issues this notice that the Caribbean Fishery Management Council (Council) has submitted Amendment 1 to the Fishery Management Plan for the Shallow-water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP) for review by the Secretary of Commerce (Secretary) and is requesting comments from the public.

DATES: Comments will be accepted until August 13, 1990.

ADDRESSES: Send comments to the Regional Director, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702. Copies of Amendment 1 may be obtained from the Carribbean Fishery Management Council, suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918. Phone (809) 766-5926.

FOR FURTHER INFORMATION CONTACT: Robert A Sadler, NOAA, National Marine Fisheries Service, Southeast Regional Office, (813) 893-3722.

SUPPLEMENTARY INFORMATION: Amendment 1 to the FMP was prepared under the provisions of the Magnuson Fishery Conservation and Management Act (Act), 16 U.S.C. 1801 *et seq.*

The actions proposed in this amendment consist of the following measures: (1) Increase the minimum mesh size for fish traps to 2 inches in the smallest dimension, (2) prohibit the harvest of Nassau grouper until the species is rebuilt to exploitable levels, (3) expand the current data collection program to include socio-economic information, and (4) establish an area closure during the red hind spawning season. Since implementation of the FMP in 1985, new information indicates that more stringent management measures are needed to accomplish the objectives of the FMP. Recent fishery statistical data show a downward trend in these fisheries indicated by a shift in species composition and decrease in volume of landings, despite the management measures implemented so far.

The amendment also provides an overfishing definition, as required by the revised 50 CFR part 602 guidelines for fishery management plans.

The Act requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Act also requires that the Secretary, upon receiving the document, immediately publish a notice of its availability for public review and comment. The Secretary will consider public comments in determining approvability of the document.

The receipt date for Amendment 1 was June 13, 1990. Proposed regulations for this Amendment will be filed with the Office of the Federal Register within 15 days of the receipt date.

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

Dated: June 15, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-14322 Filed 6-15-90; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 120
Thursday, June 21, 1990

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

Forms Under Review by Office of Management and Budget

June 15, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An idication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

New Collection

Food and Nutrition Service.

Survey of State and County Directors of the Food Stamp Program and Related Assistance Programs.

State or local governments; Non-profit institutions; 95 responses; 157 hours; not applicable under 3504(h).

Steven Carlson (703) 756–3133.

Larry K. Roberson,
Acting Departmental Clearance Officer.

[FR Doc. 90–14374 Filed 6–20–90; 8:45 am]
BILLING CODE 3410–01–M

Commodity Credit Corporation

Price Support Levels; Pulled Wool and Mohair

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determinations.

SUMMARY: This notice affirms the final determinations concerning the price support levels for pulled wool and mohair for the 1990 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

EFFECTIVE DATE: February 2, 1990.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Agricultural Economist, Commodity Analysis Division, Department of Agriculture (USDA)–ASCS, Room 3760, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–6734. A Final Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these proposed determinations will result in an annual effect on the economy of $100 million or more.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments, 10.059, as found in the Catalog of Federal Domestic Assistance.

Section 703(a) of the National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments, or other operations. The Secretary of Agriculture has determined that the prices of wool and mohair will be supported for the 1986 to 1990 marketing years by means of payments to producers (51 FR 28852, August 12, 1986).

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1987 and marketing year 1990 shall be 77.5 percent and, for marketing years 1988 and 1989, 76.4 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent.

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported.

On November 8, 1989, a notice of proposed determinations was published at 54 FR 46957, requesting comments

concerning the method of calculating the price support levels for pulled wool and for mohair for the 1990 marketing year. The notice also indicated that the 1990 shorn wool support price (grease basis) would be $1.82 per pound.

Discussion of Comments

A total of 31 comments were submitted. Thirty addressed the mohair support price and one commented on the pulled wool (unshorn lamb) formula.

Twenty-seven respondents recommended that mohair be supported at 100 percent of the percentage of parity at which shorn wool is supported and one urged that mohair be supported at around $5.00 per pound. These comments on the proposed determinations were not adopted. Two respondents supported continuation of the program, but no support level was specified. The one comment received concerning the pulled wool support rate urged continuance of support payments based on the current formula which utilizes the liveweight of unshorn lambs marketed.

It has been determined that mohair will be supported at a level of 85 percent of the percentage of parity at which shorn wool is supported. Current estimates indicate that at this minimum level of support, producers would receive about 57 percent of their income from mohair in the form of Government payments. To support mohair at a higher level would be inconsistent with recent Government efforts to increase reliance by all agricultural sectors on the free market.

Accordingly, after taking the foregoing comments into consideration, and in order to implement the statutory requirement that the Secretary shall support the prices of wool and mohair for the 1986 through 1990 marketing years, the following determinations have been made with respect to the wool and mohair price support programs for the 1990 marketing year. The determinations affirm 1990 support prices of $1.82 per pound for shorn wool and $4.532 per pound for mohair as announced by the Secretary of Agriculture in a press release issued on February 2, 1990. The pulled wool support rate will continue to be calculated as it has been in previous years.

Final Determinations

A. *Support Price—Shorn Wool.* The average parity index for the 3-year period 1986–88 is 1123.3. The average parity index for the 3-year base period of 1958–60 is 297.3. The ratio of these indices is 3.7783. The result of multiplying 3.7783 by the 1965 support price of $0.62 per pound is $2.3425.

Applying the formula indicated in section 703(b) of the Wool Act, 77.5 percent of $2.3425 is $1.82, when rounded to the nearest full cent.

B. *Support Price—Pulled Wool.* The support price for pulled wool for the 1990 marketing year cannot be determined until the 1990 national average market price for shorn wool is calculated, which would occur by April 1991. The method for calculating the support price for pulled wool shall be as follows:

Once the 1990 national average market price for shorn wool is determined, the support price for pulled wool will be determined by taking 80 percent of the difference between the 1990 support price for shorn wool and the 1990 average market price for shorn wool, multiplied by 5 pounds (the amount of wool pooled from the pelt of an average 100-pound unshorn lamb).

C. *Support Price—Mohair.* The support price for mohair for the 1990 marketing year shall be 85 percent of the percentage of parity at which shorn wool is supported, or $4.532 per pound. The calculation is as follows:

The October 1989 parity prices for shorn wool and for mohair are $3.03 and $8.87 per pound, respectively. The support price for shorn wool for the 1990 marketing year as calculated in accordance with the formula set forth in section 703(b) of the Wool Act is $1.82 per pound or 60.1 percent of the October 1989 parity price for shorn wool. The price support level for mohair for the 1990 marketing year is equal to 85 percent of 60.1 percent (the percentage of parity at which shorn wool is supported), which is equal to 51.09 percent. Accordingly, 51.09 percent of the October 1989 parity price for mohair results in a support price for mohair for the 1990 marketing year of $4.532 per pound.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. As a result, the program support levels announced in this notice may be recalculated to comply with this act.

Authority: 15 U.S.C. 714b and 714c; 7 U.S.C. 1781–1787.

Signed at Washington, DC, on April 18, 1990.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 90–14378 Filed 6–20–90; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Environmental Impact Statement for the Proposed Valbois Destination Resort Village, Special Use Permit, Boise National Forest, Valley County, ID

AGENCY: Forest Service, USDA.

ACTION: Extension of time period for the public review of the Supplement to the Draft Environmental Impact Statement.

INFORMATION: Notice of filing a Supplement to the Draft Environmental Impact Statement for the Valbois Destination Resort Village was published in the **Federal Register** on March 30, 1990. Comments were due by June 14, 1990. The period for commenting is now extended to a total of 120 days to July 28, 1990. The additional time is to allow ample opportunity for the general public to review the detailed information supplied in the supplement to the draft environmental impact statement.

DATES: Comments on the DEIS must be received by July 28, 1990.

ADDRESSES: Send written comments to the Forest Supervisor, Boise National Forest, 1750 Front Street, Boise, Idaho 83702.

FOR FURTHER INFORMATION CONTACT: Greg Spangenberg 208–364–4104.

Dated: June 13, 1990.

Dave Rittersbacher,

Forest Supervisor.

[FR Doc. 90–14359 Filed 6–20–90; 8:45 am]

BILLING CODE 3410–11–M

Black Panther Fire Salvage and Resource Recovery Project; Notice of Exemption

AGENCY: Forest Service, USDA.

ACTION: Exemption of Decision from Administration Appeal, Black Panther Fire Salvage and Resource Recovery Project.

SUMMARY: The Forest Service is exempting from administrative appeals its decision to rehabilitate National Forest System Lands (NFSL) and sell salvageable timber on lands burned in the 1987 wildfires. The project area is located on the Klamath National Forest in the Ukonom Creek Watershed.

During the severe fire season of 1987, extensive areas on the Klamath National Forest were burned and now need restoration. The proposed restoration consists of rehabilitation of approximately 1,700 acres of NFSL damaged by wildfire and the recovery of approximately 1.34 million board feet

(MMBF) of dead and dying timber which is still merchantable. Any further delay in activities necessary to restore these damaged lands or remove this salvageable timber will result in unacceptable degradation of the physical and biological condition of NFSL and a further deterioration of the fire-damaged timber. Additional delays will also significantly increase the risk of severe forest insect and pest infestation of the already damaged as well as the intermingled and adjacent undamaged trees.

The Forest Supervisor has determined through an environmental analysis, which is documented in the Draft Environmental Impact Statement (DEIS), that there is good cause to expedite this project. The Black Panther Fire Recovery Project is necessary for the rehabilitation of the damaged NFSL and for the recovery of the dead and dying timber that resulted from the wildfire in the summer and fall of 1987. The wildfire affected portions of the drainages on the Klamath National Forest, California. The DEIS, which documents the expected environmental effects of the action, also documents extensive public involvement and addresses issues raised by the public.

Due to the length of time it has taken to develop an acceptable restoration and rehabilitation program and to properly evaluate effects of the program, the time remaining for program accomplishment has become critical. Any additional delays will result in damage to presently undamaged resources and could result in a complete loss of the salvageable resources as well.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision for the Black Panther Fire Recovery Project Final Environmental Impact Statement (FEIS). The decision to rehabilitate Klamath NFSL and offer salvage timber for sale in the Black Panther Fire Recovery Project Area will not be subject to administrative appeal and review.

EFFECTIVE DATE: This decision will be effective June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or Mo Tebbe, Black Panther Fire Recovery Project Coordinator, Ukonom Ranger District, Klamath National Forest, P.O. Drawer 410, Orleans, CA 95556, (916) 627–3291.

ADDITIONAL INFORMATION: The catastrophic wildfires of 1987 burned an estimated 260,000 acres of NFSL on the Klamath National Forest. The Black Panther Project Area (approximately 5,589 acres) is in Ukonom Creek Watershed. The area contains Lick and Panther Creek drainages, both of which are tributaries to the Ukonom Creek watershed. The assessment area for the Black Panther Recovery Project includes the headwaters of McCash and Cub Creeks, in addition to Lick and Panther Creeks. Approximately 3,215 acres of the assessment area is contained in the Marble Mountain Wilderness. (Portions of the Wilderness were assessed as part of the cumulative effects analysis, but no activities are proposed within any part of the Wilderness.).

The Black Panther Fire Recovery Project Area lies entirely within the assessment area which consists of approximately 10,983 acres. Approximately 60,000 acres of NFSL were burned in varying intensities by the King-Titus Fire. Approximately 1,700 acres of the most severely burned areas in the Black Panther Fire Recovery Project Area are proposed for harvest, primarily by helicopter logging, but approximately 10 percent is proposed for cable logging. These lands need to be promptly salvaged and to remove the timber that was killed or severely damaged by the wildfire.

Analyses of the rate of deterioration of the damaged timber and its related value indicates that about 1.34 MMBF, with an estimated value of $151,500, would be lost to insects and decay as a result of any further delays. Additional delays would also result in an estimated loss of $37,875 to Siskiyou County in National Forest Receipts.

On September 25, 1990, the Klamath National Forest Supervisor published a Notice of Intent to Prepare an Environmental Impact Statement in the Federal Register for a proposal to implement fire recovery activities on a portion of the Black Panther Fire on the Ukonom District. Scoping was conducted by the Klamath National Forest, pursuant to 40 CFR 1501.7, to determine the significant issues related to the Black Panther Fire Recovery Project Proposal. A scoping session was held in Somes Bar, California, on June 6, 1990. Considerable written scoping was also conducted. In compliance with the National Environmental Policy Act, the analysis for this proposal was documented in the Black Panther Fire Recovery Project DEIS, which was issued for public review on February 28, 1990. The Notice of Availability for the DEIS appeared in the Federal Register on March 16, 1990. Public comments will be received and addressed. The FEIS and Record of Decision was expected to be issued in June 1990. The associated planning records are located at the Ukonom Ranger District, P.O. Drawer 410, Orleans, CA 95556.

Dated: June 15, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90–14367 Filed 6–20–90; 8:45 am]

BILLING CODE 3410–11–M

Wildcat River Advisory Commission Meeting

AGENCY: Forest Service, USDA.

ACTION: Wildcat River Advisory Commission meeting.

SUMMARY: The Wildcat River Advisory Commission will meet on July 10, 1990, at the U.S. Forest Service, Saco Ranger District Office in Conway, New Hampshire. The meeting will begin at 7:30 p.m. An agenda for the meeting includes a description of the tasks to be accomplished by the Commission during the upcoming year. This meeting is being publicized through local and regional news media. Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Carl F. Gebhardt, Staff Officer, White Mountain National Forest, 719 Main Street, Laconia, NH 03247, (phone 603–528–8778).

Dated: June 15, 1990.

Otis L. Durham,

Acting Forest Supervisor.

[FR Doc. 90–14370 Filed 6–20–90; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

French Creek Pumping Plant Repair Snohomish County, WA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended; the Council on Environmental Quality NEPA Regulations (40 CFR part 1500–1508); and the Soil Conservation Service NEPA Procedures (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the French Creek

Pumping Plant Repair, Snohomish County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, W. 920 Riverside, Room 360, Spokane, Washington, 99208–1080, telephone (509) 353–2337.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns the repair of an existing flood control structure to restore the floor control capability. The planned repair includes installing a new pumping plant approximately 400 feet upstream of the present structure and moving existing hardware to the new structure. Steel pipes will connect the new structure to the existing structure to discharge pump flow from French Creek into the Snohomish River. Fish passage facilities will be installed. Riparian vegetation, as mitigation, will be established. Estimated cost of the repair is $6.1 million dollars.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Basic data developed during the environmental assessment are on file and may be reviewed by contacting Lynn A. Brown.

No administrative action implementation of the proposal will be taken until thirty (30) days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: June 13, 1990.

Lincoln E. "Ed" Burton,

Acting State Conservationist.

[FR Doc. 90–14287 Filed 6–20–90; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to 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: International Trade Administration

Title: Application for License to Enter Watches and Watch Movements into the Customs Territory of the U.S. (Pub. L. 97–446)

Form Numbers: Agency—ITA–334P; 15 CFR 303 OMB—0625–0040

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 8 respondents; 8 reporting hours

Average Hours Per Response: 1 hour

Needs and Uses: Public Law 97–446 requires the Departments of Commerce and Interior to administer the distribution of duty-exemptions and duty-refunds involving up to $5 million annually to watch producers in the U.S. Territories and the Northern Mariana Islands. The annual allocation and the production incentive certificate for each producer are based on data supplied from Form ITA–334P. The form is completed annually by each producer. It is also used by new firms making application for entitlements for the first time

Affected public: Businesses or other for profit; small businesses or organizations

Frequency: Annually

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Donald Arbuckle, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14319 Filed 6–20–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to 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: Bureau of Export Administration

Title: Emergency Application for Rating or Directive Assistance

Form Number: ITA–993; OMB—0648–0055

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 1 respondent; 1 reporting hour.

Needs and Uses: The information required for the enforcement and administration of the delegated authority of the Defense Production of 1950, as amended (50 USC App. 2061, *et seq.*) to provide emergency special priorities assistance during a national emergency

Affected Public: Businesses or other for-profit institutions; small business or organization

Frequency: On occasion

Respondent's Obligation: Mandatory

OMB Desk Officer: Marshall Mills, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14418 Filed 6–20–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to 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: Bureau of Export Administration

Title: Exception to Order Requirement

Form Number: Export Administration Regulations § 772.6(c); OMB–0648–0011
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 10 respondents; 3 reporting/recordkeeping hours. Average time per respondent is 15 minutes.
Needs and Uses: The information requested by this report must be submitted to OEL whenever a definite order for export has not been received for a pending shipment. The purpose of the reporting requirement is to prevent shipments of commodities and technology in violation of the Export Administration Regulations
Affected Public: Businesses or other for-profit institutions; small business or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit.
OMB Desk Officer: Marshall Mills, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14419 Filed 6–20–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to 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: Bureau of Export Administration
Title: Statement by Foreign Importer of Aircraft or Vessel Repair Parts
Form Number: BXA–686P, Export Administration Regulations § 773.8; OMB—0648–0022
Type of Request: Extention of the expiration date of a currently approved collection
Burden: 55 respondents; 14 reporting/recordkeeping hours. Average time per respondent is 15 minutes.
Needs and Uses: The foreign importer may submit Form BXA–686P for approval to operate under the Aircraft and Vessel Repair Station procedure. If approved, the foreign importer will not be required to send the usual documents to the U.S. exporter (such as, import certificates, consignee/purchaser statement, Yugoslav End-Use Certificate, etc.).
Affected Public: Businesses or other for-profit institutions; small business or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Marshall Mills, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14420 Filed 6–20–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (U.S.C. chapter 35).

Agency: Bureau of Export Administration
Title: Reports on General License Exports of U.S.-Origin Commodities Imported for Servicing
Form Number: Export Administration Regulations § 771.17(a)(4); OMB—0648–0018
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 200 respondents; 36 reporting/recordkeeping hours. Average time per respondent is 10 minutes
Needs and Uses: Exporters must submit a report within two weeks of exportation of a serviced commodity. The report eliminates the need for submitting an application for an export license when returning U.S. commodities that were previously exported from the U.S. to a proscribed country
Affected Public: Businesses or other for-profit institutions; small business or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Marshall Mills, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14421 Filed 6–20–90; 8:45 am]

BILLING CODE 3510–CW–M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to 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: Bureau of Export Administration
Title: Short Supply Regulations—Petroleum Products
Form Number: Export Administration Regulations, §§ 771.16 and 777.6; OMB—0648–0026
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 4,536 respondents; 93 reporting/recordkeeping hours. Average time per respondent is ½ hour
Needs and Uses: This information collection requires the retention of documents to prove that petroleum products being exported are not prohibited
Affected Public: Businesses or other for-profit institutions; small business or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Marshall Mills, 395–734

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: June 15, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90–14422 Filed 6–20–90; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held July 11, 1990 at 9:30 a.m., in the Herbert C. Hoover Building, room 1617–F, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

Agenda: General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. TAC Utilization in List Review Process.
5. Discussion of Report on Core List Criteria.

Executive Session:

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: Ms. Ruth D. Fitts, U.S. Department of Commerce/BXA, Office of Technology & Policy Analysis, 14th & Constitution Avenue NW., room 4069A, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 13, 1989, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Dated: June 14, 1990.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 90–14318 Filed 6–20–90; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–582–802, A–580–806, A–583–808]

Postponements of Final Antidumping Duty Determinations: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong and Taiwan; and Announcement of Public Hearings: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong, the Republic of Korea, and Taiwan

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

ACTION: Notice.

SUMMARY: This notice informs the public that we have received requests from respondents in the investigations of sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Hong Kong and Taiwan to postpone the final determinations, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673d(a)(2)(A)).

Based on these requests, we are postponing our final determinations as to whether imports of MMF sweaters are being, or are likely to be, sold in the United States at less than fair value until not later than July 19, 1990 for Hong Kong, and August 2, 1990 for Taiwan. In addition, we are announcing the schedule of public hearings for the investigations of MMF sweaters from Hong Kong, the Republic of Korea (Korea), and Taiwan. *See*, Public Comment section of this notice.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Mary Clapp (Taiwan and Korea), Carole Showers (Taiwan and Hong Kong), or James Terpstra (Korea), at (202) 377–3965, 377–3217 or 377–8830, respectively, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On April 27, 1990, we published preliminary determinations of sales at less than fair value on MMF sweaters from Hong Kong (55 FR 17788) and Taiwan (55 FR 17779). These notices stated that if the investigations proceeded normally, we would make our final determinations by July 5, 1990. On May 24, 1990 we published a notice of postponement of the final determination on Taiwan until July 19, 1990.

On May 25, 1990, respondents from Hong Kong requested a postponement of the date of the final determination until not later than two weeks from the scheduled date. On June 5, 1990, respondents from Taiwan requested a further postponement of the date of the final determination until not later than August 2, 1990. These respondents account for a significant proportion of exports of the subject merchandise from the respective countries to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation request an extension subsequent to an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final determinations until not later than July 19, 1990 for Hong Kong and August 2, 1990 for Taiwan.

Public Comment

In accordance with 19 CFR 353.38 of our regulations, we will hold public hearings to afford interested parties an opportunity to comment on the preliminary determinations in the

antidumping duty investigations of MMF sweaters from Hong Kong, Korea, and Taiwan. A public hearing will be held at 2 p.m. on June 26, 1990 for Hong Kong, 9:30 a.m. on July 10, 1990 for Taiwan, and 1:30 p.m. on July 12, 1990 for Korea, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

Interested parties who wish to participate in the hearings must submit ten copies of the business proprietary version and five copies of the public version of case briefs or other written comments to the Assistant Secretary for Import Administration, Room B-099, at the above address, no later than June 18, 1990 for Hong Kong, June 29, 1990 for Taiwan, and July 2, 1990 for Korea. Ten copies of the business proprietary version and five copies of the public version of rebuttal briefs must be submitted to the Assistant Secretary by June 22, 1990 for Hong Kong, July 6, 1990 for Taiwan, and July 9, 1990 for Korea. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

The U.S. International Trade Commission is being advised of these postponements, in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: June 6, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-14423 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Determination on Certain Type 430 Stainless Steel Wire Rod

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Determination on Certain Type 430 Stainless Steel Wire Rod.

Short-Supply Review Number: 19.

SUMMARY: The Secretary of Commerce ("Secretary") hereby grants a short-supply allowance for 750 metric tons of various sizes of certain type 430 stainless steel wire rod for the second half of 1990 under the U.S.-Brazil, U.S.-EC, U.S.-Japan, and U.S.-Korea steel arrangements.

EFFECTIVE DATE: June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Norbert O. Gannon or Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4037 or (202) 377-0159.

SUPPLEMENTARY INFORMATION: On May 29, 1990, the Secretary received an adequate short-supply petition from the American Wire Producers Association ("AWPA"), on behalf of four members of the Stainless Committee, requesting a short-supply allowance for 1,650 metric tons of this product under Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products, and Article 8 of the Arrangement Between the Government of the Republic of Korea and the Government of the United States of America Concerning Trade in Certain Steel Products. The AWPA requested short supply for this product due to the general unavailability of this grade of stainless rod domestically and the unwillingness of foreign mills to supply this product with regular export licenses. The Secretary conducted this short-supply review pursuant to Section 4(b)(4)(A) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.102 of the Department of Commerce's Short-Supply Regulations, published in the **Federal Register** on January 12, 1990, 55 FR 1348 ("Commerce's Short-Supply Regulations").

The requested product meets the specifications for type 430 stainless steel wire rod with the exception of the maximum carbon content. In this request, the carbon level cannot exceed 0.04 percent. The sizes and quantity requested for each size are as follows:

Diameter (millimeters)	Quantity (metric tons)
5.5-6.0	1,440
7.0	120
9.5	40
20.0	50

Action

On May 29, 1990, the Secretary established an official record on this short-supply request (Case Number 19) in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce at the above address. Section 4(b)(4)(B)(i) of the Act and § 357.106(b)(1) of Commerce's Short-Supply Regulations require the Secretary to apply a rebuttable presumption that a product is in short supply, and to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exists: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary has granted short-supply allowances for this product during each of the two immediately preceding years. Therefore, the Secretary has applied a rebuttable presumption that this product is presently in short supply in accordance with section 4(b)(4)(B)(II) of the Act and § 357.106(b)(1)(ii) of Commerce's Short-Supply Regulations. Unless domestic steel producers provided proof that they could and would produce the requested quantity of this product within the desired period of time, provided it represented a normal order-to-delivery period, the Secretary would issue a short-supply allowance not later than June 13, 1990. On June 1, 1990, the Secretary published a notice in the **Federal Register** announcing its review of this request and providing domestic steel producers an opportunity to rebut the presumption of short supply. All comments were required to be received no later than June 8, 1990.

On June 8, 1990, the Secretary received comments from Baltimore Specialty Steels Corporation ("BSSC"). BSSC stated that it has produced trial quantities of Type 430 stainless rods with 0.04 percent maximum carbon content, and has provided samples to the petitioning companies. BSSC offered to supply 900 metric tons of two sizes of Type 430 stainless rods to the AWPA to partially meet its short-supply needs.

On June 8, 1990, the Secretary also received comments from the AWPA indicating that sample shipments were made from BSSC to the petitioning companies in December 1989 and January 1990, which were evaluated for acceptability. The AWPA further indicates that only some of these shipments were not acceptable to at least two AWPA petitioning companies.

Conclusion

The Secretary received comments to the **Federal Register** notice from a potential supplier, which has produced material meeting the specifications of at least one of the petitioning AWPA member companies, offering to supply 900 metric tons of the requested product. However, because the Secretary received no comments to the **Federal Register** notice by potential suppliers to rebut the Secretary's presumption of short supply with respect to 750 metric tons of the requested product, the Secretary hereby grants, pursuant to section 4(b)(4)(A) of the Act and § 357.102 of Commerce's Short-Supply Regulations, a short-supply allowance for 750 metric tons of the requested type 430 stainless steel wire rod for the second half of 1990 under Article 8 of the Arrangement Between the Government of Brazil and the Government of the United States of America Concerning Trade in Certain Steel Products, Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products, and Article 8 of the Arrangement Between the Government of the Republic of Korea and the Government of the United States of America Concerning Trade in Certain Steel Products.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-14321 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administraton

Endangered Species; Issuance of Permit; Southwest Fisheries Science Center (Permit No. 706)

On April 20, 1990, notice was published in the **Federal Register** (55 FR 14992) that an application had been filed by the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, CA 92038, for a permit to take and import the olive ridley sea turtle, *Lepidochelys olivacea*; hawksbill turtle, *Eretmochelys imbricata*; leatherback turtle, *Dermochelys coriacea*; the green/black turtle, *Chelonia mydas/Chelonia mydas agassizi*; and the loggerhead turtle, *Caretta caretta* for scientific research.

Notice is hereby given that on June 15, 1990, as authorized by the provisions of the Endangered Species Act of 1973, the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) will be consistent with the purposes and polices set forth in Secton 2 of the Act. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, of the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

Dated: June 15, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90-14328 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of an experimental fishing permit.

SUMMARY: This notice announces the issuance of an experimental fishing permit to harvest groundfish with domestic trawl vessels using detachable codends of various mesh sizes in the exclusive economic zone off the coasts of Washington, Oregon, and California. The permit authorizes experimental fishing practices, which otherwise would be prohibited by federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and implementing regulations.

EFFECTIVE DATES: June 1, 1990 through December 31, 1990.

ADDRESSES: Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 3000 S. Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140; or Rodney R. McInnis, 213–514–6199.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR part 663 specify that experimental fishing permits (EFPs) may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

An EFP application to harvest groundfish with bottom trawl gear using detachable codends of various mesh sizes in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California was received on March 5, 1990. The application represents the last of three years of field work in the West Coast Groundfish Mesh Size Study which began in 1988. The goal of the experimental fishery is to compare the effectiveness of mesh size gear restrictions to the current trip limit regime set forth in the FMP. Current groundfish regulations at 50 CFR 663.26 prohibit the use of a mesh size smaller than four and one-half inches in bottom trawls and prohibit detachable codends if the vessel is carrying a net with smaller than four and one-half inch mesh. In addition, in order to obtain meaningful results in comparing the relative effectiveness of gear regulations to trip limits, the applicant requested that the EFP waive current trip poundage limits and groundfish quota restrictions for vessels engaged in experimental fishing under the permit. A notice acknowledging receipt of the application, describing the proposal, and requesting public comment was published in the **Federal Register** on March 28, 1990 (55 FR 11428). No written comments were received. The application was considered by the Pacific Fishery Management Council, including the directors of the fishery management agencies of Washington, Oregon, California, and Idaho, at its April 1990 public meeting in Eureka, California. The Council recommended that NMFS issue an EFP, as requested by the applicant, and an EFP was issued under the provisions of 50 CFR 663.10.

The EFP was issued to Dr. Ellen Pikitch, University of Washington. The EFP authorities thirty domestic trawl vessels to engage in experimental

fishing under the direction of Dr. Pikitch, according to the terms and conditions of the permit, from June 1, 1990, through December 31, 1990, in the EEZ off the coasts of Washington, Oregon, and California. Under the terms and conditions of the permit, an observer from the University of Washington must be aboard each vessel during experimental fishing and present during the unloading of fish taken from each experimental trip. The permitted vessels are authorized to use detachable codends of various mesh sizes when involved in experimental fishing as directed by the permit holder. The groundfish trip limits or optimum yield (quota) closures do not apply to the experimental fishing. The permittee is required to provide weekly notification to NMFS of the activities of the vessels involved in experimental fishing. The permittee will prepare a comprehensive report on the results of the experimental fishery under a project supported by a Saltonstall-Kennedy grant entitled "West Coast Groundfish Mesh Size Study."

Further details or a copy of the permit may be obtained from the NMFS Regional Director at the above address.

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

Dated: June 15, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-14323 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-22-M

DEPARATMENT OF COMMERCE

National Technical Information Service

Prospective Grant of Exclusive Patent License to Commonwealth Technology, Inc.

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application Serial Number 7-347,700, "An All Tantalum Stopped Flow Microcalorimeter" to Commonwealth Technology, Inc., having a place of business at Alexandria, VA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The present invention is a highly sensitive, quick recovery differential microcalorimeter which includes at least one fluid inlet, at least one mixer assembly connected to each fluid inlet, at least one fluid outlet connected to each mixer assembly, at least one heater element surrounding at least a portion of each fluid outlet and a plurality of sensors surrounding at least a portion of each fluid outlet. Each of the mixing assemblies includes a mixing chamber and at least one entry manifold connected to a fluid inlet and has a plurality of ports which connect to the mixing chamber.

The availability of the invention for licensing was published in the **Federal Register**, Vol. *54, #103,* p. *23244* (May 31, 1989).

A copy of the instant patent application may be purchased from the NTIS Sales Desk by telephoning 1-800-336-4700 or by writing to the Order Department, NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Inquiries, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Center for the Utilization of Federal Technology, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90-14353 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

June 14, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: June 21, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 631 is being increased for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 27664, published on June 30, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 14, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 23, 1989, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1989 and extends through June 30, 1990.

Effective on June 21, 1990, the directive of June 23, 1989 is amended further to increase to 986,162 dozen pairs [1] the limit for Category 631, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and Indonesia.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after June 30, 1989.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-14320 Filed 6-15-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Uruguay

June 18, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new agreement year limits.

EFFECTIVE DATE: July 2, 1990.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current bilateral agreement between the Governments of the United States and Uruguay establishes limits for the period July 1, 1990 through June 30, 1991.

A copy of the agreement is available from the Textile Divisions, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: June 18, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

June 18, 1990.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Wool Textile Agreement of December 30, 1983 and January 23, 1984, as amended, between the Governments of the United States and Uruguay; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 2, 1990, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in the following categories, produced or manufactured in Uruguay and exported during the twelve-month period which begins on July 1, 1990 and extends through June 30, 1991, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
334	92,697 dozen.
335	79,798 dozen.
410	2,660,139 square meters of which not more than 1,520,080 square meters shall be in Category 410-A [1] and not more than 2,449,017 square meters shall be in Category 410-B [2].
433	15,884 dozen.
434	23,697 dozen.
435	47,858 dozen.
442	33,854 dozen.

[1] Category 410-A: only HTS numbers 5111.11.1000, 5111.11.6030, 5111.11.6060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.6000, 5111.30.6000, 5111.90.3000, 5111.90.6000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[2] Category 410-B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.0030, 5112.11.0060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.20.0000, 5112.30.0000, 5112.90.3000, 5112.90.6010, 5112.90.6090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520

Imports charged to these category limits for the periods February 1, 1989 through June 30, 1990 and July 1, 1989 through June 30, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by the previous entries, such goods shall be subject to the limits set forth in this directive.

The limits may be adjusted in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Uruguay.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-14417 Filed 6-20-90; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Rights in Data and Copyrights.

ADDRESS: Send comments to Ms. Eyvette Flynn, FAR Desk Officer, OMB, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. John O'Neill, Office of Federal Acquisition Policy, (202) 501-3856 or Mr.

Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION: a. *Purpose.* 1. Rights in Data is a regulation which concerns the rights of the Government and organizations with which the Government contracts to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data, and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into four categories.

a. A provision which is to be included in solicitations where the proposer would identify any proprietary data he would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

b. Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or its software, to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software, and given, that the Government would need to see that data in order to determine the extent of the work.

c. A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract are complete, accurate and comply with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

d. The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities, and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data, for which the Government paid.

e. Paragraph (d) of the Rights in Data-General clause outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely if ever delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

2. Under the procedures established for development of the FAR, agency and public comments were solicited and each comment was addressed before finalization of the text. The comments which were received were for the most part from educational institutions, which stated that requiring their investigators to keep records of unlimited rights data for three years after acceptance of deliverables was unreasonable, in that such investigators in reality do not segregate their research by contract, but rather combine it with other data in order to continue their research. In light of this, the proposed rule was changed to state that the Additional Data Requirements clause would not be placed in contracts for basic or applied research with educational institutions—where the value was $500,000 or less. The $500,000 threshold was adopted after surveying the major civilian R&D agencies, whose data suggested that an average R&D contract was $250,000—$300,000; in order to be commensurate with other clause thresholds, (e.g., small business subcontracting) the $500,000 was chosen. Thus, for most R&D contracts with universities, no recordkeeping is required.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 1,100; responses per respondent, *1*; total annual responses, *1,100*; hours per response, *2.7*; and total response burden hours, *2,970*.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights.

Dated: June 14, 1990.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 90–14355 Filed 6–20–90; 8:45 am]

BILLING CODE 6820–34–M

Office of the Secretary

Defense Science Board Task Force on Advanced Naval Warfare Concepts; Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Advanced Naval Warfare Concepts scheduled for June 19, 1990, as published in the **Federal Register** (Vol. 55, No. 112, Page 23582, Monday, June 11, 1990, FR Doc. 90–13383) has been cancelled.

Dated: June 18, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–14389 Filed 6–20–90; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Chemical Weapons Policy; Meeting

ACTION: Change in Location of Advisory Committee Meeting.

SUMMARY: The meeting of the Defense Science Board Task Force on Chemical Weapons Policy scheduled for June 11, 1990, at SAIC, McLean, Virginia, as published in the **Federal Register** (Vol. 55, No. 112, Page 23583, Monday, June 11, 1990, FR Doc. 90–13384) will be held in the Pentagon.

Dated: June 18, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–14390 Filed 6–20–90; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board 1990 Summer Study on Tactical Forces/C^3; Meeting

ACTION: Change in Location of Advisory Committee Meeting.

SUMMARY: The meeting of the Defense Science Board 1990 Summer Study on Tactical Forces/C^3 scheduled for 26 and 27 June, 1990, as published in the **Federal Register** (Vol. 55, No. 111, Page 23467, Friday, June 8, 1990, FR Doc. 90–13291) will be held at the System

Planning Corporation, Arlington, Virginia.

Dated: June 18, 1990.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-14391 Filed 6-20-90; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 17 July 1990.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Becky F. Terry, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: June 18, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-14392 Filed 6-20-90; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers; Department of the Army

Inland Waterways Users Board; Meeting

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name of the Committee: Inland Waterways Users Board.

Date of Meeting: July 24, 1990.

Place: Minneapolis-St. Paul Airport, Hilton Hotel, 3800 W. 80th Street, Bloomington, MN 55431.

Time: 9 a.m. to 5 p.m.

Proposed Agenda

AM Session: *Business Session*

—Call to Order

—Disposition of Prior Meeting Minutes

Presentation of Information to the Board

9:20 Trust Fund Analysis

9:45 Trust Fund Disbursements

10:15 Break

10:30 —Update of Investment Needs Assessment

11:00 —Construction Projects Update

11:15 —Upper Mississippi River Transportation Economics Study

12:00 Lunch

PM Session: *North Central Division Presentations*

1:00 —Upper Mississippi River Environmental Management Program

1:30 —Upper Mississippi River Study

2:00 —Illinois River Study

2:30 Break

2:45 —Recreational Use of Upper Mississippi River Locks

3:00 —Public Comment Period

4:45 —Other Business/Instructions to Baard Staff

5:00 Adjournment

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Sanford, Jr., Headquarters, U.S. Army Corps of Engineers, CECW-P, Washington, DC 20314-1000 at (202) 272-0146.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90-14354 Filed 6-20-90; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.183F]

Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions; Analysis of Institution-wide Projects

Purpose of Program: To provide grants to institutions of higher education (IHEs) to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in IHEs. Grants under Analysis and Dissemination Program competitions support projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-wide Program competitions and Special Focus Program competitions.

Note: Under 34 CFR 612.2(d) eligibility under this Analysis and Dissemination Program competition is limited to current or former recipients of an award under an Institution-wide Program competition or a Special Focus Program competition.

Deadline for Transmittal of Applications: July 23, 1990.

Applications Available: June 21, 1990.

Available Funds: $750,000.

Estimated Range of Awards: Up to $150,000.

Estimated Number of Awards: 5 to 10 awards.

Note: The Department is not bound by any estimates in this notice.

Budget Period: Up to 24 months.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, and 85; and (b) The regulations for this program in 34 CFR part 612.

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(d) the Secretary gives an absolute preference to applications that meet the following priority: Projects designed to analyze successful project designs, policies, and results of projects supported under Institution-wide Program competitions.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet the following invitational priority:

Applications by recipients of grants under Institution-wide Program competitions proposing to analyze the

direct and indirect impacts of the FY 1987 Institution-wide projects for which Departmental assistance has ended.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: In evaluating applications for grants under the Analysis and Dissemination Program, the Secretary uses the specific competition selection criteria in 34 CFR 612.23(c)(3).

The program regulations in 34 CFR 612.23(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Methods and management plan (34 CFR 612.23(c)(3)(ii)). Five points are added to this criterion for a possible total of 25 points.

Key personnel (34 CFR 612.33(c)(3)(iii)). Ten points are added to this criterion for a possible total of 25 points.

For Applications or Information Contact: Dr. Ronald B. Bucknam, FIPSE, FY 1990–F Competition, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3100, ROB–3, Washington, DC 20202–5175. Telephone: (202) 732–5757.

Authority: 20 U.S.C. 3211.

Dated: May 15, 1990.

Leonard L. Haynes, III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–14396 Filed 6–20–90; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No. 84.183E]

Drug Prevention Programs in Higher Education—Analysis and Dissemination Program Competitions; Dissemination of Successful Institution-wide Projects

Purpose of Program: To provide grants to institutions of higher education (IHEs) to develop, implement, operate, and improve drug abuse education and prevention programs for students enrolled in IHEs. Grants under Analysis and Dissemination Program competitions support projects to analyze and disseminate successful project designs, policies, and results of projects supported under Institution-wide Program competitions and Special Focus Program competitions.

Note: Under 34 CFR 612.2(d) eligibility under this Analysis and Dissemination Program competition is limited to current or former recipients of an award under an Institution-wide Program competition or a Special Focus Program competition.

Deadline for Transmittal of Applications: July 23, 1990.

Applications Availabile: June 21, 1990.

Available Funds: $800,000.

Estimated Range of Awards: $35,000–$150,000.

Estimated Number of Awards: 8 awards.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 24 months.

Project Period: 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, and 85; and (b) The regulations for this program in 34 CFR part 612.

Priorities:

Absolute Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 612.21(d) the Secretary gives an absolute preference to applications that meet the following priority: Projects designed to disseminate successful project designs, policies, and results of projects supported under Institution-wide Program competitions.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: Within the absolute priority in this notice, the Secretary is particularly interested in applications that meet the following invitational priority:

Applications by former recipients of grants under Institution-wide Program competitions proposing to disseminate their own successful projects which were funded in FY 1987 and for which Departmental assistance has ended.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria:: In evaluating applications for grants under the Analysis and Dissemination Program, the Secretary uses the specific competition selection criteria in 34 CFR 612.23(c)(3).

The program regulations in 34 CFR 612.23(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition the Secretary distributes the 15 points as follows:

Design (34 CFR 612.23(c)(3)(i)). Five points are added to this criterion for a possible total of 35 points.

Key personnel (34 CFR 612.23(c)(3)(iii)). Five points are added to this criterion for a possible total of 20 points.

Cost effectiveness and budget clarity (34 CFR 612.23(c)(3)(v)). Five points are added to this criterion for a possible total of 15 points.

For Applications or Information Contact: Dr. Ronald B. Bucknam, FY 1990–E Competition, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–5175. Telephone: (202) 732–5757.

Authority: 20 U.S.C. 3211.

Dated: May 15, 1990.

Leonard L. Haynes, III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–14397 Filed 6–20–90; 8:45 am]

BILLING CODE 4000–01–M

National Commission on Drug Free Schools; Meeting

AGENCY: National Commission on Drug-Free Schools, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a forthcoming meeting of the National Commission on Drug-Free Schools. Notice of this meeting is offered pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2.

DATES/TIMES: July 12–13, 1990; meetings will be held between the hours of 8:30 a.m.–5:30 p.m.

LOCATION: The Willard Inter-Continental, located at 1401 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: William Modzeleski, Executive Director, National Commission on Drug-Free Schools, Washington, DC, 20202–7584; (202) 732–6140.

AGENDA: This meeting is a working session for the Commission members to review and comment on all issues addressed to date, in preparation for submitting a final report to the President and Congress.

SUPPLEMENTARY INFORMATION: The National Commission on Drug-Free Schools was established pursuant to section 5051 of Public Law 100–690. Co-chaired by the Secretary of Education and the Director of the Office of National Drug Control Policy, the membership consists of selected members of the Senate and House of Representatives, and citizen members representing various areas of drug education, prevention, and law enforcement. The legislative mandate of

the Commission is to develop recommendations for identifying drug-free schools and campuses, identifying model programs to achieve drug-free schools, and to make other findings that are consistent with its mission.

This meeting is open to the public. Records of Commission proceedings are available for public inspection at the Office of the Commission, 330 C Street, SW., Washington, DC, from the hours of 9 a.m.–5 p.m. during Federal government working days.

Dated: June 15, 1990.

Ted Sanders,

Under Secretary.

[FR Doc. 90–14409 Filed 6–20–90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Conduct of Employees; Waiver

Section 207(f), title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of subsection (a) of section 207, title 18, United States Code, to permit a former employee with outstanding qualifications in a scientific, technological, or other technical discipline to make appearances before or communications to the Department in connection with a particular matter which requires such qualifications, where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that Duane C. Sewell, who was the Department's Assistant Secretary for Defense Programs from August 1978 to January 1981, has a unique combination of outstanding qualifications in the field of applied nuclear physics and extensive experience in management of nuclear weapons and nuclear energy development programs. I am further satisfied that it will serve the national interest to permit him, in his capacity as Deputy Director of the Lawrence Livermore National Laboratory, to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to the funding, operation, and management of the Lawrence Livermore National Laboratory. I am satisfied that these activities are in a scientific field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of subsection (a) of section 207, title 18, United States Code (in consultation with the Director of the office of Government Ethics), to permit contact by Mr. Sewell with employees of the Department of Energy and other government agencies with respect to the funding, operations, and management of the Lawrence Livermore National Laboratory.

Dated: June 15, 1990.

Admiral James D. Watkins,

U.S. Navy (Retired), Secretary of Energy.

[FR Doc. 90–14384 Filed 6–20–90; 8:45 am]

BILLING CODE 6450-01-M

Intent To Award a Grant to Oleg Engineering

AGENCY: Department of Energy.

ACTION: Notice of unsolicited assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award under Grant Number DE–FG01–90CE15471 to Oleg Engineering to assist in the "design, construction and characterization of working a breadboard model of a measurement-while- drilling (MWD) turbine pulser."

Scope: This grant will aid in providing funding in the amount of $70,000 to demonstrate proof of concept and to collect data from a breadboard model which the industry can analyze and review. The system is a new and different approach to transmittal of downhole drilling data. This invention has the significant potential for a higher data transmission rate because it can send positive and negative signals in sequence. Faster and more data transmission improves the ability to interpret reservoir characteristics closer to a real-time basis, enhancing the drilling process and the number of moving components is reduced.

Eligibility: Eligibility of this award is being limited to Oleg Engineering. Mr. Oleg Kotlyer, the inventor and president of the company, is a mechanical engineer with 20 years' experience in the drilling industry. Mr. Kotlyer has been involved with other mud pulse telemetry systems programs and has successfully developed serveral mud pulse transmitters. It has been determined that this project has high technical merit, representing an innovative technology that has a strong possibility of adding to the natural energy resources.

The term of this grant shall be eighteen months from the effective date of award.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90–14385 Filed 6–20–90; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order With Kern Oil & Refining Co. and Larry D. Delpit

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) has determined that a proposed Consent Order between the DOE, and Kern Oil & Refining Co. (Kern) and Larry D. Delpit (Delpit), which was published for public comment in 55 FR 19648 (May 10, 1990), shall be made final. The Consent Order resolves matters relating to Kern's and Delpit's compliance with the federal petroleum price and allocation regulations for the period October 1, 1979, through January 27, 1981. To resolve these matters, Kern will pay to the DOE $750,000 and Delpit will pay $2,600,000, for a total of $3,350,000, within thirty (30) days of the effective date of the Consent Order. Following receipt of the settlement monies, ERA will petition the DOE's Office of Hearings and Appeals to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges will have the opportunity to submit claims for payment.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 1000; Independence Avenue, SW., RG–32, Washington, DC 20585, (202) 586–1699.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comment Received
III. Analysis of Comment
IV. Decision

I. Introduction

On May 10, 1990, the DOE's Economic Regulatory Administration (ERA) issued a notice announcing a proposed Consent Order between DOE, and Kern and Delpit, which would resolve matters relating to Kern's and Delpit's compliance with the federal petroleum price and allocation regulations for the period October 1, 1979, through January 27, 1981. 55 FR 19648. Specifically, the May 10 Notice provided information regarding Kern's and Delpit's respective potential overcharge liability arising from certain tie-in crude oil purchase and sale transactions at issue in a Proposal Remedial Order issued March 31, 1987, as amended; and detailed the considerations which underlay the ERA's perliminary view that the

settlement is favorable to the government and in the public interest.

The Notice solicited written comments from the public relating to the terms and conditions of the settlement and whether the settlement should be made final. ERA received one written comment, which was considered in making the decision to issue the proposed Consent Order as a final Order.

II. Comment Received

The one comment received on the proposed Consent Order, filed on behalf of a group of utilities, transporters, and manufacturers (hereinafter "end users"), addressed two issues relating to the proposed settlement terms with Kern: (1) The adequacy of the information provided in the May 10 Notice concerning Kern's financial condition; and (2) the adequacy of the settlement amount to be paid by Kern.

III. Analysis of Comment

A. Kern's Financial Condition

The May 10, 1990, Notice stated that the proposed settlement amount to be paid by Kern is based on ability-to-pay considerations, and that after extensive analysis, "ERA determined that Kern would not be capable of satisfying a judgment in an amount approaching the potential maximum liability alleged in the PRO." 55 FR 19649. The end users maintained that commenters could not comment intelligently on ERA's conclusion because ERA did not explain the major aspects of the financial information Kern provided to ERA or offer to make such information available to commenters.

In the May 10 Notice, ERA stated that it "considered Kern's current and projected financial condition, based on extensive information Kern provided to ERA, including tax returns, reports reflecting Kern's net asset values and the underlying documents and information on which the reports, returns and statements were made." 55 FR 19469. The financial information Kern submitted for ERA's consideration was provided on a confidential basis and for settlement purposes only, and ERA agreed to accept the documents on those terms. By setting forth in the May 10 Notice the types and sources of information which underlay ERA's analysis of Kern's financial condition, ERA disclosed the bases of its determination, but not the contents of the cited documents, consistent with maintenance of the well-recognized confidentiality of the substance of settlement negotiations and the statutory protections accorded financial information of closely held corporations (such as Kern).

B. Adequacy of Kern Settlement Amount

The end users suggestd that ERA might have "set a settlement figure" with Kern without any diminution for collection risk and provided instead for payment over an (unstated) number of years, with the amount of payment in any year related to Kern's cash flow or profit. The fact, relied upon by end users, that ERA has entered into such settlement arrangements in other cases does not make such an approach appropriate in this case.

The Consent Order's payment terms applicable to Kern are the product of ERA's examination of Kern's particular financial situation. In view of ERA's determination of the low potential for any significant additional recovery from Kern, ERA has concluded that the public interest is best served by a prompt resolution of this matter and Kern's payment of the settlement amount in full within 30 days of the effective date of the Consent Order.

IV. Decision

Upon consideration of the one written comment received and addressed herein, and inasmuch as there were no other bases proffered for rejecting or modifying the settlement as proposed, the DOE has determined that it is in the best interest of the public to make the proposed Consent Order final without change. By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between DOE, Kern, and Delpit is made a final Order of the Department of Energy, effective on the date of publication of this notice in the **Federal Register**.

Issued in Washington, DC, on June 14, 1990.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 90-14387 Filed 6-20-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Pre-Freshman Enrichment Program (PREP)

AGENCY: Department of Energy.

ACTION: Program solicitation announcement.

SUMMARY: The purpose of this notice is to announce the availability of the PREP solicitation, to identify the institutions which will be eligible for this grant program, and to inform potential applicants of the closing date and location for submission of applications for awards under this program.

SUPPLEMENTARY INFORMATION:

Background

The Department of Energy (DOE) is concerned about whether there are enough science, engineering and mathematics professionals to perform its R&D mission and is authorized in the Energy Reorganization Act of 1974 to "* * * assure an adequate supply of manpower for the accomplishment of energy research and development programs by sponsoring and assisting in education and training activities in postsecondary institutions, vocational schools and other institutions * * *", 42 U.S.C. 5813 (11).

Specifically, DOE's concern is based on the consideration that the future supply of science and engineering manpower is threatened by two factors: fewer students enrolling in science-based courses in high school and fewer students available to join the science, engineering and math pool due to declining birth rates. Students who have completed the ninth grade in high school often decide not to take another science-based course. One the traditional math/science sequence is disrupted, it is too late for students to meet the minimum requirements for admission to college and university science and engineering programs.

The primary purpose of PREP is to alleviate manpower shortages in science, engineering and math careers by preparing and guiding students in the sixth through tenth grades in the selection of college-preparatory courses in science, mathematics and engineering.

In the past 17 years, 274 PREP projects have been funded. These projects have reached over 18,000 students, principally women and minorities who have been underrepresented in science, math and engineering. Pending Congressional action, DOE intends to commit about $1.35 million for the Pre-Freshman Enrichment Program for fiscal year 1991. DOE invites all qualified institutions (see following section) to write for a copy of its Pre-Freshman Enrichment Program solicitation, DOE/ER-0454, Notice of Program Announcement Number DE-PS05-91ER75571.

Eligibility and Limitations

The overall intent of the program is to increase the number of scientists, engineers and mathematicians who graduate from college, and who will

continue to play critically important roles in the Nation's overall energy programs. Therefore, institutions which offer science, mathematics and/or engineering degree programs are deemed most qualified. Accordingly, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(1), applications will be accepted only from U.S. colleges and universities which grant science, mathematics and/or engineering degrees at the baccalaureate level. Non-profit organizations, scientific and professional societies, science museums and science centers, two-year colleges, for-profit industries, and Federal laboratories may participate in cooperative or joint PREP projects, providing the application is submitted by a four-year U.S. college or university.

Application Forms

Program solicitations are expected to be ready for mailing by August 1, 1990. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation. Copies of this solicitation may be obtained by writing to: Division of University and Industry Programs, ER–44, Office of Field Operations Management, Office of Energy Research, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Telephone Number: (202) 586–1634.

Closing Date for Submission of Applications

To be eligible, applications must be received by the Department of Energy by 4:30 p.m., October 30, 1990.

FOR FURTHER INFORMATION CONTACT: All communications or questions regarding this program solicitation should be directed to: PREP Contracting Officer; Procurement and Contracts Division; Oak Ridge Operations; Department of Energy; Oak Ridge, Tennessee 37831; Telephone Number: (615) 576–7564.

(Catlalog of Federal Domestic Assistance No. 81.047, Pre-Freshman Enrichment Program).

Issued in Washington, DC on June 18, 1990.

James F. Decker,

Acting Director, Office of Energy Research.

[FR Doc. 90–14386 Filed 6–20–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. RP88–205–005, TM89–1–1–003]

Alabama-Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 14, 1990.

Take notice that Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), on June 11, 1990, tendered for filing revisions to its FERC Gas Tariff, First Revised Volume No. 1 in order to conform its tariff with the settlement approved by the Commission in its "Order Approving Settlement as Modified" issued by the Commission on May 2, 1990 in this proceeding. Consistent with the May 2, 1990 Ordrer, Alabama-Tennessee proposes an effective date of June 1, 1990 for these tariff sheets.

Alabama-Tennessee states that copies of the filing were served upon the company's jurisdictional customers and interested public bodies, and all persons on the Commission's official service lists in the captioned dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before June 21, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–14308 Filed 6–20–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ90–3–20–001, TF90–1–20–002]

Algonquin Gas Transmission Co.; Compliance Filing

June 14, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on June 11, 1990, tendered for filing electronic versions of the following tariff sheets:

Accepted to be effective April 1, 1990

2 Rev 39 Rev Sheet No. 201
Sub First Revised Sheet No. 201A
2 Rev 40 Rev Sheet No. 203
2 Rev 36 Rev Sheet No. 204

Accepted to be effective June 1, 1990

Alt Forty-first Revised Sheet No. 201
Alternate Third Revised Sheet No. 201A
Alt Forty-second Revised Sheet No. 203
Alt Thirty-eighth Revised Sheet No. 204
Alt Thirty-fifth Revised Sheet No. 205

Algonquin states that such electronic versions of the above listed tariff sheets are made in compliance with the Commmission's Letter Orders of May 22, 1990 and May 25, 1990 in Algonquin's Interim and Quarterly PGA's in the captioned dockets. Such May 22 and May 25 Letter Orders accepted Algonquin's Interim and Quarterly PGA, respectively and, *inter alia*, directed Algonquin to refile electronic versions of the subject tariff sheets to make certain corrections, all as more fully set forth in the Commission's May 22 and May 25 Letter Orders and Algonquin's instant filing. Algonquin states that none of its rates are affected by this filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before June 21, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–14309 Filed 6–20–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM90–10–22–001]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 14, 1990.

Take notice that CNG Transmission Corporation ("CNG"), on June 11, 1990, pursuant to section 4 of the Natural Gas Act, the Stipulation and Agreement approved by the Commission on October 6, 1989, in Docket Nos. RP88–217, *et al.* and § 12.9 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets, all to Volume No. 1 of CNG's FERC Gas Tariff:

Second Revised Sheet No. 43
Third Revised Sheet No. 49A
Fourth Revised Sheet No. 160C
Third Revised Sheet No. 160D
Fourth Revised Sheet No. 160E
Third Revised Sheet No. 160F
Fourth Revised Sheet No. 160G
Third Revised Sheet No. 160H
Second Revised Sheet No. 160I

The purpose of this supplemental filing is to correct an inadvertant error made in the filing of May 31, 1990 in Docket No. TM90-10-22-000. The paper copy of the tariff sheets was printed on a pre-printed form captioned "First Revised Volume No. 1." These sheets should have been filed on "Original Volume No. 1" tariff paper. The supplemental filing also corrects the cover letter and form of notice to the original filing which set forth an incorrect list of the tariff sheets that were actually filed.

CNG states that copies of the filing were served upon affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before June 21, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14314 Filed 6-20-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-7-4-000]

Granite State Gas Transmission Inc.; Tariff Filing

June 14, 1990.

Take notice that on June 13, 1990, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on July 1, 1990:

Fourth Revised Sheet No. 7-C

According to Granite State, the purpose of the instant filing is to comply with the Commission's order issued September 28, 1988, in Docket No. RP88-242-000 relating to the procedures pursuant to which Granite State will recover from its customers the fixed take-or-pay charges billed by Tennessee Gas Pipeline Company under the provisions of Order No. 500. Granite State proposes to track Tennessee's revised take-or-pay charges filed on May 31, 1990 in Docket No. RP88-191.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 22, 1990. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14310 Filed 6-20-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL90-32-000]

Indiana Municipal Power Agency v. Indiana Michigan Power Co.; Filing

June 14, 1990.

Take notice that on May 31, 1990, Indiana Municipal Power Agency (IMPA) tendered for filing a complaint against Indiana Michigan Power Company (I&M). IMPA states that I&M has charged and is charging IMPA wholesale rates that are unjust, unreasonable and unduly discriminatory and therefore unlawful under the Federal Power Act.

IMPA requests an investigation and the establishment of a refund effective date of July 30, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol 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, 385.214). All such motions or protests should be filed on or before July 16, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any 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. IMPA has served a copy of the complaint on I&M. I&M's answer shall be due on or before July 16, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14311 Filed 6-20-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-144-003]

Northern Border Pipeline Co.; Compliance Tariff Filing

June 14, 1990.

Take notice that on June 13, 1990, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Third Revised Sheet No. 100
Second Substitute First Revised Sheet Number 120
First Revised Sheet Number 121
Second Revised Sheet Number 402
Original Sheet No. 402a

The purpose of this tariff filing is to revise the proposed Credit Worthiness provision in Rate Schedule T-1 and the term section of the pro forma U.S. Shippers Service Agreement to be in compliance with the Commission's Order Granting Appeal dated June 1, 1990 in Docket No. RP87-144-002.

Northern Border has requested that these revised tariff sheets be effective June 14, 1990. Northern Border states that copies of this filing have been sent to all parties of record in this proceeding.

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, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 22, 1990. Protests will be considered but do not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Persons

that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 90-14312 Filed 6-20-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-117-084]

Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

June 14, 1990.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 11, 1990 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheet:

Fourth Revised Sheet No. 805

Texas Eastern states that the purpose of this filing is to update the Index of Purchasers for Texas Eastern's FERC Gas Tariff, Fifth Revised Volume No. 1 to reflect the execution of Rate Schedules CD-1 and FT-1 Service Agreements for Equitrans, Inc. as reflected in a companion filing dated June 11, 1990 in Docket Nos. RP85-177-076, *et al.*

The proposed effective date of the tariff sheet listed above is June 11, 1990.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 22, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14313 Filed 6-20-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-228-030]

Tennessee Gas Pipeline Co., Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 14, 1990.

Take notice that on June 11, 1990, Tennessee Gas Pipeline Company (Tennessee) filed the following sets of tariff sheets to its FERC Gas Tariff:

I. Rates Effective November 1, 1989
Second Revised Volume No. 1
- Second Substitute Sixteenth Revised Sheet No. 20
- Second Substitute Thirteenth Revised Sheet No. 20A
- Substitute Ninth Revised Sheet No. 22
- Substitute Fifth Revised Sheet No. 22A
- Second Substitute Eighth Revised Sheet No. 23
- Second Substitute Eighth Revised Sheet No. 24

Original Volume No. 2
- Third Substitute Sixteenth Revised Sheet No. 5
- Third Substitute Fifteenth Revised Sheet No. 6
- Substitute Sixth Revised Sheet No. 7
- Second Substitute Seventh Revised Sheet No. 8
- Second Substitute Sixth Revised Sheet No. 9
- Substitute Ninth Revised Sheet No. 10

II. Rates Effective January 1, 1990
Second Revised Volume No. 1
- Substitute Seventeenth Revised Sheet No. 20
- Substitute Fourteenth Revised Sheet No. 20A
- Tenth Revised Sheet No. 22
- Ninth Revised Sheet No. 23
- Ninth Revised Sheet No. 24

Original Volume No. 2
- Substitute Seventeenth Revised Sheet No. 5
- Substitute Sixteenth Revised Sheet No. 6

III. Rates Effective April 1, 1990
Second Revised Volume No. 1
- Substitute Eighteenth Revised Sheet No. 20
- Substitute Fifteenth Revised Sheet No. 20A

Original Volume No. 2
- Substitute Eighteenth Revised Sheet No. 5
- Substitute Seventeenth Revised Sheet No. 6

IV. Rates To Be Effective May 1, 1990
Second Revised Volume No. 1
- Substitute Second Revised Sheet No. 57
- Substitute Second Revised Sheet No. 230

V. Rates Filed To Be Effective July 1, 1990 in Docket No. TQ90-4-9
Second Revised Volume No. 1
- Nineteenth Revised Sheet No. 20
- Sixteenth Revised Sheet No. 20A

Original Volume No. 2
- Substitute Nineteenth Revised Sheet No. 5
- Substitute Eighteenth Revised Sheet No. 6

Tennessee states that the purpose of these revisions is to implement new base tariff rates effective November 1, 1989 pursuant to the settlement in Docket No. RP88-228 which was approved by Commission orders on March 8, 1990 and May 25, 1990.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 21, 1990. 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 petition to intervene; provided, however, that any person who had previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-14315 Filed 6-20-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket No. FE C&E 90-13; Certification Notice—61]

Notice of Filing Certification of Compliance:

Coal Capability of New Electric Powerplant Pursuant to Provisions of the Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended, ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a), 42 U.S.C. 8311 (a), Supp. V. 1987). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability

to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Two owners and operators of proposed new electric base load powerplants have filed self certifications in accordance with section 201(d).

Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION: The following companies have filed self certifications:

Name	Date received	Type of facility	Megawatt capacity	Location
West Lynn Cogeneration, Boston, MA	5-30-90	Combined Cycle	128.82	Lynn, MA.
City of Vero Beach, Vero Beach, FL	5-31-90	Combined Cycle	56.5	Vero Beach, FL.

Amendments to the FUA on May 21, 1987, (Public Law 100-42) altered the general prohibitions to include only new electric base load powerplants and to provide for the self certification procedure.

Copies of this self certification may be reviewed in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, phone number (202) 586-6769.

Issued in Washington, DC, on June 13 1990.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 90-14388 Filed 6-20-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3789-6; ECAO-CD-86-0082]

Draft Criteria Document for Oxides of Nitrogen; Vegetation and Ecosystem Effects and Materials Effects Chapters

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces peer review workshops to be held by the Environmental Criteria and Assessment Office (ECAO) of EPA's Office of Health and Environmental Assessment to facilitate the preparation of an external review draft of a revised version of EPA's Air Quality Criteria for Nitrogen Oxides. The workshop site is the Radisson Governor's Inn, NC 54 and I-40 Davis Drive, Research Triangle Park, North Carolina, 27713, (919) 549-8631.

DATES: The workshop will be held July 9 and 10, 1990, from 8:30 a.m. to 5 p.m. for the vegetation and ecosystem effects chapter and on July 10, 1990, from 8:30 a.m. to 5 p.m. for the materials effects chapter. Members of the public are invited to attend.

FOR FURTHER INFORMATION CONTACT: J.H.B. Garner, Ph.D., U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, North Carolina 27711, (919) 541-4153 or (FTS) 629-4153.

SUPPLEMENTARY INFORMATION: Periodic revisions of the air quality criteria documents to incorporate relevant new information that may either support or suggest reevaluation of existing national ambient air quality standards (NAAQS) are required under the Clean Air Act. EPA is currently revising the criteria document for oxides of nitrogen as announced in the **Federal Register** on July 22, 1987 (52 FR 27580).

ECAO is holding these workshops to review certain draft chapters. These chapters discuss the effects of nitrogen oxides on vegetation and ecosystems and the effects of nitrogen oxides on materials. The meetings to discuss the two chapters will be held concurrently the second day. Copies of the chapters will be made available to the public at the meeting. Members of the public will have an opportunity to make brief oral statements. The draft chapters will be subsequently revised and released as part of an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of an external review draft. The public comment period for the external review draft will be announced in a subsequent **Federal Register** notice.

Dated: June 14, 1990.

Carl R. Gerber,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 90-14288 Filed 6-20-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3789-7]

Evaluation of the Potential Carcinogenicity of Electromagnetic Fields

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces an expert, peer-review workshop to be held by EPA's Office of Health and Environmental Assessment (OHEA) to facilitate preparation of a draft document titled, "Evaluation of the Potential Carcinogenicity of Electromagnetic Fields." The workshop site is the Compri Hotel, 4620 South Miami Blvd., Morrisville, North Carolina 27560 (Tel: 919/941-6066).

DATES: The workshop will be held June 28, 1990, from approximately 8:30 a.m. to 5 p.m. Members of the public may attend as observers.

ADDRESSES: Dynamac Corporation, an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, contact Nicolas Hajjar, Dynamac Corporation, 11140 Rockville Pike, Rockville, Maryland 20852 (Tel: 301/230-6138). Seating capacity is limited.

FOR FURTHER INFORMATION CONTACT: Robert E. McGaughy, Office of Health and Environmental Assessment (RD-689), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Tel: 202/382-5898 or FTS/382-5898.

SUPPLEMENTARY INFORMATION: The "Evaluation of the Potential Carcinogenicity of Electromagnetic Fields" will summarize the human evidence for carcinogenicity and laboratory studies related to carcinogenesis of these fields. The document contains no recommendations for regulatory or other health protection measures.

Copies of the workshop draft will be made available to the public at the meeting. A limited number of copies of the draft also will be available to requesters from the ORD Center for Environmental Research Information (CERI) in Cincinnati, Ohio. Those persons interested in obtaining a single copy of the workshop draft should contact CERI at the following address:

CERI (FRN), US EPA, 26 W. Martin Luther King Drive, Cincinnati, OH 45268, Tel: 513/569–7562 or FTS/684–7562. Requesters should ask for the document by the EPA number: EPA/600/6–90/005A.

Following the workshop, the document will be revised and an external review draft released for public comment and EPA Science Advisory Board (SAB) review. Ample opportunity will be provided for public review and submission of written comments upon release of the external review draft. The public comment period for the external review draft and the dates of the SAB meeting will be announced in subsequent **Federal Register** notices.

Dated: June 13, 1990.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 90–14289 Filed 6–20–90; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–00103; FRL–3769–9]

Biotechnology Science Advisory Committee Subcommittee on Ecoregions; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1–day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Ecoregions. The Subcommittee will consider scientific issues related to the use of large-scale ecological regions (ecoregions) to assist in the assessment of the release of previously reviewed genetically engineered microorganisms into the environment. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, July 25, 1990, starting at 9 a.m. and ending at approximately 5 p.m.

ADDRESSES: The meeting will be held at: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. The Environmental Assistance Division will provide summaries of the meeting at a later date.

Dated: June 14, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc 90–14414 Filed 6–20–90; 8:45 am]

BILLING CODE 6560–50–D

[OPTS–44554; FRL 3770–2]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on isopropanol (CAS No. 67–63–0), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within15 days after it is received.

I. Test Data Submissions

Test data for isopropanol was submitted by Chemical Manufacturers Association Isopropanol Panel, on behalf of the test sponsors pursuant to a final test rule at 40 CFR 799.2325. It was received by EPA on June 5, 1990. The submission describes a Forward Mutation Assay with Independent Repeat in the Chinese Hamster Ovaries. Mutagenicity testing is required by this test rule. This chemical is used as a solvent in consumer products and industrial products and procedures.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the completeness of the submission.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44554). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 13, 1990.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 90–14415 Filed 6–20–90; 8:45 am]

BILLING CODE 6560–50–D

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–865–DR]

Amendment to Notice of a Major Disaster Declaration; Arkansas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–865–DR), dated May 15, 1990, and related determinations.

DATED: June 12, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Arkansas, dated May 15, 1990, 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 May 15, 1990:

The counties of Calhoun, Monroe, and Ouachita for Individual Assistance and Public Assistance;

Desha County for Individual Assistance; and

Columbia County for Public Assistance (previously designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–14400 Filed 6–20–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–868–DR]

Amendment to Notice of a Major Disaster Declaration; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–868–DR), dated May 26, 1990, and related determinations.

DATED: June 13, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective June 13, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–14401 Filed 6–20–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–869–DR]

Amendment to Notice of a Major Disaster Declaration; Indiana

AGENCY: Federal Emergency Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–869–DR), dated June 4, 1990, and related determinations.

DATED: June 14, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Indiana, dated June 4, 1990, 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 June 14, 1990:

The counties of Dubois and Perry for Individual Assistance; and
The counties of Greene and Scott for Public Assistance (previously designated for Individual Assistance).

Richard W. Krimm

Acting Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 90–14402 Filed 6–20–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–870–DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–870–DR), dated June 6, 1990, and related determinations.

DATED: June 10, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: .The notice of a major disaster for the State of Ohio, dated June 6, 1990, 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 June 6, 1990:

The counties of Fairfield, Licking, and Muskingum for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–14403 Filed 6–20–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–866–DR]

Amendment to Notice of a Major Disaster Declaration; Oklahoma

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–866–DR), dated May 18, 1990, and related determinations.

DATE: June 8, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Oklahoma, dated May 18, 1990, 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 May 18, 1990:

The counties of Caddo, Cleveland, Delaware, Ellis, and Okmulgee for Individual Assistance only; and
The City of Bethany for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–14404 Filed 6–20–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–863–DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–863–DR), dated May 2, 1990, and related determinations.

DATED: June 11, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 2, 1990, 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 May 2, 1990:

Cherokee County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–14405 Filed 6–20–90; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–863–DR]

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–863–DR), dated May 2, 1990, and related determinations.

DATES: June 8, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency

Management Agency, Washington, DC 20472 (202) 646–3614.

NOTICE: The notice of a major disaster for the State of Texas, dated May 2, 1990, 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 May 2, 1990:

The counties of Hansford Ochiltree, and Pecos for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90–14406 Filed 6–20–90; 8:45 am]

BILLING CODE 6718–02–M

Office of Training

Board of Visitors for the National Fire Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following committee meeting:

Name: Board of Visitors for the National Fire Academy.

Date of Meeting: June 27, 1990.

Place: Conference room, Third Floor of H Bldg., National Emergency Training Center, Emmitsburg, MD 21717.

Time: June 27, 1990—8:30 a.m. to 5 p.m.

Proposed Agenda: Program Goal and Objective Statements for Fiscal Years 1992, 1993, and 1994.

The meeting will be open to the public with seating available on a first-come, first-serve basis. Members of the general public who plan to attend the quartely meeting should contact the Office of the Superintendent, National Fire Academy, Office of Training, 16825 South Seton Avenue, Emmitsburg, Maryland, 21727 (telephone number, 301–447–1123) on or before June 25, 1990.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: June 8, 1990.

Laura A. Buchbinder,

Acting Director, Office of Training.

[FR Doc. 90–14407 Filed 6–20–90; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No. 224–200123–001

Title: South Carolina State Ports Authority/Sea-Land Service, Inc. Terminal Agreement

Parties: South Carolina State Ports Authority (SCSPA) Sea-Land Service, Inc. (Sea-Land)

Synopsis: The Agreement provides for Sea-Land to pay SCSPA $50.00 per loaded container and $10.00 per empty container moving across SCSPA's wharves on quantities of 0 to 70,000 loaded containers per contract year. On quantities in excess of 70,000 loaded containers per contract year, Sea-Land will pay SCSPA $45.00 per loaded container and $10.00 per empty container. In the event that SCSPA provides Sea-Land with facilities costing more than $960,000 but less than $2,000,000, the above-referenced loaded and empty container rates will be increased by $0.012 per loaded container and $0.012 per empty container for each additional $10,000.00 of such cost.

Agreement No. 224–200090–001

Title: Port of Tacoma/PCTC, Inc./ Plum Creek Timber Company, L.P.

Parties: Port of Tacoma (Port), PCTC, Inc. (PCTC), Plum Creek Timber Company, L.P. (PCTCLP)

Synopsis: The Agreement amends the basic agreement (Agreement No. 224–200090) between the Port and PCTC for preferential berthing of vessels at Berth A, Blair Terminal, Port of Tacoma to provide for the assignment of all PCTC's interest in and under said lease agreement to PCTCLP.

Dated: June 15, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–14290 Filed 6–20–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–056

Title: Asia North America Eastbound Rate Agreement

Parties: American President Lines, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Neptune Orient Lines, Ltd., Nippon Liner Systems, Ltd., Nippon Yusen Kaisha Line, Sea-Land Service, Inc.

Synopsis: The proposed amendment would revise Appendix B by deleting the prohibition of secret ballots.

Dated: June 15, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–14291 Filed 6–20–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banc One Corporation, et al.; Formations of; Acquistions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing at the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 10, 1990.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to merge with D.S.B. Bancshares, Inc, Randolph, Wisconsin, and thereby indirectly acquire Dairyman's State Bank, Randolph, Wisconsin.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *C.B. Bancshares, Inc.*, Des Peres, Missouri; to become a bank holding company by acquiring at least 90 percent of the voting shares of Century Bank, Des Peres, Missouri.

Board of Governors of the Federal Reserve System, June 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14337 Filed 6-20-90; 8:45 am]

BILLING CODE 6210-01-M

Citizens Financial Services, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 1990.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Citizens Financial Services, Inc.*, Mansfield, Pennsylvania; to acquire Star Savings and Loan Association, Sayre, Pennsylvania, and thereby engage in savings association activities pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the States of New York and Pennsylvania.

Board of Governors of the Federal Reserve System, June 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14338 Filed 6-20-90; 8:45 am]

BILLING CODE 6210-01-M

Eddie Pen-Shing Pen et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Eddie Pen-Shing Pen*, Burns, Tennessee; to acquire an additional 3.0 percent of the voting shares of Cumberland Valley Bancshares, Inc., Madison, Tennessee, for a total of 18.2 percent, and thereby indirectly acquire First Cumberland Bank, Madison, Tennessee.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Eugene Leroy Riser—Trustee*, George West, Texas, to acquire 23.95 percent; Eugene Leroy Riser, George West, Texas, to acquire 22.63 percent; Cruz Garcia, George West, Texas, to acquire 9.05 percent; Gwendolyn Knox, Dallas, Texas, to acquire 9.05 percent; James Marvin Johnson III, George West, Texas, to acquire 9.05 percent; James Henderson Eckhardt, San Antonio, Texas, to acquire 9.05 percent; Robert Edward Matula, Calliham, Texas, to acquire 8.15 percent; Paul Martin Dirks, George West, Texas, to acquire 4.53 percent; and Marcia Lynne Wallace, San Antonio, Texas, to acquire 4.53 percent of the voting shares of Charlotte Bancshares, Inc., Charlotte, Texas, and thereby indirectly acquire Charlotte State Bank, Charlotte, Texas.

Board of Governors of the Federal Reserve System, June 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14336 Filed 6-20-90; 8:45 am]

BILLING CODE 6210-01-M

Societe Generale, Paris, France; Proposal to Act as a Futures Commission Merchant in the Execution and Clearance of Futures Contracts, and Options on Future Contracts, on Stock and Bond Indexes

Societe Generale, Paris, France ("Sogen"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("the BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its indirect wholly-owned subsidiary, FIMAT Futures USA, Inc., Chicago, Illinois ("FIMAT"), to engage *de novo* in the execution and clearance of broad-

based bond and stock indices future contracts on major commodity exchanges and options thereon, as a futures commission merchant ("FCM"). Sogen proposes that these activities be conducted worldwide.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or management or controlling banks as to be a proper incident thereto."

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1337 (D.C. Cir. 1975) ("*National Courier*"). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. "Board Statement Regarding Regulation Y," 49 **Federal Register** 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Sogen contends that the proposed activities are closely related to banking under the *National Courier* test, and that permitting bank holding companies to engage in the proposed activities would result in increased competition and gains in efficiency. Sogen has applied to act as an FCM in the provision of execution and clearance on the following future contracts and options thereon: (a) Bond Buyer Municipal Bond Index futures contract and options thereon, (b) Financial Times Stock Index futures contract and options thereon, (c) Kansas City Mini Value Line Index futures contract, (d) Kansas City Maxi Value Line Index futures contract, (e) New York Stock Exchange Composite Index futures contract, and options thereon, (f) Nikkei Stock Average futures contract and (g) Standard and Poor's 500 Stock Price Index futures contract and options thereon. The Board has previously approved the execution and clearance on the listed futures contracts and options thereon. *See e.g., BankAmerica Corporation*, 75 Federal Reserve Bulletin 78 (1989); *Northern Trust Corporation*, 74 Federal Reserve Bulletin 333 (1988); and *Republic New York Corporation*, 73 Federal Reserve Bulletin 224 (1987). Company would conduct its FCM activities in accordance with the limitations of 12 CFR 225.25(b)(18).

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the BHC Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standard of the BHC Act.

Any comments or requests for a hearing should be submitted in writing and received by Williams W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than July 10, 1990. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14335 Filed 6-20-90; 8:45 am]

BILLING CODE 6210-01-M

Synovus Financial Corp.; Acquisition of Companies Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a) or (f) of the Board's Regulation Y (12 CFR 225.23 (a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 10, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Synovus Financial Corp., Columbus, Georgia, and TB&C Bancshares, Inc., Columbus, Georgia; to expand the activities of its wholly-owned subsidiary, Synovus Securities, Inc., Columbus, Georgia, and engage *de novo* in providing employee benefits consulting services pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities have been approved by the Board. *Norstar Bancorp, Inc.*, 71 Fed. Res. Bull. 656 (1985).

Board of Governors of the Federal Reserve System, June 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-14344 Filed 6-20-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 892 3176]

CPC International Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an advertiser and distributor of Mazola Corn Oil and Mazola Margarine from misrepresenting the effects of such oil or margarine products on cholesterol levels, and from making claims concerning such products' ability to affect heart disease or serum cholesterol levels unless at the time such representations are made, they are substantiated with competent and reliable scientific evidence.

DATES: Comments must be received on or before August 20, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert Cheek, FTC/S–4002, Washington, DC 20580. (202) 326–3045.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of CPC International Inc., a corporation, and it now appearing that CPC International Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between CPC International Inc., by its duly authorized officer, and counsel for the Federal Trade Commission that:

1. Proposed respondent CPC International Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at International Plaza, Englewood Cliffs, New Jersey 07632.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated hereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint as attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

It is ordered, That respondent CPC International Inc., a corporation, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Mazola Corn Oil, Mazola Margarine or any other edible oil or margarine product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication:

(a) That consumption of chicken fried in any such oil or margarine product will reduce serum cholesterol levels;

(b) That adding any such oil or margarine product to the diet without other dietary changes will cause a 17% reduction in serum cholesterol levels; or

(c) The effect of any such oil or margarine product on cholesterol levels.

II.

It is further ordered, That respondent, its successors and assigns, and its officers, representatives, agents and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of Mazola Corn Oil, Mazola Margarine or any other edible oil or margarine product, in or affecting

commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that any such product can or may reduce, or help reduce, the risk of developing or otherwise affect heart disease, or that any such product can or may reduce, or help reduce, or otherwise affect serum cholesterol levels, unless at the time of making such representation respondent possesses and relies upon competent and reliable scientific evidence that substantiates such representation. For any test, analysis, research, study or other evidence to be "competent and reliable" for purposes of this Order, such test, analysis, research, study or other evidence must be conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted by others in the profession to yield accurate and reliable results.

III.

Nothing in this Order shall prevent respondent from representing truthfully, for example, that any product covered by this Order can be part of or compatible with a diet low in saturated fats and cholesterol, and that such diet can be used to reduce serum cholesterol or the risk of heart disease.

IV.

It is further ordered, That for three (3) years from the date that the representations to which they pertain are last disseminated, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any representation covered by this Order; and

B. All tests reports, studies, surveys or other materials in its possession or control that contradict, qualify or call into question such representation or the basis upon which respondent relied for such representation.

V.

It is further ordered, That respondent shall distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives or employees engaged in the preparation and placement of advertisements or other such sales materials covered by this Order.

VI.

It is further ordered That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations under this Order.

VII.

It is further ordered That respondent shall, within sixty (60) days after service of this Order upon it, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from CPC International, Inc. (respondent).

The consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After (60) days, the Commission will decide whether it should withdraw from the agreement and take other appropriate action, or make final the order contained in the agreement.

This matter concerns advertisements about Mazola Corn Oil and Mazola margarine (collectively referred to as "Mazola").

The Commission's complaint in this matter charges that respondent has violated the Federal Trade Commission Act by making false and misleading claims in connection with its ads for Mazola. According to the complaint, respondent's ads represented that consumption of chicken legs fried in Mazola will reduce serum cholesterol levels. The complaint alleges that this claim is false and without a reasonable basis. Also according to the complaint, the ads represented that adding Mazola to the diet without other dietary changes will cause a 17% reduction in serum cholesterol levels. The complaint alleges that respondent did not have a reasonable basis for making this representation and, therefore, the claim is false and misleading.

The consent order contains provisions designed to prevent respondent from engaging in similar allegedly unlawful acts in the future.

Part I of the order prohibits respondent from misrepresenting that consumption of chicken fried in any edible oil or margarine will reduce serum cholesterol and that adding such oil or margarine to the diet without other dietary changes will cause a 17% reduction in serum cholesterol levels. In addition, the order prohibits misrepresentation of the effects of such oil or margarine products on cholesterol levels.

Part II of the order prohibits claims concerning such products' ability to affect heart disease or serum cholesterol levels unless at the time such representations are made respondent possesses and relies upon competent and reliable scientific evidence that substantiates these representations.

Part III contains a provision which states that this order does not prevent truthful representations that any product covered by the order of a low-fat, low-cholesterol diet and that such a diet can be used to reduce serum cholesterol or the risk of heart disease.

Part IV requires respondent to keep records concerning claims covered by this order. Part V requires respondent to distribute a copy of the order to its operating divisions and to each officer, agent, representative or employee engaged in preparation and placement of advertisements or sales materials encompassed by the order.

Part VI requires respondent to notify the Commission of any change in status that might affect compliance with the order. Part VII requires respondent to file a compliance report within sixty (60) days after service of the order and at such other times as the Commission may require.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 90-14364 Filed 6-20-90; 8:45 am]

BILLING CODE 6750-01-M

[Docket No. 9213]

Illinois Cereal Mills, Inc., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Dismissal order.

SUMMARY: The Commission has dismissed the complaint in this matter as to respondent Elders Grain, Inc., by granting a motion to that effect filed by complaint counsel. In certifying the motion to the Commission, the Administrative Law Judge agreed that continued prosecution of the case, with respect to this respondent, is no longer in the public interest because respondent has exited the dry corn milling industry.

DATES: Complaint issued June 30, 1988. Dismissal Order issued May 31, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph Brownman, FTC/S–3302, Washington, DC 20580. (202) 326–2605.

SUPPLEMENTARY INFORMATION: In the Matter of Illinois Cereal Mills, Inc., et al. The prohibited trade practices and/or corrective actions as to the respondent Elders Grain, Inc. are deleted.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Order Dismissing Complaint

In the matter of Illinois Cereal Mills, Inc., a corporation, et al.

Pursuant to section 3.22 of the Commission's Rules of Practice, Complaint Counsel have moved that the Commission dismiss the complaint in this matter as to the respondent Elders Grain, Inc., and the Administrative Law Judge has certified the motion to the Commission, with his recommendation that the motion be granted. The motion is granted.

It is ordered that the complaint in this matter be, and it hereby is, dismissed as to the respondent Elders Grain, Inc.

By the Commission, Commissioner Calvani recused.

Donald S. Clark,

Secretary.

[FR Doc. 90–14363 Filed 6–20–90; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Health Services Research Dissemination and User Liaison Advisory Committee; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following national advisory body scheduled to meeting during the month of June 1990:

Name: HEALTH SERVICES RESEARCH DISSEMINATION AND USER LIAISON ADVISORY COMMITTEE

Date and Time: June 26–27, 1990, 8:30 a.m.

Place: Holiday Inn—Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland. Closed June 26, 2:15 p.m. to 4:15 p.m. Open for remainder of meeting.

Purpose: The Committee's charge is to review and make recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and agency liaison with health care policy makers, providers and consumers.

Agenda: This is the initial meeting of the Committee, and most of the agenda will be devoted to orientation, including a presentation by the Acting Administrator, Agency for Health Care Policy and Research and several AHCPR senior staff. During the closed sessions, the Committee will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(C)(6), the Acting Administrator, AHCPR has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meeting, or other relevant information should contact Mr. John D. Gallicchio, Chief, Review and Advisory Services Program, Agency for Health Care Policy and Research, Room 18A20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–3091.

Agenda items are subject to change as priorities dictate.

Dated: June 13, 1990.

J. Jarrett Clinton,

Acting Administrator, Agency for Health Care Policy and Research.

[FR Doc. 90–14299 Filed 6–20–90; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control

Scientific Issues Involved in Administration of Potassium Iodide for Protection of the Thyroid Gland in the Event of a Nuclear Reactor Mishap: Meeting

The Center for Environmental Health and Injury Control (CEHIC) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Scientific Issues Involved in Administration of Potassium Iodide for Protection of the Thyroid Gland in the Event of a Nuclear Reactor Mishap.

Time and Date: 9 a.m. to 5 p.m., July 24, 1990.

Place: Terrace Garden Inn, 3405 Lenox Road, NE., Atlanta, Georgia 30329, 404/261–9250.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Matters to be Discussed: In September 1989, representatives of the American Thyroid Association wrote to the Federal Emergency Management Agency meeting requesting that the Federal Government reconsider the issues of stockpiling, distribution, administration of potassium iodide (KI) in case of a large release of radioactive iodine as a result of a nuclear reactor mishap. This matter was referred to the Federal Radiological Preparedness Coordinating Committee (FRPCC) for future consideration. The FRPCC requested that the Department of Health and Human Services (HHS) provide them with recommendations on these issues. In order to fulfill this request, HHS under the leadership of CDC and the Food and Drug Administration, is convening this *ad hoc* meeting of experts in the field of nuclear medicine and potassium iodide issues to solicit relevant scientific and medical information on this subject. Radioiodine exposure dose levels and other safety and efficacy issues regarding the use of potassium iodide as a radioprotective agent will be discussed.

Contact Person for More Information: Additional information concerning the meeting may be obtained from E. Kent Gray, Chief, Emergency Response and Coordination Group, CEHIC, CDC, Mailstop E–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone 404/639–0615, FTS 236–0615.

Dated: June 15, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 90–14366 Filed 6–20–90; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 90M–0176]

Depuy; Premarket Approval of AML® Porocoat® Acetabular Cup Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by DePuy, Warsaw, IN, for premarket approval under the Medical Device Amendments of 1976, of the AML® Porocoat® Acetabular Cup Prosthesis. After reviewing the recommendation of the Orthopedic and Rehabilitation Devices Panel, FDA's Center for Devices and

Radiological Health (CDRH) notified the applicant, by letter of March 23, 1990, of the approval of the application.

DATES: Petitions for administrative review by July 23, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas J. Callahan, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1036.

SUPPLEMENTARY INFORMATION: On November 16, 1988, DePuy, Warsaw, IN 46580, submitted to CDRH an application for premarket approval of the AML® Porocoat® Acetabular Cup Prosthesis. The device is indicated for noncemented use in skeletally mature individuals undergoing primary surgery for rehabilitating hips damaged as a result of noninflammatory degenerative joint disease (NIDJD) or any of its composite diagnoses of osteoarthritis, avascular necrosis, traumatic arthritis, slipped capital epiphysis, fused hip, fracture of the pelvis, and diastropic variant. The AML® Porocoat® Cup Prosthesis is indicated for cementless use with the ⅝ porous coated AML® Porocoat® stem that is also indicated for cementless use, or with a cemented femoral component, to comprise a total hip system. Such systems consists of a femoral component, or stem, that is placed in the intramedullary canal of the femur and an acetabular component placed in the pelvis. FDA's regulatory review of safety and effectiveness data for the cemented use of the AML® Porocoat® Acetabular Cup is not required at this time because FDA has determined that the device used with bone cement is substantially equivalent to a generic type of device marketed in interstate commerce prior to May 28, 1976 (see 21 CFR 888.3350).

On June 6, 1989, the Orthopedic and Rehabilitation Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 23, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Thomas J. Callahan (HFZ-410), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 23, 1990, file with Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (section 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: June 14, 1990.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-14352 Filed 6-20-90; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors Meeting—July 10-11, 1990; Cancellation

This is to announce that the meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts *(Peer Review Panel)* scheduled for July 10 and 11, 1990, has been cancelled.

The next meeting of the Peer Review Panel will be held as planned on November 19 and 20, 1990, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park (RTP), North Carolina.

The Executive Secretary, Dr. Larry G. Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919-541-3971, FTS 629-3971) may be contacted for information.

Dated: June 18, 1990.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 90-14371 Filed 6-20-90; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Notice is given that subchapter S5E, Office of Public Affairs, is being amended to reflect the establishment of the Intergovernmental Affairs Staff in the Office of External Affairs. The changes are as follows:

Subchapter S5E, Office of Public Affairs
S5E.00 Mission
S5E.10 Organization
S5E.20 Functions

Subchapter S5E.10 *The Office of Public Affairs*—(Organization):

G. The Office of External Affairs (S5EK).

Add:

5. The Intergovernmental Affairs Staff (S5EK7).

Subchapter S5E.20 *The Office of Public Affairs*—(Function):

G. The Office of External Affairs (S5EK).

2. The External Liaison Staff (S5EK4).

Delete:

a. First sentence: "other Federal agencies and State and local governments."
b. Third line: "Federal, State and."
c. Fifth line: "Intergovernmental."
Add:
5. The Intergovernmental Affairs Staff (S5EK7).
a. Develops, plans and carries out a program of liaison and coordination and information exchange with all levels of government—Federal, State, County and municipal. Presents, explains, advocates and defends the views, goals and objectives of SSA.
b. Works to enhance SSA's image through effective means of open communications and shared information. Works to establish communication networks with all levels of governments.

Dated: June 14, 1990.

John R. Dyer,

Deputy Commissioner for Management.

[FR Doc. 90-14292 Filed 6-20-90; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-90-3105]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 205503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Papework Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 11, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Public Housing Agency Application, Project Proposal and Legal Authority for Public Housing Development.

Office: Public and Indian Housing

Description of the Need for the Information and its Proposed Use: These forms affect Public Housing Agencies (PHAs) and, on occasion, local officials, turnkey developers, and private owners. The Department needs the information to determine relative funding priorities for localities, PHA eligibility to participate in the program, and whether project proposals meet program requirements.

Form Number: HUD-52470, 52471, 52472, 9009, 52483A, 52651A, 52485, 51971-I, and 52482.

Respondents: State Or Local Governments and Non-Profit Institutions.

Frequency of Submission: Recordkeeping and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-52470	100		1		1		100
HUD-9009	100		1		1/4		25
HUD-52471	100		1		1/2		50
HUD-52472	50		1		1/2		25
HUD-52843A	228		1		2		456
HUD-52651A	228		2.5		3		1,710
HUD-51971-I	178		2.5		1-1/2		668
HUD-52485	228		1		1		228
HUD-52482	48		1		2		96

Total Estimated Burden Hours: 3,358.

Status: Reinstatement.

Contact: Raymond H. Hamilton, HUD, (202) 708-1938; Scott Jacobs, OMB, (202) 395-6880.

Dated: June 11, 1990.

Submission of Proposed Information Collection to OMB

Proposal: Mandatory Meals Program in Multifamily Rental and Cooperative Projects for the Elderly.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Housing project owners may require tenants of elderly assisted housing to participate in and pay for a mandatory meals program as a condition of occupancy in projects equipped with central kitchen and dining facilities.

Form Number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, Federal Agencies or Employees, and Non-Profit Institutions.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Requests	400		1		3		1,200
Recordkeeping	400		1		2		800

Total Estimated Burden Hours: 2,000.
Status: Reinstatement.
Contact: James J. Tahash, HUD, (202) 426–3944, Scott Jacobs, OMB, (202) 395–6880.

Dated: June 11, 1990.

[FR Doc. 90–14305 Filed 6–20–90; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–90–3106]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Scott Jacobs, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 7, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Indian Housing: Revised Consolidated Program Regulations, FR–2208.
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: The regulations require Indian Housing Authorities to submit information for administering their Indian Housing programs. The Department will use this information to assure compliance with the Regulations.
Form Number: None.
Respondents: State or Local Governments and Non-Profit Institutions.
Frequency of Submission: Recordkeeping and On Occasion.
Reporting Burden:

Section of regulation	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting burden: New							
905.135(e) and (f)	40		1		6		240
905.135(g)	15		1		2		30
905.360	180		1		5		900
905.455	3		1		3		9
905.458	3		1		3		9
905.503(d)	3		1		4		12
905.529(a)(2)	500		1		1		500
Reporting burden: Existing							
905.422(a)(2)	180		1		.30		54
905.446(f)	1,000		1		4		4,000
905.452(a)	40,000		1		1		40,000
905.466	3		1		3		9
905.475	3		1		4		12
905.505(c)	3		1		6		18
905.517(h)	40,000		1		1		40,000
905.903(a)	180		1		1		180
Recordkeeping burden							
905.160(a)(4)	180		3		.5		13
905.446(f)(4)	180		10		2		3,600

Total Estimated Burden Hours: 89,586.
Status: New.
Contact: Dominic Nessi, HUD, (202) 708–5846; Scott Jacobs, OMB, (202) 395–6880.

Dated: June 7, 1990.

[FR Doc. 90–14306 Filed 6–20–90; 8:45 am]
BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. N–90–3104; FR–2845–N–01]

Public Hearing

AGENCY: Office of the Secretary, HUD.
ACTION: Notice of public hearing on regulation.

SUMMARY: This document provides notice of a public hearing on the regulation of the Federal National Mortgage Association (Fannie Mae) and of the Federal Home Loan Mortgage Corporation (Freddie Mac) by the Secretary of the U.S. Dept. of Housing and Urban Development (HUD).

The Secretary is conducting this public hearing to comply with the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), which strengthens his role as regulator of Fannie Mae and establishes him as the regulator of Freddie Mac. The new regulations will assure the continuance of these institutions' mission of increasing housing opportunities for low and moderate income families and will protect the safety and soundness of these institutions by instituting proper financial oversight procedures and requiring adequate capital reserves.

DATES: The public hearing will be held on Tuesday, July 31, 1990, beginning at 10 a.m. Outlines of oral comments must be delivered by Friday, July 20, 1990.

ADDRESSES: The public hearing will be held in the Departmental Conference Room, Room 10233, Tenth Floor, HUD Building, 451 Seventh St. SW., Washington, DC. The request to speak and outline of oral comments should be submitted to: U.S. Dept. of Housing and Urban Development, Attn: Walter T. Cassidy, Room 9252, 451 Seventh Street, SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Walter T. Cassidy, Acting Senior Tax Attorney, 202–708–1263. (This is not a toll free number.)

HOURS: 9 a.m. to 5 p.m. e.s.t.

SUPPLEMENTARY INFORMATION: The Secretary's general regulatory power over Fannie Mae is found at 12 U.S.C. 1723a(h) and over Freddie Mac at 12 U.S.C. 1452(b). The current regulations promulgated by the Secretary over Fannie Mae are found at 24 CFR part 81. The regulations promulgated by Freddie Mac, prior to its coming under the regulatory power of the Secretary, are found at 1 CFR parts 460–462.

The following are issues on which HUD particularly seeks public comments and suggestions, but speakers are not limited to these issues:

1. Mortgage programs which would help provide adequate housing for low and moderate income families;
2. Capital adequacy regulations, including stress tests if appropriate;
3. Fair housing requirements;
4. Reports and information to be furnished to HUD;
5. Role of private mortgage insurers (PMIs);
6. Enforcement mechanisms which should be available to HUD.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for HUD and answers to those questions.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available at the hearing.

Dated: June 14, 1990.

Alfred A. DelliBovi,
Undersecretary.

[FR Doc. 90–14302 Filed 6–20–90; 8:45 am]
BILLING CODE 4210–32–M

[Docket No. D–90–924]

Acting Manager, Region IV (Atlanta); Designation for Memphis Office

AGENCY: Department of Housing and Urban Development.
ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Memphis Office.

EFFECTIVE DATE: May 24, 1990.

FOR FURTHER INFORMATION CONTACT: H.E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, 404–841–5199.

Designation of Acting Manager for Memphis Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Chief, Property Disposition Branch
3. Chief, Valuation Branch
4. Chief, Mortgage Credit Branch
5. Chief, Loan Management Branch

This designation supersedes the designation effective July 24, 1989, (54 FR 34255, August 18, 1989). (Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971)).

This designation shall be effective as of May 24, 1990.

Robert W. Reavis, Jr.,
Acting Manager, Memphis Office.

Raymond A. Harris,
Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 90–14301 Filed 6–20–90; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. D–90–923]

New York Regional Office; Designation of Order of Succession

AGENCY: Department of Housing and Urban Development.
ACTION: Designation of Order of Succession.

SUMMARY: The Regional Administrator is designating officials who may serve as Acting Regional Administrator/Regional Housing Commission during the absence, disability, or vacancy in the position of Regional Administrator/Regional Housing Commissioner.

EFFECTIVE DATE: This designation is effective June 8, 1990.

FOR FURTHER INFORMATION CONTACT: Lisa T. Surplus, Acting Director, Administrative and Management Services Division, Office of Administration, New York Regional Office, Department of Housing and Urban Development, 26 Federal Plaza, New York, NY 10278, telephone (212) 264–2761. (This is not a toll-free number.)

DESIGNATION: Each of the officials appointed to or designated as Acting in the following positions is designated to serve as Acting Regional Administrator/Regional Housing Commissioner during the absence, disability, or vacancy in the position of the Regional

Administrator/Regional Housing Commissioner, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator/Regional Housing Commissioner: Provided, that no official is authorized to serve as Acting Regional Administrator/Regional Housing Commissioner unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Regional Administrator.
2. Director, Office of Operational Support.
3. Director, Office of Fair Housing and Equal Opportunity.
4. Director, Office of Community Planning and Development.
5. Director, Office of Administration.
6. Director, Office of Housing.
7. Director, Office of Public Housing.
8. Regional Counsel.

This designation supersedes the designation effective June 20, 1988.

Authority: Delegation of Authority, 27 FR 4319 (1962); section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); and Interim Order II, 31 FR 815 (1966).

Dated: June 8, 1990.

Anthony M. Villane, Jr.,

Regional Administrator/Regional Housing Commissioner, Region II.

[FR Doc. 90-14300 Filed 6-20-90; 8:45 am]

BILLING CODE 4210-01-M

Government National Mortgage Association

[Docket No. N-90-3103; FR-2742-N-01]

Withdrawal From Participation in GNMA Programs

AGENCY: Government National Mortgage Association, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(d) of the National Housing Act notice is hereby given of withdrawal of the below listed mortgagees, from participation in the GNMA Program.

FOR FURTHER INFORMATION CONTACT: Paul A. Yates, Senior Assistant Vice President, 451 Seventh Street, SW., room 6204, Washington, DC 20410-9000, Tel: (202) 708-4141.

SUPPLEMENTARY INFORMATION: Section 202(d) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989) deals with the coordination of Federal Housing Administration (FHA) and Government National Mortgage Association (GNMA) withdrawal actions. It requires the FHA and GNMA, whenever either initiates proceedings that could lead to withdrawing a mortgagee from participating in its program(s), to (1) Within 24 hours notify the other agency in writing of the action taken (2) provide to the other agency the factual basis for the action taken; and (3) if a mortgagee is withdrawn, publish its decision in the **Federal Register.**

In addition, within 60 days of receipt of a notification of action that could lead to withdrawal the agency so informed shall (1) Conduct and complete its own investigation; (2) provide written notification to the other agency of its decision, including the factual basis for its decision; and (3) if a mortgagee is withdrawn, publish its decision in the **Federal Register.**

In compliance with these requirements of section 204(d) of the National Housing Act notice is hereby given that the Government National Mortgage Association initiated action resulting in the withdrawal of the below listed mortgagees from participation in the GNMA program.

1. The Florida Group, Inc., St. Petersburg, Florida.
2. Trust America Resources, Inc., St. Petersburg, Florida.

Dated: April 26, 1990.

Arthur J. Hill,

President, Government National Mortgage Association.

[FR Doc. 90-14304 Filed 6-20-90; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-060-00-4130-09]

Battle Mountain and Elko Districts

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of intent to prepare an environmental impact, statement on an amendment to a mining plan of operations for the Cortez Mine, Lander and Eureka Counties, Nevada; and notice of scoping period and public meetings.

SUMMARY: Pursuant to section 102 (2)(c) of the National Environmental Policy Act of 1969, and to 43 CFR, part 3809, the Bureau of Land Management will be directing the preparation of an environmental impact statement (EIS) for the proposed expansion of an existing gold mine in Lander and Eureka Counties, Nevada. This EIS will be prepared by contract, funded by the proponent, Cortez Gold Mines. The Bureau invites comments and suggestions on the scope of the analysis.

DATES: Scoping meetings will be held July 10, 1989 at the Bureau of Land Management, Elko District Office, 3900 E. Idaho, Elko, Nevada; and on July 11, 1990 at the Peppermill Hotel Casino, 2707 South Virginia, Reno, Nevada in order to identify issues and concerns to be addressed in the environmental impact statement (EIS) and in order to encourage public participation in the environmental review process. Both meetings are scheduled from 7-9 p.m. Representatives of Cortez Gold Mine will be available to present the Plan of Operations Amendment and answer any questions from the audience regarding the Plan or existing Cortez Gold Mine operations. Additional scoping meetings may be held as appropriate. Written comments on the Plan of Operations Amendment and the scope of the EIS will be accepted until September 10, 1990. A draft environmental impact statement (DEIS) is expected to be completed by late March, 1991 at which time the DEIS will be made available for public review and comment.

ADDRESSES: Scoping comments may be sent to: The District Manager, P.O. Box 1420, Battle Mountain, NV 89820. ATTN: Cortez Coordinator.

FOR FURTHER INFORMATION CONTACT: Write to the above address, or call Mr. Dave Davis, at (702) 635-4000.

SUPPLEMENTARY INFORMATION: Cortez Gold Mines of Cortez, Nevada has submitted to the Battle Mountain and Elko District Offices of the U.S. Department of Interior, Bureau of Land Management (BLM) an Amendment to a Plan of Operations (POO). The Plan of Operations Amendment describes existing and proposed mining and processing operations in Lander and Eureka counties, Nevada. Current activities at the Cortez Gold Mine under several approved Plans of Operation include open-pit mining, heap leaching, processing of oxide and sulfide ores, tailings management, and exploration projects. The proposed action includes expanding existing open-pit mines, developing a new open-pit mine, constructing new heap-leach and tailings-disposal facilities, and conducting on-going exploration drilling. The proposed action will allow a sustained rate for the milling of ore of 2,000 tons per day. Total permitted and existing surface disturbance is estimated at 1,770 acres of Public Lands and 690 acres of private land.

Proposed surface disturbance described in the 1990 Plan of Operations

is estimated at 1,630 acres of Public Land and 75 acres of private land.

The project site is located approximately 75 miles southwest of Elko, Nevada. The Cortez Gold Mines company is a joint venture based in Lander county, Nevada, where the administrative offices, mill site, and ancillary facilities are situated. The Cortez Joint Venture has operated at Cortez since 1969. It controls approximately 44,000 acres of unpatented mining claims and 3,200 acres of patented mining claims in the project area.

The existing mining activities of the Cortez Gold Mine are located on two BLM administrative districts: the Elko District, Elko Resource Area, and the Battle Mountain District, Shoshone-Eureka Resource Area. Since the larger portion of the surface activities occur in the Battle Mountain District the two Districts have agreed that Battle Mountain will take the lead in directing the preparation of the EIS.

The issues expected to be analyzed in the EIS are impacts to: cultural resources, including the Cortez Historic District which has been determined to be eligible as a National Register Site by the Keeper of the National Register; water quantity and quality: groundwater monitoring by Cortez has led to the discovery of heavy metal and cyanide contamination of the local aquifer; Air quality: A new roasting facility to pre-treat sulfide and carbonaceous ores has been brought on line recently; soils and vegetation; social and economic values; cumulative impacts on the environment from mining activities in the area.

An interdisciplinary team composed of BLM resource specialists will be convened to review the Plan Amendment and EIS. Disciplines represented on the team will be: wildlife, recreation, geology, paleontology, cultural resources, soils, water and air quality, range management, lands and realty, and land use planning.

Federal, state and local agencies and other individuals or organizations who may be interested in or affected by the Bureau's decision on the Plan of Operations Amendment are invited to participate in the scoping process with respect to this environmental analysis. These entities and individuals are also invited to submit comments on the DEIS.

Interested parties are encouraged to provide input and review during the scoping and draft stages of the EIS preparation.

The Authorized Officer will respond to public input and comment as part of the final EIS. The decision regarding the proposal will be recorded as a Record of Decision, which is subject to appeal under 43 CFR part 4.

Dated: June 14, 1990.

James D. Currivan,

District Manager.

[FR Doc. 90-14282 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-HC-M

[WO-150-00-4830-11]

National Public Lands Advisory Council—Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet July 20 and 21, 1990, at the Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402. The meeting hours will be 8 a.m. to 5 p.m. on Friday, the 20th, and 8 a.m. to 12 p.m. on Saturday, the 21st. On Thursday, July 19, Council members will participate in a field tour of BLM-managed lands along the Snake River. The proposed agenda for the meeting is:

Friday, July 20:

Morning: Opening remarks by Assistant Secretary, Land and Minerals Management, Department of Interior, Dave O'Neal and Director of the Bureau of Land Management, Cy Jamison; followed by a presentation on the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976.

Afternoon: Public Statement period; followed by a presentation on the Endangered Species Act of 1973 and a BLM budget overview.

Saturday, July 21:

Council old and new business, to include Department responses to previous Council resolutions; meetings of Council subcommittees; Report from subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 1 p.m. on Friday, July 20. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written statements prior to oral delivery. Please send written comments by July 15 to the Bureau of Land Management's Idaho State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: July 20 and 21—Council Meeting. July 20—Public Statements.

ADDRESS: Copies of Public statements should be mailed by July 15 to: Ms. Pat Entwistle, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Nan Morrison, Washington, DC Office, BLM, telephone (202) 208-5101; or Pat Entwistle, Idaho State Office, BLM, telephone (208) 334-9030.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdication of BLM.

Dated: June 15, 1990.

Mike Penfold,

Acting Deputy Director.

[FR Doc. 90-14316 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-84-M

Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management (Susanville District Grazing Advisory Board Susanville, CA

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Grazing Advisory Board, created under the Secretary of Interior's discretionary authority on May 14, 1986, will meet on August 7, 1990.

The August 7 meeting will begin at 10 a.m. at the Susanville District Office, Bureau of Land Management, 705 Hall Street, Susanville, California.

Subjects to be covered during the meeting will include a report of progress on range improvements for FY 1990, a report on new and revised Allotment Management Plans (AMPs) for FY 1990, a discussion of cattleguard maintenance problems, a discussion of the proposed helicopter gathering of wild horses and burros for FY 1991, and a discussion of other items as appropriate.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3 p.m. to 4:30 p.m. on August 7, 1990 or file a written statement for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130 by August 1, 1990. Depending upon the number of persons wishing to make oral

statements, a per person time limit may be established.

Summary minutes of the Board meeting will be maintained in the District Office, and will be available for public inspection and reproductoin (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 90-14350 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-40-M

[NV-930-00-4212-14; N-50904]

Realty Action; Modification of Recreation and Public Purposes Classification and Designation of Public Land for Competitive Sale; Washoe County, NV

Classification of the following land pursuant to the Recreation and Public Purposes Act of 1926, as amended (43 U.S.C. 869, et seq.), is hereby modified to allow for disposal of the land through sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, at no less than fair market value:

Mount Diablo Meridian

T. 20 N., R. 20 E.,
sec. 28: Lots 15-24, 26-29 and 31, SW¼NE¼, SE¼.

The area described above aggregates 237.32 acres, more or less. The land will remain closed to all other forms of appropriation including the mining laws. The land has been and will remain open to mineral leasing.

On December 18, 1978, this public land was classified for recreational purposes pursuant to the Recreation and Public Purposes Act. The land was subsequently leased to the City of Sparks, Nevada for recreational facilities and park purposes. The lease expired in 1985. The land was never developed and neither the City, nor Washoe County have any further interest in the land for recreational purposes.

This public land has been examined and determined to be suitable for disposal by competitive sale. Disposal of the land is consistent with Bureau and local plans. The land is no longer required for any Federal purpose and disposal would serve important public objectives for community expansion. The lands are prospectively valuable for geothermal steam and related resources.

This land will be offered for sale beginning at 10 a.m. PDT, September 12, 1990, Carson City District Office, Bureau of Land Management. No bids will be accepted for less than the appraised fair market value of the property. The property has been appraised at $1,623,000. Sealed bids may be made by a principal or duly qualified agent. Sealed bids shall be considered only if received at the Carson City District BLM Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706, prior to 9 a.m., September 12, 1990. Each bid shall be accompanied by a certified check, postal money order, bank draft or cashiers check made payable to the Department of the Interior—BLM for not less than twenty (20) percent of the amount of the bid and shall be enclosed in a sealed envelope marked in the lower left hand corner, *BLM Land Sale, N-50904.*

The patent when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

2. Geothermal steam and related resources shall be reserved to the United States, together with the right to prospect for and remove those resources and will be subject to:

1. Those rights for utility purposes which have been granted to Sierra Pacific Power Company, their successors or assignees by rights-of-way CC-025152, Nev-058664, Nev-061608, Nev-061913, Nev-066906, N-30813, N-46826, N-48540 and N-49752.

2. Those rights for highway purposes which have been granted to the Nevada Department of Transportation, their successors or assignees by right-of-way Nev-047623.

3. Those rights for communication line purposes which have been granted to Nevada Bell, their successors or assignees by rights-of-way Nev-044106 and N-49737.

4. Those rights for gas pipeline purposes which have been granted to Southwest Gas Corporation, their successors or assignees by rights-of-way Nev-058689 and N-24960.

5. Those rights for communication facility purposes which have been granted to TCI of Reno, Inc., their successors or assignees by right-of-way N-12150.

6. Those rights for utility purposes which have been granted to Donald M. Johnson, his successors or assignees by right-of-way N-48126.

7. Those rights for access purposes which have been granted to Feliciano Jimenez, his successors or assignees by right-of-way N-39925.

(These rights-of-way may be altered prior to sale to permit perpetual grant terms.)

Conveyance of the available mineral estate will occur simultaneously with sale of the lands in accordance with section 209(b)(1)(l) of Public Law 94-579.

Acceptance of a bid offer will constitute an application for mineral conveyance and will require payment of a $50 nonrefundable fee by the declared high bidder.

Patent will be issued in the name of the declared high bidder only. Bidders must be either, (1) Citizens of the United States, 18 years of age or older; (2) corporations subject to the laws of any state or of the United States; (3) other entities such as associations and partnerships capable of holding lands or interest therein under the laws of the State of Nevada; or (4) states, state instrumentalities or political subdivisions authorized to hold property. If two or more sealed bids containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by supplemental oral bidding. The remainder of the full bid price shall be paid within 180 days of the sale. Failure to submit the full bid price within 180 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale. All other bids will be returned within 30 days of the sale date.

BLM may reject any and all offers or withdraw the lands from sale if the authorized officer determines that sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable law. If the tract does not sell at the first offering, sealed bids will be accepted at the Carson City District Office during business hours (7:30 a.m. to 4:15 p.m.) and opened on the first and third Wednesday of each month at 10 a.m. Pacific Time until the tract is sold or withdrawn from sale.

The lands will not be offered for sale for at least 60 days after the date of this notice. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89706. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Dated this 8th day of June, 1990.

James W. Elliott,

District Manager.

[FR Doc. 90-14283 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-HC-M

[NM-010-5101-09-YGKK/GPO-0112]

Albuquerque District Office; Notice of Application: New Mexico

AGENCY: Bureau of Land Management, Albuquerque District, Interior.

SUMMARY: Application has been filed for a 30 inch diameter natural gas pipeline.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 USC 185), as amended by the Act of November 16, 1973 (37 Stat. 576), Northwest Pipeline Corporation has applied for a right-of-way, NM77266, for a 30 inch diameter natural gas pipeline. The pipeline would be approximately 33 miles long and will cross the following lands:

New Mexico Prinicpal Meridian

T. 33 N., R. 8 W.,
Sec. 30: W½NW¼.
T. 32 N., R. 9 W.,
Sec. 1: W½W½;
Sec. 12: W½W½;
Sec. 13: W½W½;
Sec. 14: NE¼/NE¼;
Sec. 24: W½NW¼, N½SW¼.
T. 33 N., R. 9 W.,
Sec. 1: SW¼SW¼;
Sec. 11: NE¼NE¼;
Sec. 24: E½SE½;
Sec. 25: E½NE¼, SE¼SW¼; SE¼;
Sec. 36: E½NW¼, N½SW¼,W½SW¼.
T. 31 N., R. 9 W.,
Sec. 5: Lots 9, 10, 12;
Sec. 7: Lots 4, 11, 12, 14, 18, 19;
Sec. 8: Lot 4;
Sec. 18: Lots 6, 7, 9, 10, 15, 16.
T. 32 N., R. 9 W.,
Sec. 9: Lots 5, 6, 11, 12, 13, 14;
Sec. 15: Lots 4, 5, 12, 13;
Sec. 22: Lots 4, 5, 12;
Sec. 27: Lot 2;
Sec. 28: Lots 1, 8, 9, 15, 16;
Sec. 33: Lots 2, 6, 7.
T. 30 N., R. 10 W.,
Sec. 4: Lot 8;
Sec. 5: Lots 5, 6, 10, 11, 15, 17, 18;
Sec. 7: Lot 20;
Sec. 18: Lots 5, 8, 9, 15, 16;
Sec. 19: Lots 6, 10, 11, 15, 18;
Sec. 30: Lots 7, 8, 9, 16.
T. 31 N., R. 10 W.,
Sec. 13: Lots 8, 9, 15, 16;
Sec. 23: Lots 6, 7, 8;
Sec. 24: Lots 2, 3, 4, 5;
Sec. 26: Lot 2;
Sec. 27: Lots 1, 7, 8, 10, 11, 12, 13;
Sec. 33: Lots 1, 7, 8, 9, 10, 11, 13, 14;
Sec. 34: Lots 1, 2.
T. 29 N., R. 11 W.,
Sec. 1: Lots 2, 3, NW¼NW¼, E½SW¼, SW¼SW¼;
Sec. 11: E½NE¼, E½SE¼;
Sec. 12: NW¼NW¼.
T. 30 N., R. 11 W.,
Sec. 35: Lot 9, SE¼SE¼.

The purpose of this notice is to inform the public that the agencies involved will be deciding whether the right-of-way grant should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 435 Montano Road, NE, Albuquerque, NM 87107.

Dated: June 11, 1990.

Patricia E. McLean,

Associate District Manager.

[FR Doc. 90-14348 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-FB-M

[NM-010-4211-11/GPO-0111]

Amendment of Right-of-way Grant; New Mexico

AGENCY: Bureau of Land Management, Albuquerque District, Interior.

SUMMARY: Approximately ten miles of pipeline authorized by NM42439 will be increased in size from 20 inches to 30 inches.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 USC 185), as amended by the Act of November 16, 1973 (37 Stat. 576), El Paso Natural Gas Company has applied to amend right-of-way NM42439 to increase the diameter from 20 inches to 30 inches for 10.173 miles. The 30 inch diameter natural gas pipeline will cross the following lands:

New Mexico Principal Meridian

T. 30 N., R. 10 W.,
Sec. 4: Lot 8;
Sec. 5: Lots 5, 6, 10, 11, 15, 17, 18;
Sec. 7: Lot 20;
Sec. 18: Lots 5, 8, 9, 15, 16;
Sec. 19: Lots 6, 10, 11, 15, 18;
Sec. 30: Lots 7, 8, 9, 16.
Tl 31 N., R. 10 W.,
Sec. 23: Lots 6, 7, 8;
Sec. 24: Lots 2, 3, 4, 5, 6;
Sec. 26: Lot 2;
Sec. 27: Lots 1, 7, 8, 10, 11, 14;
Sec. 33: Lots 1, 7, 8, 10, 11, 13, 14;
Sec. 34: Lots 1, 2.
T. 29 N., R. 11 W.,
Sec. 1: Lot 4;
Sec. 2: NW¼SE¼;
Sec. 11: NW¼NE¼, E2W2.
T. 30 N., R. 11 W.,
Sec. 25: Lots 9, 15.

The purpose of this notice is to inform the public that the Bureau will be deciding whether the amendment should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 435 Montano Road, NE, Albuquerque, NM 87107.

Dated: June 11, 1990.

Patricia E. McLean,

Associated District Manager.

[FR Doc. 90-14349 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-FB-M

[ES-030-00-4212-14; WIES 041392; 0-00157 ILM]

Realty Action: Sale of Public Land in Oneida County, Wisconsin; Modified; Competitive Sale WIES 041392A and WIES 041392B; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of Public Land, Correction.

SUMMARY: This notice corrects the date of the modified competitive sale, tracts WIES 041392A and WIES 041392B as published in the **Federal Register** on May 17, 1990, Volume 55, No. 96, page 20536. The correct date is August 6, 1990.

Leon R. Kabat,

Acting District Manager.

[FR Doc. 90-14345 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-GJ-M

[CO-010-00-4111-08]

Intent To Prepare a Resource Management Plan and Environmental Impact Statement for White River Resource Area, Craig District, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare a Resource Management Plan and Associated Environmental Impact Statement for the White River Resource Area and Cancellation of the Amendment to the White River Management Framework Plan and Piceance Basin Resource Management Plan.

SUMMARY: The White River Resource Area, Craig District, Colorado State Office, hereby gives notice of its intent to prepare a resource management plan and environmental impact statement for the White River Resource Area. This notice also initiates the scoping process to examine the proposed issues and planning criteria. The White River Resource Area, located in northwest Colorado, contains approximately 1.4 million acres of public land and an additional 700,000 acres of public minerals underlying lands of other ownership.

EFFECTIVE DATE: Comments on the proposed issues, planning criteria, alternatives, and resource disciplines involved will be accepted through July

20, 1990. Public scoping meetings will be held in Rangely, Colorado, at the Chevron Production Office meeting room located at 100 Chevron Road, east of Rangely, on June 18, 1990, beginning at 7 p.m.; at the White River Resource Area Office in Meeker, Colorado, on June 20, 1990, beginning at 7 p.m.; and at the BLM District Office, 3rd Floor Conference Room, 764 Horizon Drive in Grand Junction, Colorado, on June 21, 1990, beginning at 7 p.m. A newsletter will be sent out to all interested individuals and groups requesting comments on the planning proposal. Public meetings will be announced through the local news media. Additional public participation opportunities will be provided for comment on the alternatives and upon publishing the Draft RMP/EIS.

FOR FURTHER INFORMATION CONTACT: Roger Wickstrom, Team Leader, Bureau of Land Management, White River Resource Area, P.O. Box 928, Meeker, Colorado 81641–0928, telephone (303) 878–3601.

SUPPLEMENTARY INFORMATION: This Resource Management Plan will replace the existing White River Management Framework Plan and the Piceance Basin Resource Management Plan. Existing decisions in either document, which are still valid, will be carried forward into the new Resource Management Plan. The White River Management Framework Plan (MFP) and the Piceance Basin Resource Management Plan (RMP) are located in the White River Resource Area office in Meeker, Colorado. The plan amendment process, initiated in February 1990 and published in the Federal Register on February 21, 1990, is cancelled and issues and concerns associated with that process will be carried forward to the Resource Management Planning process.

The following issues are anticipated in the White River Resource Management Plan:

1. *Oil and Gas Leasing:* Decisions in the Resource Management Plan will determine which public land and minerals will be available for oil and gas leasing and what stipulations may be necessary to protect other resource values. This issue will bring oil and gas leasing into compliance with the latest Bureau of Land Management program guidance for fluid minerals (Bureau of Land Management Manual Section 1624.2).

2. *Off-Highway Vehicle Management:* Decisions will determine off-road vehicle designations for the public lands within the White River Resource Area. All public lands will be designated open, closed, or limited. Actions to be taken in response to user needs in unrestricted areas will identify opportunities for cooperating in the statewide OHV program partnership.

3. *Wild Horse Management:* Decisions will determine management guidelines for wild horses within the Piceance Basin Herd Management Area and horses outside of the designated area.

4. *Land and Mineral Ownership Adjustment:* Decisions will determine whether land and/or minerals will be available for disposal and what method of disposal will best serve the public interest.

5. *Special Managment Areas:* Decisions will determine what areas will receive special designation to protect or enhance significant scenic, riparian, natural, geologic, cultural, plant, or wildlife values.

6. *Black-Footed Ferret Recovery Program:* This decision will determine the feasibility for the reintroduction of the threatened and endangered black-footed ferret in the River Resource Area.

7. *Public Access:* The decision will be to determine where public access will be sought.

8. *Recreation Management:* Decisions will determine Special and Extensive Recreation Management Areas, management objectives, and recreation management actions.

Additional issues may be identified through public scoping and will be analyzed through the Resource Management Plan process. The proposed planning criteria used to address these issues are summarized below:

1. Oil and Gas—(a) Identify lands eligible for leasing through consultation and application of laws and regulations. (b) Assess the ability of the lands to incur oil and gas development and the availability of the resource for development. (c) Compare the public values of oil and gas development with the public values of other alternative uses which may be precluded or impacted.

2. Off-Highway Vechicle Management—Identify: (a) How the four OHV designation criteria apply (reasons for OHV designations); (b) Management actions to enhance OHV recreation in unrestricted areas (cooperative actions in the statewide OHV program).

3. Wild Horses—Identify: (a) Herd size for the herd managment area; (b) crictical use levels which will not be exceeded and criteria that might guide adjustments among consumptive uses; (c) constraints that will be required on other resources; (d) habitat condition.

4. Land and Mineral Ownership Adjustment—Identify: (a) Location, resource values, and manageability of the land and/or minerals identified for disposal or acquisition; (b) the land and mineral ownership adjustment authorities under which the lands may be conveyed; (c) the conditions, including activity planning requirements, if any, which must be met in order to allow conveyance; (d) the management objectives to be served by adjusting land and/or mineral ownership; (e) the withdrawals to be modified or revoked in support of these actions.

5. Special Management Areas—Identify: (a) General management objectives and strategies for the area; (b) constraints on development and use of the area; (c) the areas warranting national or international recognition that meet the criteria for National Natural Landmark, Man and the Biosphere or World Heritage, National Historic Landmark, or Area of Critical Environmental Concern designations.

6. Black-Footed Ferret Recovery Program—Identify: (a) What areas are suitable for reintroduction; (b) what protection measures would be required for reintroduction; (c) what resources would be impacted by reintroduction.

7. Public Access—Identify: (a) The criteria for areas where access should be acquired; (b) known areas where access should be acquired; (c) benefits to the public.

8. Recreation Management—Identify: (a) Public recreation needs; (b) classification of recreation opportunities; (c) intensity of recreation management required; (d) any areas needing special recreation management designation and the types required.

Alternatives proposed for consideration include: (1) No Action—defined as continuation of current management; (2) Limited Action—defined as those actions necessary to meet the intent of existing laws and regulations; (3) Proposed Action Alternative—defined as those actions necessary to bring management into compliance with current BLM policy and with changes in management direction through consultation with staff and the public.

The White River Resource Management Plan will be prepared using an interdisciplinary team, including persons trained in geology, petroleum engineering, hydrology, soils, air, wildlife, range, recreation, realty, surface protection, cultural resources, and economics.

Dated: May 31, 1990.

Tom Walker,

Associate State Director.

[FR Doc. 90-14358 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-JB-M

Fish and Wildlife Service

Notice of Receipt of Application Amendment for Endangered Species Permit

The following applicants have amended their application for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et. seq.):

File No: PRT-739678

Applicant: County of Riverside and 5 cities within Riverside County, California

The County of Riverside and the cities of Moreno Valley, Hemet, Perris, Riverside and Lake Elsinore within Riverside County applied for a permit under section 10(a)(1)(B) of the Endangered Species Act to incidentally take Stephens' kangaroo rat (*Dipodomys stephensi*), an Endangered Species, in the course of otherwise lawful activities. The application includes a Habitat Conservation Plan (HCP) and Implementation Agreement between the Fish and Wildlife Service (FWS), the applicants, and the Riverside County Habitat Conservation Agency (JPA), an agency created to implement the conservation program. A joint State/Federal Environmental Impact Statement/Environmental Impact Report was prepared. Notice of the original application was published in the **Federal Register** on July 31, 1989 (54 FR 31584). That notice invited submission of comments on the application for a period of 30 days.

The applicants request the permit to incidentally take Stephens' kangaroo rat (SKR) in association with various proposed public and private projects in the western portion of the County. The area covered by the proposed permit would include much of the historical range of the species within the County and would allow taking incidental to otherwise lawful development of 20 percent or 4,400 acres, whichever is less, of the approximately 22,000 acres of remaining occupied habitat known for the species in western Riverside County.

To mitigate for the incidental take, it is proposed that up to 4,400 acres (as needed to replace loss of habitat at a 1:1 ratio) of occupied habitat in the vicinity of lands currently in public ownership be acquired, during the two year permit period, and placed into public or semipublic ownership for the management of the species. The acquisition of the private lands would be funded from mitigation fees ($1,950 per acre) collected by the applicant jurisdictions. The applicant jurisdictions would approve the issuance of land development permits, subsequent to a mandated review under the California Environmental Quality Act of potential impacts to other environmental resources, for public and private project proponents in specified portions of the county (outside of areas being studied for inclusion in a permanent reserve system for the species) during the two-year permit period.

On June 1, 1990, the applicants submitted a number of technical amendments to their application. The substantive portion of the request pertains to the portions of the conservation plan and implementation agreement that address limitations on the amount of take. As stated above, the maximum amount of habitat on which incidental take would be allowed during the two-year permit period will be limited to 4,400 acres or 20 percent of the total amount of SKR occupied habitat within the HCP area, whichever is less. In addition, the amount of occupied habitat in which incidental take would occur within the HCP area during any three-month period following issuance of the incidental take permit cannot exceed 10 percent, in area, the amount of occupied habitat acquired as replacement habitat.

The applicants propose to incorporate into the appropriate provisions of the HCP and Implementation Agreement the following provision with regard to acquisition of replacement habitat:

"Notwithstanding the foregoing, the obligation to acquire replacement habitat within such six-month period on a one-to-one basis for each acre of incidental take allowed will not apply to incidental take allowed to occur during the first six month period on up to 500 acres of occupied SKR habitat within the HCP area subject to the following terms and conditions: (i) For each such acre of take allowed the County or participating city permitting such incidental take shall pay to the JPA an amount equal to twice the estimated cost of acquiring one acre of replacement habitat and shall receive a credit against impact fees otherwise payable to the JPA in an amount equal to that portion of the estimated cost of acquisition of replacement lands that are attributed to unoccupied land; (ii) all funds received by the JPA are to be held in a separate trust account for the purpose of acquiring replacement habitat on a one-to-one basis within reserve study areas; and (iii) all such replacement habitat is to be acquired as expeditiously as possible, but in all events prior to the expiration of one year from the date of receipts of funds. A more detailed description of the limitations on the amount of take is set forth in the Implementation Agreement (Attachment '1')."

In addition, the applicants wish to incorporate the following provision:

"Except as otherwise expressly provided in this Short-term HCP and in the Implementation Agreement, the USFWS must be satisfied that the amount of occupied habitat on which take has occurred during the previous six months does not exceed by more than 10 percent, in area, the amount of occupied habitat acquired during the same period. If take exceeds acquisiton by more than 10 percent, the permit will be suspended until the required level of acqusition is reached. The USFWS also may disapprove of any specific acquisiton proposal if it does not find the proposed acquisition location appropriate."

The applicants further propose to replace all references to the word "quarterly" in the Short-term HCP and Implementation Agreement to read "semi-annual" or "semi-annually" as the context requires. Finally, the applicants note a modification in the description of the Alessandro Heights reserve study area such that the study area currently includes 768 acres, rather than 796 acres as stated in the HCP, (148 acres of low, 582 acres of medium and 38 acres of high density populations as opposed to 158 acres, 600 acres and 38 acres, respectively).

Copies of the amendments to the application and associated documents (addendum and modification to the HCP, revised Implementation Agreement and draft environmental assessment on the proposed amendments) are on file at the following location and are available for inspection by the public during normal business hours: Assistant Regional Director—Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 1002 NE. Holladay Street, Portland, OR 97232-4181 (503/231-6150).

Interested parties may comment on this modification request by submitting written views, arguments, or data at the above address. Comments must be received by the Assistant Regional Director within 15 days of the date of this publication. Please refer to "PRT-739678/Riverside County" when submitting comments.

Dated: June 18, 1990.

R.K. Robinson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 90-14346 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Meeting of Advisory Committee for U.S. Trade and Development Program

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee for the U.S. Trade and Development Program ("TDP"). The meeting will be held on Friday, July 20, 1990 at the Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC.

The Committee will discuss American competitiveness in the world economy and ways to make TDP even more effective in enhancing American competitiveness.

The meeting will begin at 9 a.m. and will adjourn when its business is completed that afternoon. The meeting is open to the public. Any interested persons may attend, file a written statement with the Advisory Committee, and, when recognized by the chairperson, present short oral statements as time permits.

For further information, contact Priscilla Rabb-Ayres, Director, TDP, Room 309, S.A.-16, Washington, DC 20523-1602, Telephone: 703-875-4357.

Dated: June 13, 1990.

Priscilla Rabb-Ayres,

Director.

[FR Doc. 90-14351 Filed 6-20-90; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31685]

Exemption; Carolina & Northwestern Railroad, Inc.—Lease and Operation Exemption—Southern Railway Co.

Carolina & Northwestern Railroad, Inc. (C&NW), has filed a notice of exemption to lease (with an option to purchase) and operate 22.7 miles of rail line owned by the Southern Railway Company. The line extends between milepost HG-90.0, at Hickory, NC, and milepost HG-112.7, at Valmead, NC.

This transaction is related to a notice of exemption filed concurrently, in Finance Docket No. 31686, *Rail Link, Inc.—Continuance in Control Exemption—Carolina & Northwestern Railroad, Inc.*

Any comments must be filed with the Commission and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

C&NW shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 407.[1]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 11, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14251 Filed 6-20-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31686]

Exemption; Rail Link, Inc.—Continuance in Control Exemption—Carolina & Northwestern Railroad, Inc.

Rail Link, Inc. (Rail Link), a non-carrier, has filed a notice of exemption to continue to control Carolina & Northwestern Railroad, Inc. (CNWS). Rail Link already controls non-connecting class III rail carriers Commonwealth Railway Incorporated, which operates in Virginia, and Carolina Coastal Railway, Inc., which operates in North Carolina. CNWS has concurrently filed a notice of exemption in Finance Docket No. 31685, *Carolina & Northwestern Railroad, Inc.—Lease and Operation Exemption—Southern Railway Company.*

Rail Link indicates that: (1) CNWS will not connect with Rail Link's other railroads; (2) the continuance in control is not part of a series of transactions that would connect CNWS with any of the other railroads owned by Rail Link; and (3) the transaction does not involve a Class I carrier. Therefore, this transaction involves the continuance in control of a nonconnecting carrier and is exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to the use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Any pleadings must be filed with the Commission and served on: Kelvin J. Dowd, Slover & Loftus, 1224 Seventeenth Street NW., Washington, DC 20036.

Decided: June 13, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-14252 Filed 6-20-90; 8:45 am]

BILLING CODE 7035-01-M

[1] C&NW certifies that it has identified to the appropriate State Historic Preservation Officer all sites and structures 50 years and older that will be transferred as a result of this transaction.

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Standing Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Committee on Rules of Practice and Procedure to consider proposed amendments submitted by the Advisory Committees under the provisions of chapter 131 of title 28, United States Code. The meeting will be open to public observation but not participation. The meetings will commence each day at 9:00 a.m.

DATES: July 12-13, 1990, Alexandria, Virginia.

ADDRESSES: Holiday Inn Old Town, 480 King Street, Alexandria, Virginia 11314.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 633-6021.

Dated: June 13, 1990.

James E. Macklin, Jr.,

Secretary, Commerce on Rules of Practice and Procedure.

[FR Doc. 90-14361 Filed 6-20-90; 8:45 am]

BILLING CODE 221-001-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree

In accordance with Department policy, 28 CFR 50.7, and section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given

that on June 7, 1990, a proposed consent degree in *United States* v. *National Bank of the Commonwealth and Seasonall Industries, Inc.*, Civil Action No. 89–2127, was lodged with the United States District Court for the Western District of Pennsylvania.

The proposed consent decree requires the National Bank of the Commonwealth to reimburse the Hazardous Substance Superfund $47,500 in response costs incurred by the Environmental Protection Agency (EPA) to address the release or threat of release of hazardous substances at the Cherry Street Site in Punxsutawney, Pennsylvania. The parties to the consent decree are the United States and National Bank of the Commonwealth.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *National Bank of the Commonwealth and Seasonall Industries, Inc.*, DOJ Ref. 90–11–3–338A.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 United States Post Office and Courthouse, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania, and at the Region III office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy please enclose a check in the amount of $1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–14286 Filed 6–20–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Consent Decree in Enforcement Action

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 190209, notice is hereby given that a proposed consent decree in United States v. City of New York and its Department of Sanitation (E.D.N.Y.), Civil Action No. CV–90–1807, was lodged with the United States District Court for the Eastern District of New York on May 29, 1990. This decree settles an enforcement action involving alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the applicable portions of the New York State implementation Plan, 6 NYCRR parts 201 and 222.

The Department of Justice will receive for 30 days from the date of publication of this notice, written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to United States v. City of New York and its Department of Sanitation, D.J. ref. No. 90–5–2–1–1296.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of New York, U.S. Courthouse, 225 Cadam Plaza East, Brooklyn, New York 11201; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1515, 9th Street and Pennsylvania Avenue NW., Washington, DC 20530. When requesting a copy by mail, please enclose a check in the amount of $3.00 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–14285 Filed 6–20–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Occupational Exposure to Hand-Arm Vibration; Criteria Document Availability

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of availability of criteria document.

SUMMARY: The Mine Safety and Health Administration (MSHA) has received a criteria document for a recommended standard from the National Institute for Occupational Safety and Health (NIOSH) entitled "Occupational Exposure to Hand-Arm Vibration." (NIOSH Publication No. 89–106). Under section 101(a)(1) of the Federal Mine Safety and Health Act of 1977, this notice serves as the Secretary of Labor's response to the NIOSH recommendations. While MSHA believes that hand-arm vibration syndrome (HAVS) is a concern that may need to be addressed in the mining industry, the NIOSH criteria document does not provide the Agency with sufficient information to proceed with comprehensive and effective rulemaking at this time. The recommendations contained in the criteria document constitute valuable information which can be used by the mining community to address any hazards that may be associated with HAVS. This notice lists MSHA's major concerns that form the basis for its decision not to proceed with rulemaking at this time and solicits comments on the NIOSH criteria document.

DATES: Comments on the NIOSH criteria document must be submitted to MSHA by October 31, 1990.

ADDRESSES: Copies of the NIOSH Document, "Occupational Exposure to Hand-Arm Vibration" may be obtained frm the Office of Standards, Regulations, and Variances, MSHA; room 631; Ballston Tower No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203. Comments on the criteria document shoud be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA; (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

NIOSH has concluded that exposure to vibrating tools can cause symptons of

peripheral vascular and peripheral neural disorders of the fingers, hands, and arms. This can result in numbness, pain, blanching of the fingers, loss of finger dexterity, and necrosis of the fingers. The composite of vibration-induced symptons is referred to as HAVS. The prevalence and severity of HAVS usually increases as the acceleration level and duration of use of vibrating tools increases. HAVS is a chronic, progressive disorder with a latency period that may vary from a few months to several years. The early stages of HAVS are usually reversible if further exposure to vibration is reduced or eliminated. However, treatment is usually ineffective for the advanced stages of HAVS.

NIOSH has recommended a standard for exposure to hand-arm vibration that includes a measuring methodology, engineering controls, good work practices, use of protective clothing and equipment, worker training programs, administrative controls such as limited daily use time, and medical monitoring and surveillance. NIOSH has stated that it currently cannot establish a specific quantitative exposure limit to eliminate the risk of developing HAVS in all workers exposed to hand-transmitted vibration from all types of vibrating tools. NIOSH also states, however, that prevention is critical and that adherence to the recommendations should prevent or greatly reduce the potential for vibration-exposed workers to develop HAVS.

II. Issues

The following discussion addresses specific issues raised by the NIOSH criteria document:

A. Dose-Response Relationship

According to NIOSH, a specific dose-response relationship for HAVS cannot be currently determined due to the complex nature of HAVS and the general lack of data. Thus, MSHA has not been given sufficient information to establish a permissible exposure limit (PEL).

B. Mining Tools

The NIOSH criteria document is based on studies conducted on a variety of vibrating machinery. Based on these studies, the criteria were extrapolated to all vibrating tools. MSHA believes that specific data are needed on tools used in the mining industry to define an appropriate scope for the standard and to determine the nature of the vibrating tools to be addressed.

C. Vibration Measurements

1. NIOSH recommends that exposure monitoring be performed initially, and annually thereafter, on all vibrating tools and that records of the acceleration levels be maintained.

MSHA believe that without a PEL this information has practical utility only for future epidemiologic studies. While such studies would be useful if they were based on a consensus methodology, industry-wide exposure monitoring at this time is not warranted.

2. MSHA believes that the instrumentation that is required to perform the recommended vibration measurements may not be sufficiently durable to withstand the adverse conditions of the mining environment. Additionally, the Agency is concerned with the accuracy and precision of the measurement methodology specified in the NIOSH criteria document.

D. Vibration Controls

NIOSH recommends that engineering controls and work practice controls be implemented to reduce hand-transmitted vibration exposure to the "lowest feasible level."

MSHA is concerned that without a recommended exposure limit (REL), specified engineering controls, or specified work practices, mine operators and vibrating-tool manufacturers have little basis for establishing optimization of control design.

E. Labeling

NIOSH recommends mandatory labeling of vibrating hand-held tools with the associated vibration acceleration level.

MSHA believes that such a requirement in the mining industry would be ineffective. The stated vibration level may become invalid because the vibration levels change as a function of time, maintenance, and manner or tool usage. Also, in the absence of a REL, the vibration level can only be used as a guide.

F. Medical Monitoring

MSHA has concerns about properly identifying the population at risk and targeting the appropriate medical surveillance for each stage of HAVS and each vibration exposure level.

Dated: June 12, 1990.

John B. Howerton,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 90-14307 Filed 6-20-90; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for Relationship Between Arts Education and Performance on Standardized Tests for Grades K-12

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for research and collecting existing data, and analysis of raw test data, which show the relationship between instruction and experience in the arts and performance on standardized tests by students in grades K–12. It is expected this project will result in a report summarizing the studies which will be disseminated to a wide variety of constituencies. Those interested in receiving the Solicitation package should reference Program Solicitation PS 90–08 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 90–08 is scheduled for release approximately July 6, 1990 with proposals due on August 13, 1990.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 90-14284 Filed 6-20-90; 8:45 am]

BILLING CODE 7537-01-M

Independent Commission; Meeting

Notice is hereby given that a meeting of the Independent Commission established by Public Law 101–121 will meet on June 25, 1990, from 10 a.m.—3:30 p.m. in room 311 at the Pension Building, 441 F Street, NW., Washington, DC 20001.

This meeting will be open to the public on a space available basis. Items to be discussed are the review of the National Endowment for the Arts' grants making procedures, including those of its panel system, and consideration of whether the standard for publicly funded art should be different from the standard for privately funded art.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–14383 Filed 6–20–90; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Notice of Withdrawal of Application For Amendment to Facility Operation License, Illinois Power Co.

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Illinois Power Company (the licensee) to withdraw its May 18, 1988 application for proposed amendment to Facility operating License No. NPF–62 for the Clinton Power Station, Unit No. 1, located in DeWitt County, Illinois.

The proposed amendment would have revised note "c" on Table 4.11.2–1 of the Clinton Technical Specifications.

The Commisison has previously issued a Notice of consideration of Issuance of Amendment published in the **Federal Register** on December 14, 1988 (53 FR 50330). However, by letter dated January 26, 1990 and telephone conversation on June 8, 1990, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 18, 1988, and the licensee's letter dated January 26, 1990, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document room, 2120 L Street, NW., Washington, DC, and the Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland, this 14th day of June 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–14394 Filed 6–20–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322]

Long Island Lighting Co.; Issuance of Amendment to Facility Operating License and Final Determination of No Significant Hazards Consideration

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 4 to Facility Operating License No. NPF–82, issued to Long Island Lighting Company (LILCO) (the licensee), which revised the Technical Specifications for operation of the Shoreham Nuclear Power Station, Unit 1 (the facility) located in Suffolk County, New York. The amendment was effective as of the date of its issuance.

The amendment revised paragraph 2.E to the Shoreham license allowing reclassification of certain vital areas and other modifications which allows LILCO to reduce the size of the Shoreham facility's security force.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 21, 1990 (55 FR 10540). A request for a hearing was filed on April 20, 1990 by the Shoreham-Wading River Central School District and the Scientists and Engineers for Secure Energy, Inc.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, the amendment has been issued and made immediately effective and any hearing will be held after issuance.

The Commission has determined that this amendment satisfies the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

For further details with respect to the action see (1) The application for amendment dated January 5, 1990 and supplemented by letter dated April 5, 1990, the supplemental letter did not change the original intent of the application request and did not affect the staff's original no significant hazards determination, (2) Amendment No. 4 to Facility Operating License No. NPF–82, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, and at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786–9697. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland, this 14 day of June 1990.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–14395 Filed 6–20–90; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, July 12, 1990
Thursday, July 26, 1990
Thursday, August 9, 1990
Thursday, August 23, 1990
Thursday, September 13, 1990
Thursday, September 27, 1990

These meetings will start at 10:30 a.m. and will be held in room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: June 14, 1990.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 90–14365 Filed 6–20–90; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Trade Policy Staff Committee; Review and Solicitation of Public Comment: U.S. International Trade Commission Public Report Assessing Economic Impact of Proposed Modifications of the List of Articles Eligible for Duty-Free Treatment Under the U.S. Generalized System of Preferences (GSP) as a Result of Petitions Filed for Special GSP Review for Certain Andean Countries

As indicated in a previous notice of March 10, 1990 (55 FR 8249), the GSP Subcommittee of the Trade Policy Staff Committee hereby notifies interested parties of the opportunity to comment on the public version of the U.S. International Trade Commission (USITC) report assessing the domestic economic impact of proposed changes in the list of eligible items under the Special GSP Review for Bolivia, Colombia, Ecuador and Peru. The report will be available on June 22 from the USITC by calling Cindy Payne at the Office of Industries at (202) 252–1451. The USITC is located at 500 E Street, SW., Washington, DC. The report will also be available for review by appointment after June 22 at the USTR Public Reading Room (101), in Washington, DC. Appointments may be scheduled by calling (202) 395–6186.

All comments concerning the USITC report should be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, Room 414, 600 17th Street, NW., Washington, DC 20506. Comments must be received no later than 5 p.m. Monday, July 2, 1991. Information submitted will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "nonconfidential").

Daniel F. Leahy,

Acting Chairman, Trade Policy Staff Committee.

[FR Doc. 90–14368 Filed 6–20–90; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Special Committee 166—User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance System; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the Special Committee 166—User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems Meeting to be held July 9–10 in the RTCA Conference room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks, (2) approval of minutes of the sixth meeting held on March 15–16, (3) review of initial draft report, (4) discussion of airport classification by user category, (5) define future committee work schedule, (6) other business, and (7) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 29.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90–14334 Filed 6–20–90; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA General Docket No. H-90-1]

Petition for Exemption or Waiver for a Test Program; National Railroad Passenger Corp.

Notice is hereby given that the National Railroad Passenger Corporation (Amtrak) has submitted a petition for a temporary waiver of compliance with the provisions of title 49, Code of Federal Regulations, § 13.57(b), that part of the Federal Track Safety Standards that prescribes the maximum allowable operating speeds for trains on curves as a function of superelevation and curvature. The petitioner requested this waiver in order to conduct a 90-day test program, the primary purpose of which will be the evaluation of curving performace of rail vehicles described below.

The petitioner recognizes a need to improve trip times for rail passenger service between Boston and New York City. One way to reduce trip time between this city pair would be the negotiaion of curved track at speeds exceeding the values specified in § 213.57(b). The restrictions contained in this section are based on a limiting unbalance of track superelevation, often called cant deficiency, of three inches.

(The theoretical nature of cant deficiency, the origin of the three-inch value and the safety considerations of exceeding this limit with certain rail vehicle types were comprehensively discussed in three prior FRA notices published in the **Federal Register:** 52 FR 38035, October 13, 1987; 53 FR 984, January 14, 1988; 53 FR 7627, March 9, 1988. The October 13, 1987 notice is particularly detailed.)

FRA is considering the conditions under which the test series might be carried out so that the risk of accident to the specimen equipment and its crew as well as hazard to the abutting community would be minimal. In general, the approach to accomplishing this will be: (1) To determine, from static lean tests, certain physical constants characteristic of specific vehicle behavior; (2) to use these data in a modelling exercise to predict vehicle/track interaction at the target test cant-deficient speeds; and (3) to require that sufficient, appropriate instrumentation be installed on each test vehicle to be able to monitor vehicle conformance with the limiting values arrived at through step (2).

The petitioner desires to investigate the following types of rolling stock for ultimate assignment to revenue passenger service: Heritage cars, Material Handling cars, Horizon cars and Viewliners. All of this equipment is currently in revenue operation, but at curving speeds less than the maximum envisioned by the petitioner during test. The test zone defined by the petitioner includes Tracks 1 and 2 between New Haven, Connecticut and Boston. Within this test zone, the petitioner desires to operate the test rolling stock at speeds developing up to eight inches of cant deficiency.

FRA is seeking information and comments from all interested parties. FRA will take these comments into account in arriving at a final specification of conditions governing test conduct. All interested parties are invited to participate in this proceeding through written submissions. FRA does not anticipate scheduling an opportunity for oral comment because the facts do not seem to warrant it. An opportunity to present oral comment will be provided, however, if by August 10, 1990, the party submits a written request for hearing that demonstrates that his or her position cannot be properly presented by written statements.

All written communications concerning this petition should reference "FRA General Docket No. H-90-1 and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 400 7th Street, SW., Washington, DC 20590.

Comments received by August 10, 1990, will be considered in this proceeding. All comments received will be available for examination by interested persons at any time during regular working hours (9 a.m. to 5 p.m.) in Room 8201, Nassif Building, 400 7th Street, SW., Washington, DC 20590.

Issued in Washington, DC, on June 8, 1990.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 90-14373 Filed 6-20-90; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 15, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. 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, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: IRS Customer Satisfaction Questionnaire for Tax Practitioners
Description: The data collected will be used to analyze the quality of service that the Eastern Area Distribution Center (IRS) has given to tax practitioners during the filing season. The information will be used by IRS managers to determine if the current service is meeting this group's needs. The need for further evaluation of our service and programs will be indicated by this effort.
Respondents: Small businesses or organizations
Estimated Number of Respondents: 550
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 138 hour
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503

Irving W. Wilson, Jr.,

Departmental Reports Management Officer.

[FR Doc. 90-14362 Filed 6-20-90; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Automated Data Processing Systems; Meeting

In accordance with Public Law 92-463, the Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on Automated Data Processing Systems will be held in room 1010, 810 Vermont Avenue NW., Washington, DC, on July 24, 1990. This morning session will be held from 9 a.m. to 12 Noon, and the afternoon session will be held from 12:45 p.m. to 4:30 p.m.

The Advisory Committee will be presented with an overview of the Department of Veterans Affairs strategic IRM planning process and the Veterans Health Services and Research Administration's strategic information systems plans. The Committee will then discuss emerging information

technologies in the health care marketplace and how they relate to what VA is doing in supporting its medical operations.

The meeting will be open to the public up to the seating capacity of the room. Due to the limited seating capacity of the room, those who plan to attend the session should contact Lorraine Pertino, Office of Information Resources Management (731), Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, 20420, at least 5 days before the meeting. Mrs. Pertino's telephone number is (202) 233–6204.

Dated: June 7, 1990.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90–14295 Filed 6–20–90; 8:45 am]

BILLING CODE 8320–01–M

Special Medical Advisory Group; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Special Medical Advisory Group will be held on July 12–13, 1990. The session on July 12 will be held at the Capital Hilton Hotel, 16th and "K" Streets NW, Washington, DC, and the session on July 13 will be held in the Omar Bradley Conference room (10th floor) at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW, Washington, DC. The purpose of the Special Medical Advisory Group is to advise the Secretary and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Services and Research Administration. The session on July 12 (held at the Capital Hilton Hotel) will convene at 6 p.m. and the session on July 13 will convene at 8:30 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertal, Office of the Chief Medical Director, Department of Veterans Affairs (phone 202/233–3985) prior to July 6, 1990.

Dated: June 5, 1990.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90–14294 Filed 6–20–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 120
Thursday, June 21, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COPYRIGHT ROYALTY TRIBUNAL

TIME AND DATE: Thursday, July 12, 1990, 10:00 a.m.

PLACE: 1111 20th Street NW., Suite 450, Washington, DC 20036.

STATUS: Closed pursuant to a vote taken June 18, 1990.

MATTERS TO BE CONSIDERED: Formal rule making—adjustment of the syndicated exclusivity surcharge.

CONTACT PERSON FOR MORE INFORMATION: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, 202–653–5175.

Dated: June 18, 1990.

J.C. Argetsinger,

Chairman.

[FR Doc. 90–14462 Filed 6–18–90; 5:02 am]

BILLING CODE 1410–09–M

FEDERAL ELECTION COMMISSION

* * * * *

"FEDERAL REGISTER" NUMER: 90–31977.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 21, 1990, 10:00 a.m.

This meeting will be open to the public.

The following items have been added to the agenda:

Draft Debt Settlement Forms with Explanation and Justification
Proposed Rulemaking Proceeding on Foreign National Issue

* * * * *

DATE AND TIME: Tuesday, June 26, 1990, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 73g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26 U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, June 28, 1990, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes.
Draft Advisory Opinion 1990–11—Friends of Gary Hart '88
Administrative Matters

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90–14558 Filed 6–19–90; 3:34 pm]

BILLING CODE 6715–01–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 3–90

Notice of Meetings—Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gves notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time

Friday, June 29, 1990 at 10:00 a.m.

Subject Matter

Oral Hearing on objection to Proposed Decision issued on claims against the Government of the Arab Republic of Egypt:
EG–084—Yolanda Sheriff
Hearings on the Record on objections to Proposed Decisions issued on claims against the Government of the Arab Republic of Egypt:
EG–007—Estate of Felix Mansour Benzakian, Decreased
EG–114—Saad Mansour Ibrahim, et al.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 400, Washington, DC 20579. Telephone: (202) 653–6155.

Dated at Washington, DC, on June 18, 1990.

Judith H. Lock,

Administrative Officer.

[FR Doc. 90–14559 Filed 6–19–90; 3:34 pm]

BILLING CODE 4410–01–M

Corrections

Federal Register
Vol. 55, No. 120
Thursday, June 21 1990

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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 795

[OPTS-42100B; FRL-3627-4]

Tributyl Phosphate; Final Test Rule

Correction

In rule document 89-18850 beginning on page 33400 in the issue of Monday, August 14, 1989, make the following correction:

§795.228 [Corrected]

On page 33412, in the first column, in § 795.228(c)(2)(iii)(B), the paragraphs designated "(1)" and "(2)", should be designated as "*(1)*" and "*(2)*"

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 444 and 448

[Docket No. 76N-482B]

RIN 0905-AA06

Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph for OTC First Aid Antibiotic Drug Products

Correction

In proposed rule document 90-13316 beginning on page 23450, in the issue of Friday, June 8, 1990, make the following corrections:

§ 444.542l [Corrected]

1. On page 23453, in the second column, in § 444.542l(a)(1), in the third line, after "sulfate"insert a "hyphen"(-).

§ 444.542l [Corrected]

2. On the same page, in the same column, in the same section (§ 444.542l(a)(1)), in the eighth line, "8" should read "B".

§ 448.513c [Corrected]

3. On the same page, in the third column, at § 448.513c, in the third line of the section heading, after "sulfate" insert a hyphen (-).

§ 448.513c [Corrected]

4. On the same page, in the same column, in § 448.513c(a)(1)(iii), in the last line, "8" should read "B".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 89N-0058]

Human and Veterinary Drugs; Editorial Amendments

Correction

In rule document 90-6284 beginning on page 11575 in the issue of Thursday, March 29, 1990, make the following correction:

On page 11584, in the third column, under § 452.910, in the third line, "(a)(3)(ii)", should read "(a)(4)(ii)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90D-0194]

Compliance Policy Guide for Radioimmunoassay (RIA) Analysis of Hair To Detect the Presence of Drugs of Abuse; Availability

Correction

In notice document 90-13649 beginning on page 23985 in the issue of Wednesday, June 13, 1990, in the second column, in the last line of the SUMMARY, "(21 U.S.C. 360)" should read "(21 U.S.C. 360e)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4214-11; IDI-010804, et al.]

Proposed Continuation of Withdrawals; Idaho

Correction

In notice document 90-11508 appearing on page 20538 in the issue of Thursday, May 17, 1990, make the following corrections:

On page 20538, in the first column, under **Boise Meridian**, in the land description for Rush Creek Administrative Site, the third line should begin "Sec. 28".

On the same page, in the second column, in the land description for Bear Gulch Picnic Area, an additional "NE1/4" was omitted from the end of the description.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-09-4920-10-4410; N-48869]

Realty Action; Private Exchange in Clark and Washoe Counties, NV

Correction

In notice document 90-12765 appearing on page 22851, in the issue of Monday, June 4, 1990, make the following correction:

In the first column, in the land description, under "T. 22 S., R. 61 E.", under "Sec. 17", in the fourth line, after "W½" insert "E½".

BILLING CODE 1505-01-D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

RIN 1212-AA53

Payment of Premiums

Correction

In rule document 89-15866 beginning on page 28944, in the issue of Monday, July 10, 1989, make the following correction:

§ 2610.24 [Corrected]

On page 28959, in the first column, in § 2610.24(c), the first paragraph designated "(2)" should read "(1)".

BILLING CODE 1505-01-D

federal register

Thursday
June 21, 1990

Part II

Department of Transportation

Coast Guard

33 CFR Part 154 et al.
46 CFR Part 30 et al.
Marine Vapor Control Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 154, 155, 156

46 CFR Parts 30, 32, 35, 39

[CGD 88-102]

RIN 2115-AC65

Marine Vapor Control Systems

AGENCY: Coast Guard, DOT.
ACTION: Final rule.

SUMMARY: The Coast Guard is adopting new regulations for the safe design, installation, and operation of marine vapor control systems. Some states, in an attempt to meet the national ambient air quality standard for ozone set by the EPA under the Clean Air Act, have issued requirements for the control of volatile organic compound (VOC) emissions from tank vessels which carry oil and chemicals in bulk. Vapor emission control is also being considered as a means of reducing occupational exposure to toxic chemicals such as benzene. Unsafe vapor control system design or operation could result in fires and explosions, tank ruptures, and oil spills. This rulemaking does not require the installation or use of vapor control systems.

DATES: This regulation is effective July 23, 1990. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the **Federal Register** as of July 23, 1990.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert H. Fitch, Office of Marine Safety, Security, and Environmental Protection (G-MTH-1), (202) 267-1217, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On October 6, 1989, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (54 FR 41366). Interested persons were requested to submit comments. On November 29, 1989, the Coast Guard published a notice in the **Federal Register** (54 FR 49097) extending the comment period for the NPRM from November 20, 1989 to January 2, 1990. A total of 103 comment letters were received. Because of comments received which requested either a public hearing or a CTAC meeting, a CTAC meeting open to the public was held on November 28, 1989.

Drafting Information

The principal persons involved in drafting this rule are Lieutenant Commander Robert H. Fitch, Project Manager, and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

Background

During loading or ballasting of bulk liquid cargo tanks, the liquid introduced into a tank displaces vapors within the tank, which in typical operations today are released to the atmosphere. The displaced vapors of certain cargoes contain VOC's which are a precursor to the formation of ozone, a major air pollutant in some areas. Several states, acting pursuant to their authority under the Clean Air Act of 1970, are considering requirements for the control of VOC emissions from the loading and ballasting of tankships and tank barges. Three states currently have regulations which will require the control of marine VOC emissions in the future.

Marine occupational exposure offers another reason for using vapor control systems. In a separate regulatory project (CGD 88-040), the Coast Guard is developing regulations requiring lower occupational exposure limits for benzene. A Notice of Proposed Rulemaking concerning benzene exposure was published in the **Federal Register** on January 29, 1990 (55 FR 2978). In anticipation of these requirements, vessel and facility operators are considering the use of marine vapor control systems for the purpose of reducing occupational exposure to benzene and other hazardous chemicals.

In a typical vapor control system, vapors emitted from a tank vessel being loaded or ballasted are collected and piped ashore where they are destroyed through a process such as incineration, recovered through a process such as refrigeration/condensation, or returned to the shore tank being emptied (vapor balancing). When vapors are collected for purposes of reducing occupational exposure, and air pollution is not a factor, facility operators may choose to pipe the vapors to a remote location and disperse them to the atmosphere.

The use of marine vapor control systems introduces potentially significant new hazards to the loading and ballasting operations of tank vessels. The Coast Guard can best address these hazards through the development of safety regulations for tank vessels and facilities using vapor control systems. This rulemaking does not require The installation or use of vapor control systems.

The primary hazards associated with the use of vapor control equipment are: Cargo tank over- or underpressurization; overfill and spillage; and fire, explosion, and detonation. The severity and likelihood of accidents which might result from the use of vapor control systems warrant Coast Guard measures to minimize the risk of such accidents. It is, for example, possible for a vapor control system pipeline interconnecting a tank on a tank vessel with a shoreside vapor processing system to be filled with a flammable vapor. An ignition of this vapor could initiate a detonation wave which would propagate along the pipeline in either direction at the speed of sound and would generate pressures exceeding 600 pounds per square inch. Such an ignition could originate in shoreside vapor processing units such as incinerators or flares. In 1983, such a flare initiated casualty occurred in a marine vapor control system. As a result, two barges were totally destroyed and considerable damage was done to the facility. Review of the casualty indicates that additional safety features, routine inspections, and better training of personnel would have contributed to minimizing the likelihood of this casualty.

Present regulations do not address vapor control in the comprehensive manner considered necessary for safe operation of vapor control systems. There are currently no safety regulations applicable to facility vapor control system installations. In the case of tank vessels, while there are existing regulations for piping and electrical equipment which are applicable to vapor control equipment on vessels, the regulations are at this time inadequate in addressing all of the hazards associated with vapor control. Because of the complexities of vapor control systems, proper training of both ship and facility personnel is also considered essential to the safe operation of vapor control systems. At this time there are no Coast Guard requirements dealing with the training and qualifications of personnel operating vapor control systems.

Recognizing the hazards associated with vapor control systems, the Coast Guard began to review proposed shoreside systems used in handling limited numbers of vessels in dedicated trade. While effective when vapor control system use was limited to a small number of dedicated trades, the case by case reviews fell short of providing a comprehensive safety check and providing the standardization considered necessary for widespread application of vapor control. Case by

case review was also an inefficient means of conveying to Coast Guard field units and to industry the level of safety which must be provided.

The use of vapor control systems is expected to increase dramatically as states require their use to help achieve Clean Air Act standards for air quality and as industry increases its use of vapor control systems to meet new or proposed limits for occupational exposure to benzene and other carcinogenic chemicals carried in bulk. Given the anticipated increased use of vapor control systems, the Coast Guard can best ensure safety through regulations.

Because there was little historical experience to provide background data for vapor control systems and serious concerns existed over potential safety hazards introduced in implementing vapor control requirements, in 1986 the Coast Guard funded a National Research Council (NRC), Commission on Engineering and Technical Systems, Marine Board study to assess the technical, safety, and economic aspects of vapor control systems. The NRC study was released in January, 1988 and concluded that control and recovery of hydrocarbon vapors from tankships and tank barges was feasible with available technology provided that national safety standards for vapor emission controls were developed and implemented.

In response to the NRC recommendation, the Chemical Transportation Advisory Committee (CTAC) Subcommittee on Vapor Control was formed to develop standards for the design and operation of vapor control systems. The Subcommittee held its first meeting in August 1987. Six Subcommittee and ten working group meetings were held to develop the standards. All meetings were open to the public and announced in the **Federal Register**. CTAC presented the final recommendations to the Coast Guard in February 1989.

The Coast Guard funded a failure modes and effects analysis and a worst case scenario analysis on several hypothetical vapor control systems which included the safety provisions contained in earlier draft recommendations prepared by CTAC. On the basis of the analysis, the Coast Guard proposed changes to the CTAC draft recommendations. CTAC reviewed the Coast Guard recommendations and incorporated some of those recommendations in their final recommendations. The American Petroleum Institute (API) funded a quantitative hazards analysis (referred to as the API hazards analysis) based upon the final CTAC recommendations. Some changes to the CTAC recommendations resulting from the API hazards analysis were incorporated in the proposed rules. Both the Coast Guard and the API studies are included in this rulemaking docket and are available for examination.

The CTAC recommendations were used as the basis for the proposed regulations in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on October 6, 1989 (54 FR 41366). The recommendations were reorganized and revised as appropriate to conform with language required for regulations, and some recommendations were not included because they were outside the scope of this rulemaking. Specific technical deviations from the CTAC recommendations were discussed in the Discussion section of the NPRM.

A CTAC meeting was held on November 28, 1989, at which some questions raised in comments submitted to the docket up to that time were discussed. The meeting was announced in the **Federal Register** on November 2, 1989 (54 FR 46317), and was open to the public.

The close of the comment period was announced as November 20, 1989 in the NPRM. An extension of the comment period to January 2, 1990, was published in the **Federal Register** on November 29, 1989 (54 FR 49097).

The objective of this rulemaking is to provide standards for the safe design and operation of marine vapor control systems and provide qualification requirements for personnel operating vapor control systems. The requirements would be applicable to vessels and facilities that use vapor control systems to collect vapors of crude oil, gasoline blends, and benzene from a tank vessel's cargo tanks. This rulemaking will not require the installation or use of vapor control systems. The requirement to use a vapor control system will stem from a state requirement to control vessel emissions, or alternatively, as part of a vessel or facility operator's program for complying with personnel exposure requirements for hazardous chemicals.

Discussion of Comments and Changes to the Regulations

General

During the comment period, as extended, a total of 103 comment letters were received. Beginning with this General section, the comments are arranged by issue or topic addressed.

Fifteen comments requested an extension to the comment period. The requested extension ranged from December 20, 1989 to January 20, 1990. As previously discussed, the comment period was extended to January 2, 1990.

Seven comments requested either a public hearing or a CTAC meeting. As previously discussed, a CTAC meeting open to the public was held on November 28, 1989.

Six comments stated that the next step in the rulemaking should be to issue an interim final rule, to permit the industry and the Coast Guard to begin implementation of the requirements while still permitting modifications to be made to the regulations as experience is obtained. Two of the comments recommended a 24=month interim final rule comment period. The Coast Guard's position is that an interim final rule is not appropriate for this rulemaking. Because vapor control systems involve large expenditures on equipment, any revisions in the interim final rule could have significant impact on vessels and facilities as they replace equipment to comply with the changes in the requirements. The Coast Guard will evaluate the adequacy of these regulations as they are applied and necessary changes will be proposed through the normal rulemaking process.

Federalism

Three comments were received regarding the federalism implications of this rulemaking. All supported the concept that states should not be permitted to modify requirements relating to standardization and safety. One of the comments stated that legislation is needed to make the control of marine emissions a national issue, which must provide specific responsibilities for the EPA, the Coast Guard, and the states. While such legislation might be beneficial, it is beyond the scope of this rulemaking.

Timing

One comment stated that the compliance date for state vapor control regulations should coincide with the ability of facilities to acquire the hardware to comply with these regulations. Another comment stated that most of the modifications will have to be done with the ships out of service, and forcing compliance with the regulations prior to a ship's scheduled drydocking will cause financial problems. Another comment stated that the Coast Guard should make it clear to air quality authorities that requiring implementation in less than five years will entail removing vessels out of service before their scheduled drydockings to make modifications, and result in financial hardships and potential disruption of vital products.

The Coast Guard cannot control the implementation dates of state required vapor control systems. However, the Coast Guard has worked with the states to encourage them to allow sufficient time to allow proper design and installation of vapor control systems from the promulgation of these regulations tothe implementation date of state vapor control requirements.

One comment stated that a provision should be added addressing the operational timing problems stemming from the state deadlines. The comment asserted that since some companies will modify their vessels anticipating the final regulations, a temporary certification of these new shipboard systems should be provided to allow these vessels to operate until the next regularly scheduled drydocking. The Coast Guard's position is that it is not appropriate to allow temporary certification of vapor control systems which are not in compliance with the final regulations. Systems with minor differences from the final regulations may be reviewed on a case by case basis and allowed to operate with a certain period allowed to come into compliance.

One comment noted that there is no plan for phasing in of systems, and it will take a long time to develop cost efficient technology, design, approve, retrofit, and build these systems. One comment asked if the standards would apply as soon as they come into force where vapors are currently being collected. This comment also stated that some period of grace for the application of the standards relative to when a local authority declares its intention to require vapor control is necessary. The final rules in 33 CFR 154.804 and 46 CFR 39.10–13 contain implementation schedules for existing vapor control systems at facilities and on vessels which were operating prior to the effective date of the regulations. Implementation schedules for new systems depends upon the compliance schedules of those states requiring vapor control systems. The Coast Guard has encouraged the states to provide sufficient time to design and install safe systems.

One comment stated that final rules for bulk liquid hazardous material cargo transfer (CGD 86–034) and benzene exposure (CGD 88–040) should be delayed until these regulations are in place. The Coast Guard's position is that the rule for bulk liquid hazardous material cargo transfer is sufficiently distinguishable from this rulemaking that it does not need to be promulgated after this rule. However, the rule for benzene exposure is scheduled to be promulgated after this rule.

Four comments stated that the Coast Guard should delay implementation of requirements until the International Maritime Organization (IMO) has developed international requirements for vapor control systems. Another comment stated that the IMO standards being developed will only cover ships and the ship/shore interface, not the facility requirements. At the IMO Subcommittee on Bulk Chemicals in September 1989, a joint ad hoc working group was formed to develop uniform international design standards for vapor control systems. It was agreed that standards would be developed for both the ship and the facility arrangements. These standards are scheduled to be completed in 1991. Because of impending state requirements to require control of vapors, the Coast Guard cannot wait for the development of international requirements. The Coast Guard will work with IMO to try to make the international standards compatible with this rulemaking.

One comment stated that the adoption of these national standards will do much to promote national consistency for marine vapor control equipment, and they should be adopted swiftly. Another comment stated that it is crucial that the Coast Guard meet its published schedule for issuing final regulations by February 28, 1990, for industry to be able to meet the deadlines for controlling vapor emissions set by the states. The Coast Guard has made every effort to promulgate these regulations as soon as possible.

Economic Impact

One comment stated that, in general, the NPRM was responsible and cost-effective.

Nine comments opined that the NPRM would have significant economic impact which needs to be considered. One of the comments stated that the regulations will damage U.S. competitiveness. Another of the comments stated that facilities in non-attainment areas and small tug-barge companies may be forced out of business. Another of the comments stated that the limited environmental benefit cannot justify increasing the risk of an accident and the additional costs of vapor control. As discussed in the Background and the Regulatory Evaluation sections, these regulations do not require the installation or use of vapor control systems, and so the costs should not be attributed to this rulemaking. The cost/benefits ratio and the loss of competitiveness should be analyzed by the authorities mandating the use of vapor control systems.

Three of the comments mentioned in the preceding paragraph specified reducing the allowable loading to 97% of tank capacity and expanding the application of the regulations beyond crude oil, gasoline, and benzene as major contributors to the economic impact. The applicability of the regulations has been changed to directly apply only to the loading of crude oil, gasoline blends, and benzene. However, systems loading other cargoes will be reviewed on a case by case basis by the Coast Guard. It would be irresponsible of the Coast Guard to ignore the impact on safety of the control of other cargo vapors, which may be required by some states. Filling limits have been increased to 98.5% of the tank capacity or the level at which the overfill alarm is set.

One comment stated that estimates of constructing vapor control systems at two loading facilities were $10 million for one and $16 million for the other. These figures are not inconceivable. The costs estimated in the NRC study were for typical systems. The size, number of loading berths, number of products loaded, and complexity of the system could easily push the costs beyond that estimated by the NRC study. These costs should be brought to the attention of and analyzed by the authorities mandating the use of vapor control systems.

General Control Technology

Six comments stated that the rulemaking was too specific, and would hinder advancements in technology and flexibility in design. One of those comments suggested establishing performance standards, and another suggested giving the minimum technical content necessary to ensure safety. Title 33 CFR 154.808, 154.810, 154.814, 154.820, 154.840, and 154.850, and Title 46 CFR 39.10–11, 39.20–1, 39.20–7, 39.20–9, 39.20–11, 39.20–13, and 39.30–1 have been revised in the final rule to be made more performance oriented and to allow greater flexibility in choosing different alternatives. All of these revisions are discussed in greater detail later in this rulemaking document. The Coast Guard's position is that the regulations are now as flexible and as performance oriented as possible consistent with ensuring public safety. Certain specifications are needed for uniformity, such as vapor connection requirements. Future technological development which has not been anticipated by the regulations can be handled under existing provisions contained in 33 CFR 154.107 and 154.108, and 46 CFR 30.15.1

for approval and acceptance of equivalent technology.

Seven comments stated that the rulemaking significantly deviated from the CTAC recommendations and would hinder flexibility and greatly increase costs. The Goast Guard's position is that the NPRM did not differ as significantly from the intent of the CTAC recommendations as the comments indicate. The recommendations were reorganized and revised as appropriate to conform with language required for regulations. Specific deviations from the CTAC recommendations were discussed in the preamble of the NPRM, and will not be repeated here. Some people will consider the revisions to 33 CFR 154.800, 154.808, 154.810, 154.814, 154.820, 154.840, and 154.850, and Title 46 CFR 39.10–1, 39.10–11, 39.20–1, 39.20–7, 39.20–9, 39.20–11, 39.20–13, and 39.30–1 in the final rule as being more in accordance with the CTAC recommendations in allowing greater flexibility. As discussed previously, the regulations allow as much flexibility as possible consistent with ensuring public safety.

Four comments stated that the rulemaking did not properly consider the API hazards analysis. One of the comments stated that the analysis does not justify requirements which go beyond safety levels established by the CTAC recommendations. Another comment stated that the Coast Guard's references to the API's hazards analysis were responsible and correct. When the NPRM was drafted the final report of the hazards analysis had not yet been released. Since publication of the NPRM, the Coast Guard has been able to further study the analysis. The requirements in 46 CFR 154.820 concerning fire, explosion, and detonation protection have been revised and reorganized in the final rule, and more properly reflect the analysis. However, because of imposed constraints of the analysis and the lack of operational experience to back up the failure data which was used, the results of the analysis cannot be accepted carte blanche.

One comment stated that the regulations may fail to provide safe and economical vapor recovery. The Coast Guard's position is that these regulations, coupled with proper enforcement, will help to ensure that vapor control systems operate safely, and these regulations provide for control of vapors as economically as is possible while ensuring safe operation. As was previously discussed, it is not appropriate for the Coast Guard to weigh the cost/benefits of vapor control.

One comment stated that the EPA and the Coast Guard have not coordinated the analysis of risks in employing such systems with the states implementing air quality control programs for ships. The Coast Guard has discussed the risks involved in using vapor control systems to meet air quality standards with the EPA and interested state officials and will continue to do so. The risks are thoroughly discussed in the various studies. The Coast Guard does not have the authority to control state action to require use of these systems.

One comment stated that the regulations drive vapor control systems towards incineration of the vapors. Five other comments stated that it should not be assumed that incinerators or flares will be the most commonly used vapor processing system, and that such assumption will preclude the use of other equally effective technologies. While the Coast Guard acknowledges that incineration of the vapors will be an attractive alternative in some circumstances, the Coast Guard did not intend to assume that incineration will be the most common means of processing the vapors, nor does the Coast Guard desire to drive all vapor control systems toward destruction techniques. Some changes have been made to 33 CFR 154.820 to provide certain allowances when nondestructive techniques are used. This is discussed in more detail in the discussion for that section.

Two comments stated that if barges are loaded under vacuum, safety provisions for closed loading are unnecessary, since leaks will be in, not out, and minor during ullaging. While this may be acceptable for certain dedicated operations where a facility has oversized blowers or compressors and the size of the ullage openings on the dedicated barge are known, the Coast Guard's position is that this is an unacceptable situation for general operations and should not be permitted as an option in the regulations. A facility needs to know that the vapor control system is not drawing in excess amounts of air to be able to operate safely within its design parameters.

One comment stated that industry needs to know the pressure drop across detonation arresters to properly design facilities to meet the proposed regulations. Because of different sizes of arresters and different flow rates, it is not feasible to specify a maximum pressure drop. However, in accordance with paragraph 6.1.9 of appendix A, the maximum design pressure drop at the maximum flow rate for each detonation arrester is to be part of the ordering information.

One comment asked if the necessary equipment for vapor control systems exists for safe use in a marine environment. The Coast Guard's position is that all of the necessary components are available. Large size detonation arresters have not been tested, but a test program is expected to begin shortly.

One comment stated that equipment needs to be thoroughly tested and approved by the Coast Guard. The Coast Guard's position is that the testing and certification of these devices is more appropriately done by third party independent test organizations.

One comment stated that the Coast Guard should make it clear to air quality authorities that these regulations are based on untested assumptions and not on proven tests on existing equipment. The Coast Guard has corresponded with the states known to be considering vapor control requirements and informed them of the hazards and unproven technology of vapor control systems. However, while vapor control systems have not been tested in non-dedicated operation, the Coast Guard is confident that these regulations will provide for the safe design and operation of vapor control systems.

One comment stated that the Coast Guard should provide a detailed outline of a safe vapor control system based on tested equipment. Because of the many variables which must be considered in designing a vapor control system, it is not feasible to present a standard system. It would also appear that the Coast Guard was trying to prevent flexibility of designs.

One comment stated that while it is appropriate to set definite parameters for loading rates and pressures, the requirements are too rigid on how these ends are to be accomplished. Revisions have been made to 33 CFR 154.814 and 46 CFR 39.20–11 and 39.30–1(d) in order to make limitations on loading rates and pressures more flexible. See the discussions on these sections for details.

One comment stated that past experience has shown that barge operators are unfamiliar with the electrical requirements for hazardous areas, and that a reminder should be added to the regulations that wiring methods for Class I hazardous locations must meet the requirements of 46 CFR 111.105. A reference to 46 CFR 111.105 has been added to 33 CFR 154.812 and 46 CFR 39.20–9.

One comment stated that all vessels should be required to be leak tight during loading at their desired maximum pressure. The Coast Guard's position is that this is not a safety issue, but rather an effectiveness issue which the Coast

Guard does not have the statutory authority to regulate.

One comment stated that the hazards should be addressed with three levels of protection: control systems designed to establish and maintain safe operating conditions; automatic systems designed to prevent operation with an unsafe condition; and automatic/passive systems designed to minimize damage in the event that an accident does occur. Where feasible, this is the approach that the Coast Guard has taken in this rule.

One comment stated that emissions control could be achieved with greater safety and efficiency if it is handled by a vapor collection and combustion system on board the vessel. Another comment stated that a vessel vapor processing unit should be prohibited. Nothing in this rulemaking prohibits installing a vapor control system on a vessel, and it may be economically attractive to do this in certain dedicated operations. A tank vessel which has a vapor processing unit on board is required by 46 CFR 39.10–9 to comply with 33 CFR part 154, subpart E.

One comment stated that the success of recovering vapors from tank trucks cannot be transferred directly to vessel loading because of differences in the operations. These requirements have been developed independently of tank truck operations, and the Coast Guard has made no attempt to apply tank truck regulations to marine vapor control systems.

One comment stated that regulations are becoming overly complicated and very difficult for people to understand and comply with and that these regulations should only cover the additional requirements needed without trying to duplicate and confuse existing regulations. The Coast Guard is sensitive to such concerns, and has made every effort to make the regulations understandable and to eliminate duplication as much as possible without sacrificing safety or clarity.

33 CFR 154.106 and 46 CFR 39.10–5 Incorporation by Reference

One comment supports the Coast Guard's efforts to address the compatibility of vessel and terminal systems, and stated that industry guidelines should be incorporated where available. The Coast Guard has incorporated by reference as many existing industry guidelines as possible.

One comment pointed out API's correct address in the Incorporation by Reference section. This has been corrected in 33 CFR 154.106 and 46 CFR 39.10–5.

Three comments stated the American Institute of Chemical Engineers (AIChE), Guidelines for Hazard Evaluation Procedures, 1985, should be added to the incorporated material. The Coast Guard disagrees. While the guidelines are mentioned in 33 CFR 154.804 as guidance for conducting a hazards analysis, it is not being incorporated as a standard. The guidelines provide good guidance in conducting a hazards analysis, but a hazards analysis should not be restricted by the guidelines.

One comment recommended that the following industry standards should be added to the references under API in 33 CFR 154.106: API Recommended Practice XXX on Ship, Barge and Terminal Hydrocarbon Vapor Collection Manifolds, dated XXX; API Recommended Practice XXX on Overflow Control Systems for Petroleum Tank Barges, dated XXX; and API Recommended Practice XXX on Effectiveness for Marine Vapor Control Systems, dated XXX. These are recommended practices still under development. The Coast Guard cannot incorporate these by reference because they will not be completed in time for this rulemaking. The Coast Guard may consider incorporating them at a later time.

Two comments stated that appendix C of the NPRM (Draft Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications) should be added to the referenced ASTM standards in 33 CFR 154.106. This specification is not referenced in 33 CFR part 154, therefore it does not need to be added to the list of incorporated references. The number of this specification was left blank in 46 CFR 39.10–5 of the NPRM because it was under development. It has been adopted by ASTM as Standard F1271 and the specification number has been included in the final rule.

The number of the Standard Specification for Tank Vent Flame Arresters was enclosed as Appendix B and the specification number was left blank in 33 CFR 154.106 of the NPRM because it was under development. The specification has not yet been adopted, and the reference to it has been deleted from these sections. It has been included as appendix B of 33 CFR part 154 of the final rule as guidance material.

The number of the Standard Specification for Detonation Flame Arresters was left blank in 33 CFR 154.106 and 46 CFR 39.10–5 of the NPRM because it was under development. The specification has not yet been adopted, and the reference to it has been deleted from these sections. It has been included as appendix A of 33 CFR part 154 of the final rule as guidance material.

In response to comments concerning electrical connections, three standards have been added to 33 CFR 154.106 and 46 CFR 39.10–5: IEC 309–1, IEC 309–2, and NEMA WD6. These standards are referenced in 33 CFR 154.812 and 46 CFR 39.20–9, and are used to specify standard electrical connections for tank barges and facilities.

The International Safety Guide for Oil Tankers and Terminals (ISGOTT) has been added to 46 CFR 39.10–5. It is referenced in 46 CFR 39.30–1 to specify the initial loading for static accumulator cargoes.

33 CFR 154.310 Operations Manual

One comment stated that a copy of the operations manual which includes the facility's vapor control system should be located at the transfer control point (dock) available for review by the person in charge of the vessel to be loaded. While it may be desirable to have the operations manual available for review by the vessel personnel, the Coast Guard does not see a need for vessel personnel to review the manual, and parts of the manual may be considered privileged information. Therefore, it is not appropriate to require facilities to have the operations manual available for review by the vessel personnel.

One comment stated that minor changes are continuously made in operating procedures, and minor changes should not have to be submitted to the Coast Guard; therefore, operating procedures should be kept up to date and readily available at the transfer control point (dock) separate from the operations manual. The Coast Guard agrees that detailed operating procedures are not necessary for the operations manual, so the introduction of § 154.310(b)(2) has been revised to require only a description of the vapor control system's design and operation including specific components.

Four comments stated that the term "line diagram" should be replaced with a "simplified piping and instrumentation diagram (P&ID)" to be consistent with accepted shoreside terminology. The Coast Guard agrees, and has made the change to § 154.310(b)(1).

Three comments stated that the requirement in § 154.310(b)(2)(iv) that the operations manual contain provisions for dealing with pyrophoric sulfide for inerted vapors should only apply to facilities which handle vapors containing hydrogen sulfide in an oxygen deficient atmosphere, that it does not have to contain an inert gas.

The Coast Guard partially agrees. The Coast Guard agrees that pyrophoric iron sulfide is not a problem with all vapors, only those vapors containing sulfur. Therefore, the requirement has been changed to only apply to facilities which handle cargoes containing sulfur. The Coast Guard is not aware of pyrophoric iron sulfide deposits being a problem with enriched atmospheres.

33 CFR 154.740 Records

Six comments were received regarding the length of record retention in this section. One comment stated that the records should be retained for five to ten years. One comment stated that two years record retention is adequate. One comment stated that 18 months record retention is sufficient. Two comments stated that it should be one year. One comment stated that records of all repairs and failures should be kept for the life of the system. The Coast Guard has decided that three years is the optimum for record retention. That will provide sufficient time for observing problem trends without creating an undue burden upon the record keepers.

One comment stated that keeping records of minor repairs will be an unnecessary burden on the facilities. The comment recommended that only records of repairs to components which are certified under 33 CFR 154.804 be retained. While the Coast Guard agrees that keeping records of minor repairs is unnecessary, limiting record retention to records of repairs to components required by subpart E is sufficient to eliminate repairs considered to be minor.

One comment stated that paragraph (h) of this section should require a dock operation log, including problems with the vapor control system and corrective measures, since these logs are maintained by the persons in charge. The Coast Guard does not think that this change is needed. The log described by the comment would be adequate to meet the requirement. The Coast Guard will allow the operators discretion to choose the format for the record.

One comment stated that specific penalties should be attached to recordkeeping violations. The Coast Guard disagrees. The penalties for violation of the regulations are in the authorizing statutes. The penalty assessed in a particular case will depend on the nature and severity of the violation.

33 CFR 154.800 and 46 CFR 39.10–1 Applicability

One comment stated that the Coast Guard should require all vessels transporting crude oil and its products to install a vapor control system to protect both directly exposed workers and the general population. Two other comments stated that vapor control should be required as a method to control occupational exposure for benzene and other hazardous chemicals. The Coast Guard does not have statutory authority to require vapor control to reduce emissions for air pollution. This authority is granted to the EPA and the states. However, the Coast Guard does have authority to require reduced exposure to marine personnel of hazardous chemicals. As discussed in the Background section, a separate rulemaking (CGD 88–040) is under development which would lower occupational exposure limits for benzene. If the Coast Guard determines that additional products warrant requirements to lower occupational exposure, they will be developed in separate rulemakings.

One comment stated that because occupational exposure was not considered during CTAC's work, this rulemaking should not be linked to the need to lower benzene exposure. This rulemaking is not linked to lowering benzene exposure. It does not matter why vapor control systems are installed. But if they are installed, then their design, installation, and operation must be reviewed for compliance with applicable safety standards.

One comment stated that vessels complying with the IMO gas and chemical carrier codes should be permitted to perform vapor control in U.S. ports without any modifications. The IMO gas carrier code is applicable to vessels carrying liquefied flammable gases. This rulemaking specifically exempts the collection of these cargoes. Even though a vessel may meet the IMO chemical carrier code, some modifications will probably have to be made or else the vessel could not load safely while collecting the vapors. However, these modifications should be minor.

Six comments were received concerning the general applicability requirements of 33 CFR 154.100. These comments appear to have a misunderstanding that every facility to which part 154 was made applicable would have to meet the vapor control requirements. The applicability in 33 CFR 154.100 is for applicability to the whole part. The specific applicability to the facility vapor control requirements is in 33 CFR 154.800 of this part. In addition, the change to this section is not as a result of this rulemaking, but of another rulemaking. Since it now appears that the change to 33 CFR 154.100 will be final before this rulemaking, it has been deleted from this final rule.

One comment stated that a statement should be included which says that these regulations do not require vapor control, and that the authority to require such systems rests with the individual states. The Coast Guard's position is that this type of statement is not necessary. Nowhere in these regulations is the installation of vapor control systems required, and it should be apparent in reading the applicability sections of 33 CFR 154.800 and 46 CFR 39.10–1 that these regulations do not require their installation.

One comment stated that a statement should be included which says that these regulations are only applicable when vapors are required to be controlled as a result of state requirements. Another comment stated that these regulations should only apply to vessels and facilities in non-attainment areas. The Coast Guard disagrees. Because of safety concerns applicable whenever the vapors are being controlled, these regulations should apply regardless of why the vapors are being controlled.

One comment stated that designation of flammable or combustible should be deleted, since states will determine which VOC cargoes will be listed. The change to applicability discussed in the previous paragraph should satisfy this comment.

Seventeen comments stated that these regulations should only apply to the loading of crude oil, gasoline (or gasoline blends), and benzene. The most common argument was that the CTAC recommendations and the API hazards analysis considered only crude oil, gasoline, and benzene, so inclusion of a broader range of hydrocarbons at this stage is inappropriate and extremely risky. Several of the comments stated that no investigation of compatibility associated with mixing vapors has been made. One of the comments stated that the chemical carrier trade is too different from the crude oil trade to be able to include chemical carriers in this rulemaking. The Coast Guard agrees that the control of all cargo vapors has not been thoroughly analyzed and that initial applicability of the vapor control regulations to a broad range of VOC vapors, as proposed in the NPRM, is inappropriate. Therefore, the direct applicability of the vapor control regulations has been limited to vapors of crude oil, gasoline blends, or benzene in 33 CFR 154.800(a) and 46 CFR 39.10–1(a). However, since control of vapors of other cargoes will sometimes be required, a new paragraph (b) has been

added to 46 CFR 154.800 and 39 CFR 39.10–1 which requires a facility or vessel which collects vapors of flammable or combustible cargoes other than crude oil, gasoline blends, or benzene, to meet the requirements prescribed by the Commandant (G–MTH) on a case by case approval.

Two comments stated that cargoes with low vapor pressures should be excluded from the regulations because they will not emit vapors in the flammable range. The change discussed previously to the cargoes of applicability should exclude cargoes with low vapor pressures from these regulations. However, a vapor control system which collects these vapors will require case by case review in accordance with the new paragraph (b). It is unlikely that vapors of these cargoes will be required to be collected because they do not emit a significant amount of vapors.

Three comments stated that the application of individual vapor collection systems to parcel/chemical tanker operations would be very complex. One of the comments stated that the rule should apply only to petroleum tankers and barges, and allow chemical carrier operators to work with the Coast Guard to prepare requirements applicable to chemical tankships and barges. The Coast Guard agrees that collecting vapors from many different, incompatible products creates technical problems. These problems can be worked out, but solutions may be complicated and may require a separate collection system for each incompatible product. At this time the Coast Guard does not anticipate vapor control to be required on a large number of incompatible cargoes. However, if the vapors are being collected, safety concerns need to be addressed. As mentioned previously, case by case review will be necessary for vessels collecting vapors on cargoes other than crude oil, gasoline blends, and benzene. The Coast Guard is willing to work with the chemical carrier operators to develop general requirements for chemical tankships.

One comment stated that multiple berths are not fully addressed, that different product vapors may require different methods of recovery due to compatibility and vapor pressure. Some changes have been made to 33 CFR 154.820 to address fire protection for facilities with multiple berths. The problems associated with the collection of vapors from incompatible cargoes will have to be addressed on a case by case basis.

One comment stated that 46 CFR Table 151.05 and Table 1 in 46 CFR part 153 should be modified to indicate hydrocarbons to help determine applicability of these regulations. One comment stated that it is important for all tank vessels to have rules for vapor control; however, certain changes should be added for specialized tankers. By specialized tankers, the Coast Guard assumes that the comment meant chemical tankships. Because of the changes previously discussed, neither of these changes are needed.

One comment stated that vapor control of pressure tanks on vessels should be exempted. The Coast Guard disagrees. Because of the hazards involved with collecting the vapors, if vapors are collected from a pressure tank the safety considerations cannot be ignored.

One comment stated that existing vapor control systems with a safe operating record should not have to meet the regulations. A safe operating record is only one indication that the system is safe. The Coast Guard's position is that facility systems which have been approved by the Coast Guard and are operating prior to the effective date of these regulations should be exempt except for operational requirements. Therefore, a new paragraph (c) has been added to 33 CFR 154.800 to exempt these systems from the subpart except for 33 CFR 154.850. Existing facility systems which have not been approved by the Coast Guard will be permitted to operate on an interim basis and have a period of time, as given in 33 CFR 154.804(b), in which to fully comply with the regulations.

Existing vapor control systems on vessels which have been approved by the Coast Guard are exempted by a new paragraph (c) in 46 CFR 39.10–1 except for operational requirements in 46 CFR 39.30–1 and 39.40–5. Existing vessel systems which have not been approved by the Coast Guard will be permitted to operate on an interim basis, and have a period of time, as given in 46 CFR 39.10–13(b), in which to comply with the regulations.

One comment asked if these regulations would apply if the amount of vapors vented to atmosphere is well under the EPA regulations. These regulations will apply if the vapors are being collected, regardless of why they are collected.

One comment stated that the Coast Guard should provide the states with a standard for those products from which significant VOC's are emitted and thus for which these systems may be cost effective. It is not appropriate for the Coast Guard to do this. The EPA and state air quality authorities have the statutory authority under the Clean Air Act to designate products for which vapor control may be required.

One comment stated that additional clarification is required to distinguish applicability between tankships and tank barges. The notations given in 46 CFR 30.01–5(c) distinguish whether a section applies to tankships, tank barges, or both, for all of 46 CFR subchapter D.

One comment stated that many barges have vent stacks on an existing vapor collection system, which can be isolated by a valve, and can vent the vapors when loading cargoes for which there are occupational exposure limits. This is perfectly acceptable provided there are no requirements by the local air quality authorities or the EPA to collect the vapors, and these regulations will not apply. As noted in 46 CFR 39.10–1(a), the regulations will apply to vapor dispersion methods only when the vapors are collected through a vapor control system.

One comment stated that the term "vapor processing unit" in 33 CFR 154.802 and 46 CFR 39.10–3 should be changed to "dedicated vapor processing unit" to deal with a facility which collects vapors and routes them to an existing refinery vapor processing system, and that the regulations should not apply to that portion of a vapor control system which is part of an existing refinery vapor processing system. The Coast Guard agrees that this type of system deserves special consideration. A new paragraph (d) has been added to 33 CFR 154.800 to exempt that portion of a facility's existing vapor control system used to process vapor streams from other processes in the facility.

One comment asked how the collection of vapors of liquefied flammable gases (LFG's) will be regulated since they are exempted from these regulations. Because of the differences involved in handling vapors of LFG's, the Coast Guard's position is that they cannot be handled in this rulemaking. The Coast Guard will evaluate the need for developing regulations for collecting vapors of LFG's, and develop such regulations if deemed appropriate.

Because of the change in applicability, the section on Other Hazardous Materials (33 CFR 154.803 and 46 CFR 39.10–7 in the NPRM) has been revised and moved in the final rule to 33 CFR 154.800 and 46 CFR 39.10–1 as paragraph (b). It now requires a facility or vessel which collects vapors of flammable or combustible cargoes other than crude oil, gasoline blends, or benzene to meet

the requirements prescribed by the Commandant (G–MTH).

Seven comments were received concerning 33 CFR 154.803 and 46 CFR 39.10–7 which either stated that the section should be deleted or it should be revised to reflect applicability to only crude oil, gasoline blends, and benzene. The Coast Guard acknowledges that the regulations may not adequately address the collection of vapors of all flammable and combustible liquids, but the Coast Guard cannot ignore the safety aspect of collecting vapors of cargoes other than crude oil, gasoline blends, or benzene. Therefore, systems which collect vapors of cargoes other than crude oil, gasoline blends, or benzene, will be reviewed on a case by case basis by the Commandant (G–MTH).

One comment stated that cargoes with a flash point over 125 °F should be exempted because they will not emit vapors in the flammable range. The Coast Guard's position is that if the vapors are being collected, the system must be reviewed for safety.

One comment argued that the Coast Guard should provide a list of cargoes which are not hydrocarbon liquids to ensure that there are no additional safety considerations required for the handling of these products. Because of the changes in applicability, the reference to hydrocarbon liquids in paragraph (b) of 33 CFR 154.800 and 46 CFR 39.10–1 has been deleted.

33 CFR 154.802 and 46 CFR 39.10–3 Definitions

The NPRM proposed to redefine "facility" in 33 CFR 154.105 to include facilities which transfer hazardous materials to or from a vessel. Six comments were received regarding this change. Five of the comments appeared to have the misunderstanding that this definition only related to a facility which collected vapors. Since this proposed change was a part of rulemaking CGD 86.034, "Hazardous Materials Pollution Prevention," the comments have been referred to the project manager for that rulemaking. This definition has been deleted from this rulemaking.

Two comments stated that the definition for "existing vapor control/collection systems" should include those systems which have been submitted to and reviewed by the Coast Guard. The Coast Guard agrees. The definition has been revised to include all systems which are operating prior to the effective date of these regulations.

One comment asked if vessels operating under current Coast Guard issued letters of Compliance would be included under "existing vapor collection systems." These vessels would be included if they have a vapor collection system operating prior to the effective date of these regulations.

Ten comments expressed confusion as to where the "facility vapor connection" was actually located. They stated that it should be at the point where the shoreside vapor control system interconnects with the vapor hose or the base of the vapor collection arm. The Coast Guard agrees, and this change has been made.

Five comments expressed similar uncertainty about the "vessel vapor connection." They stated it should be at the point where the ship's vapor collection system interconnects with the end of the vapor hose or the vapor collection arm. The Coast Guard agrees, and this change has been made.

One comment stated that for the definition of "maximum allowable loading rate," the following should be added to the end of the first sentence: "or non-vapor generating cargo into unwashed tanks previously containing crude oil, gasoline, gasoline blending stocks, or benzene." The Coast Guard's position is that this change is not needed. This definition is appropriate no matter what cargo is loaded when the vapors are collected.

One comment stated that in the definitions of "lightering," "service vessel," and "vessel to be lightered," the words "flammable or combustible liquids" should be changed to "crude oil, gasoline blends, and benzene." The Coast Guard's position is that this change is not needed. The applicability section has been changed to include only those cargoes, so there is no reason to change the definitions.

Because of changes to 46 CFR subpart 39.40, the term "vessel to be lightered" has been deleted from 46 CFR 39.10–1.

One comment recommended changes so that reasonable bounds can be placed on the extent of applicability for systems that are not dedicated to marine systems. These recommendations were to change the definitions of "vapor control system" and "vapor processing unit" to limit applicability, and to replace the term "vapor processing unit" with the terms "dedicated vapor processing unit" and "nondedicated vapor processing unit" to account for facilities which are not dedicated to marine vessels. The Coast Guard agrees that some limit to applicability for this kind of facility is needed, but that the recommended changes are not necessary. A new paragraph (d) has been added to the applicability section (33 CFR 154.800) to exempt the portion of the facility's vapor control system where it connects with the facility's main vapor control system when that system also serves tank storage areas and other refinery processes.

Three comments stated that the term "means of protection" should be deleted, because other recommended changes make it unnecessary. The Coast Guard agrees. Because of changes to the regulations concerning design, review, and initial installation inspection in 33 CFR 154.804, the term is no longer used, so its definition has been deleted from 33 CFR 154.802.

One comment stated that a definition of "emergency lightering" should be added in order to exempt lightering without vapor control in an emergency situation. The Coast Guard's position is that this term is not needed. Vapor control will be required by the states, so an emergency exemption must be provided by the states.

One comment suggested that the following terms be defined: detonation arrester, flame propagation, explosive limits, flame arrester, flame screen, and electrostatic conditions; and that examples of acceptable and unacceptable devices would be helpful. The Coast Guard's position is that definitions for these terms is not necessary. These terms are either familiar with the industry, or criteria for an acceptable device is given in the regulations. Giving examples of acceptable or unacceptable devices would be interpreted as limiting flexibility.

The term "independent" has been revised to delete the last sentence, which referred to electrical wiring. The Coast Guard decided that this sentence was not needed.

The definition of "inerted" has been revised to delete "other inerting arrangements acceptable to the Commandant (G–MTH)" as unnecessary.

Because of revisions to 46 CFR subpart 39.40 of the final rule, the definition of "lightering" has been revised to delete reference to liquids intended only for use as fuel or lubricant as unnecessary, and to specify that the cargo is transferred to a service vessel.

The definition of "maximum allowable loading rate" has been changed to "maximum allowable transfer rate." The reference to 46 CFR 39.30–1(b) has been deleted since it is unnecessary.

Because of revisions to 46 CFR subpart 39.40 of the final rule, the definition of "service vessel" in 46 CFR 39.10–3 has been revised to mean "a vessel which transports flammable or

combustible cargo between a facility and another vessel."

A definition for "topping-off operation" has been added to 46 CFR 39.10–3. This term is used in the revised 46 CFR subpart 39.40.

The definition of "vapor balancing" has been revised for clarification to add that the vapors are transferred via a vapor collection system.

A definition for "certifying entity" has been added to 33 CFR 154.802. The Coast Guard decided that adding this definition would help to clarify its use in 33 CFR 154.804 and 154.806.

Definitions for "vapor destruction unit" and "vapor recovery unit" have been added to 33 CFR 154.802. These terms are used in the revised 33 CFR 154.820 of the final rule.

33 CFR 154.804 Review and Certification of System Designs and Initial Inspection

One comment stated that the proposed regulations' reference to equivalence is vague, qualitative, and unworkable, and that a quantifiable risk related to the current industry practice of open loading should be used as the base level of safety. Another comment stated that if a facility obtained Coast Guard approval, information should be submitted on equipment which was added or modified since the Coast Guard approval and a record of operating experience since the Coast Guard approval. Also, where the existing system, as modified, would not meet a specific requirement of Subpart E, an analysis or a record of actual operating experience to demonstrate an equivalent level of protection should be allowed. One comment stated that each of the criteria for a hazards analysis should be compared to the level of safety of current industry practice of open loading. The NPRM contained no reference to equivalence. The existing 33 CFR 154.108 gives the criteria applicable to facilities for exemptions. The use of a quantitative hazards analysis is just one tool to help show equivalence. Because of the limitations on quantitative hazards analysis, the Coast Guard will not allow total reliance on such an analysis. Reliable failure data on vapor control systems is not available which reduces the confidence in a close comparison by a quantitative hazards analysis. A new paragraph (d)(4) has been added to this section to allow a quantitative hazards analysis to support the qualitative hazards analysis. Because of the limitations on quantitative hazards analysis and uncertainty in failure data, the standard of acceptance is set one order of magnitude (10 times) higher than that for operating without a vapor control system. Military Standard MIL–STD–882B is given as a reference which can be used for guidance in performing a quantitative hazards analysis.

One comment stated that existing systems that have been operating satisfactorily should not have to be reviewed. Another comment stated that systems which have received Coast Guard approval and have been operating satisfactorily should only have to demonstrate an equivalent level of safety. The Coast Guard partially agrees. A new paragraph (c) has been added to this section which exempts existing systems at facilities which have been approved by the Coast Guard as long as they continue to operate with only the vessels for which they were approved. However, vapor control systems currently operating which have not been approved by the Coast Guard must submit design plans to an accepted certifying entity within 6 months after the effective date of these rules and complete certification within 24 months after the effective date of these rules.

One comment stated that there should be a 60 month period from the effective date of these regulations in which to install the vapor control equipment. This rulemaking does not contain any compliance date for requiring control of vapors when vapor control is required. Compliance dates will be established by local air quality authorities. The Coast Guard's position is that the time period in paragraph (b) of this section provides adequate time for existing vapor control systems to come into compliance with these regulations.

One comment stated that only the Coast Guard should provide system review and initial inspection. Another comment stated that the process of acceptance needs to be more strict and that the certifying entity should be independent of the designer, fabricator, owner and operator of the facility. The third party review process is being instituted because the Coast Guard does not have the resources to conduct the initial review and inspection. The Coast Guard agrees that the certifying entity must be independent. Therefore, in addition to the requirements for independence in 33 CFR 154.806, a new paragraph (i) has been added to this section to prohibit an entity which was involved in the design or installation of a vapor control system to certify the system.

One comment recommended that the Coast Guard consider the use of the certifying entity to review barge vapor collection systems. The Coast Guard has an existing mechanism for reviewing and inspecting barge construction and modification by the Marine Safety Center and local Marine Safety Offices which is appropriate for vapor collection systems.

One comment stated that the maximum review period for the certifying entity needs to be specified as six months. The Coast Guard's position is that it is not appropriate to specify the maximum review period of the certifying entity. The Coast Guard anticipates that the time period to review a vapor control system will be much shorter than six months.

Eight comments stated that 12 months is not sufficient time to complete modifications for facilities. One comment stated that 12 months may be too short if an environmental permit is needed, so there should be a provision for lengthening the time period if compliance within 12 months is beyond the facility's control. The comments recommended ranges from 18 months to 24 months from the date of notification of needed modifications from the certifying entity. One comment stated that an exemption to completing the modifications within 24 months should be provided if the facility owner can demonstrate that compliance within this time period is beyond his control. The Coast Guard agrees that the 12 month period in the NPRM was too severe. Therefore, the regulation has been amended in the final rule to require completion of modifications not later than 24 months after the effective date of this rule. The Coast Guard expects that the certifying entities will review plans as quickly as practicable.

One comment asked if the Coast Guard will be able to enforce the regulations. Five other comments stated that inspection and enforcement provisions are needed and should be adopted. One of the comments stated that facilities should be inspected at least annually. Another comment stated that periodic inspections by the certifying entities should be required. The Coast Guard currently conducts an annual exam of every facility. The Coast Guard intends to develop an enforcement program for the vapor control system which will become a part of this exam. It is the Coast Guard's position that this inspection will be adequate and a periodic inspection by the certifying entities is not needed.

One comment stated that calculations for facilities should only be provided on an as needed basis. The Coast Guard agrees. Only calculations needed to help show compliance with these regulations should be submitted. If no calculations are needed to demonstrate compliance, none have to be submitted.

Three comments stated that the requirement for a qualitative failure analysis focusing only on fire protection is inadequate and needs to include analysis of additional hazards. Two comments stated that the criteria for hazards analysis was unnecessarily restrictive and should show that the vapor control system will be safe. Three comments stated that the criteria suggested at the November 28, 1989 CTAC meeting, which broadened the criteria for the hazards analysis, would be more appropriate for the hazards analysis. The Coast Guard agrees, and paragraph (d) of this section (was paragraph (c) in the NPRM) is revised in accordance with the criteria suggested at the CTAC meeting. This criteria will provide a more complete and useful analysis than what was contained in the NPRM.

One comment stated that two levels of safety to protect the terminal from the vessel is not possible to accomplish. Another comment stated that the CTAC Subcommittee did not recommend two levels of protection, that this additional level of protection is not necessary, and that it is not cost effective. The Coast Guard disagrees with the comments, but as discussed previously the references to two means of protection for the criteria of the hazards analysis have been deleted.

Two comments stated that protection against ignition should be expanded to conform with the definition of "means of protection." Another comment stated that sources of ignition with very low probability of occurring should only require one means of protection. Because of the previously discussed changes to the criteria for the hazards analysis, "means of protection" has been deleted.

Three comments suggested that the hazards analysis should be in accordance with guidelines for hazards analysis published by the American Institute of Chemical Engineers (AIChE). The Coast Guard partially agrees. The AIChE guidelines provide good guidance in conducting a hazards analysis, but a hazards analysis should not be restricted by the guidelines. The AIChE guidelines are mentioned in paragraph (d) of this section as a source for guidance in conducting the analysis.

One comment stated that an internal review of the hazards analysis by a company's own certified employees should be acceptable in lieu of review by a separate certifying entity. The Coast Guard disagrees. While the facility's own employees may conduct the hazards analysis, it is important that the review be conducted by an independent third party in order to maintain objectivity.

Two comments stated that letters of adequacy should be issued by Commandant (G–MTH) or the Marine Safety Center. Existing provisions for letters of adequacy are contained in 33 CFR 154.325, which specifies that the letter is issued by the local Captain of the Port (COTP). The letter addresses more than just the safety of the vapor control system. Most of the safety aspects of the letter of adequacy are best addressed on the local level by the COTP, who is most familiar with the local conditions.

Nine comments addressed the type of alterations which need to be reviewed by a certifying entity as required by paragraph (g) of this section in the final rule, all wanting to eliminate review of normal maintenance or repairs. The Coast Guard agrees and has changed the paragraph to read "Any design or configuration alteration * * *.

One comment stated that a copy of the plans, calculations, and specifications should be submitted to the COTP for indefinite retention. The Coast Guard partially agrees. The plans, calculations, and specifications need to be retained, but they do not need to be retained by the Coast Guard. A new paragraph (h) has been added to this section which requires that the plans, calculations, and specifications be retained by the facility.

Two comments stated that designers of vapor control systems should be permitted to certify designs, because they represent a large source of expertise. The Coast Guard agrees. However, as discussed previously, designers of vapor control systems should not be permitted to certify systems which they designed. To remove potential conflicts of interest, paragraph (i) was added to 33 CFR 154.804 to prohibit vapor control system designers from certifying systems with which they were involved in the design or installation.

33 CFR 154.806 Application for Acceptance as a Certifying Entity

One comment expressed concurrence with the requirements in this section concerning the acceptance of certifying entities. Three comments expressed concern about the qualifications of the certifying entities. Two of these comments stated that the certifying entity should be a classification society or equivalent. One of the comments stated that certification should be by a classification society under terms similar to the current arrangement between the American Bureau of Shipping (ABS) and the Coast Guard, and that private companies should not be allowed to certify. Classification societies have most of their experience with vessels, and may not have the expertise to review facilities. The current arrangement between ABS and the Coast Guard for plan review is applicable only to the review of vessels. The Coast Guard's position is that there are other entities with the ability to review facilities other than classification societies. The Coast Guard will carefully review each application in order to ensure a high level of ability.

One comment stated that any qualified, independent professional engineer should be able to review, evaluate and analyze vapor control systems. The Coast Guard disagrees. Not all professional engineers will have the necessary experience to review vapor control systems. A professional engineer who desires to be accepted as a certifying entity must apply in accordance with this section.

One comment stated that provision should be made to obtain a letter from foreign classification societies stating that they are ready to certify facility vapor control systems. Foreign classification societies may apply to be accepted as a certifying entity just like any other organization.

One comment stated that the applicant should have the ability to review and evaluate hazards analyses in accordance with AIChE standards and any other standards that may be accepted by the Commandant (G–MTH). The Coast Guard agrees that a certifying entity should have the ability to review hazards analyses, and this provision has been added to paragraph (b)(1) of this section. However, it is not appropriate to specify the standards because the regulations do not specify the standards which must be used.

Six comments stated that owners/operators should not have to use outside firms to certify their vapor control systems since this would be an extra and unnecessary expense. The Coast Guard disagrees. While owners/operators may have very competent design personnel, an independent entity, free of all possible biases, is needed to certify the system.

Two comments stated that certifying entities should monitor and evaluate tests, but not conduct tests. The Coast Guard agrees. The regulations in 33 CFR 154.804(e) and paragraph (b)(3) of this section have been changed to reflect this.

One comment stated that some oversight program is needed to monitor review by certifying entity. The Coast

Guard intends to develop a program to oversee the certification process.

33 CFR 154.808 Vapor Control System, General

One comment expressed general agreement with this section.

Because of changes to the criteria for hazards analysis, paragraph (a) of this section has been revised to include potential overfill, overpressure, and vacuum hazards which must be eliminated or addressed in the system design and installation.

One comment stated that 150 psig maximum allowable working pressure is over-design. While another comment stated that it should be required. The Coast Guard's position is that 150 psig maximum allowable working pressure is appropriate. While 150 psig is much higher than a vapor control system should ever see in normal operation, the extra strength is needed for mechanical protection and to contain most detonations within the vapor collection system if any should occur. The requirements in paragraph (b) of this section have been revised to require that valves and flanges meet ANSI B16.5 or B16.24, 150 pound class. These standards are more appropriate than ANSI B31.3 as was proposed in the NPRM.

One comment stated that steel should not be allowed for the vapor collecting piping systems because non-steel piping will minimize the formation of iron sulfide. While this is an acceptable way of dealing with pyrophoric iron sulfide, the Coast Guard's position is that there are effective ways of dealing with the problem other than prohibiting steel pipe. Therefore, to maintain greatest flexibility in the rules, steel pipe is permitted for vapor control piping systems.

One comment stated that an outside audible and visual alarm is not appropriate for a facility which has a continuously manned control room with multiple loadings occurring simultaneously. Another comment stated that the alarms should be received in the facility control room as well as on deck. The Coast Guard agrees that the alarm need only sound in a control room, if provided. A new paragraph (e) of this section requires an alarm required by this subpart to be audible and visible at the location where the cargo transfer system and the vapor control system is controlled.

One comment expressed support for the requirement to separate or insulate the vapor control system from external heat sources to limit surface temperature to 177 °C that was given in 33 CFR 154.820(j) in the NPRM. Two comments stated that 177 °C is too high. The Coast Guard's position is that 177 °C is well below the autoignition temperatures of the applicable cargoes, but sufficiently high to allow heat tracing or steam heating of the vapor collection line if the design requires this feature. This requirement has been retained but moved to paragraph (f) of this section in the final rule.

One comment pointed out that there are ways to handle liquid condensate other than collecting it. The Coast Guard agrees. The requirement in paragraph (g) of this section (was paragraph (c) in the NPRM) has been revised to make the requirement to deal with liquid in the vapor line more flexible by making it a performance standard. It requires a means to be provided to eliminate any liquid condensate from the vapor collection system.

One comment recommended excluding liquid seal screw and other compressors not affected by liquid carryover from the requirement to have a liquid knockout vessel. Two comments stated that a liquid knockout vessel may not be needed if the compressor/blower is at the high point of the system. Another comment stated that a liquid knockout vessel is necessary regardless of whether the compressor is at the high point of the system, because entrained liquid will be carried by the gas both horizontally and vertically. Because of the previously discussed change to make paragraph (g) of this section a performance standard, the Coast Guard's position is that it is not necessary to require a liquid knockout vessel. A liquid knockout vessel is just one means of preventing liquid carryover into a compressor, and the compressor may not need to be protected from liquid carryover. The requirements in paragraph (h) of this section in the final rule have been revised to require certain features on a liquid knockout vessel if it is installed.

Two comments stated that the high level in the liquid knockout vessel should trip the compressor instead of, or in addition to, closing the vapor valve. The Coast Guard agrees, and paragraph (h) of this section has been revised to require this.

One comment stated that a requirement for expansion joints in vapor lines on ship or shore to be provided with electrical bonding connections should be included. The Coast Guard agrees. The requirement in 46 CFR 39.20-1(a)(5) requires electrical continuity on vessels and a new paragraph (i) has been added to this section to require electrical continuity at facilities.

Two comments stated that pyrophoric sulfide contaminations come from inert gas generator systems located on board vessels, and do not apply to an inerting process which uses an inert gas such as nitrogen. The Coast Guard disagrees. Pyrophoric sulfide can be a problem in inerted atmospheres regardless of the source or type of inerting gas.

Three comments pointed out that not all cargoes have the ability to generate pyrophoric iron sulfide deposits and that only facilities that handle inerted vapors from pyrophoric iron sulfide generating materials need to have provisions to control the deposits. The Coast Guard agrees. The proposed requirements in 33 CFR 154.820(o) of the NPRM has been revised in 33 CFR 154.808(j) of the final rule to require provisions to control heating from pyrophoric iron sulfide deposits if the facility handles inerted vapors of cargoes containing sulfur.

One comment suggested that a low concentration of sulfur oxides should be required in order to minimize the formation of iron sulfide deposits. Although this may be effective, the Coast Guard's position is that it is not appropriate to limit vessels to only load cargoes with a low concentration of sulfur oxides.

One comment stated that pyrophoric iron sulfide deposits can form in oxygen deficient atmospheres, not just in inerted spaces. The Coast Guard's position is that pyrophoric iron sulfide deposits will only be a problem in inerted atmospheres, enriched atmospheres will normally have sufficient oxygen to prevent iron sulfide deposits from forming.

Two comments requested clarification as to what procedures are available to protect against pyrophoric iron sulfide deposits. One comment stated that the deposits can be handled by operating procedures, such as by having a slow and controlled oxidation in the vapor line before air is allowed into the system. Another comment suggested that the requirements for facilities to control heating from pyrophoric iron sulfide deposits should be the same as for vessels. The Coast Guard's position is that the necessary provisions to control the heating from pyrophoric iron sulfide deposits depends upon the unique circumstances of each facility, such as the frequency of handling inerted vapors, the concentration of sulfur in the cargo, etc. Therefore, it is inappropriate to establish a specific criteria. Section 22.3 of ISGOTT provides guidance for dealing with the problem on vessels that can also be applied to facilities in order to control pyrophoric iron sulfide deposits.

Generally, procedures to control the heating include purging the line with an inert gas containing a slowly increasing amount of oxygen to allow the deposits to slowly oxidize, prior to introducing any flammable vapors.

Four comments stated that the unique configurations and requirements of offshore terminals have not been properly addressed, and that many of the proposed requirements will be impractical offshore and at facilities using subsea lines. One of these comments stated that the rulemaking should either be modified to account for such facilities or they should be exempted from the requirements. Another of the comments stated that recovery of vapors on board the vessel is necessary for safe vapor control. Three other comments stated that the NPRM does not address loading at mooring buoys, with one saying that this should be noted in the preamble, another saying that an entire section should be developed to address this issue, and the other saying that they should be reviewed on a case by case basis. The Coast Guard agrees that these types of facilities present some unique problems, and that having the vapor processing unit on board the vessel is a viable option. However, exempting them from the regulations is not possible since some states may require offshore terminals to collect cargo vapors emitted from vessels within their jurisdictional waters. A new paragraph (k) has been added to 33 CFR 154.814 to better address the concerns for controlling the pressure on tank vessels by these facilities.

33 CFR 154.810 Vapor Line Connections

Four comments stated there is no need for a separate isolation valve, that one automatic valve capable of manual operation would be sufficient. Two other comments stated that this separate manual isolation valve is needed, one clarified that it is needed to isolate an inactive system after completion of loading. The requirements for the automatic and manual valves have been revised. The term "automatic vapor shutoff valve" has been changed to "remotely operated cargo vapor shutoff valve" since this better describes its function. A separate manual isolation valve is required only if the facility is fitted with an enriching system and operates at a positive gauge pressure at the facility vapor connection. This is to prevent enriching gas from leaking back onto a vessel after the transfer operation is completed. Otherwise, only a remotely operated cargo vapor shutoff valve capable of manual operation is required. The revised requirement for the manual isolation valve is in paragraph (h) of this section in the final rule. The revised requirement for the remotely operated cargo vapor shutoff valve is in paragraph (a) of this section (was paragraph (b) in the NPRM).

Seven comments addressed the location of the isolation valve. All thought that there should be some distance between the facility vapor connection and the isolation valve. Two of the comments suggested "as close as practical" should be specified. The Coast Guard agrees that some distance between the facility vapor connection and the isolation valve can be allowed. The requirement in paragraph (h)(1) of this section (was paragraph (a) in the NPRM) has been revised to require the manual isolation valve to be located between the remotely operated cargo vapor shutoff valve (referred to as an automatically operated vapor shutoff valve in the NPRM) and the facility vapor connection. This will allow sufficient distance for required pressure sensors, and still locate the valve close enough to the facility vapor connection.

One comment asked if the remotely operated cargo vapor shutoff valve was to be between the ship and the detonation arrester. The requirement in paragraph (a) of this section in the final rule has been revised to require the valve to be between the facility vapor connection and the point where any inerting enriching, or diluting gas is introduced into the vapor collection line or a detonation arrester is fitted.

Eleven comments disagreed with the requirement for the remotely operated cargo vapor shutoff valve to close in five seconds, and suggested either 30 or 60 seconds for closing time. Generally, the reasoning of the comments was that five seconds closing time would cause hydraulic hammer in the lines and the closing time should be consistent with the closing time of the liquid loading valve. The Coast Guard disagrees that hydraulic hammer would be a problem in vapor lines. However, the Coast Guard does agree that 30 seconds closing time is adequate for this valve, and has revised the requirement in paragraph (a)(1) of this section accordingly.

One comment stated that the automatic vapor shutoff valve should be "fail safe." Another comment stated that the valve should fail in the closed position. The Coast Guard intreprets "fail safe" in this instance to mean fail in the closed position. The Coast Guard's position is that requiring a valve to fail in the closed position would unnecessarily restrict the type of valve which could be used, and some otherwise acceptable valves would be prohibited. However, requiring a valve to close upon loss of control signal is a reasonable requirement with added safety benefits. Therefore, paragraph (a)(2) of this section has been added to require the valve to automatically close on loss of control signal.

One comment said that the automatic vapor shutoff valve should be a "fire safe" valve. Another comment said that the valve should not be "fire safe" because the valve is solely a control valve. Because this valve will often serve as the isolation valve, it is not just a control valve. Although the Coast Guard endorses the idea that the valve should be fire safe, there is not an accepted standard for "fire safe." Therefore, paragraph (a)(6) of this section has been added which gives a criteria to make the valve fire resistant.

Two requirements have been added to the final rule for the remotely operated cargo vapor shutoff valve because the valve may be the only isolation valve. A new paragraph (a)(4) of this section requires the valve to be capable of manual operation or activation, and a new paragraph (a)(5) of this section requires the valve to have a means of determining locally the valve position.

Eight comments were received expressing disagreement with the proposed color coding of the vapor pipe and vapor hose. Four of the comments stated that bright orange is used for cargo loading hoses at offshore moorings to help pilots see them. Six of the comments said that the color coding should agree with the red/yellow/red striping criteria included in a draft API guideline. Another comment stated that the color coding requirements should be deleted because API is developing an industry guideline for manifolds. Because the API guidelines are still under development, they cannot be incorporated by reference. However, the Coast Guard agrees that the red and yellow striping arrangement in the proposed API guidelines is more appropriate, and has revised the color code requirements in paragraphs (b), (d), and (f) of this section, and 46 CFR 39.20–1 (d) and (f) of the final rule to require red and yellow striping consistent with the proposed API guidelines.

One comment said that vapor hoses do not need to be stenciled, that color coding is sufficient. The Coast Guard disagrees. The hoses need to be labeled to ensure they will not be used for anything else.

One comment recommended that vapor hoses be "marked" with black letters, "not more than" 2½ inches high.

The Coast Guard agrees, and these changes have been made in paragraphs (b), (d), and (f) of this section, and 46 CFR 39.20–1 (d) and (f) of the final rule. The Coast Guard has also revised the minimum height of the letters to 50 millimeters (2 inches).

Seven comments expressed concern about the requirements for the stud and hole in the vapor connection flanges. Four of the comments stated that it was not needed because of required color coding and pre-loading checks. Two of the comments said that hose alignment would be difficult, especially for floating hoses. One of the comments suggested that the requirement be operational. Three of the comments also said that the stud system could be defeated by the use of adapters or by sawing off the stud. The Coast Guard's position is that because of the severe consequences of a misconnection, a mechanical means of preventing misconnection is necessary, and that color coding and pre-loading checks are not sufficient. The Coast Guard has revised the requirements in paragraphs (b), (c), (d), and (f) of this section, and 46 CFR 39.20–1 (e) and (f) of the final rule to facilitate alignment. Only the vessel and facility vapor connection flanges are required to have the studs. Vapor hose and vapor collection flanges can have floating flanges or flanges with multiple holes to facilitate alignment. It is true that this method of protection could be defeated, but the operator must be aware of the possible consequences, which could include civil penalties, condemnation of vapor connection flanges with corrective requirements, or operational restrictions.

One comment suggested that the stud arrangement should agree with the proposed API standard, which calls for it to be located at the top of the flange. The Coast Guard agrees and has revised paragraph (c) of this section and 46 CFR 39.20–1(e) accordingly.

Seven comments stated that 100 psig for the burst pressure of vapor hoses is too high and recommended that 25 psig burst pressure would be sufficient. Their arguments were that 100 psig burst pressure will require heavier and more expensive hoses than necessary, and less strong hoses will be sufficient if they are abrasion resistant. The Coast Guard agrees and has revised paragraph (d) of this section and 46 CFR 39.20–1(f) to require hoses with a burst pressure of 25 psig and working pressure of 5 psig which are resistant to abrasion and kinking.

Because of the reduced vapor hose strength allowed, the Coast Guard has decided that provisions are needed to prevent a hose from collapsing when it is handled. A new paragraph (e) has been added to this section and a new paragraph (g) has been added to 46 CFR 39.20–1 which requires vapor hose handling equipment to be provided with hose saddles which provide adequate support to prevent kinking or collapse of a hose.

Two comments expressed disagreement with the requirement for a maximum hose resistance of 1 million ohms (1 Mohm). One of the comments recommended 200 ohms. The other comment recommended 1,000 ohms. The Coast Guard agrees that 1 Mohm is too high, and has revised paragraph (d)(4) of this section and 46 CFR 39.20–1(f)(4) in the final rule to require a maximum resistance of 10,000 ohms.

One comment expressed concurrence with the requirement for the insulating flange in paragraph (g) of this section. Four other comments stated that it should not be required. One of the comments stated that the insulating flange is inconsistent with the requirement for electrical continuity of hoses. Another of the comments stated that the insulating flange should be left to the discretion of the facility to be consistent with the grounding of the vessel. The other stated that it was inconsistent with current practice of grounding the vessel. The Coast Guard's position is that it is not inconsistent with the hose requirement for continuity and it is not dependent upon grounding of the vessel. The hoses need to be conductive to dissipate static charges to either the facility or the vessel. Without the insulating flange, there is potential for arcing when the connections are made up or disconnected, even if the vessel is grounded to the facility by a separate grounding.

Three comments said that a non-conducting length of hose should be allowed in place of the insulating flange, as is often currently used. The Coast Guard agrees. The requirement in paragraph (g) of this section has been revised to require insulation of the vessel vapor connection in accordance with ISGOTT, which allows a single length of non-conductive hose.

One comment recommended adding a definition for insulating flange. The Coast Guard's position is that this is not necessary. The revised requirement refers to ISGOTT, and does not mention insulating flange. The term is used in ISGOTT and is adequately described there.

33 CFR 154.812 Facility Requirements for Vessel Liquid Overfill Protection

Two comments stated that paragraph (b) of this section (paragraph (a) in the NPRM) should be revised to clearly indicate that the automatic cargo loading shutdown system, which is connected to the barge, is only required when the barge has no other means of overfill protection. The Coast Guard agrees. The requirement has been revised to require the system only when it is the barge's only means of overfill protection.

Twelve comments stated that the automatic shutdown system in paragraph (b) of this section should either be made voluntary or deleted. One of the comments stated that if the facility installs a system other than an overfill control panel, the barge must have a backup overfill protection system. One of the other comments stated that the API risk analysis did not find the need for such a system. Two of the comments stated that the system was rejected by the CTAC Subcommittee because it would degrade safety. The Coast Guard disagrees with these comments. This system was developed by the CTAC Subcommittee as a cost-effective method and included in the recommendations to the Coast Guard. This system was also accepted by the API hazards analysis. An emergency shutdown system is already required by 33 CFR 154.550 which allows for a vessel linkage to the facility by electrical, pneumatic, or mechanical means.

Two of the comments stated that independent systems would be safer. The Coast Guard disagrees. An independent shutdown system located on the barge could create surge pressures in the cargo loading hose or the facility's piping which the facility was not designed to handle.

Another of the comments stated that the system was not practical, because the facility panel would be required to monitor as many as 40 tanks on the barge. The Coast Guard disagrees. The facility's control panel would be independent of the number of tanks on the barge. All of the sensors in the tanks are required to be connected in series, so that a high level in any of the tanks would activate the shutdown system, and only one control circuit is needed.

Three of the comments stated that an automatic shutdown was not needed, that the proposed high level alarms would be sufficient. The Coast Guard disagrees. The high level alarms of 46 CFR 39.20–7 are not mandatory for barges. The automatic shutdown system is in lieu of the high level alarms.

Two of the comments stated that the system would be relied upon by the crew as the means to load the barge instead of careful monitoring, resulting in a net reduction in safety. There is a

danger of complacency with any automatic alarm or shutdown. Proper training and management oversight will be necessary to help prevent this.

Four comments pointed out that this system could cause confusion between vessel and facility personnel concerning responsibility and liability. The Coast Guard's position is that if the pre-loading checks and tests are properly performed, this should not be a problem.

Because of objections received to the automatic shutdown, paragraph (a) of 46 CFR 39.20-9 has been revised to allow dual high level alarms on tank barges if they are fitted with an electrical shore power connection to power the alarms. To supply a shore power connection, a new paragraph (a) has been added to this section for the facility to provide a suitable electrical shore power connection, and this paragraph gives the requirements to standardize the connection. Vessels and facilities may prefer to go to this type of arrangement in lieu of paragraph (b) of this section (was paragraph (a) in the NPRM).

Four comments stated a need for standardization of the system. The Coast Guard agrees. API is developing a guideline for standardizing the system connection. Some requirements from the draft API standard have been added to paragraph (b) of this section, as well as references to additional standards, to provide the degree of standardization necessary.

Two comments suggested including the requirements for intrinsically safe wiring in 46 CFR 111.105. The Coast Guard disagrees with the need to cite the intrinsically safe wiring requirements of 46 CFR 111.105 in paragraph (b) of this section. However, a reference to 46 CFR 111.105 has been added in paragraph (a)(3) of this section to require that the shore power connection equipment be listed by an independent test organization.

Four comments suggested that the cargo pump does not always need to be shut down when loading is shut down. One comment suggested that the requirement for shut down is inconsistent with the 30 to 60 second shutdown in 33 CFR 154.550(c). The Coast Guard agrees. The requirement in paragraph (b)(1) of this section has been revised to require loading to be shutdown in accordance with 33 CFR 154.550. This section requires shutdown within either 30 or 60 seconds of receiving the shutdown signal, depending on the age of the facility. This change was necessary because a maximum time needs to be established so that barges will know the amount of time they will have to secure loading in order to set the sensors at the proper level.

Paragraph (b)(1) of this section has been revised to require that the remotely operated cargo vapor shutoff valve be closed upon receiving the shutdown signal. The Coast Guard has determined that this is needed as a precaution to prevent liquid from being drawn into the vapor collection line if the tank were to become overfilled.

One comment suggested that the cable for receiving the signal from the barge should be supported to prevent mechanical damage. The Coast Guard's position is that while in most cases it would be prudent to support the cable, it is not appropriate to require it in all situations.

Two comments confirmed the requirement that the alarms should be visible and audible on both the dock and the vessel, and they should be distinctive from other alarms. One of the comments suggested that the high level alarm should have a yellow strobe light or rotating beacon with a distinct low frequency sounder, and the high level shutdown alarm should have a red strobe light or rotating beacon with a distinct high frequency sounder. While the Coast Guard agrees that such distinctiveness is prudent, this is an area which can best be addressed by an industry standard.

33 CFR 154.814 Facility Requirements for Vessel Vapor Overpressure and Vacuum Protection

Two comments stated that 33 CFR 154.814 should clarify that this section applies only for shoreside equipment. The Coast Guard agrees and has changed the title for this section to clarify this.

Seven comments stated that a 25% factor for vapor pressure is excessive for certain cargoes. The comments suggested that the factor should be based upon the cargo loaded, or 5% or 20% for benzene. The Coast Guard partially agrees. The 25% factor is valid for most cargoes. Most available information gives figures which are based on average loading. For this application, the most severe case with turbulent loading is needed. However, the Coast Guard realizes that some facilities may handle only heavy crude oils or other cargoes with low vapor pressures, and has added a provision to paragraph (a) of this section that a lower factor can be used if the facility owner/operator can show that the most volatile cargo under the most severe conditions will have a lower figure.

Two comments stated that a facility's maximum liquid transfer rate, as referred to in paragraph (a) of this section, is difficult to determine at a complicated refinery with a number of loading pumps available and a number of loading berths. The Coast Guard agrees that this figure may be difficult to determine, but the designer will have to use some figure as a basis for designing the size of compressors, vapor collection piping, and the vapor processing unit. This may require limiting the number of pumps which will be used.

Three comments pointed out that as proposed, a facility would be required to size its vapor collection system for the highest loading rate for any liquid product, even if that product did not require vapor control. The Coast Guard agrees, and has revised 33 CFR 154.814(a) to specify that the maximum design loading rate is for cargoes for which the vapors will be collected.

Fourteen comments expressed disagreement with the required pressure ranges given in paragraph (b) of this section. Another comment stated that the pressure range specified in paragraph (b) of this section should be maintained at the vessel vapor connection rather than the facility vapor connection. The purpose of this requirement is to limit the pressures in the cargo tanks to acceptable levels. The following paragraph discusses this more fully.

Another comment suggested that the pressure range given in paragraph (b) of this section should be maintained in the vessel's cargo tanks, based on the pressure measured at the facility vapor connection, corrected for pressure drops across the vessel's vapor collection system and the vapor transfer hose/loading arm. The Coast Guard agrees with the concept of maintaining the pressure in the cargo tanks corrected for pressure drops. Paragraph (b) has been revised to reflect this concept. However, the pressure range has been changed. Since the allowable pressure range will be the pressure in the tank, the range can be based upon the actual tank conditions. Therefore, the upper range has been changed to 80% of the pressure relief valve setting, and the lower range for non-inerted vessels has been changed to 80% of the setting of the vacuum relief valve. A new paragraph (c) has been added to this section to require the pressure drop across the vessel's vapor collection system and the vapor hoses to be taken into consideration in order to maintain the pressure in the tanks.

One comment stated that the pressure sensing device should be specified to be intrinsically safe. The Coast Guard disagrees. The pressure sensing device is not required to be electrical. Where it

is electrical, 33 CFR 154.808(c) requires all electrical equipment to comply with the National Electric Code.

One comment stated that the vapor overpressure and vacuum protection must activate upon loss of continuity of the tank vessel's overflow control system circuitry. A tank barge fitted with an overflow control system in accordance with 46 CFR 39.20–9(b) will be protected from overpressure and excessive vacuum. The requirements in paragraph (b) of this section requires the shutdown system to be activated by loss of continuity in the sensor system and the remotely operated cargo vapor shutoff valve to close upon activation of the shutdown system.

Two comments stated that the pressure shutdown settings should be fixed for all loading operations to avoid erroneously setting the shutdown levels. One of the comments suggested 0.5 psi vacuum and 1.2 psig pressure. Another comment stated that the shutdown system should be activated when the pressure falls below a low pressure shutdown limit that is equal to or greater than the vacuum relief limits of vessels loaded at the facility. The Coast Guard agrees with the concept of fixed settings for shutdown, but recognizes that the vessel can be better protected if the settings are adjustible. The requirements in paragraphs (f) and (g) of this section have been revised to require an upper and lower limit for the shutdown settings at 2.0 psig for high pressure, and 1.0 psi vacuum for high vacuum, and allows the settings to be adjusted within this range. These paragraphs have also been revised to require the emergency shutdown system required by 33 CFR 154.550 to be activated at these pressure settings.

One comment pointed out that the high pressure shutdown need not cause the automatic vapor shutoff valve to close if there is a means of detecting backflow of gas from the facility to the vessel, and if backflow is detected to the vessel, the cargo transfer and vapor shutoff valves are closed. Two other comments stated that automatic shutdowns are not needed. Another comment stated that the low pressure shutdown should not require shut down of the cargo transfer, since the cargo loading will increase the pressure in the cargo compartments. The Coast Guard agrees that automatic shutdown of cargo transfer is not needed on low pressure, but disagrees with the other comments. Paragraph (g) of this section has been revised to delete the requirement to automatically stop cargo transfer when the low pressure shutdown is activated. Backflow of gas from a facility to a vessel is not the only means to overpressure a vessel. The liquid cargo may be entering the cargo tanks faster than the vapor control system can draw the vapors off the vessel. Without knowing what is causing the abnormal pressure, the safest practice is to secure both cargo and vapor transfer and isolate the vessel from the facility.

Four comments stated that root valves should be allowed in the line for the pressure sensing device to allow for in-line testing or repair of pressure sensing devices. The Coast Guard agrees. The requirement in paragraph (h) of this section was not intended to prevent root valves in the sample line. One comment suggested placing locking devices on the instrument isolation valves. The Coast Guard does not consider this to be necessary. Paragraph (h) has been revised to specify the location of the sensing device between the facility vapor connection and the manual isolation valve.

Twelve comments stated that a designer should be able to choose a mechanical relief valve instead of a liquid vacuum breaker. The Coast Guard agrees and has revised 33 CFR 154.814(j) to allow this flexibility by requiring a "vacuum relief valve."

One comment pointed out that some blowers may be incapable of developing more than 1.0 psi vacuum and should not have to have a vacuum relief valve. The Coast Guard agrees and has revised paragraph (j) of this section to require the vacuum relief valve only if the compressor, blower, or eductor are capable of drawing more than 1.0 psi vacuum.

Two comments stated that pressure and vacuum relief valves should be required to have means to prevent the passage of flame, such as a flame screen. A second comment stated that the capacity test for the vacuum relief valve should include a flame screen connected to the valve. The Coast Guard agrees and paragraph (j) has been revised to require a flame screen fitted at the opening of a vacuum relief valve and that the valve be flow tested with this screen in place.

One comment stated that the location of the safety relief valves should not be specified since the hazard evaluation will indicate the optimum location. While paragraph (j) of this section does not specify an exact location, it requires the valve to be located between the vapor connection and the vapor compressor or blower. The exact location is left to the designer.

Several comments were concerned that the pressure control requirements would adversely impact offshore terminal design. The Coast Guard agrees and a new paragraph (k) has been added to 33 CFR 153.814 to address this issue for facilities with offshore loading moorings with undersea pipelines. This paragraph allows the facility to develop a vacuum greater than 1.0 psi vacuum in order to draw the vapors through the long undersea pipeline. However, the pressure drop in the vapor hoses and undersea pipeline must be considered and, since the actual pressure drop depends on the velocity of the vapors, the actual loading rate must be considered.

Two comments stated that additional relief valves are only needed if gasses are injected into the system, because the vessels are protected by on board valves. The Coast Guard agrees and has revised paragraph (l) in the final rule (paragraph (h) in the NPRM) to only require the pressure relief valve if inerting, diluting, or enriching gas is injected into the vapor stream and is capable of exceeding 2.0 psig.

One comment stated that requiring the capacity of the pressure relief valve to include a vapor generation factor of 25% is too high for some cargoes. Because of the previously discussed revision to paragraph (l) of this section, the reference to maximum loading rate and the vapor generation factor have been removed. The facility vapor relief valve is only required to have a capacity equal to the maximum capacity of the inerting, enriching, or diluting gas source.

One comment stated that 2.0 psig is too low for the relief valve to allow for unassisted vapor balancing. The Coast Guard disagrees. While a vessel may have a high setting for its pressure relief valves which allows for higher pressure than 2.0 psig on the vessel, there will be a pressure drop across the vapor collection lines which will likely reduce the pressure below 2.0 psig. A lower setting would not adequately protect the majority of vessels which are likely to load at a facility. However, a facility which loads dedicated vessels with high pressure relief valve settings may apply to the Coast Guard for an exemption from this requirement.

One comment stated that fixed orifices to limit injection flow will more reliably protect against the hazard of overpressurizing from the injection gas than a pressure relief valve. The Coast Guard disagrees. While using fixed orifices may be safer than using a control valve, there is still the danger of a blockage in the vapor collection line, which would allow the pressure to build up.

One comment stated that the pressure relief valve must also have a capacity

equal to that of the blowers. The Coast Guard disagrees. While the capacity of the blower is a factor in the sizing of the vacuum relief valve, it is not a factor in the sizing of the pressure relief valve required by these regulations.

Two comments expressed uncertainty as to whether the requirements in 33 CFR 154.820(p) of the NPRM would require flame arresters on the outlet of pressure relief valves. To clarify this, paragraph (l) of this section has been revised to require a flame screen at the outlet of a pressure relief valve. Unless the pressure relief valve is a high velocity vent valve, flash back through a pressure relief valve is possible if there is no means provided to prevent it. A comment pointed out that a vacuum relief valve should be tested for venting capacity with the flame screen attached. Paragraph (j) has been revised to require a vacuum relief valve to be tested for relieving capacity with a flame screen fitted. A new paragraph (m) has been added to require a pressure relief valve to be tested for relieving capacity with a flame screen fitted unless the valve is a high velocity relief valve.

One comment stated that the pressure relief valve should be located between the point where inerting, enriching, or diluting gas is introduced and the vapor assist device or the vapor processing unit, with no valves allowed in between. The Coast Guard disagrees. A location between the point of gas injection and the facility vapor connection offers better protection to a vessel connected to the vapor control system.

One comment questioned the location of the pressure relief valve relative to the manual isolation valve. The NPRM proposed to require the pressure relief valve to be located upstream of the detonation arrester and the injection point of the inerting, enriching, or diluting gas. The reference to the detonation arrester has been deleted from paragraph (l)(1) of this section (paragraph (k)(4) in the NPRM). While the pressure relief valve could be located on either side of the manual isolation valve or the remotely operated cargo vapor shutoff valve, the Coast Guard anticipates that it will normally be located in close proximity to the point where inerting, enriching, or diluting gas is injected into the system.

One comment stated that the pressure relief valve should be able to be part of the vacuum relief valve. The Coast Guard agrees. There is nothing in this rule to prohibit this.

Seven comments stated that measurement of the loading rate, proposed in paragraph (l) of this section in the NPRM, should not be required. Five of the comments stated that provisions for overpressure would be adequate. Four of the comments were concerned that a "means" to determine the loading rate would require cargo metering equipment. The means to determine the loading rate does not have to be metering equipment in the cargo loading line. Pump capacity curves or a continuous facility tank gauging system is also acceptable. The Coast Guard realizes that this paragraph created an excessive amount of confusion. The requirements in 33 CFR 154.850(g) require the loading rate to be less than the maximum allowable transfer rate. The Coast Guard does not intend to specify how the facility will ensure that the maximum allowable loading rate is not exceeded. Therefore, the requirement in paragraph (l) of the NPRM is redundant and has been deleted from the final rule.

33 CFR 154.820 Fire, Explosion, and Detonation Protection

Nine comments were received which disagreed with the approach taken in this section. Most stated that the requirements of this section were too specific and inflexible, and that they would not allow for future technology. This section has been extensively revised and reorganized into five separate sections to make it as flexible as possible while ensuring adequate protection. These changes are discussed in more detail in the following paragraphs. The requirements allow for the development of new technology.

One comment said that systems should be designed to prevent ignition from ever occurring, claimed that a detonation cannot be stopped, and proposed that automatic devices be required at all critical points in the overall system. The Coast Guard agrees that the system should be designed to prevent ignition from occurring, and the requirements in this subpart are designed to do that as much as possible. However, all possible sources of ignition cannot be eliminated, so provisions are required to stop the spread or minimize the damage from an ignition. The Coast Guard disagrees that a detonation cannot be stopped. Detonation arresters are designed to do just that. An inerting, enriching, and diluting system is also capable of stopping a detonation flame front, although the pressure wave will continue until it is dissipated. Most automatic shutdown devices cannot react fast enough to shut down and isolate the system once a detonation wave has developed.

Two comments stated that the test for equivalence should specifically state that the rulemaking is designed to not reduce the level of safety below that of the current industry practice of open loading, and any system seeking approval as equivalent would be approved when a hazards analysis shows that it meets or exceeds the base level of safety. Existing provisions for equivalence are contained in 33 CFR 154.108, and the Coast Guard's position is that these provisions are adequate. A hazards analysis is just one tool to help show equivalence.

One comment stated that events with a very low probability of occurrence could either be ignored or require fewer means of protection. Because of revisions to 33 CFR 154.804, the term "means of protection" is not referred to in this rulemaking. Revisions to this section take into account vapor processing units which have lower probabilities of ignition than vapor destruction units.

One comment stated that low pressure disks that enable flame to blow out at designated, controlled points provides a greater degree of safety than high pressure containment designs and devices. The Coast Guard disagrees. While blowout disks are not prohibited, these alone are not adequate since in a detonation the flame front will precede the pressure wave.

Twenty comments were received which objected to the mandatory installation of detonation arresters at all facilities as proposed in paragraph (a) of this section in the NPRM. Nine of the comments expressed concern over the unproven technology, the lack of testing, and the unavailability of detonation arresters. An API test program is expected to begin testing detonation arresters in actual detonations in March 1990. The Coast Guard expects that several of the models will pass the tests and that availability of the arresters will be adequate. Nine of the comments stated that the mandatory use of detonation arresters would limit flexibility unnecessarily, and will not necessarily be more effective than other devices or systems that are or may become available. The Coast Guard agrees and has revised this section to allow more flexibility. Detonation arresters are not mandatory for a vapor control system with a single facility vapor connection which either uses a vapor recovery unit or only receives vapor from inerted vessels.

Two comments stated that the requirement to install detonation arresters should be deleted until the standard is published for comment. The draft ASTM standard was published as appendix A in the NPRM for comment.

One comment recommended allowing a flame arrester with a high temperature

shutdown. The Coast Guard disagrees. Most flame arresters do not have the strength to withstand the pressures generated by a detonation and are not designed to quench a flame front traveling at sonic velocities.

One comment asked if liquid seals could be used in place of a detonation arrester. A liquid seal will be acceptable if it meets the material design standards and the test requirements in appendix A of 33 CFR part 154.

Eight comments disagreed with the proposed requirement in paragraph (a)(3) of this section in the NPRM to require the detonation arrester to be installed within 6.0 meters of the facility vapor connection. They recommended the arrester be allowed to be located "as close as practical" or "as close as feasible" to the facility vapor connection. The Coast Guard disagrees. Such language in regulations would be difficult to enforce. It is important that the detonation arrester be as close to the vessel as possible, and a facility should be able to find room within 6.0 meters of the facility vapor connection. Six of the comments appeared to be uncertain as to where the facility vapor connection is located. The definition of "facility vapor connection" has been revised to clarify this in 33 CFR 154.802 and 46 CFR 39.10–3. As a result of the reorganization of section 33 CFR 154.820 as proposed in the NPRM, the requirements for location of detonation arresters are contained in paragraphs (b)(1), (c)(1), (d)(1), (e), (f)(1), and (g)(1) of this section.

Two comments stated that the number of pipe diameters which would allow a flame to propagate to a detonation should be given, so that flame arresters could be accepted as an alternative. The Coast Guard disagrees. There are too many factors which can affect the run-up distance to reach a detonation. In addition, if an ignition were to occur on the vessel, it would have the length of the vapor collection piping on the vessel plus the length of the vapor hose to build up to a detonation. Therefore, the run-up distance to reach detonation is not relevant.

Seventeen comments disagreed with the mandatory use of inerting, enriching, or diluting for all vapor control systems. Some of the comments stated that it would force facilities to incinerate cargo vapor, economically prohibit refrigeration units, and increase the size of vapor control systems. Several of the comments pointed out that carbon bed adsorption and refrigeration units have proven safety records. Some of the comments pointed out that the API hazards analysis showed that flammable vapors could be handled safely. Three comments expressed support for inerting, enriching, or diluting of all vapors. They pointed out that incinerators have flames, carbon beds can overheat, refrigeration systems have rotating equipment, and compressors and blowers can be ignition sources. One of the comments claimed that enriching cargo vapor would not force facility owners to choose combustion and would not increase the size of the recovery system.

The requirements to inert, enrich, or dilute in this section have been revised. The Coast Guard has concluded that inerting, enriching, or diluting is not necessary for all installations. It will not be mandatory for a vapor control system with a single facility vapor connection which either processes vapor with a vapor recovery unit, only receives vapor from inerted vessels, or vapor balances; and for a vapor control system with multiple facility vapor connections which processes vapor with a vapor recovery unit.

Three comments stated that the fire protection requirements for facilities with multiple berths need additional study and development. One of the comments stated that each facility with multiple berths should be studied and approved on an individual basis consistent with the findings of the API hazards analysis. The Coast Guard agrees that the regulations do not address every aspect of multiple berths. It is difficult to anticipate every type of vapor control system design which will be used and develop the appropriate requirements. These regulations give general requirements which should be applicable to most systems. The hazards analysis and the review by the certifying entity are means to help uncover details in system designs which are not adequately covered and may cause a hazardous situation. The fire protection requirements that were in 33 CFR 154.820(i) of the NPRM have been deleted from the final rule, and all of § 154.820 has been reorganized to give the fire protection requirements for multiple and single berth facilities separately. Paragraph (e) of this section gives the requirements for a multiple berth facility which has a vapor recovery unit, and paragraph (f) of this section gives the requirements for a multiple berth facility which has a vapor destruction unit.

One comment stated that the subject of individual pressure control stations leading to a common collection pipeline with appropriate shutdown valves and non-return valves needs additional treatment in the rules. This comment is similar to the comments discussed in the previous paragraph. While detailed requirements may not be included, 33 CFR 154.814 gives the requirements that must be met at each facility vapor connection for each vessel simultaneously using the vapor control system. It is up to the designer to determine how to meet the requirements. The hazards analysis and the review by the certifying entity will help to uncover additional details in a system which could create a hazardous system.

A vapor control system with a single facility vapor connection which only receives vapor from inerted vessels and processes vapor with a vapor recovery unit must verify that the vapors are inerted. A vapor control system with a single facility vapor connection which only receives vapor from inerted vessels and processes vapors with a vapor destruction unit must either have a detonation arrester or an inerting system. A vapor control system with a single facility vapor connection that receives non-inerted vapor from a vessel and processes vapor with a vapor recovery unit must have either a detonation arrester or an inerting, diluting, or enriching system. A vapor control system with multiple facility vapor connections that processes vapor with a vapor recovery unit must have a detonation arrester at each facility vapor connection. A vapor control system that uses vapor balancing must have detonation arresters at the facility vapor connection and at the storage tank, and must have high level alarm and overfill control systems at the storage tank. All other vapor control systems must have both a detonation arrester and an inerting, enriching, or diluting system. The requirements in 33 CFR 154.826(a) require facilities which do not have an inerting, enriching, or diluting system to have the inlet and outlet of each vapor compressor or blower protected by either a flame arrester, detonation arrester, or an explosion suppression system acceptable to the Coast Guard. This approach allows maximum flexibility while maintaining a minimum level of safety.

One comment stated that the regulations should be independent of climate zones, including cold climate zones, therefore, enrichment or air dilution should not be allowed. The Coast Guard disagrees. Although there will be problems to overcome if enrichment is used in cold weather, the problems can be overcome. In addition, a facility's vapor control system can be tailored for the specific climate at its location, whereas vessels must be

designed to operate over a wider range of climatic conditions.

One comment stated that cargo tank inerting is needed to eliminate flammable vapor throughout the system because an ignition on a vessel will have a much more devastating effect on the vessel and surrounding area than an ignition at a facility. While the Coast Guard agrees that inerting the cargo tank vapor space on the vessel will eliminate this additional hazard, it does not agree that this increase in safety is worth the additional expense and complexity that would result from requiring inertion on all tankships and tank barges.

Two comments stated that explosion suppression systems should be tested, that design criteria should then be developed, and that provisions for such systems in lieu of inerting, enriching, or diluting systems should be added in the regue systems.

Two comments stated that vapor balancing should be added as a method of controlling the vapor mixture. The Coast Guard agrees that vapor balancing should be allowed. Although the NPRM did not prohibit it, by requiring inerting, enriching, or diluting, vapor balancing was impractical. With the revision to this section, a vapor balancing system will be more practical. A new paragraph (g) has been added to this section which permits vapor balancing when detonation arresters are installed at the facility vapor connection and at the cargo storage tank. Control of vapor emissions where the facility cargo storage tank is filled becomes a separate but linked problem which can be addressed by 33 CFR 154.800(d).

One comment stated that halons should not be allowed, considering the recent resolution adopted at IMO. The Coast Guard disagrees. The regulations do not require the use of explosion suppression systems that use halon. Manufacturers of fire fighting systems are actively looking for other equally effective media. The prohibition of halons is not appropriate at this time. However, a facility owner must bear in mind that the availability of halon is likely to be limited in the future and that future rulemakings may prohibit its use.

One comment suggested that the term "lower explosive limit" should be used instead of the term "lower flammable limit." The Coast Guard disagrees. While lower flammable limit and lower explosive limit have the same meaning, only one should be used in this rulemaking for consistency. It is the Coast Guard's position that lower flammable limit is more descriptive of the actual conditions. Because of the reorganization of the fire protection requirements, lower flammable limit and upper flammable limit are referred to in 33 CFR 154.824 in the final rule.

One comment expressed support for requiring an alarm to be seen and heard where the cargo transfer and vapor control system are controlled, and anywhere the operator may be reasonably expected to be located. One comment stated that the alarm only needs to be heard in the cargo transfer control area. The Coast Guard's position is that any alarm must at least be audible and visible where the cargo transfer and vapor control systems are controlled. Another comment stated that the point where the cargo transfer is controlled needs to be defined to ensure that it is not considered to be on the vessel. The Coast Guard's position is that this is not necessary. The term is clear enough to indicate that this is the place at the facility where cargo transfer is controlled. This requirement was moved to 33 CFR 154.808 in the final rule because it is applicable to more than just alarms for fire protection. The provision proposed in 33 CFR 154.820(h) of the NPRM to require the alarm to also be audible and visible anywhere the operator may be reasonably expected to be located has been deleted from the revised 33 CFR 154.808(e) of the final rule because it is not needed.

Three comments stated that requiring the analyzers to be not more than 3.0 meters from the facility vapor connection for facilities which only receive vapors from inerted vessels and do not have a source of inert gas is not sufficient. Two of the comments suggested that 6.0 meters be allowed. The Coast Guard agrees. The proposed requirement in 33 CFR 154.820(g)(3) of the NPRM has been revised in paragraph (a)(2) of this section in the final rule to allow a 6.0 meter distance. This paragraph has also been revised to allow only one oxygen analyzer to be used to verify the oxygen content of vapors coming off the vessel.

One comment stated that 33 CFR 154.820(g)(3) in the NPRM would prohibit pre-inerting of a vessel. The Coast Guard does not agree. The requirement has been revised in paragraph (a)(2) of this section in the final rule and neither the proposed nor the revised version of this paragraph would prohibit pre-inerting of the vessel.

Two comments stated that a vessel's inert gas system should be allowed to purge the collection lines prior to cargo transfer, which can be done while ballast from cargo tanks is being transferred ashore. The Coast Guard agrees. This is not prohibited by paragraph (a) of this section.

Six comments objected to the proposed requirement in 33 CFR 154.820(i) of the NPRM for a detonation arrester at the junction point of each branch. Three of the comments stated that short branches do not need the detonation arresters and will only add a significant pressure drop to the system. Two of the comments stated that the hazard evaluation will indicate where and what type of safety devices are needed. One of the comments stated that detonation arresters are not needed at the junction point because of other safeguards. Five comments raised objections to the requirement in 33 CFR 154.820(i) of the NPRM to provide dual means of isolation of branches at the junction point of a multiple berth system. One of the comments stated that the hazard evaluation would determine if the double valves were needed. One of the comments stated that double block and bleed valves have not been accepted in the past for use in an inert gas system. Another of the comments suggested liquid seals be permitted to isolate the branches. One of the comments stated that a single shutoff valve should be sufficient. One of the comments stated that the junction point may be in an inaccessible location, and it should be permissible to isolate the branches upstream of the junction point. Another comment suggested that a branch line may remain open to the downstream system if a purge gas is supplied continuously to the open unused branch. With the extensive revisions to 33 CFR 154.820 to differentiate between vapor destruction systems and vapor recovery systems, and single and multiple vessel vapor collection systems, the Coast Guard has determined that the requirements in 33 CFR 154.820(i) (2) and (3) of the NPRM are no longer necessary and has deleted them. The Coast Guard has also determined that the prohibition against mixing different methods of controlling the vapor mixture contained in 33 CFR 154.820(i)(1) of the NPRM is not needed and has deleted it. However, one aspect of mixing inerted and enriched vapors needs to be addressed. An enriching system which uses oxygen analyzers will not operate properly if inerted vapors are received unless special provisions are made. Paragraph (k) has been added to 33 CFR 154.824 to provide requirements for an enriching system which receives inerted vapors.

Eight comments requested clarification of the requirement to provide flame arresters at all outlets of the vapor control system. One comment pointed out that it would require a vent on double block and bleeds and low

point drains. Two comments stated that flame arresters should not be required on unintended openings such as open hatches, fittings, relief valves, and drains. Four comments stated that flame arresters should be required for normal vapor vents to atmosphere, except for stacks on combustion units. Two comments stated the only outlets will be pressure relief vents, and a plugged flame arrester could cause a relief valve to be ineffective. One comment suggested that a flame arrester or flame screen should be installed on the outlet of the vapor processing unit if a flammable mixture can occur, which would include all processing units except for combustion devices. The Coast Guard agrees that the requirement needs clarification. The regulation proposed in 33 CFR 154.820(p) of the NPRM has been revised in 33 CFR 154.820(h) of the final rule to require a flame arrester at each outlet of a vapor control system that vents to atmosphere which is not isolated with a pressure vacuum relief valve. The Coast Guard's position is that a flame screen would not be sufficient to prevent flashback into the system at these outlets. This would exclude non-normal vent outlets and stacks of combustion devices.

One comment stated that the NPRM ignores unintended openings such as open hatches, fittings, and relief valves, and that intentional or accidental leakage should not be tolerated. The degree of tightness sought by this comment appears to go beyond what is required for safety and addresses effectiveness for air pollution control. The Coast Guard does not have statutory authority to regulate effectiveness for air pollution control. This rulemaking addresses tightness insofar as it affects safety, such as requirements to close load and close gauge. It would be unsafe to not allow pressure relief valves to vent in an overpressure condition. However, the requirements in this rulemaking are designed to prevent a relief valve from opening except in an emergency condition.

One comment stated that the hazard evaluation will indicate where and what type of safety devices are needed for fire protection. The Coast Guard disagrees. A hazard evaluation is not required to know that a flame arrester is needed at certain vent outlets. However, the hazard evaluation may point out a need for additional safety features at other outlets.

33 CFR 154.822 Detonation Arresters, Flame Arresters, and Flame Screens

This new section consolidates general requirements for detonation arresters, flame arresters, and flame screens.

Appendix A of the NPRM contained the draft Standard Specification for Detonation Flame Arresters. Because this standard has not yet been adopted by ASTM, it is included in this rulemaking as appendix A to 33 CFR part 154. Paragraph (a) requires a detonation arrester to be capable of arresting a detonation from either direction and to be acceptable to the Commandant (G-MTH). A detonation arrester built and tested in accordance with appendix A is acceptable.

One comment recommended that a detonation arrester have a rupture disk which would divert the pressure to an area where it can be controlled and dissipated. The Coast Guard disagrees. Tests of detonation arresters conducted by the Jet Propulsion Laboratory for the Coast Guard showed that rupture disks were not effective in dissipating the energy associated with a detonation.

Appendix B of the NPRM contained a draft standard specification for Tank Vent Flame Arresters. Because this standard has not yet been adopted by ASTM, it is included in this rulemaking as Appendix B to 33 CFR part 154. A new paragraph (b) in this section requires all flame arresters to be acceptable to the Commandant (G-MTH). A flame arrester built and tested in accordance with appendix B is acceptable. A new paragraph (c) has been added to this section which gives the criteria for a flame screen. This criteria is identical to that in 46 CFR 30.10-25.

33 CFR 154.824 Inerting, Enriching, and Diluting Systems

The specific requirements for inerting, enriching, and diluting systems have been put into this new section. Paragraphs (h), (i), and (l) of this section have been revised to require that an inerting, enriching, or diluting system be able to supply sufficient gas to maintain the vapor stream outside of the flammable range by an adequate margin. This was implied, but not clearly spelled out in the NPRM.

Six comments stated that 6.0 meters was not sufficient for locating the injection point of the inerting, enriching, or diluting gas, because of other safety devices and pressure control valves that need to be located upstream of the point of injection. One of the comments recommended 40 to 60 feet. Four of the other comments recommended as "close as practical." The Coast Guard agrees that 6.0 meters may be unnecessarily restrictive. Specifying "as close as practical" is not appropriate for regulations without a maximum distance specified. The proposed requirements in 33 CFR 154.820(f)(1) of the NPRM have been revised in 33 CFR 154.824(b) of the final rule to require the injection point to be located as close as practical to but not more than 10 meters from the facility vapor connection.

One comment stated that complete or homogeneous mixing of the vapor stream is difficult to achieve in 20 diameters, and that mixing only needs to be sufficient to ensure that all parts of the vapor stream are outside the flammable range. The Coast Guard agrees that homogeneous mixing connotes a degree of mixing that is impractical and unnecessary. The proposed requirement in 33 CFR 154.820(f)(4) of the NPRM has been revised in paragraph (f)(3) of this section in the final rule to delete the reference to homogeneous mixing. However, the Coast Guard views mixing to ensure that all parts of the vapor stream are outside of the flammable range as complete mixing. The requirement for complete mixing proposed in 33 CFR 154.820(f)(2) of the NPRM is now located in paragraph (b) of this section in the final rule, and it requires complete mixing within 20 pipe diameters of the injection point.

Eight comments expressed objections to prohibiting drawing a vacuum after the point of injection of inerting or enriching gas. One of the comments suggested that a means should be provided which ensures that equivalent safety is maintained. Four of the comments said that means can be provided to prevent excessive air in-leakage. Two of the comments suggested that it should be acceptable to limit the number of flanges and require the vapor stream to be measured upstream of the vapor mover. One of the comments stated that Commandant (G-MTH) approval should not be necessary because these systems will frequently not operate at a positive gauge pressure. The Coast Guard agrees that criteria can be given to control the leakage of air into the vapor control system without requiring Commandant (G-MTH) approval. The proposed requirement in 33 CFR 154.820(f)(12) of the NPRM has been revised in paragraph (c) of this section in the final rule to allow two different design options. The first option is to not have any sleeve-type pipe couplings, vacuum relief valves, or other devices which could allow air leakage into the vapor collection system downstream of the injection point. The

second option is to provide an additional analyzer downstream with means to inject additional enriching or inerting gas.

Two comments stated that the words "sets of" should be deleted from the proposed requirement in 33 CFR 154.820(d) of the NPRM for two independent hydrocarbon analyzers for enriching systems. The Coast Guard agrees and the new paragraph (d) of this section in the final rule does not contain the words "sets of." This new paragraph consolidates the analyzer requirements that were in the NPRM. The requirements in paragraph (d) of this section in the final rule requires two analyzers when the analyzers control the amount of inerting, enriching, or diluting gas injected into the vapor collection line. This change was made because new paragraphs (c)(2) and (e) of this section, and 33 CFR 154.820(a)(2) allow a single analyzer when the analyzer does not control the amount of inerting, enriching, or diluting gas injected.

One comment stated that provision should be made for using volumetric measurement instruments to control the addition of inerting, diluting, or enriching gases. The Coast Guard agrees. A new paragraph (e) has been added to this section to allow this in lieu of controlling the mixture by means of dual analyzers. However, one analyzer is still required as a check to ensure that the vapor mixture is maintained in an acceptable range.

Two comments stated that some types of hydrocarbon analyzers always read low when they fail (fail safe), and so redundant hydrocarbon analyzers should not be required for an enriching or diluting system. The Coast Guard disagrees. Sufficient information is not available at this time to be able to determine which analyzer types exhibit this characteristic or if it is only a design feature of some models. Allowing the proposed option could limit an operator's options when replacing equipment.

Two comments questioned how the 30 second response time of the analyzers is measured. The time is measured from when the sample is removed from the vapor stream to when the analyzer registers the reading. If the analyzers are located in the vapor stream, the time is measured from when the gasses contact the analyzer to when the analyzer registers the reading. One comment stated that it is more appropriate to specify a maximum distance from the gas injection point to the sampling point and a maximum sampling time, rather than a maximum time from injection to analysis; because the latter time will vary depending on the vapor flow rate. The Coast Guard agrees. This requirement is now located in paragraph (f)(2) of the final rule. A revision to specify the maximum time from injection to analysis was considered but rejected.

One comment stated that the frequency of an analyzer sampling the vapor concentration should be continuous. The Coast Guard agrees. The proposed requirement in 33 CFR 154.820(f)(4) of the NPRM has been revised in paragraph (f)(3) of this section in the final rule to require continuous sampling.

The requirement to be able to inert, enrich, or dilute the vapor hose in 33 CFR 154.820(f)(10) of the NPRM has been moved to paragraph (a) of this section in the final rule. The requirement to have the more severe analyzer concentration reading activate the required alarms and automatic shutdown system in 33 CFR 154.820(f)(5) of the NPRM has been moved to paragraph (d) of this section and has been broken down to specifically address inerting, enriching, and diluting systems individually. The requirement to sample the vapor concentration no more than 30 pipe diameters downstream from the point of gas injection in 33 CFR 154.820(f)(4) of the NPRM has been moved to paragraph (f)(3) of this section.

One comment stated that certain oxyen analyzers were prohibited without any rationale. The proposed requirements in 33 CFR 154.820(f)(8) of the NPRM prohibited zirconia electrochemical and thermomagnetic type oxygen analyzers because these analyzers operate at an elevated temperature and so could become a source of ignition in the vapor stream. This requirement has been changed in paragraph (g) of this section in the final rule to prohibit oxygen analyzers that operate at elevated temperatures which could become a source of ignition, and gives zirconia electrochemical and thermomagnetic type oxygen analyzers as examples of these types of analyzers.

One comment stated that zero and span gas should be injected into the "sample system." This arrangement is acceptable. The Coast Guard has determined that the requirement proposed in 33 CFR 154.820(f)(9) of the NPRM for a connection for injecting zero and span gas into the system was unnecessary. The requirements in 33 CFR 154.850(b), 156.120(aa)(7), and 156.170(g)(4) require testing and calibration of analyzers, it is up to the designer/operator to provide a means to perform the tests and calibrations.

One comment stated that the lower flammable limit and the upper flammable limit of vapors are variable, and sometimes difficult to determine. The changing of the applicability to crude oil, gasoline blends, and benzene should satisfy this concern since the flammability limits of these products are similar.

Two comments stated that automatic shutdown of cargo loading should be required any time the remotely operated cargo vapor shutoff valve is closed by an inerting, enriching, or diluting system shutdown condition. One comment stated that automatic shutdown of cargo loading should not be required. The requirements in this section (33 CFR 154.820 in the NPRM) do not require the automatic shutdown of cargo loading when the remote cargo vapor shutoff valve is closed. The requirement in 33 CFR 154.850(j) (33 CFR 154.850(b) in the NPRM) requires the operator to shut down the loading whenever a condition results in a shutdown of the vapor control system. The Coast Guard's position is that there is sufficient time for the operator to shut down the cargo loading when the vapor control system shuts down.

Two comments pointed out that the "(e)" was missing from 33 CFR 154.820(e) of the NPRM. This was an inadvertent mistake. The requirements for an inerting system in this paragraph in the NPRM have been moved to paragraph (h) of this section in the final rule.

One comment recommended that the set point for the oxygen alarm for inerted vapor control systems should be given as a range, for example 6%–8%, because the operator may need more time to react. The Coast Guard's position is that this is not necessary. The 8% alarm set point in paragraph (h) of this section in the final rule is the maximum set point which may be used, the operator may choose a lower set point if desired.

Two comments stated that the alarm set point should be set not higher than 7% and the shutdown set point should be set not higher than 8% for inerting systems to be consistent with the CTAC recommendations and requirements of the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 74/83). The Coast Guard disagrees. SOLAS 74/83 requires inerted tanks to have an oxygen content no higher than 8%. If a tankship being loaded was inerted to 7.5%, it would set off a high oxygen alarm set at 7% during the entire loading operation while still meeting SOLAS 74/83. An alarm should only reflect an abnormal condition, with the automatic shutdown set at an

appropriately higher level while still outside of the flammable range.

One comment stated that the alarm and shutdown set points for inerting systems are not appropriate for all cargoes because some products have explosive ranges form 1.7% to 36.5%. With the change to the cargo vapors applicable to these regulations in 33 CFR 154.800, the explosive ranges of the applicable cargoes will be much narrower and the set points given are appropriate.

Two comments stated that the values for activating alarms and shutdown valves for enriching systems should be given as minimums to allow them to be set higher. The Coast Guard's position is that the present wording is sufficient to allow the set points to be higher. If the set points are higher, they will fulfill the requirements as written.

One comment stated that there should be provisions to purge the vessel's tanks of oxygen if the vapor control system shuts down at high oxygen level. Another comment suggested that the regulations should allow the vapor control system to be supplied with inert gas from either the ship itself or from shore. The Coast Guard disagrees. The facility vapor control system is not required to be sized to handle the additional inert gas that would be transferred ashore.

One comment stated that oxygen analyzers are not appropriate for monitoring enrichment systems, because a change of 5% in hydrocarbon content is required to change the oxygen concentration by 1%. The Coast Guard partially agrees. Oxygen analyzers can be used, but because of the wide variance of hydrocarbon content reflected by a small change in oxygen content, the appropriate criteria for proper enrichment needs to be carefully considered. The Coast Guard has reviewed the proposed requirement in 33 CFR 154.820(d)(5) of the NPRM and concluded that it failed to properly consider this effect. The requirements in paragraph (j) of the final rule have been revised to require the maximum set point for the alarm at 15.5% oxygen and the maximum set point for automatic shut down at 16.5%. This corresponds to 170% and 150%, respectively, of the UFL for methane.

One comment expressed support for the requirements for air dilution. The requirements for air dilution (33 CFR 154.820(c) in NPRM) have been moved to paragraph (1) of this section.

33 CFR 154.826. Vapor Compressors and Blowers

This new section consolidates the requirements for vapor compressors and blowers into one section. Paragraphs (m) and (n) proposed in 33 CFR 154.820 of the NPRM have been moved to this new section as paragraphs (b) and (d), respectively. A new paragraph (a) has been added to require a detonation arrester, flame arrester, or explosion suppression system acceptable to the Commandant (G-MTH) at the inlet and outlet of each compressor or blower which handles vapor that has not been inerted, enriched, or diluted. This addition is necessary because of the revision to 33 CFR 154.820 which does not require the inerting, enriching, or diluting of all vapors.

One comment stated that the requirements for compressors and blowers in the NPRM were too restrictive, and that other designs can achieve an equivalent level of protection. The requirements given for compressors and blowers are meant to address known hazards characteristics of most types of compressors and blowers. The Coast Guard does not intend to limit compressors and blowers to the types mentioned in this section.

One comment stated that quick closing valves or explosion suppression systems have been extensively tested over a broad scale of applications, and so should be considered for use in lieu of detonation arresters. The Coast Guard disagrees. The Coast Guard does not know of any testing done on these types of systems to demonstrate their ability to stop a fully developed detonation wave travelling at sonic velocities. If successful testing demonstrates the effectivness of these types of systems for this application, the Coast Guard can accept such systems under equivalence provisions. The Coast Guard acknowledges that explosion suppression systems are likely to be effective in certain locations in a vapor control system where a deflagration wave has not accelerated to a detonation. Paragraph (a) of this section and 33 CFR 154.828(a) in the final rule allow an explosion suppression system acceptable to the Coast Guard in lieu of a flame arrester or detonation arrester at the inlet and outlet of a compressor or blower, or the inlet of a vapor recovery unit.

Four comments stated that liquid ring compressors were not addressed and should be allowed. The Coast Guard agrees. The exclusion of liquid ring compressors from the NPRM was not meant to prohibit them. A new paragraph (c) has been added to this section to provide requirements for liquid ring compressors, if used.

Two comments stated that the use of aluminum, aluminum alloys, magnesium, and magnesium alloys should be prohibited for blowers because sparks can be produced on impact with iron oxide. The Coast Guard disagrees. The Coast Guard accepts that this described hazard is possible, but it is not aware of any explosions attributed to rust or scale impacting the impeller. The proposed requirements in 33 CFR 154.820(n) of the NPRM are consistent with the requirements for a nonsparking fan contained in 46 CFR 110.15-1(b)(16). These requirements have been moved to paragraph (d) of this section in the final rule.

Two comments suggested including requirements for lobe blowers. The Coast Guard agrees and lobe blowers have been added to centrifugal compressors and fans in paragraph (d) of this section in the final rule.

Two comments pointed out that it may be impossible to "bond" the shaft of a fan to the fan casing because it passes through a seal. The Coast Guard agrees and has deleted this requirement.

One comment stated that additional fan specifications as to gas tight construction criteria for the housing and seal should be provided. It is the Coast Guard's position that these regulations do not need to go into this much detail.

33 CFR 154.828 Vapor Recovery and Destruction Units

This new section consolidates the requirements for vapor recovery and destruction units. It includes requirements that were in 33 CFR 154.820(k) of the NPRM.

Paragraph (a) of this section requires either a detonation arrester, a flame arrester, or an explosion suppression system acceptable to the Commandant (G-MTH) at the inlet of a vapor recovery unit if the vapors are not inerted, enriched, or diluted. This requirement was not in the NPRM and is needed since the requirements for inerting, enriching, or diluting have been changed.

One comment asked if a hydraulic seal required by paragraph (b)(1) of the final rule is like a typical deck water seal in a vessel's inert gas system. The Coast Guard interprets the terms to have the same meaning.

One comment stated that automatic quick acting stop valves should not be required for an incinerator or flare. Two comments stated that a double block and bleed valving arrangement should be acceptable in lieu of the two automatic quick acting valves for an incinerator or flare, with one of the valves automatic quick acting and the other manual. The Coast Guard disagrees. Quick acting valves are necessary to quickly isolate the

incinerator or flare from the rest of the vapor control system when there is a flame failure. The second is needed for redundancy in case the first valve leaks. The requirements for flares and incinerators that were contained in 33 CFR 154.820(k) in the NPRM are now contained in paragraphs (b), (c), and (d) of this section.

Four comments suggested allowing a detonation arrester in lieu of a flame arrester at the inlet of a vapor destruction unit. Three comments stated that a detonation arrester should be required in lieu of a flame arrester. The Coast Guard's position is that either is acceptable. The purpose of the requirement is to protect the rest of the vapor control system from an ignition originating in the vapor destruction unit and a separate detonation arrester will serve that purpose as well as a flame arrester located close to or integrated into the unit. The requirements in paragraph (c) of this section have been revised to allow a detonation arrester in lieu of a flame arrester.

One comment stated that a flame arrester is not needed in addition to the water seal for a vapor destruction unit. The Coast Guard disagrees. A flame arrester fitted with a means to detect a flame on the arrester is needed to ensure that the flame front does not back up into the vapor collection system from the vapor destruction unit during normal system operation.

One comment stated that a minimum velocity at the vapor injection nozzle to the incinerator should be required, along with an interlock system to take appropriate action if the velocity drops below some set point. While this would be prudent, the Coast Guard's position is that it is not appropriate to include this in these regulations. This rulemaking is not intended to include detailed safety requirements for various vapor processing units. To do so could limit technical development and restrict the design of these units. The Coast Guard must rely on other authorities, the system designer, and the certifying entities to develop the details for safety of vapor processing units. In keeping with this approach, the requirement proposed in 33 CFR 154.820(1) of the NPRM that incinerators meet NFPA 85A has been dropped in the final rule. The reference to NFPA 85A has also been deleted from 33 CFR 154.106.

33 CFR 154.840 and 46 CFR 39.10–11 Personnel Training

One comment stated that an extensive personnel training program will be required to ensure safe operation and that this will take time. The Coast Guard agrees with this assessment. An adequate training program is an integral part of a safe vapor control system operation. The development of a training program must begin early in the design phase of a vapor control system.

One comment recommended that the Coast Guard propose a comprehensive training program for review by national authorities, perhaps via the International Maritime Organization (IMO). The Coast Guard intends to submit to IMO a training program similar to Appendix D in the NPRM as part of the effort to develop international standards for vapor control systems.

One person suggested that the scope should be broadened to include all persons involved in the transfer operation, with additional training in supervision for persons in charge. While it would be prudent to provide training for all personnel, the Coast Guard's position is that the minimum necessary for safety is to have one person on the vessel and one person at the facility on watch with the necessary training.

Three comments supported the personnel training requirements and the duration of training. One of the comments stated that personnel training is better than technical requirements for automatic shut downs of cargo loading or the vapor control system. Another comment supported eight hours of hands-on training in normal and emergency operating procedures.

Twenty four comments stated that 40 hours of training, as proposed in paragraph (a) of these sections in the NPRM, is excessive. Eight comments supported eight hours for vessel crews. Three of the comments supported 16 hours. One of the comments supported 12 hours for new tankermen. Two comments stated that 24 hours of training for personnel who had previously undergone the training is excessive. One of the comments supported one hour of drills for a barge of each type. One of the comments supported one day on the job training for system specific equipment. Eleven of the comments stated that either a minimum time should not be required, or the minimum time should be left to the operator. The Coast Guard agrees that it is not practical to require a minimum time because of the wide variation of complexity of both vessel and facility systems. The regulations in paragraph (a) in each of these sections have been revised to delete the minimum required time for training. The subjects to be covered by the training program remain the same as those proposed in the NPRM.

One comment stated that the Coast Guard should not become involved in the training of facility operators. The Coast Guard disagrees. The Coast Guard has the responsibility to issue regulations for the safety of facilities, and human error accounts for the majority of all marine accidents.

One comment stated that a tankerman should not be required to have eight hours of training on each barge worked on. The wording in 46 CFR 39.10–11(a) is not intended to require additional training for a person every time they work on a different vessel, only when "the particular system on the vessel" differs from those with which the person has experience. In addition, as previously discussed, the minimum time period has been deleted, therefore the amount of additional training for a different system is up to the operator. Because the amount of training is up to the operator, the last sentence of 33 CFR 154.840(a) and 46 CFR 39.10–11(a) in the NPRM requiring training for persons who have had previous vapor control system training has been deleted from the final rule.

One comment suggested that in addition to the training course, the employer must verify that the man has had enough supervised on the job training to be qualified to be a person in charge. The Coast Guard's position is that this is included by requiring "drills or demonstrations using the installed vapor control system covering normal operations and emergency procedures."

One comment stated that training for vessel personnel can be integrated into existing internationally accepted tanker training courses. The Coast Guard agrees that this can be done to a certain extent. Most existing tanker training programs are not vessel specific, and therefore will not be able to give the necessary detailed training for the particular system installed on a vessel. In addition, training schools may not want to include training for vapor control systems since not all vessels will have the systems installed.

One comment stated that the training criteria should be included in the tankerman regulations. The Coast Guard disagrees. Not all tank vessels will have vapor collection systems, so the training will not be required for all tankermen.

One comment recommended that on the job training of junior officers by the Master or Chief Officer should be permitted. Details of how the training is achieved is up to the owner/operator. If the owner/operator wants on the job training run by the Master or Chief Officer, that is acceptable. The Coast Guard anticipates that some on the job training supervised by the Master or

Chief Officer will be a part of most tankship training programs.

One comment stated that more detailed and specific information on training requirements, instructors, and criteria should be provided. The Coast Guard disagrees that this is needed in the regulations. More detail on the content of the course was published as appendix D in the NPRM and is available from the Commandant (G–MVP). Other details for training are dependent on the specifics of each type of vapor control system and the experience of the personnel. It is the responsibility of the owner/operator to ensure that each person gets adequate training.

Four comments stated that the training program should include additional criteria for health effects of vapors and proper use of personal protection equipment. The Coast Guard disagrees. These topics are applicable to all tankermen, and are part of the alraady required training for all tankermen.

Two comments questioned how the training and certification of training will be accomplished. One comment recommended that the vessel or facility should issue a certification to all employees who have completed the training program. How the training is accomplished is up to each owner/operator. They may set up an in-house training program. Alternatively, established schools may develop programs, with part of the course going to the vessel or facility for the on-hands portion. Completion of the training should be documented by the owner/operator or training school by a letter, similar to the way training for crude oil washing is currently documented.

Nine comments were received regarding the review or approval of the training program. One comment recommended having the certifying entity approve the facility training program. Four comments supported Coast Guard approval of training programs. Two comments supported review but not approval of programs by the Coast Guard. Two comments stated that the Coast Guard should neither review nor approve the programs. The Coast Guard's position is that owners/operators can develop and provide adequate training programs with guidance from the Coast Guard, if requested. Coast Guard review and approval of the programs is not necessary. While it may be prudent to have the certifying entity review a facility's training program, it is not appropriate to require this. Requiring a certifying entity to also have expertise in personnel training may eliminate many otherwise qualified applicants.

One comment recommended specifying in 46 CFR 39.10–11(a) that it is the "shipboard" person in charge that must have received training. The Coast Guard's position is that this is not necessary because the paragraph is only applicable to vessels.

One comment suggested adding a requirement to have a short ship/shore training and safety exercise as part of the pre-transfer procedures. The Coast Guard's position is that this is not needed. Requirements for pre-transfer checks of sensors and automatic shutdown systems will keep personnel familiar with the equipment. Additional exercises prior to each loading will not be cost effective.

Two comments recommended a requirement to have periodic refresher or updating courses. The Coast Guard's position is that such a requirement is not appropriate. The necessary refresher training depends upon the complexity of the vapor control system. The Coast Guard recommends that each facility and vessel conduct periodic drills and refresher training for personnel, appropriate to its vapor control system.

Two comments pointed out that the time frame for compliance with the training requirements is not given. One of the comments recommended that existing approved operations should be given 24 months to comply. The Coast Guard disagrees. All vessel and facility persons in charge must complete training prior to operating a vessel control system. Persons in charge of existing vapor control systems should have already had training at least similar to that required by these regulations.

33 CFR 154.850 Operational Requirements

The requirements in this section have been reorganized and revised to follow the sequence of events in a transfer operation.

Seven comments addressed the frequency of testing of the alarms, automatic shutdown systems, and sensing devices. One comment suggested testing just prior to loading. One comment suggested testing just prior to loading if the vapor control system is used infrequently, otherwise every two weeks. Two comments stated that daily testing would be appropriate for analyzers. One comment recommended monthly testing of the alarms and automatic shutdown systems. One comment recommended testing once per week. Another comment stated that testing should be less frequent or use self-checking devices, because often equipment cannot be tested without product flowing through the system. The Coast Guard's position is that daily testing is appropriate. By specifying not more than 24 hours prior to loading, a facility in continuous operation will not have to shut down to test if it has tested not more than 24 hours prior to the loading for another vessel. If the facility loads infrequently, it will not have to test until within 24 hours of loading. The importance placed on these alarms, automatic shutdown systems, and sensing devices makes it necessary to require at least daily testing. A system can be designed to make this testing simple and quick, without having to have vapors flowing through the system.

Two comments suggested changes to the requirement to test alarms and automatic shutdown systems within 24 hours prior to each loading to ensure that it is not confused with the calibration of analyzers in 33 CFR 156.170(g)(4). One of the comments suggested specifying that the tests be electrical and mechanical. The other comment suggested requiring a mechanical test. The Coast Guard disagrees. The wording in paragraph (b) of this section in the final rule (paragraph (d) in the NPRM) is sufficiently clear to indicate that the alarms and automatic shutdown systems are to be operationally tested by whatever means is appropriate for each particular system.

One comment suggested that the preloading checks should specify a check on the calibration of each analyzer to be ussd, which will entail observing the recorded response of each analyzer to the calibration span gas. The Coast Guard agrees. The requirements in paragraph (b) of this section (paragraph (d) in the NPRM) and 33 CFR 156.120(aa)(7) have been revised to specify that the analyzers must be checked for calibration by use of a span gas. The term "sensors" in paragraph (b) and 33 CFR 156.120(aa)(7) has been replaced with the term "analyzers" to more clearly specify the intent.

One comment suggested including or referencing the requirement for weekly analyzer calibration in 33 CFR 156.170. The Coast Guard disagrees, this would result in confusing required periodic tests or instrument calibration with operational checks. Periodic tests will normally be performed by different personnel than the operational checks.

Because of revisions to 33 CFR 154.812(b), a facility's overfill sensor circuit must be labelled with the maximum allowable length of cable and maximum allowable inductance and

capacitance which can be connected to the control panel. A new paragraph (d) has been added to this section which prohibits a barge with an overfill control system in accordance with 33 CFR 154.812(b) from connecting to a facility's overfill control panel if the length of cable, inductance, or capacitance exceeds the allowable values for the facility.

One comment pointed out that the requirement for the facility to control the initial loading rate should instead apply to the tankerman on the vessel. Another comment supported the requirement and stated that the initial loading rate is difficult to determine on the vessel because the vessel will not have a flow meter, and the facility will have to monitor the flow rate. The Coast Guard has revised paragraph (f) of this section (paragraph (h) in the NPRM) to require this cooperation between the facility and vessel so that the loading rate can be properly limited.

Seven comments objected to requiring the slow initial loading to be continued until the height of cargo reaches one meter in depth, noting that one meter could be ¼ or ⅛ of the cargo capacity on some river barges. The comments estimated that the resulting loading time could increase by 50% over current loading time. The Coast Guard agrees that one meter may be excessive. The requirements in paragraph (f) of this section (paragraph (h) in the NPRM) have been revised to require the initial loading rate to comply with the rate agreed to at the pre-transfer conference required by 33 CFR 156.120(w) and 46 CFR 39.30.1(h). The regulation in 46 CFR 39.30.1(h) now requires the initial loading rate to meet the cargo tank filling recommendations in section 7.4 of ISGOTT.

Two comments pointed out that controlling the loading rate to each cargo tank is only within the control of the vessel, that the facility can only control the overall loading rate. The Coast Guard agrees that this is true, however, there will still be a maximum loading rate for the vessel which cannot be exceeded and that only the facility can limit. For the sake of clarity, paragraph (g) of this section in the final rule has been revised to include both paragraphs (c) and (d) of the NPRM.

Two comments supported the prohibition of line clearing of a cargo loading line. One of the comments stated that it should be prohibited even for open loading. Nine comments objected to the requirement, stating that it will have a major impact on operations. Three of the comments stated that clearing the line can be accomplished without overpressurizing the vessel. One of the comments suggested that line clearing could be done with inert gas. One of the comments stated that clearing of liquid cargo hoses to the vessel would allow only a small quantity of vapor to be involved, and should be permitted. One of the comments stated that pigging of cargo lines can be done safely. One of the comments stated that certain cargoes which can crystallize need to be pigged to clear the lines. One of the comments stated that this requirement would prevent the facility from loading other vessels, and does not recognize the need to wash cargo tanks. The hazard involved in line clearing, overpressurizing the cargo tanks, is caused by the pressurized gas used in the line clearing. While this hazard may exist to some extent for open loading, the risk and consequence is greatly increased during closed loading with vapor control. The Coast Guard agrees that pigging of cargo hoses can be done safely as long as compressed air or gas is not used and that clearing of cargo hoses can be done safely with compressed air or gas. In order to allow this, the requirements in paragraph (h) of this section (paragraph (m) in the NPRM) have been revised to allow gas to be used to clear cargo loading hoses or loading arms when transferring cargo to a vessel connected to a vapor control system. The cargo lines can be modified to allow clearing cargo lines with compressed air or gas while the cargo loading valve is closed.

One comment stated that when one of the analyzers fails, further loadings should be allowed provided the remaining device is tested and calibrated before every load rather than weekly, and the failed analyzer is repaired or replaced within a specified time. The Coast Guard disagrees. Because of the importance of the analyzers, it is the Coast Guard's position that it would not be prudent when dual analyzers are required to begin another loading operation with only one analyzer. The requirement to not conduct further transfer operations if one of the dual analyzers is inoperable is contained in paragraph (i) of this section (paragraph (f) in the NPRM).

Two comments recommended that paragraph (j) of this section (paragraph (b) in the NPRM) allow the continuation of loading without vapor control provided local air quality district regulations allow the facility to do so. If cargo vapor is not being collected, these requirements do not apply. Therefore, if the local air quality district regulations allow a facility to continue loading without collecting vapor, these requirements will not prohibit the operation. However, if a condition results in a shutdown of the vapor control system, it is important to secure cargo loading in accordance with this paragraph, determine the cause, and then, if conditions permit, disconnect the vapor collection hose or arm, and secure the facility and vessel vapor collection systems before restarting cargo transfer.

One comment stated that a shutdown condition should include simultaneous shutdown of both the cargo pumping system and the vapor control system. The Coast Guard does not agree. Simultaneous shutdown of both the cargo loading and the vapor control system is not required when the fault or shutdown condition originates in the facility vapor control system. With these conditions, there will normally be sufficient time to manually shut down cargo loading.

Three comments recommended including periodic inspection and cleaning of flame arresters in addition to the requirement to inspect the flame arrester after a flare-back as required in paragraph (k) of this section (paragraph (n) in the NPRM). Another comment suggested adding "in addition to routine maintenance." The Coast Guard's position is that this is not necessary. Requirements for periodic inspections are contained in 33 CFR 156.170(g) of the final rule.

The Coast Guard has determined that the proposed requirement to verify normal vapor flow, contained in paragraph (i) of the NPRM, is vague and does not significantly contribute to safety. Therefore, it has been deleted from the final rule.

Four comments objected to the proposed requirement to limit vapor hose length to 30 meters. Suggested alternatives were to require limits on hose length to be determined by pressure drop considerations, and to specify a maximum pressure drop of 0.1 psi at the maximum vapor collection rate. The Coast Guard agrees that the desired result can be achieved by better means than limiting the length of vapor hose. The requirement to limit the length of vapor hose proposed in paragraph (k) of the NPRM has been deleted. The requirements in 33 CFR 154.814(c) require the pressure drop across the vapor collection hose or arm to be considered in maintaining the proper pressure.

Thirteen comments objected to the proposed requirement to have the vapor hose not less than the size of the tank vessel's vapor collection system. Suggested alternatives were to match the size of the hose to the facility's maximum loading rate considering

pressure drop, or to require the total cross sectional area of all vapor hoses to exceed the cross section area of the vessel's vapor collection pipe. Two comments stated that the requirement should be deleted because the vessel is protected from overpressurization at the maximum loading rate. The Coast Guard agrees that the desired result can be achieved by better means than limiting the size of the vapor hose. The requirement to limit the size of the vapor hose proposed in 33 CFR 154.850(l) of the NPRM has been deleted. The requirements in 33 CFR 154.814(c) require the pressure drop across the vapor collection hose or arm to be considered in maintaining the proper pressure.

33 CFR 155.750 Contents of Oil Transfer Procedures

One comment stated that all the information required to be put in the vessel's oil transfer procedures by paragraph (d) could be included on the line diagram drawing which is tailored to the equipment for each barge. The requirement does not specify how the information is to be presented. If it can all be put on one drawing, that will be satisfactory.

One comment recommended that the maximum loading rate should be either on the vessel's Certificate of Inspection (COI), or it could be painted on a barge. The Coast Guard considered adding this information to the COI or requiring that it be marked on the vessel and decided the most appropriate place to record this information was in the oil transfer procedures. Placement of this information on the COI would not be sufficient since the person in charge will have to be knowledgeable of all the information included in the oil transfer procedures.

Two comments pointed out that paragraph (d)(1) of this section requires the line drawing to show the location of flame arresters and other devices that are not necessarily installed on every vessel. The Coast Guard agrees, and has added "if fitted" to the paragraph.

Two comments pointed out that the proposed regulation in the NPRM requires the transfer procedures to contain a description of the automatic shutdown system, which is not required for every vessel. The Coast Guard agrees, and "if fitted" has been added to 33 CFR 155.750(d)(7)(v). "If fitted" has also been added to paragraph (4)(iv) for a description of the high level alarm system, since it also is not required for every vessel.

Two comments stated that the vessel's oil transfer procedures should include a table or graph showing the maximum pressure drop across the vessel's vapor collection system versus the cargo loading rate. One of the comments suggested using the density of air (1.0 specific gravity), the other comment suggested using the density of a gasoline/air mixture (2.0 specific gravity). The Coast Guard agrees that the pressure drop across the vessel's vapor collection system as a function of loading rate should be in the oil transfer procedures. Consistent with the change to 33 CFR 154.814(b), the facility needs to be able to determine the pressure drop in a vessel's vapor collection system. A new 33 CFR 155.750(d)(5) has been added which requires this information, calculated in accordance with 46 CFR 39.30–1(b), to be provided in the oil transfer procedures. The regulation in 46 CFR 39.30–1(b) has been revised to require the pressure drop to be calculated based upon the density of a 50% cargo vapor and air mixture.

One of the comments stated that certifying entities should be authorized to review oil transfer procedures, because COTP's and OCMI's may not have the experience needed to approve them. The Coast Guard disagrees. It is not appropriate for a certifying entity to review a vessel's oil transfer procedures. A COTP or OCMI can obtain assistance from the Marine Safety Center in reviewing oil transfer procedures, if needed.

33 CFR 156.120 Requirements for Oil Transfer

Three comments stated that the oxygen content of inerted cargo tanks should be verified prior to transfer. Two of the comments recommended the facility personnel verify the oxygen content. The other comment stated it would be sufficient to have the vessel personnel verify the oxygen content, because the facility monitors the oxygen content as the vapors come ashore. The Coast Guard agrees that the oxygen content should be checked prior to transfer, but because the facility will monitor the vapors as they come off the vessel, the facility personnel do not need to also verify the oxygen content on the vessel. Requiring the facility personnel to also verify the oxygen content would prohibit the vessel from beginning to check the tanks prior to docking. A new paragraph (aa)(9) has been added to this section which makes verification of the oxygen content a part of the pre-transfer checks for inerted tank vessels.

Four comments requested clarification of the requirement for the insulating flange. The requirements in 33 CFR 154.810(g) and 46 CFR 39.40–5(c) have been revised to allow an insulating flange or a section of insulating hose. Additionally, paragraph (aa)(3) of this section has been revised to verify that the electrical insulating device required by 33 CFR 154.810(g) or 46 CFR 39.40–3(c) has been installed.

Two comments suggested that the requirement in 33 CFR 156.120(aa)(6) to check the tank barge overflow control system specify to test the system. The Coast Guard agrees. The paragraph has been revised to require that the system is tested and operating properly.

One comment suggested that the schedule for testing alarms and automatic shutdown systems in paragraph (aa)(7) of this section should specify not more frequently than once a week for those terminals with less than once a week loading situations. The Coast Guard's position is that the present wording of the requirement would allow this. The alarms and automatic shutdown systems are to be tested within 24 hours prior to the start of the transfer operation. If there is only one transfer operation a week, this will only have to be done once a week.

One comment stated that the testing schedule proposed in 33 CFR 156.120(aa)(7) is too stringent, and recommended that the schedule proposed in 33 CFR 154.850(e) in the NPRM be used. The Coast Guard's position is that these two requirements contain the same testing schedule: not more than 24 hours prior to the transfer operation. Section 154.850(e) in the NPRM has been moved to § 154.850(b) in the final rule.

One comment stated that testing alarms and automatic shutdown systems once a week would provide an adequate level of safety. The Coast Guard disagrees. The alarms and automatic shutdown systems are essential safety components, and frequent testing, contingent on cargo loading frequency, is necessary to ensure that they will function properly.

One comment stated that intrinsically safe wiring requirements should be included in paragraph (aa)(7) of this section. The Coast Guard disagrees. It is not appropriate to include intrinsically safe wiring requirements in requirements for pre-transfer checks.

33 CFR 156.170 Equipment Tests and Inspections

One comment pointed out the word "experience" was missing from paragraph (g)(3) of this section. The Coast Guard agrees, the word was inadvertently left out.

One comment stated that styrene vapors could cause clogging of a detonation arrester in the heat of the

day, that the device should be inspected after a predetermined number of hours in operation, and a maintenance report should be maintained for the life of the device. The Coast Guard agrees that detonation arresters may need to be inspected and cleaned more than once per year. With the change in applicability to only crude oil, gasoline blends, and benzene, rapidly clogging cargoes such as styrene can be considered on a case by case basis. However, some crude oils may require frequent cleaning of detonation arresters. Because there is no operational experience with detonation arresters, there is no information available as to how often they need to be inspected and cleaned. The regulations in paragraph (g)(3) of this section require a detonation arrester to be inspected and cleaned more frequently if experience shows it is necessary. Cleaning of detonation arresters should be included as part of the record of repairs required by 33 CFR 154.740(g).

Two comments suggested that weekly calibration of analyzers is not needed if the vapor control system is used infrequently. The Coast Guard agrees that the analyzers do not need to be calibrated weekly if the system is not used that frequently. The requirement in paragraph (g)(4) of this section has been clarified to allow testing within 24 hours prior to operation if the system is operated less frequently than once a week.

Four comments recommended less frequent testing of analyzers because they are reliable and not subject to calibration drift. Two of the comments recommended biweekly. The other two recommended monthly calibration. The Coast Guard agrees that thay can be calibrated less frequently than weekly. Therefore, paragraph (g)(4) of this section has been revised to allow biweekly calibration.

One comment stated that because analyzers must be tested regularly, they should be tested either 24 hours before loading or once a week. The Coast Guard's position is that regular testing is required by these regulations. The regulation in paragraph (g)(4) of this section requires calibration either biweekly or not more than 24 hours prior to operation when the system is operated less frequently than once a week.

One comment stated that verifying the analyzer prior to its being used rather than at some arbitrary interval would better achieve the desired result, and suggested that this be included as a part of 33 CFR 154.850(b). The Coast Guard's position is that this is provided for in the regulations. The regulation in 33 CFR 156.170(g)(4) requires calibration either biweekly or not more than 24 hours prior to operation when the system is operated less frequently than twice a week, and 33 CFR 154.850(b) requires operationally testing analyzers not more than 24 hours prior to each transfer operation.

One comment stated that calibration of the analyzers should be the same ship-side and shore-side. The Coast Guard's position is that this is required by the regulations. The requirement in paragraph (g) of this section applies to both vessels and facilities.

One comment recommended that each facility should be routinely examined and inspected by the Coast Guard. Facilities currently have an annual inspection by the Coast Guard.

Appendices

Seven comments were received on Appendices A, B, and C of the NPRM. These appendices were draft ASTM standards which were presented for the information of readers. Appendix C has been adopted as ASTM standard F1271. Appendices A and B of the NPRM, Standard Specification for Detonation Flame Arresters and Standard Specification for Tank Vent Flame Arresters, have not been adopted, and have been included for guidance as appendix A and B to 33 CFR part 154.

46 CFR 32.53–85 Instruction manual—T/ALL

One comment noted that additions to the IGS Instruction Manual required by 46 CFR 32.53–85 should not be required unless the vapor control and inert gas systems are interconnected. The Coast Guard agrees and has so modified the final rule.

Another comment stated that the IGS instruction manual should not be changed and that a new manual should be required. This comment is rejected because it would unnecessarily add to the paperwork burden.

One comment stated a concern about who would be responsible for approving amendments to the IGS manual. Since this section does not require changes to the manual but a rather minor addition to the manual, reapproval of the manual will not be necessary.

A new paragraph was added to this section which requires that the oxygen content of the vessel's cargo tanks, if inerted, be at or below 8 percent by volume. This addition was necessary because of changes made to the "Declaration of Inspection" in § 35.35–30.

46 CFR 35.35–20 Inspection prior to transfer of cargo—TB/ALL

One comment voiced general agreement with the requirements of this section, however, two other comments questioned the need for an insulating flange and three comments were concerned that the wording used to state the insulating flange requirement eliminates alternatives currently used by industry. In response to these comments the final rule has been changed to allow alternative procedures that follow the ISGOTT guidelines for the electrical insulating requirements.

One comment questioned whether an insulating flange would be needed for a barge to barge transfer. The answer is yes. Paragraph (m)(3) of this section references § 39.40–3(c) which states that for lightering operations "An electrical insulating flange or one length of non-conductive hose must be provided between the vessel vapor connection on the service vessel and the vapor connection on the vessel being lightered or topped-off."

Three comments pointed out that not all barges are required to have an overflow control system and, therefore, the connection of this system to the facility is not always required. The Coast Guard agrees with this comment and the final rule has been revised to clarify this point.

46 CFR 35.35–30 "Declaration of Inspection" for tankships—T/ALL

One comment stated that the Declaration of Inspection should also include verification that the oxygen content of the cargo tanks of an inerted vessel is below 8%. The Coast Guard agrees with this statement and has added this verification to the list of requirements in the Declaration of Inspection.

46 CFR 39.10–9 Vessel vapor processing unit—TB/ALL

Two comments were received that suggested that vessel processing units should be prohibited from a safety standpoint. The Coast Guard disagrees since vessels so equipped, other than tank vessels, must meet the requirements contained in subpart E of 33 CFR part 154 and by so doing will be able to operate safely.

One comment recommended that this section should say "meet the requirements of," rather than "meet the intent of," 33 CFR part 154, subpart E. The Coast Guard agrees and has revised the subject paragraph. The entity responsible for determining if these requirements have been met has been changed from the Marine Safety Center

to the Commandant (G–MTH) since policy decisions, such as this, are normally made by Coast Guard headquarters. The Coast Guard recognizes that not all of the requirements in subpart E of 33 CFR part 154 will be applicable to vessels since it deals with facilities. However, since Coast Guard approval of the installation will be required, the Coast Guard will be able to evaluate alternative proposals to ensure that an equivalent level of safety is achieved.

46 CFR 39.10–13 Submission of vapor control system designs—TB/ALL

One comment recommended that plans, calculations, and specifications that must be submitted for approval be sent directly to the Marine Safety Center rather than using the requirements contained in 46 CFR 31.10–5(a). The regulations in 46 CFR 39.10–13 of the final rule has been revised to indicate this change.

Four comments questioned why vapor control system designs on U.S. vessels have to be certified by the Coast Guard while foreign vessels can obtain certification from classification societies. The Coast Guard intends, at least initially, to be involved in the certification of these systems on all U.S. tank vessels. The certification of vapor control systems on foreign vessels by classification societies will be accepted as a substitute for the Coast Guard plan review and inspection. As experience is gained in the use of vapor control systems, the Coast Guard will consider revising the agreements with the American Bureau of Shipping (ABS) to permit them to review and approve vapor control systems.

Five comments recommended that local MSO's and OCMI's be allowed to review vapor control systems for approval and reapproval. This recommendation has not been incorporated. Personnel at MSO's and OCMI's do not have the experience or the expertise to carry out complete plan reviews of tank vessels. Currently, the Marine Safety Center is responsible for carrying out plan reviews for tank vessel systems other than vapor control, so this requirement is consistent with present Coast Guard policies.

Three comments stated that previously approved vapor control systems should not require reapproval. A new paragraph (c) has been added to this section to exempt tank vessels with existing vapor collection systems that have been approved by the Coast Guard and were operating prior to the effective date of the final rule as long as they only transfer vapor to the specific facilities for which they were approved.

Four comments stated that the amount of time allowed for modifying existing vapor control systems was not adequate. The Coast Guard agrees and has modified the regulations in this section of the final rule to allow up to 24 months after the effective date of the final rule for completing any modifications.

Four comments took exception to the requirement that a vessel which has a vapor collection system that was approved for use at one facility must be reapproved if it is to use a different facility. These comments have misinterpreted the requirements of this section. Only vessels, approved by the Coast Guard and operating at a specific facility prior to the effective date of this final rule must be reapproved if they intend to transfer vapor at a facility other than the one for which they were approved.

One comment questioned whether oversight or certification of foreign vessels would be required, and if so, who will be responsible. Plans for oversight are in the development stage, details are still to be determined.

One comment stated that certain gas and chemical carriers are already in possession of Certificates of Compliance approving their existing vapor control installations in accordance with IMO codes and should be accepted by the Coast Guard. The Coast Guard disagrees with this suggestion since section 15.12.2 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk only requires that a vapor connection be provided. It does not contain design, installation, or operational requirements for vapor control systems.

46 CFR 39.20–1 Vapor collection system—TB/ALL

Five comments stated concern about the compatibility of ship to shore vapor connections. The Coast Guard's position is that this will not be a problem since this section prescribes the configuration of the flanges used in making the connections.

Five comments dealing with the location of vapor connections and the compatibility of vessel and facility connections were received. One comment was received which agreed with the Coast Guard's position on the location of the vapor manifold. In light of these comments, this section has been revised to require that vapor collection piping must be permanently installed as close as practical to the vessel's loading manifold. An exception is allowed for those vessels certified to carry cargoes listed in 46 CFR Table 151.05 or Table 1 of 46 CFR part 153. These vessels, in order to preserve segregation of cargo systems, will be allowed to locate their vapor connections in the vicinity of each tank.

One comment questioned whether the requirements in this section would interfere with vapor connections in use outside the U.S. This may be the case, however, the Coast Guard is working through the International Maritime Organization to develop an international standard for vapor control systems.

Another comment questioned if these requirements would preclude the current chemical-tanker practice of hooking up shore vapor return hoses directly to semi-permanent connections on tank hatches, butterworth openings, or cargo or inert gas piping. The answer is yes since this section states that all vapor control piping must be permanently installed. In addition, the variable size openings involved with such hook-ups would make it difficult to determine the pressure drop that would result.

One comment suggested that the permanent piping required by this section could pose a problem for barges that must transit low bridges. The Coast Guard position is that the height of this piping would not be higher than the present venting arrangement required by 46 CFR 32.55, so it should cause no more of a problem than that which presently exists.

Two comments stated that this section prohibits using the inert gas piping system for both inerting and vapor collection purposes. This section does require a means to isolate the vessel's inert gas supply line from the vapor collection system but it does not prohibit the use of the IG main and tank connections for vapor collection purposes.

One comment suggested that the requirement in proposed paragraph (a)(4) of this section to have a stop valve which can isolate the inert gas system from the vapor collection system be modified so that equivalent means of isolation, such as a spool piece, can be used. This requirement has been changed and added to paragraph (a)(6) of the final rule to require a "means to isolate" rather than a specific device.

Two comments questioned the requirement to have a means to drain liquid from all low points in the vapor collection system. They stated that this would be difficult to do because of changing tanker trim and that it would require too many drains thereby creating more sources of leakage. Paragraph (a)(4) of this section has been revised in the final rule to require a means to eliminate liquid condensate

from the line. The draining and collection of liquid from the low points in the line would be one method to meet this requirement.

One comment questioned if a rising stem valve would satisfy the requirement for having an isolation valve at the vessel vapor connection. The answer is yes, if the valve is capable of manual operation.

Twenty-one comments were received concerning the labeling and color coding of hoses and the use of lugs on vapor connection flanges. Most of the comments stated that the use of lugs is not necessary and that they would only make the connection of hoses very difficult and possibly lead to hose damage. The Coast Guard's position is that in order to ensure that vapor collection systems are not accidentally connected to cargo loading systems the use of a lug or stud is necessary. However, in order to allow easier connection of vessel vapor control systems to facility vapor control systems this section of the final rule has been modified so that a stud (lug) is only required on the vessel and facility vapor manifold flanges and not on hoses or facility loading arms. Additionally, the flanges on vapor hoses and on facility loading arms must have at least one hole to accept the stud, but may have as many as practical. The regulations in this section addressing color coding and labeling requirements for vapor hoses and piping have also been changed to be in agreement with an API guideline currently under development.

One comment suggested that this section should require use of the industry practice of having a measured in-service resistance of not less than 1,000 ohms recommended by ISGOTT for the vapor hose instead of the maximum value of one million ohms (Mohm) being required. The Coast Guard agrees that one Mohm is too high and paragraph (f)(5) of this section in the proposed rule has been revised in paragraph (f)(4) of this section of the final rule to require a maximum resistance of 10,000 ohms.

46 CFR 39.20–3 Cargo gauging system—TB/ALL

Four comments took exception with the requirement for permanently installed cargo gauging systems since portable gauging systems are available and are adequate. The introductory text to paragraph (a) of this section in the final rule has been modified to eliminate this restriction.

One comment assumed that the use of sight glasses would satisfy the requirements of paragraphs (a) (1) and (2, of this section. The Coast Guard's position is that a viewing port on the tank hatch cover or expansion trunk would be acceptable.

One comment stated that paragraph (a) of this section should only be applicable for closed loaded vessels. The Coast Guard has no problem with this comment since every vessel using vapor control is required to be closed loaded.

One comment stated that even if a barge is fitted with an overfill alarm system it should still have a "topping-off" level indication. The Coast Guard disagrees. A single high level warning and overfill control system should be adequate. However, the regulations do not prohibit such an arrangement.

Two comments stated that local indication by cargo gauging systems should not be required if the vessel has a cargo transfer control room, because this is not required for closed cargo gauging systems in 46 CFR part 153. The Coast Guard agrees. Paragraph (a)(3) of this section has been revised to only require the liquid level to be indicated where cargo transfer is controlled.

Four comments expressed the opinion that it was not necessary for the cargo gauging system to simultaneously indicate the liquid level at the tank as well as at the point from which cargo loading is monitored and controlled. The Coast Guard agrees and has modified the requirement for indication to be at the location where cargo transfer is being controlled.

Nineteen comments were received concerning the visual level indicator required for tank barges that are not equipped with a high level and overflow alarm system. The comments were directed at two areas, the height at which indication begins and locations from which the indicator is visible. All of the comments indicated that a height of 1.5 meters for a "dip stick" type of device was excessive and would expose the device to damage from mooring lines and cargo hoses. The comments recommended heights ranging from 0.75 to 1.05 meters. The Coast Guard understands the problem and has revised the final rule to require that the visual indicator becomes activated when the liquid level in the cargo tank is within one meter of the tank top. Most comments indicated that the requirement to insure that the tank level indicator be visible from all points on the deck would be impossible in some instances and recommended that the indicator should be visible from all cargo control areas. The Coast Guard agrees and has changed the requirement in paragraph (b)(3) of this section as recommended.

46 CFR 39.20–7 Tankship liquid overfill protection—T/ALL

Eleven comments questioned the requirement proposed in paragraph (a) of this section that each cargo tank must be equipped with both a high level alarm and a tank overflow alarm. The Coast Guard has reviewed this requirement and the CTAC recommendations and has concluded that both alarms are warranted in order to prevent tank overfilling and possible tank rupture during closed loading.

One comment questioned the special non-conductive material requirements for in-tank instruments and another stated that these instruments must be intrinsically safe. Upon review of this section, the Coast Guard has decided to delete the specific material requirements proposed in paragraph (b) of the NPRM and replace them in paragraph (a) of the final rule with a requirement that the alarm circuits be intrinsically safe.

Five comments questioned the requirement that high level and overflow alarms must be capable of being checked at the tank. They pointed out that many alarms, such as those using radar or pressure transducer systems, cannot be tested at the tank and that allowance should be made for electronic testing. The Coast Guard agrees and has amended this section of the final rule to allow for electronic testing. In addition to allowing electronic testing of alarms, the Coast Guard has also amended paragraph (b) so that the requirements listed therein are only applicable to alarms that are installed after the effective date of these regulations.

Twenty-two comments opposed having the high level alarm activated prior to reaching 97% of tank capacity. The consensus was that setting the alarm point below 97% would have a great economic impact in that less cargo could be carried thereby increasing shipping costs. In reviewing these comments the Coast Guard has noticed a difference in philosophy among operators as to how the high level alarms are used. Some utilize this alarm as an indicator to the operator that the tank is nearly filled to capacity and to begin a shut down of the loading operation. Others use this alarm as a warning that if some action is not immediately taken the tank overfill alarm will sound. The Coast Guard has reviewed the alarming requirements in light of these differing philosophies and has modified this section of the final rule to allow operators flexibility in how the alarms are used by requiring that the high level alarm activate before the tank

overflow alarm sounds but at a level no lower than 95% of tank capacity.

One comment stated that high level alarms will probably be activated frequently by the operator filling as close as possible to the overfill alarm level, therefore there should be no high level alarm. The Coast Guard's position is that through proper training and management oversight these occurrences will be minimized.

Two comments indicated that the requirement for rupture disks should be applicable only if they are installed, as is the case with spill valves. The Coast Guard agrees and has reworded the requirement in this section of the final rule.

46 CFR 39.20–9 Tank barge liquid overfill protection—B/ALL

Because of objections received to the automatic shutdown system which were discussed under 33 CFR 154.812, paragraph (a) of this section has been revised to allow dual high level alarms on tank barges if they have a self-contained power supply or are fitted with an electrical shore power connection to power the alarms.

Three comments indicated support for this section and for the requirements that it contains.

Four comments stated a need for standardization of the automatic shutdown system. The Coast Guard agrees. API is developing a guideline for standardizing the system connection. Some requirements from the draft API standard have been added to paragraph (b) of this section as well as reference to additional standards to provide the degree of standardization necessary.

One comment stated that a closed gauging system should not be required on a vessel which loads under vacuum. The Coast Guard's position is that all vessels using a vapor control system must be equipped with a closed gauging system since the loading conditions are controlled by the facility. Furthermore, most facilities will not be able to process the amount of vapor that would be collected during open loading if open loading were allowed.

One comment stated that this rule should not mandate the type of overflow protection necessary but should outline the minimum system alternatives which are acceptable. The rule, as written, mandates overflow protection but rather than mandate the type of protection required lists four alternatives, one of which must be used.

One comment suggested that the spill valve mentioned in this section should be called a "liquid overfill protection valve." This is rejected since the term spill valve is universally accepted and recognized throughout the marine industry.

Two comments suggested that each tank should not be required to have its own spill valve, stating that one or two spill valves on a common header should be sufficient. The Coast Guard disagrees with this recommendation. This arrangement will not protect the tanks due to flow restrictions in the vapor collection line unless the flow rate into a tank is significantly below the maximum loading rate. Furthermore, ASTM F1271 is based on a valve installation on the tank top.

Fourteen comments took exception with the pressure settings that were being required for the spill valve. They stated that a specific value should not be given since different tanks have different design pressures. They also suggested that the pressure setting should be set higher than the pressure relief valve setting but lower than maximum internal design pressure of the task. Another comment suggested that the wording describing the requirement that a spill valve relieve at a pressure higher than that of the relief valve when operating at "the maximum anticipated loading rate" be changed to "the maximum allowable transfer rate." The Coast Guard agrees with this approach and has changed this section of the final rule to reflect these suggestions.

One comment stated that the protecting devices used should be fitted with flame screens or flame arresters unless they have been approved to operate without these devices. The Coast Guard's position is that flame screens or flame arresters in these situations would be impractical since they would have too much resistance and would probably be blown out by the cargo when the valve opened.

Four comments were received concerning the use of rupture disks. One comment stated they should not be allowed, the others stated they should be allowed if a standard could be developed or if specific types of rupture disks could be approved, rather than require case by case approval. The use of rupture disks has been left in the final rule as an optional arrangement which, if used, must be approved by the Coast Guard. The Coast Guard intends to propose to the ASTM F25.13 Subcommittee on Piping that an ASTM standard be developed to cover cargo tank rupture disks.

46 CFR 39.20–11 Vapor overpressure and vacuum protection—TB/ALL

Thirty-nine comments discussed the set points for the pressure-vacuum relief valve settings. Most of the comments stated that specific values should not be required but that they should be determined on an individual basis and set to a percentage of the vessel's maximum internal design pressure and vacuum. The Coast Guard agrees with these concerns and has revised this section. Rather than prescribing a fixed set point, each cargo tank pressure relief valve must be set so that it is capable of discharging cargo vapor at 1.25 times the maximum cargo transfer rate so that the pressure in the cargo tank vapor space does not exceed the maximum allowable working pressure of the tank or the settings on spill valves or cargo tank rupture disks. Likewise, each cargo tank vacuum relief valve must be set so that it prevents a vacuum in the tank that exceeds the maximum allowable vacuum for that tank.

One comment asked if the testing of pressure-vacuum relief valves in this section was restricted to new valves. The regulation requires that all valves be tested since the flow rate through the valves is critical when a vapor collection system is used, whereas for previous arrangements without vapor collection the capacity of the valve was not a major concern.

One comment questioned the record keeping requirements for the pressure-vacuum relief valve testing. Each pressure-vacuum relief valve manufacturer will normally test a prototype or production valve of each model it manufactures. The results should be kept on file by the manufacturer and provided to the designer/installer of the vapor collection system.

One comment stated that mandating a requirement that each valve have a mechanical means available for checking the valve before loading would render useless all pressure-vacuum relief valves currently in use on tank barges. The Coast Guard disagrees since only those valves installed one year after the effective date of the final rule will need to meet this requirement.

Another comment questioned if existing pressure-vacuum relief valves are allowed to have a mechanical means to check their operation prior to loading. This rule mandates that valves installed one year after the effective date of the final rule need to have such means, it does not preclude the use of such means on existing valves.

46 CFR 39.20–13 High and low vapor pressure protection for tankships—T/ALL

One comment questioned whether the pressure sensor required by this section included visible and audible alarms or a pressure indicator. The requirement in

this section states that each tankship vapor collection system must have a pressure sensing device that has both a pressure indicator and an alarm located where cargo loading is controlled.

Three comments stated that vessels whose tanks are protected by pressure-vacuum relief valves should not be required to have pressure sensing alarms. The Coast Guard's position is that although the pressure-vacuum relief valve provides the primary protection, the addition of an alarm set to alarm at a pressure before the pressure-vacuum relief valve relieves will provide an operational means to prevent unnecessary pressure rise that would lead to the opening of the pressure-vacuum relief valves and increased vapor emissions.

Four comments stated that the requirement to have the pressure sensing alarms sound on the deck area is not necessary and could be a distraction. The Coast Guard agrees and has amended this section to require that the alarms need only be heard at the cargo transfer control point.

Eight comments questioned the requirement that the high pressure sensor alarm be set at 50% of the lowest pressure relief valve setting. Suggestions were made to set the alarm point at the lowest pressure relief valve setting or at some percentage of that value. The Coast Guard agrees that the 50% value is too conservative and has amended the alarm point to coincide with 90% of the lowest pressure relief valve setting.

Six comments questioned the need for more than one pressure sensing device and discussed the best location for the device. The consensus was that one device should be sufficient and that its location was not critical since the pressure drop through the vapor collection header would be negligible. The Coast Guard agrees with this assessment and changed the final rule to require one pressure sensing device located at the aft end of the vapor collection line. This location minimizes the length of instrument cabling and piping associated with the requirement.

One comment stated that ships with closed gauging that have local readouts only at the tank should be allowed to locally install pressure gauges and alarms. The Coast Guard disagrees, with the exception of chemical tankships which are permitted to have vapor collection for individual tanks. Fixed vapor collection piping is required, therefore, only a single pressure sensor location is needed.

46 CFR 39.30–1 Operational requirements—TB/ALL

One comment correctly noted that this section would be applicable to U.S. vessels wherever located, even outside U.S. ports, when transferring cargo vapor to a shore facility. The Coast Guard has modified the final rule so that the prohibition against transferring vapors to a facility which does not have a properly endorsed letter of adequacy is only applicable to U.S. ports.

Twenty-two comments discussed the rate of cargo transfer and the set points used to calculate this value. Most of the comments indicated that the requirement to restrict the vapor collection system pressure to 50% of the lowest pressure relief valve was overly conservative. The Coast Guard has reassessed these requirements and has revised this section to require that the rate of cargo transfer be determined by using an 80% rather than a 50% figure and by dropping the 3.0 and 2.0 pressure set points in favor of the setting of the lowest cargo tank vent system pressure relief valve.

Twenty-three comments discussed the requirement that cargo tanks must not be filled higher than 97% of the cargo tank volume. Several of the comments noted that limiting the amount of cargo to the 97% value would have a substantial economic impact. Suggestions for the filling limit ranged from 98% to 100%. The Coast Guard agrees that the 97% limit is unreasonable and has revised the filling limit to be either 98.5% of the cargo tank volume or the level at which the overfill alarm is set.

One comment stated that the requirements for opening tanks carrying static accumulating cargoes should not be required for crude oil, most alcohols, ketones, and esters or for inerted vessels. The Coast Guard agrees that if the cargo is not a static accumulator the requirement does not apply, however, the Coast Guard is not convinced that the cargoes mentioned fall into this category.

Two comments pointed out that the 30 minute wait required before sampling or gauging devices can be placed into the cargo tank is unnecessary for inerted vessels. The Coast Guard agrees and has modified the section to reflect this fact.

Another comment stated that since it will be necessary to open cargo tanks for sampling purposes it may be necessary to install vapor seal valves for sampling. This is correct and is not prohibited by the regulations.

One comment stated that barge owners should be made aware of these upcoming rules so that they can make provisions for the installation of vapor lock valves designed for restricted or closed gauging and sampling. The Coast Guard agrees, and that is one of the reasons for utilizing the rulemaking process.

Four comments took exception with the requirement to maintain a loading rate of one meter per second or less until the cargo level in the tank reached a meter in depth. The consensus was that this requirement would increase loading times unnecessarily and that limiting the loading rate until the bottom of the tank is covered would provide the required degree of safety. The Coast Guard agrees that the requirements contained in the notice were too stringent and has amended the final rule to require that the initial transfer rate be controlled in accordance with Section 7.4 of ISGOTT.

Two comments pointed out that there was a degree of confusion concerning the location at which the oxygen content of the tank is to be measured. Based on these comments the location for these measurements has been changed to include a point one meter below the tanktop and at one-half the ullage space. As previously discussed, several comments indicated that many high level alarm systems, such as those employing radar or capacitance techniques, do not have the means to be tested at the tank. The testing requirement in this section has been revised to agree with § 39.20–7.

Two comments stated that the term "continuously monitored" in § 39.30–1(j) of the NPRM was unclear. The Coast Guard agrees and on further analysis has deleted the requirement.

Five comments stated that limiting hose length to 30 meters and the inside diameter of all vapor hoses to not less than the inside diameter of the vessel's vapor collection system piping were too restrictive. The Coast Guard has deleted both of these paragraphs (k and l) because the requirement to determine the pressure drop in § 39.20–9(d) of this section is adequate to cover the reason for originally proposing these requirements.

46 CFR 39.40–1 General requirements for vapor balancing—TB/ALL

One comment stated that it was premature to publish regulations applicable to lightering operations since the safety of life and equipment is not assured by these regulations. The Coast Guard disagrees since states may require vapor control during lightering operations that take place under their jurisdiction.

One comment suggested that the applicability of this section to "flammable or combustible liquids" should be changed to "crude oil, gasoline blends, and benzene" in keeping with the suggestions of CTAC. The Coast Guard has made this revision and added paragraph (e) which requires lightering operations involving the collection of vapors from other cargoes to obtain specific approval from the Coast Guard.

One comment stated that it was not necessary to prohibit transferring vapor from a non-inerted vessel to an inerted vessel and that control of oxygen content can be achieved by overcharging the tanks with inert gas. The Coast Guard's position is that it is unsafe to transfer non-inerted vapor to an inerted vessel and that there is insufficient space to add the amount of inert gas that would be required to control the oxygen content without overpressurizing the tanks.

One comment stated that there should be provisions to allow lightering of a barge in an emergency situation without controlling the vapors. It is not appropriate for the Coast Guard to include such a provision. Vapor control will be required by the states, so an emergency exemption must be provided by the states. The Coast Guard position is that if a state mandates the use of vapor control during lightering operations under emergency conditions the requirements in this rule must be met.

Three comments stated that lightering is not adequately addressed since the rules prohibit vapor collection during the majority of lightering operations which involve transfer from an inerted tank ship to a non-inerted barge. They also suggested that the only way to handle a full discharge is to retain the vapors on the vessel receiving cargo or being ballasted by compressing the vapor within the vapor space. The Coast Guard recognizes that transfers from an inerted vessel to a non-inerted vessel is common, however, vapor transfer cannot be done safely with this arrangement. The method recommended for handling ballast vapor is allowed by these regulations provided the pressure does not exceed the value given in § 39.40–5(e) of this section. Alternatively, the receiving vessel could be equipped with a vapor processing unit.

One comment asked what was meant by a device to assist in the transfer of vapor. This requirement has been changed to refer to a compressor or blower.

One comment stated that there are no impending air quality requirements which would govern lightering operations. The Coast Guard disagrees because requirements are presently being prepared by the State of California.

Two paragraphs (c and d) were added to this section. These paragraphs were originally contained in other sections of the NPRM and were moved here as a result of a reorganization of the rule and to provide added clarity to this section.

46 CFR 39.40–3 Design and equipment for vapor balancing—TB/ALL

One comment stated that the detonation arrester should be installed on the receiving vessel. The Coast Guard partially agrees with this comment. The rule has been revised to require placement on the service vessel, which could be either the vessel receiving or discharging cargo. This location places the major burden of complying with the rule on the service vessel rather than on the more transient vessel.

One comment stated that the installation of a detonation arrester when both vessels are inerted is unnecessary, since continuous monitoring of the oxygen content of the vapor stream will provide a level of safety at least as great as that of current operations. The Coast Guard agrees with this concept and has revised the final rule to require a detonation arrester only when the tanks on the vessel discharging the cargo are not inerted.

One comment stated that detonation arresters should not be required since there are no tested, proven detonation arresters available. The Coast Guard disagrees, the technology is proven and manufacturers are currently engaged in a test program to qualify their products. Appendix A of this rule contains an acceptable procedure for testing detonation arresters.

One comment asked why the requirements for pressure sensing devices, although referred to in the preamble as being present in this section, were not included in the proposed rule. The requirements did appear in the NPRM. They were moved to § 39.20–13 but the preamble was not amended to note this move. The preamble discussion has been corrected in the final rule.

Three comments questioned the location of the oxygen analyzer and suggested that it should be located on the service vessel. The Coast Guard agrees and has amended this section of the final rule as suggested.

46 CFR 39.40–5 Operational requirements for vapor balancing—TB/ALL

One comment stated that the requirement for inerting the vapor hose prior to the transfer of cargo vapor should be changed to read "the vapor hose must be bled to atmosphere prior to the start of vapor transfer, inert gas can be used to purge and inert the hose." The Coast Guard agrees and has revised the rule to reflect this suggestion.

One comment suggested that impressed current cathodic protection systems should be shut down during lightering operations. The Coast Guard agrees and has added this requirement.

Three comments questioned the requirement for a continuously monitored pressure indicator proposed in paragraph (b) of this section in the NPRM. This requirement has been removed in the final rule and only the requirements in § 39.20–13 must be met.

Two comments suggested that a non-conductive length of hose should be allowed in lieu of an electrical insulating flange. The Coast Guard agrees and has added this option to the final rule.

One comment stated that the use of insulating flanges is contrary to past U.S. practice. Although this may have been true in the past, the Coast Guard's position is that their use is necessary in operations involving vapor collection.

One comment stated that the oxygen sampling procedure in the proposed rule seemed onerous and that if necessary should be included in 46 CFR 35.35. The Coast Guard disagrees, the requirement in 46 CFR 35.35 is to verify that the testing was done. The required procedure for testing has been retained in this section.

One comment felt that pump speeds could be used to estimate the cargo transfer rate. The Coast Guard has no problem with this method. Another comment stated that the rate of cargo transfer should be monitored by tank gauging. The Coast Guard agrees, this method should be used to confirm transfer rates based on pump characteristics.

Nine comments opposed the restriction for simultaneous lightering and tank cleaning. The Coast Guard has revised § 39.40–5(g) to allow tank washing when both vessels are inerted.

Incorporation by Reference

The material referenced in 33 CFR 154.106 and 46 CFR 39.10–5 has been approved for incorporation by reference by the Director of the **Federal Register** under 5 U.S.C 552 and 1 CFR part 51.

The materials are available as indicated in those sections.

Regulatory Evaluation

While the regulations are considered to be non-major under Executive Order 12291, they are considered significant under Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the public docket. It may be inspected or copied at the Office of the Marine Safety Council, U.S. Coast Guard, room 3314, 2100 Second Street., SW., Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The changes made to the rule since publication of the NPRM either will impose no new burdens or will reduce the burdens proposed in the NPRM. The changes to 33 CFR 154.800 and 46 CFR 39.10–1 limit the applicability to the collection of vapors of crude oil, gasoline blends, and benzene. Changes to 33 CFR 154.804 and 33 CFR 39.10–1 grant exemptions to certain existing facility and vessel vapor control systems. Changes to 33 CFR 154.808, 154.810, 154.814, 154.820, 154.840, and 154.850, and 46 CFR 39.10–11, 39.20–1, 39.20–7, 39.20–9, 39.20–11, 39.20–13, and 39.30–1 make the regulations more performance oriented and allow greater flexibility in choosing different alternatives.

The rules will benefit industry by providing standards for the safe design and operation of vapor control systems. The rules will result in fewer vessels and facilities being damaged from fires and explosions, fewer vessels being damaged from overfilling and over- or underpressurization, fewer injuries/deaths from fires and explosions, and less oil spilled from overfilling or overpressurizing of tanks while loading with a vapor control system in use.

The rules will also benefit the Federal and state governments. The standards promulgated will facilitate review and inspection of vapor control systems by the Coast Guard. State governments will not need to become involved in developing safety requirements when they impose vapor control requirements, and there will not be differing safety requirements between states.

Estimated costs of installing vapor control systems were provided in the NRC Marine Board study. The study estimated that the cost to modify a typical 35,000 deadweight ton product tanker for vapor control will be approximately $831,250. It estimated that the cost to modify a typical inland river barge for vapor control will be approximately $167,750. It also estimated that the cost to modify a typical product terminal for vapor control which serves ships and barges will be approximately $7,502,160.

Because the rules will not require the installation of vapor control systems, the entire cost of installing vapor control systems should not be attributed to this rulemaking. The only costs which are properly attributable to this rulemaking are those incremental amounts necessary to meet standards in these rules which exceed normal industry practice. Since these rules have been developed in close cooperation with industry, the differences should be minimal. A review of information the Coast Guard has on existing vapor control systems indicates that the costs of those installations are comparable to the costs expected for systems installed in accordance with these regulations.

The Coast Guard cannot predict where and under what circumstances the use of vapor control systems will be required. However, it is unlikely that state and local governments will mandate the use of vapor control systems unless the expected improvement in ambient air quality justifies the cost, or the use of vapor control systems is necessary because the local area is not meeting the national ambient air quality standards set under the provisions of the Clean Air Act. Where the use of vapor control systems is mandated, the safety benefits of standardized equipment and operating procedures are expected to outweigh any increased costs over a marginally acceptable system that might have been installed in the absence of these standards.

Small entities will be affected by this rulemaking only if the state or local governments require the use of vapor control systems. These costs should be attributed to the state or local government rulemaking. Therefore, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Differing state requirements to control hydrocarbon emissions could adversely impact competition between states. Since this rulemaking addresses safety requirements for vapor control systems, it will ease the impact on competition between states by providing for nationwide safety requirements. It is possible that some owners of foreign tank vessels will not install vapor control systems on their vessels and withdraw them from U.S. trade, however, it is not expected that the overall pattern of oil importation will be significantly affected. In addition, the Coast Guard is working with the International Maritime Organization (IMO) to develop international safety requirements for the design and operation of vapor control systems.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.b.2. of Commandant Instruction (COMDTINST) M16475.1B. The environmental impact associated with vapor control systems is the direct result of state or local action requiring the use of such systems. A Categorical Exclusion Determination Statement has been prepared and is included as part of the rulemaking docket.

Paperwork Reduction Act

This rule contains information collection requirements. These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. The section numbers and the corresponding OMB approval number are:

Section	Topic	OMB control number
33 CFR		
154.310	Operations Manual	2115–0078
154.740	Records	2115–0096
154.804	Facility Plan Review	2115–0581
154.806	Application for Certifying Entity	2115–0581
155.750	Oil Transfer Procedures	2115–0120
156.120	Declaration of Inspection	2115–0506
156.170	Equipment Tests and Inspections	2115–0096
46 CFR		
32.53–85	Inert Gas System Manual	2115–0505
35.35.30	Declaration of Inspection	2115–0506
39.10–13	Vessel Plan Review	2115–0505

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that while this final rule has important federalism implications, they are not sufficient to warrant the preparation of a Federalism Assessment. Although the Coast Guard has determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism

Assessment, it should be noted that the Coast Guard has also determined that regulations for the safe design, installation, and operation of vapor control systems, as described in this rulemaking, can only be effectively implemented at the national level. Once a state requires vapor control, the discretion available to that state to modify requirements concerning design, installation, and operation of vapor control systems, as they pertain to shoreside facilities, will be limited. For example, all flexible hoses used in vapor control systems and the last one meter (3.3 feet) of fixed piping leading to the facility vapor connection must be color coded with three bands painted red/yellow/red of specified width. The vapor connection flange is also of unique design to prevent improper cross-connection. These requirements, and others like them, could not be modified. Some standardization of equipment and operational procedures is necessary since affected vessels move from port to port in the national marketplace and excessive modification of the requirements would be burdensome and potentially unsafe.

List of Subjects

33 CFR Part 154

Incorporation by reference, Oil pollution, Reporting and recordkeeping requirements, Vapor control.

33 CFR Part 155

Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 156

Hazardous materials transportation, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 35

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 39

Cargo vessels, Hazardous materials transportation, Incorporation by reference, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Vapor control.

For the reasons set out in the preamble, the Coast Guard amends title 33, chapter I, Subchapter O, parts 154, 155, and 156, and title 46, chapter I, parts 30, 32, and 35, and adds a new part 39 to 46 CFR, Chapter I, as set forth below.

TITLE 33—[AMENDED]

PART 154—[AMENDED]

1. The authority citation for part 154 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. Section 154.106 is revised to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the Federal Register and the material made available to the public. All approved material is on file at the Office of the **Federal Register**, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street, SW., Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in part, and the sections affected are:

American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005	
API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987)	154.814
API Recommended Practice 550, Manual on Installation of Refinery Instruments and Control Systems, Part II—Process Stream Analyzers, Section 1—Analyzers, Fourth Edition, February 1985	154.824
American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018	
ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1981	154.500; 154.808; 154.810
ANSI B16.24—Bronze Pipe Flanges and Flanged Fittings, Class 150 and 300, 1979	154.500; 154.808
ANSI B31.3—Chemical Plant and Petroleum Refinery Piping, 1987 (including B31.3a–1988, B31.3b–1988, and B31.3c–1989 addenda)	154.510; 154.808
International Electrotechnical Commission (IEC), Bureau Central de la Commission Electrotechnique Internationale, 1 rue de Varembé, Geneva, Switzerland	
IEC 309–1—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 1, General Requirements, 1979	154.812
IEC 309–2—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 2, Dimensional Interchangeability Requirements for Pin and Contact-tube Accessories, 1981	154.812
National Electrical Manufacturers Association (NEMA), 2101 L St. NW., Washington, DC 20036	
ANSI/NEMA WD6—Wiring Devices, Dimensional Requirements, 1988	154.812
National Fire Protection Association (NFPA), Batterymarch Park, Quincy, MA 02269	
NFPA 70—National Electrical Code, 1987	154.735; 154.808; 154.812
Oil Companies International Marine Forum (OCIMF), 6th Floor, Portland House, Stag Place, London SWIE 5BH, England	
International Safety Guide for Oil Tankers and Terminals, Third Edition, 1988	154.735; 154.810

3. Section 154.310 is amended by redesignating existing paragraphs (b) and (c) as (c) and (d), respectively, adding new paragraph (b), and adding a parenthetical at the end of the section to read as follows:

§ 154.310 Operations manual: Contents.

* * * * *

(b) If a facility collects vapors emitted from vessel cargo tanks for recovery, destruction, or dispersion, the operations manual must contain a description of the vapor collection system at the facility which includes:

(1) A line diagram or simplified piping and instrumentation diagram (P&ID) of the facility's vapor control system piping, including the location of each valve, control device, pressure-vacuum

relief valve, pressure indicator, flame arrester, and detonation arrester; and

(2) A description of the vapor control system's design and operation including the:

(i) Vapor line connection;

(ii) Startup and shutdown procedures;

(iii) Steady state operating procedures;

(iv) Provisions for dealing with pyrophoric sulfide (for facilities which handle inerted vapors of cargoes containing sulfur);

(v) Alarms and shutdown devices; and

(vi) Pre-transfer equipment inspection requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2115-0078)

4. Section 154.740 is amended by deleting the word "and" at the end of paragraph (e), by replacing the period at the end of paragraph (f) with a semicolon, adding new paragraphs (g), (h), and (i), and adding a parenthetical at the end of the section to read as follows:

§ 154.740 Records.

* * * * *

(g) A record of all repairs made within the last three years involving any component of the facility's vapor control system required by subpart E of this part;

(h) A record of all automatic shut downs of the facility's vapor control system within the last 3 years; and

(i) Plans, calculations, and specifications of the facility's vapor control system certified under § 154.804 of this part.

(Approved by the Office of Management and Budget under control number 2115-0096)

5. A new subpart E is added to part 154 to read as follows:

Subpart E—Vapor Control Systems

154.800 Applicability.
154.802 Definitions.
154.804 Review, certification, and initial inspection.
154.806 Application for acceptance as a certifying entity.
154.808 Vapor control system, general.
154.810 Vapor line connections.
154.812 Facility requirements for vessel liquid overfill protection.
154.814 Facility requirements for vessel vapor overpressure and vacuum protection.
154.820 Fire, explosion, and detonation protection.
154.822 Detonation arresters, flame arresters, and flame screens.
154.824 Inerting, enriching, and diluting systems.
154.826 Vapor compressors and blowers.
154.828 Vapor recovery and vapor destruction units.
154.840 Personnel training.
154.850 Operational requirements.

Subpart E—Vapor Control Systems

§ 154.800 Applicability.

(a) Except as specified by paragraph (c) of this section, this subpart applies to:

(1) Each facility which collects vapors of crude oil, gasoline blends, or benzene emitted from vessel cargo tanks;

(2) A vessel which is not a tank vessel that has a vapor processing unit located on board for recovery, destruction, or dispersion of crude oil, gasoline blends, or benzene vapors from a tank vessel; and

(3) Certifying entities which review, inspect, test, and certify facility vapor control systems.

(b) A facility which collects vapors of flammable or combustible cargoes other than crude oil, gasoline blends, or benzene, must meet the requirements prescribed by the Commandant (G-MTH).

(c) A facility with an existing Coast Guard approved vapor control system which was operating prior to July 23, 1990 is subject only to § 154.850 of this subpart as long as it receives cargo vapor only from the specific vessels for which it was approved.

(d) This subpart does not apply to the collection of vapors of liquefied flammable gases as defined in 46 CFR 30.10-39.

(e) When a facility vapor control system which receives cargo vapor from a vessel is connected to a facility vapor control system that serves tank storage areas and other refinery processes, the specific requirements of this subpart apply between the vessel vapor connection and the point where the vapor control system connects to the facility's main vapor control system.

§ 154.802 Definitions.

As used in this subpart:

Certifying entity means an individual or organization accepted by the Commandant (G-MTH) to review plans and calculations for vapor control system designs, and to conduct initial inspections and witness tests of vapor control system installations.

Existing vapor control system means a vapor control system which was operating prior to July 23, 1990.

Facility vapor connection means the point in a facility's vapor collection system where it connects to a vapor collection hose or the base of a vapor collection arm.

Inerted means the oxygen content of the vapor space in a tank vessel's cargo tank is reduced to 8 percent by volume or less in accordance with the inert gas requirements of 46 CFR 32.53 or 46 CFR 153.500.

Liquid knockout vessel means a device to separate liquid from vapor.

Maximum allowable transfer rate means the maximum volumetric rate at which a vessel may receive cargo or ballast.

New vapor control system means a vapor control system which is not an existing vapor control system.

Vapor balancing means the transfer of vapor displaced by incoming cargo from the tank of a vessel receiving cargo into a tank of the vessel or facility delivering cargo via a vapor collection system.

Vapor collection system means an arrangement of piping and hoses used to collect vapor emitted from a vessel's cargo tanks and transport the vapor to a vapor processing unit.

Vapor control system means an arrangement of piping and equipment used to control vapor emissions collected from a vessel, and includes the vapor collection system and the vapor processing unit.

Vapor destruction unit means a vapor processing unit that destroys cargo vapor by a means such as incineration.

Vapor dispersion system means a vapor processing unit which releases cargo vapor to the atmosphere through a venting system not located on the vessel being loaded or ballasted.

Vapor processing unit means the components of a vapor control system that recovers, destroys, or disperses vapor collected from a vessel.

Vapor recovery unit means a vapor processing unit that recovers cargo vapor by a non-destructive means such as lean oil absorbtion, carbon bed adsorption, or refrigeration.

Vessel vapor connection means the point in a vessel's fixed vapor collection system where it connects to a vapor collection hose or arm.

§ 154.804 Review, certification, and initial inspection.

(a) A new vapor control system installation must be certified by a certifying entity as meeting the requirements of this subpart prior to operating.

(b) An existing vapor control system installation not exempted by § 154.800(c) of this subpart must be certified by a certifying entity by July 23, 1992. Plans, calculations, and specifications for the installation must be submitted to a certifying entity for review by January 23, 1991.

(c) An existing vapor control system installation that has been Coast Guard approved for operation with specific

vessels must be certified by a certifying entity prior to receiving vapors from other vessels.

(d) Plans and information submitted to the certifying entity must include a qualitative failure analysis. The analysis must demonstrate the following:

(1) The vapor control system is designed to permit the system to continuously operate safely when receiving cargo vapors from tankships and barges over the full range of transfer rates expected at the facility;

(2) The vapor control system is provided with the proper alarms and automatic control systems to prevent unsafe operation;

(3) The vapor control system is equipped with sufficient automatic or passive devices to minimize damage to personnel, property, and the environment if an accident were to occur; and

(4) If a quantitative failure analysis is also conducted, the level of safety attained is at least one order of magnitude greater than that calculated for operating without a vapor control system.

Note: The *American Institute of Chemical Engineers* publication, "Guidelines for Hazard Evaluation Procedures" may be used as guidance when preparing a qualitative failure analysis. Military Standard MIL–STD–882B may be used as guidance when preparing a quantitative failure analysis.

(e) The certifying entity must conduct all initial inspections and witness all tests required to demonstrate that the facility:

(1) Conforms to certified plans and specifications;

(2) Meets the requirements of this subpart; and

(3) Is operating properly.

(f) Upon receipt of written certification from the certifying entity that a facility's vapor control system complies with the requirements of this part the COTP shall endorse the letter of adequacy required by § 154.325 of this part to indicate that the facility is acceptable for collecting vapors of crude oil, gasoline blends, benzene, or any other vapors for which it is certified.

(g) Any design or configuration alteration involving a certified vapor control system must be reviewed by a certifying entity. After conducting any inspections and witnessing tests necessary to verify that the modified vapor control system meets the requirements of this subpart, the certifying entity must recertify the installation.

(h) Certifications issued in accordance with this section and a copy of the plans, calculations, and specifications for the vapor control system must be maintained at the facility.

(i) A certifying entity accepted under § 154.806 of this subpart may not certify a facility vapor control system if it was involved in the design or installation of the system.

(Approved by the Office of Management and Budget under control number 2115–0581)

§ 154.806 Application for acceptance as a certifying entity.

(a) An individual or organization seeking acceptance as a certifying entity must apply in writing to the Commandant (G–MTH). Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of the organization, and must include a letter of intent from a facility owner or operator to use the services of the individual or organization to certify a vapor control system installation. Any false statement or misrepresentation, or the knowing and willful concealment of a material fact may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, and denial or termination of acceptance as a certifying entity.

(b) The applicant must possess the following minimum qualifications, and be able to demonstrate these qualifications to the satisfaction of the Commandant (G–MTH):

(1) The ability to review and evaluate design drawings and failure analyses;

(2) A knowledge of the applicable regulations of this subpart, including the standards incorporated by reference in these regulations;

(3) The ability to monitor and evaluate test procedures and results;

(4) The ability to perform inspections and witness tests of bulk liquid cargo handling systems;

(5) That it is not controlled by an owner or operator of a vessel or facility engaged in controlling vapor emissions; and

(6) That it is not dependent upon Coast Guard acceptance under this section to remain in business.

(c) Each application for acceptance must contain the following:

(1) The name and address of the applicant, including subsidiaries and divisions if applicable;

(2) A statement that the applicant is not controlled by an owner or operator of a vessel or facility engaged in controlling vapor emissions, or a full disclosure of any ownership or controlling interest held by such owners or operators;

(3) A description of the experience and qualifications of the person(s) who would be reviewing or testing the systems;

(4) A statement that the person(s) who would be reviewing or testing the systems is/are familiar with the regulations in this subpart; and

(5) A statement that the Coast Guard may verify the information submitted in the application and may examine the person(s) who would be reviewing or testing the systems to determine their qualifications.

(d) The acceptance of a certifying entity may be terminated by the Commandant (G–MTH) if the entity fails to properly review, inspect, or test a system in accordance with this subpart.

Note: A list of entities accepted to certify facility vapor control system installations is available from the Commandant (G–MTH).

(Approved by the Office of Management and Budget under control number 2115–0581)

§ 154.808 Vapor control system, general.

(a) A vapor control system design and installation must eliminate potential overfill hazards, overpressure and vacuum hazards, and sources of ignition to the maximum practical extent. Each remaining hazard source which is not eliminated must be specifically addressed in the protection system design and operational requirements.

(b) Vapor collection system piping and fittings must be in accordance with ANSI B31.3 and designed for a maximum allowable working pressure of at least 150 psig. Valves and flanges must be in accordance with ANSI B16.5 or B16.24, 150 pound class.

(c) All electrical equipment used in a vapor control system must comply with NFPA 70.

(d) Any pressure, flow, or concentration indication required by this part must provide a remote indicator on the facility where the cargo transfer and vapor control systems are controlled.

(e) Any alarm condition specified in this part must activate an audible and visible alarm where the cargo transfer and vapor control systems are controlled.

(f) The vapor control system must be separated or insulated from external heat sources to limit vapor control system piping surface temperature to not more than 177 °C. (350 °F.) during normal operation.

(g) A means must be provided to eliminate any liquid condensate from the vapor collection system which carries over from the vessel or condenses as a result of an enrichment process.

(h) If a liquid knockout vessel is installed it must have:

(1) A means to indicate the level of liquid in the device;

(2) A high liquid level sensor that activates an alarm; and

(3) A high high level sensor that closes the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart and shuts down any compressors or blowers prior to liquid carrying over from the vessel to the compressor or blower.

(i) Vapor collection piping must be electrically grounded and electrically continuous.

(j) If the facility handles inerted vapors of cargoes containing sulfur, provisions must be made to control heating from pyrophoric iron sulfide deposits in the vapor collection line.

§ 154.810 Vapor line connections.

(a) A remotely operated cargo vapor shutoff valve must be installed in the vapor collection line between the facility vapor connection and the nearest point where any inerting, enriching, or diluting gas is introduced into the vapor collection line or where a detonation arrester is fitted. The valve must:

(1) Close within thirty (30) seconds after detection of a shutdown condition by a component required by this subpart;

(2) Close automatically if the control signal is lost;

(3) Activate an alarm when a signal to shut down is received;

(4) Be capable of manual operation or manual activation;

(5) Have a local valve position indicator or be designed so that the valve position can be readily determined from the valve handle or valve stem position; and

(6) If the valve seat is fitted with resilient material, not allow appreciable leakage when the resilient material is damaged or destroyed.

(b) Except when a vapor collection arm is used, the last 1.0 meter (3.3 feet) of vapor piping before the facility vapor connection must be:

(1) Painted red/yellow/red with:

(i) The red bands 0.1 meter (0.33 feet) wide, and

(ii) The middle yellow band 0.8 meter (2.64 feet) wide; and

(2) Labeled "VAPOR" in black letters at least 50 millimeters (2 inches) high.

(c) Each facility vapor connection flange must have a permanently attached 0.5 inch diameter stud at least 1.0 inch long projecting outward from the flange face. The stud must be located at the top of the flange, midway between bolt holes, and in line with the bolt hole pattern.

(d) Each hose used for transferring vapors must:

(1) Have a design burst pressure of at least 25 psig;

(2) Have a maximum allowable working pressure of at least 5 psig;

(3) Be capable of withstanding at least 2.0 psi vacuum without collapsing or constricting;

(4) Be electrically continuous with a maximum resistance of ten thousand (10,000) ohms;

(5) Have flanges with:

(i) A bolt hole arrangement complying with the requirements for 150 pound class ANSI B16.5 flanges, and

(ii) One or more 0.625 inch diameter holes in the flange located midway between bolt holes and in line with the bolt hole pattern;

(6) Be abrasion resistant and resistant to kinking; and

(7) Have the last 1.0 meter (3.3 feet) of each end of the vapor hose marked in accordance with paragraph (b) of this section.

(e) Vapor hose handling equipment must be provided with hose saddles which provide adequate support to prevent kinking or collapse of hoses.

(f) Fixed vapor collection arms must:

(1) Meet the requirements of paragraphs (d)(1) through (d)(5) of this section;

(2) Have the last 1.0 meter (3.3 feet) of the arm marked in accordance with paragraph (b) of this section.

(g) The facility vapor connection must be electrically insulated from the vessel vapor connection in accordance with section 6.10 of the OCIMF International Safety Guide for Oil Tankers and Terminals.

(h) A vapor collection system fitted with an enriching system that operates at a positive gauge pressure at the facility vapor connection must be fitted with:

(1) A manual isolation valve between each facility vapor connection and the remotely operated cargo vapor shutoff valve required by paragraph (a) of this section; and

(2) A means to prevent backflow of enriched vapor to the vessel's vapor collection system.

§ 154.812 Facility requirements for vessel liquid overfill protection.

(a) Each facility which receives cargo vapor from a tank barge which is fitted with overfill protection in accordance with 46 CFR 39.20–9(a) as its only means of overfill protection must provide a 120 volt, 20 amp explosion proof receptacle which meets:

(1) ANSI/NEMA WD6;

(2) NFPA 70, Articles 410–57 and 501–12; and

(3) 46 CFR 111.105–9.

(b) Each facility that receives cargo vapor from a tank barge fitted with an intrinsically safe cargo tank level sensor system complying with 46 CFR 39.20–9(b) as its only means of overfill protection must have an overfill control panel on the dock capable of powering and receiving an alarm and shutdown signal from the cargo tank level sensor system that:

(1) Closes the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart and activates the emergency shutdown system required by § 154.550 of this part when:

(i) A tank overfill signal is received from the barge, or

(ii) Electrical continuity of the cargo tank level sensor system is lost;

(2) Activates an alarm which is audible and visible to barge personnel and facility personnel when a tank overfill signal, or an optional high level signal corresponding to a liquid level lower than the tank overfill sensor setting, is received from the barge;

(3) Has a means to electrically and mechanically test the alarms and automatic shutdown systems prior to transferring cargo to or ballasting the tank barge;

(4) Has suitable means, such as approved intrinsic safety barriers able to accept passive devices, to ensure that the overfill and optional alarm circuits on the barge side of the overfill control panel, including cabling, normally closed switches, and pin and sleeve connectors, are intrinsically safe;

(5) Is labeled with the maximum allowable inductance and capacitance to be connected to the panel, as specified by the equipment manufacturer; and

(6) Has a female connecting plug for the tank barge level sensor system with a 5 wire, 16 amp connector body meeting IEC 309–1/309–2 which is:

(i) Configured with pins S2 and R1 for the tank overfill sensor circuit, pin G connected to the cabling shield, and pins N and T3 reserved for an optional high level alarm connection;

(ii) Labeled "Connector for Barge Overflow Control System"; and

(iii) Connected to the overfill control panel by a shielded flexible cable.

§ 154.814 Facility requirements for vessel vapor overpressure and vacuum protection.

(a) A facility's vapor collection system must have the capacity for collecting cargo vapor at a rate of not less than 1.25 times the facility's maximum liquid transfer rate for cargo for which vapor collection is required plus any inerting,

diluting, or enriching gas which may be added to the system, unless the vapor growth for turbulent loading of the most volatile liquid handled by the facility is less than 25 percent.

(b) A facility vapor collection system must maintain the pressure in a vessel's cargo tanks between 80 percent of the highest setting of any of the vessel's vacuum relief valves and 80 percent of the lowest setting of any of the vessel's pressure relief valves for a non-inerted tank vessel, and between 0.2 psig and 80 percent of the lowest setting of any of the vessel's pressure relief valves for an inerted tank vessel. The system must be capable of maintaining the pressure in the vessel's cargo tanks within this range at any cargo transfer rate less than or equal to the maximum transfer rate determined at the pre-transfer conference required by § 156.120(w) of this chapter.

(c) The pressure measured at the facility vapor connection must be corrected for pressure drops across the vessel's vapor collection system and the vapor collection hose or arm.

(d) A pressure sensing device must be provided which activates an alarm when the pressure at the facility vapor connection exceeds either the pressure corresponding to the upper pressure determined in paragraph (b) of this section or a lower pressure agreed upon at the pre-transfer conference required by § 156.120(w) of this chapter.

(e) A pressure sensing device must be provided which activates an alarm when the pressure at the facility vapor connection falls below either the pressure corresponding to the lower pressure determined in paragraph (b) of this section or a higher pressure agreed upon at the pre-transfer conference required by § 156.120(w) of this chapter.

(f) A pressure sensing device must be provided which activates the emergency shutdown system required by § 154.550 of this part and closes the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the pressure at the facility vapor connection exceeds 2.0 psi, or a lower pressure agreed upon at the pre-transfer conference required by § 156.120(w) of this chapter. The sensing device must be independent of the device used to activate the alarm required by paragraph (d) of this section.

(g) A pressure sensing device must be provided which closes the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the vacuum at the facility vapor connection is more than 1.0 psi, or a lesser vacuum set at the pre-transfer conference required by § 156.120(w) of this chapter. The sensing device must be independent of the device used to activate the alarm required by paragraph (e) of this section.

(h) The pressure sensing devices required by paragraphs (e) and (f) of this section must be located in the vapor collection line between the facility vapor connection and the manual isolation valve, if required by § 154.810(h) of this subpart, unless an interlock is provided which prevents operation of the system when the isolation valve is closed.

(i) A pressure indicating device must be provided which indicates the pressure in the vapor collection line.

(j) If a compressor, blower, or eductor capable of drawing more than 1.0 psi vacuum is used to draw vapor from the vessel, a vacuum relief valve must be installed in the vapor collection line between the compressor, blower, or eductor and the facility vapor connection, which:

(1) Relieves at a pressure such that the pressure in the vapor collection system at the facility vapor connection does not exceed 1.0 psi vacuum;

(2) Has a relieving capacity equal to or greater than the capacity of the compressor, blower, or eductor;

(3) Has a flame screen fitted at the vacuum relief opening; and

(4) Has been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000 with a flame screen fitted.

(k) When a facility collects cargo vapor through an undersea pipeline from a vessel moored offshore, the vacuum relief valve may be set at a vacuum greater than 1.0 psi vacuum provided the pressure controls take into account the pressure drop across the vessel's vapor collection system, any vapor collection hoses, and the undersea pipeline as a function of the actual transfer rate.

(l) If the pressure in the vapor collection system can exceed 2.0 psig due to a malfunction in an inerting, enriching, or diluting system a pressure relief valve must:

(1) Be installed between the point where inerting, enriching, or diluting gas is introduced into the vapor collection system and the facility vapor connection;

(2) Relieve at a pressure such that the pressure in the vapor collection system at the facility vapor connection does not exceed 2.0 psig;

(3) Have a relieving capacity equal to or greater than the maximum capacity of the facility inerting, enriching, or diluting gas source;

(4) If not designed to insure a minimum vapor discharge velocity of 30 meters (98.4 ft.) per second, have a flame screen fitted at the discharge opening; and

(5) Have been tested for relieving capacity in accordance with paragraph 1.5.1.3 of API 2000.

(m) The relieving capacity test required by paragraph (l)(5) must be carried out with a flame screen fitted at the discharge opening if the pressure relief valve is not designed to insure a minimum vapor discharge velocity of 30 meters (98.4 ft.) per second.

§ 154.820 Fire, explosion, and detonation protection.

(a) A vapor control system with a single facility vapor connection that receives vapor only from a vessel with inerted cargo tanks and processes vapor with a vapor recovery unit must:

(1) Be capable of inerting the vapor collection line in accordance with § 154.824(a) of this subpart prior to receiving vapors from the vessel;

(2) Have at least one oxygen analyzer that samples the vapor concentration continuously at a point not more than 6 meters (19.7 ft.) from the facility vapor connection; and

(3) Meet § 154.824 (f)(1), (f)(2), (g), (h)(2), and (h)(3) of this subpart.

(b) A vapor control system with a single facility vapor connection that receives vapor only from a vessel with inerted cargo tanks and processes vapor with a vapor destruction unit must:

(1) Have a detonation arrester located not more than 6 meters (19.7 ft.) from the facility vapor connection; or

(2) Have an inerting system that meets the requirements of § 154.824 of this subpart.

(c) A vapor control system with a single facility vapor connection that receives vapor from a vessel with cargo tanks that are not inerted and processes vapor with a vapor recovery unit must:

(1) Have a detonation arrester located not more than 6 meters (19.7 ft.) from the facility vapor connection; or

(2) Have an inerting, enriching, or diluting system that meets the requirements of § 154.824 of this subpart.

(d) A vapor control system with a single facility vapor connection that receives vapor from a vessel with cargo tanks that are not inerted and processes the vapor with a vapor destruction unit must:

(1) Have a detonation arrester located not more than 6 meters (19.7 ft.) from the facility vapor connection; and

(2) Have an inerting, enriching, or diluting system that meets the requirements of § 154.824 of this subpart.

(e) A vapor control system with multiple facility vapor connections that processes vapor with a vapor recovery unit must have a detonation arrester located not more than 6 meters (19.7 ft.) from each facility vapor connection.

(f) A vapor control system with multiple facility vapor connections that processes vapor with a vapor destruction unit must:

(1) Have a detonation arrester located not more than 6 meters (19.7 ft.) from each facility vapor connection; and

(2) Have an inerting, enriching, or diluting system that meets the requirements of § 154.824 of this subpart.

(g) A vapor control system that uses a vapor balancing system in which cargo vapor from a vessel is transferred through the facility vapor collection system to facility storage tanks must:

(1) Have a detonation arrester located not more than 6 meters (19.7 ft.) from each facility vapor connection;

(2) Have a detonation arrester located within the storage tank containment area as close as practical to the vapor return connection of each facility storage tank; and

(3) Have facility storage tank high level alarm systems and facility storage tank overfill control systems arranged to prevent cargo from entering the vapor return line.

(h) Except for a discharge vent from a vapor destruction unit, each outlet of a vapor control system that vents to atmosphere and is not isolated with a pressure-vacuum relief valve must have a flame arrester located at the outlet.

§ 154.822 Detonation arresters, flame arresters, and flame screens.

(a) Each detonation arrester required by this part must:

(1) Be capable of arresting a detonation from either side of the device; and

(2) Be acceptable to the Commandant (G–MTH). A detonation arrester designed, built, and tested in accordance with appendix A of this part will be acceptable to the Commandant (G–MTH).

(b) Each flame arrester required by this part must be acceptable to the Commandant (G–MTH). A flame arrester designed, built, and tested in accordance with appendix B of this part will be acceptable to the Commandant (G–MTH).

(c) Each flame screen required by this part must be either a single screen of corrosion resistant wire of at least 30 by 30 mesh, or two screens, both of corrosion resistant wire, of at least 20 by 20 mesh, spaced not less than 25 millimeters (½ in.) or more than 75 millimeters (1½ in.) apart.

§ 154.824 Inerting, enriching, and diluting systems.

(a) A vapor control system which uses inerting, enriching or diluting gas must be capable of inerting, enriching, or diluting the vapor collection line and the vapor collection hose or arm prior to receiving cargo vapor.

(b) Except as permitted by § 154.820(a) of this subpart, a vapor control system which uses an inerting, enriching, or diluting system must be equipped with a gas injection and mixing arrangement located as close as practical but not more than 10 meters (32.8 ft.) from the facility vapor connection that ensures complete mixing of the gases within 20 pipe diameters of the injection point;

(c) A vapor control system that uses an inerting or enriching system may not be operated at a vacuum after the injection point unless:

(1) There are no sleeve-type pipe couplings, vacuum relief valves, or other devices which could allow air into the vapor collection system downstream of the injection point; or

(2) An additional analyzer is used to monitor the downstream vapor concentration and a means is provided to inject additional inerting or enriching gas.

(d) A vapor control system that uses analyzers to control the amount of inerting, enriching, or diluting gas injected into the vapor collection line must be equipped with at least 2 analyzers. The analyzers must be connected so that:

(1) When oxygen analyzers are used, the higher oxygen concentration reading controls the inerting or enriching system and activates the alarm and automatic shutdown system required by paragraph (h), (j) or (k)(2) of this section;

(2) When hydrocarbon analyzers are used, the lower hydrocarbon concentration reading controls the enriching system and activates the alarm and automatic shutdown system required by paragraph (i) or (k)(1) of this section; and

(3) When hydrocarbon analyzers are used, the higher hydrocarbon concentration reading controls the diluting system and activates the alarm and automatic shutdown system required by paragraph (l) of this section.

(e) A vapor control system that uses volumetric measurements to control the amount of inerting, enriching, or diluting gas injected into the vapor collection line must be equipped with at least one analyzer to activate the alarms and automatic shutdown systems required by this section.

(f) Each oxygen or hydrocarbon analyzer required by this section must:

(1) Be installed in accordance with API Recommended Practice 550;

(2) Have a response time of not more than 30 seconds from the time the vapor is sampled; and

(3) Sample the vapor concentration continuously not more than 30 pipe diameters from the gas injection point.

(g) Oxygen analyzers which operate at elevated temperatures (i.e. zirconia oxide or thermomagnetic) must not be used.

(h) An inerting system must:

(1) Supply sufficient inert gas to the vapor stream to ensure that the oxygen concentration throughout the vapor collection system is maintained below 8.0 percent by volume;

(2) Activate an alarm when the oxygen concentration in the vapor collection line exceeds 8.0 percent by volume;

(3) Close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this part when the oxygen concentration in the vapor collection line exceeds 9.0 percent by volume; and

(4) If a combustion device is used to produce the inert gas, have a hydraulic seal and non-return valve between the combustion device and the vapor collection line.

(i) An enriching system must:

(1) Supply sufficient compatible hydrocarbon vapor to the vapor stream to ensure that the hydrocarbon concentration throughout the vapor collection system is maintained above 170 percent by volume of the upper flammable limit;

(2) Activate an alarm when the hydrocarbon concentration in the vapor collection line falls below 170 percent by volume of the upper flammable limit; and

(3) Close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the hydrocarbon concentration in the vapor collection line falls below 150 percent by volume of the upper flammable limit.

(j) Oxygen analyzers may be used in lieu of hydrocarbon analyzers in an enriching system at a facility that receives cargo vapor only from a vessel with non-inerted cargo tanks, provided that the analyzers:

(1) Activate an alarm when the oxygen concentration in the vapor collection line exceeds 15.5 percent by volume; and

(2) Close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the

oxygen concentration in the vapor collection line exceeds 16.5 percent by volume.

(k) An enriching system may be used in a vapor collection system that receives cargo vapor from a vessel with inerted cargo tanks if:

(1) Hydrocarbon analyzers are used to comply with paragraph (i)(2) and (i)(3) of this section; or

(2) If oxygen analyzers are used, the analyzers activate an alarm when the oxygen concentration in the vapor collection line exceeds 8 percent by volume, and close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the oxygen concentration exceeds 9 percent by volume.

(l) An air dilution system must:

(1) Supply sufficient additional air to the vapor stream to ensure that the hydrocarbon concentration throughout the vapor collection system is maintained below 30 percent by volume of the lower flammable limit;

(2) Activate an alarm when the hydrocarbon concentration in the vapor collection line exceeds 30 percent by volume of the lower flammable limit; and

(3) Close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart when the hydrocarbon concentration in the vapor collection line exceeds 50 percent by volume of the lower flammable limit.

§ 154.826 Vapor compressors and blowers.

(a) Each inlet and outlet to a compressor or blower which handles vapor that has not been inerted, enriched, or diluted in accordance with § 154.824 of this subpart must be fitted with:

(1) A detonation arrester;

(2) A flame arrester; or

(3) An explosion suppression system acceptable to the Commandant (G–MTH).

(b) If a reciprocating or screw-type compressor handles vapor in the vapor collection system, it must be provided with indicators and audible and visible alarms to warn against the following conditions:

(1) Excessive discharge gas temperature at each compressor chamber or cylinder;

(2) Excessive cooling water temperature;

(3) Excessive vibration;

(4) Low lube oil level;

(5) Low lube oil pressure; and

(6) Excessive shaft bearing temperatures.

(c) If a liquid ring-type compressor handles vapor in the vapor collection system, it must be provided with indicators and audible and visible alarms to warn against the following conditions:

(1) Low level of liquid sealing medium;

(2) Lack of flow of liquid sealing medium;

(3) Excessive temperature of the liquid sealing medium;

(4) Low lube oil level;

(5) Low lube oil pressure, if pressurized lubricating system; and

(6) Excessive shaft bearing temperature.

(d) If a centrifugal compressor, fan, or lobe blower handles vapor in the vapor collection system, construction of the blades and/or housing must meet one of the following:

(1) Blades or housing of nonmetallic construction;

(2) Blades and housing of nonferrous material;

(3) Blades and housing of corrosion resistant steel;

(4) Ferrous blades and housing with one-half inch or more design tip clearance; or

(5) Blades of aluminum or magnesium alloy and a ferrous housing with a nonferrous insert sleeve at the periphery of the impeller.

§ 154.828 Vapor recovery and vapor destruction units.

(a) The inlet to a vapor recovery unit which receives cargo vapor that has not been inerted, enriched, or diluted in accordance with § 154.824 of this subpart must be fitted with one of the following:

(1) A detonation arrester;

(2) A flame arrester; or

(3) An explosion suppression system acceptable to the Commandant (G–MTH).

(b) The inlet to a vapor destruction unit must:

(1) Have a liquid seal; and

(2) Have two quick-closing stop valves installed in the vapor line.

(c) A vapor destruction unit must:

(1) Not be within 30 meters (98.8 ft.) of any tank vessel berth or mooring at the facility;

(2) Have a flame arrester or detonation arrester fitted in the vapor line; and

(3) Alarm and shut down when a flame is detected on the flame arrester or detonation arrester.

(d) When a vapor destruction unit shuts down or has a flame-out condition the vapor destruction unit control system must:

(1) Close the quick-closing stop valves required by paragraph (b)(2) of this section; and

(2) Close the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart.

§ 154.840 Personnel training.

(a) A person in charge of a transfer operation utilizing a vapor control system must have completed a training program covering the particular system installed at the facility. Training must include drills or demonstrations using the installed vapor control system covering normal operations and emergency procedures.

(b) The training program required by paragraph (a) of this section must cover the following subjects:

(1) Purpose of a vapor control system;

(2) Principles of the vapor control system;

(3) Components of the vapor control system;

(4) Hazards associated with the vapor control system;

(5) Coast Guard regulations in this subpart;

(6) Operating procedures, including:

(i) Testing and inspection requirements,

(ii) Pre-transfer procedures,

(iii) Connection sequence,

(iv) Start-up procedures, and

(v) Normal operations; and

(7) Emergency procedures.

§ 154.850 Operational requirements.

(a) A facility must receive vapors only from a vessel which has its certificate of inspection or certificate of compliance endorsed in accordance with 46 CFR 39.10–13(e).

(b) The following must be performed not more than 24 hours prior to each transfer operation:

(1) All alarms and automatic shutdown systems required by this part must be tested; and

(2) The analyzers required by § 154.820(a), § 154.824 (d) and (e) of this subpart must be checked for calibration by use of a span gas.

(c) The position of all valves in the vapor line between the vessel's tanks and the facility vapor collection system must be verified prior to the start of the transfer operation.

(d) A tank barge overfill control system that meets the requirements of 46 CFR 39.20–9(b) must not be connected to an overfill sensor circuit that exceeds the system's rated cable length, inductance, and capacitance.

(e) When vapor is being received from a vessel with inerted cargo tanks, the remotely operated cargo vapor shutoff valve required by § 154.810(a) of this subpart must not be opened until the pressure at the facility vapor connection

exceeds the pressure on the downstream side of the remotely operated cargo vapor shutoff valve.

(f) The initial cargo transfer rate must not exceed the rate agreed upon at the pre-transfer conference required by § 156.120(w) of this chapter and 46 CFR 39.30–1(h).

(g) The cargo transfer rate must not exceed the maximum allowable transfer rate as determined by the lesser of the following:

(1) A transfer rate corresponding to the maximum vapor processing rate for the vapor control system, as specified in the facility operations manual required by § 154.300 of this chapter; or

(2) The vessel's maximum transfer rate determined in accordance with 46 CFR 39.30–1(d).

(h) While transferring cargo to a vessel connected to a vapor control system, compressed air or gas may be used to clear cargo hoses and loading arms, but must not be used to clear cargo lines.

(i) If one of the two analyzers required by § 154.824(d) of this subpart becomes inoperable during a transfer operation, the operation may continue provided the remaining analyzer remains operational; however, no further transfer operations may be started until the inoperable analyzer is replaced or repaired.

(j) Whenever a condition results in a shutdown of the vapor control system, the person in charge shall immediately terminate cargo loading.

(k) If it is suspected that a flare in the vapor control system has had a flare-back, or if a flame is detected on the flame arrester required by § 154.828(c)(2) of this subpart, the transfer operation must be stopped and not be restarted until the flame arrester has been inspected and found to be in satisfactory condition.

5a. Appendices A and B are added to part 154 to read as follows:

Appendix A to Part 154—Guidelines for Detonation Flame Arresters

This appendix contains the draft ASTM standard for detonation flame arresters. Devices meeting this standard will be accepted by the Commandant (G–MTH).

1. *Scope*

1.1 This standard provides the minimum requirements for design, construction, performance and testing of detonation flame arresters.

2. *Intent*

2.1 This standard is intended for detonation flame arresters protecting systems containing vapors of flammable or combustible liquids where vapor temperatures do not exceed 60 °C. For all tests, the test media defined in 14.1.1 can be used except where detonation flame arresters protect systems handling vapors with a maximum experimental safe gap (MESG) below 0.9 millimeters. Detonation flame arresters protecting such systems must be tested with appropriate media (the same vapor or a media having a MESG no greater than the vapor). Various gases and their respective MESG are listed in attachment 1.

2.2 The tests in this standard are intended to qualify detonation flame arresters for all in-line applications independent of piping configuration provided the operating pressure is equal to or less than the maximum operating pressure limit specified in the manufacturer's certification and the diameter of the piping system in which the detonation arrester is to be installed is equal to or less than the piping diameter used in the testing.

Note: Detonation flame arresters meeting this standard as Type I devices, which are certified to be effective below 0 °C and which can sustain three stable detonations without being damaged or permanently deformed, also comply with the minimum requirements of the International Maritime Organization, Maritime Safety Committee Circular No. 373 (MSC/Circ. 373/Rev.1).

3. *Applicable Documents*

3.1 ASTM Standards (1)

A395 Ferritic Ductile Iron Pressure-Retaining Castings For Use At Elevated Temperatures.

F722 Welded Joints for Shipboard Piping Systems

F1155 Standard Practice for Selection and Application of Piping System Materials

3.2 ANSI Standards (2)

B16.5 Pipe Flanges and Flanged Fittings.

3.3 Other Documents

3.3.1 ASME Boiler and Pressure Vessel Code (2)

Section VIII, Division 1, Pressure Vessels

Section IX, Welding and Brazing Qualifications.

3.3.2 International Maritime Organization, Maritime Safety Committee (3)

MSC/Circ. 373/Rev. 1—Revised Standards for the Design, Testing and Locating of Devices to Prevent the Passage of Flame into Cargo Tanks in Tankers.

3.3.3 International Electrotechnical Commission (4)

Publication 79–1—Electrical Apparatus for Explosive Gas Atmospheres.

4. *Terminology*

4.1 $\Delta P/P_o$—The dimensionless ratio, for any deflagration and detonation test of 14.3, of the maximum pressure increase (the maximum pressure minus the initial pressure), as measured in the piping system on the side of the arrester where ignition begins by the device described in paragraph 14.3.3, to the initial absolute pressure in the piping system. The initial pressure should be greater than or equal to the maximum operating pressure specified in paragraph 11.1.7.

4.2 Deflagration—A combustion wave that propagates subsonically (as measured at the pressure and temperature of the flame front) by the transfer of heat and active chemical species to the unburned gas ahead of the flame front.

4.3 Detonation—A reaction in a combustion wave propagating at sonic or supersonic (as measured at the pressure and temperature of the flame front) velocity. A detonation is stable when it has a velocity equal to the speed of sound in the burnt gas or may be unstable (overdriven) with a higher velocity and pressure.

4.4 Detonation flame arrester—A device which prevents the transmission of a detonation and a deflagration.

4.5 Flame speed—The speed at which a flame propagates along a pipe or other system.

4.6 Flame Passage—The transmission of a flame through a device.

4.7 Gasoline Vapors—A non-leaded petroleum distillate consisting essentially of aliphatic hydrocarbon compounds with a boiling range approximating 65 °C/75 °C.

5. *Classification*

5.1 The two types of detonation flame arresters covered in this specification are classified as follows:

5.1.1 Type I—Detonation flame arresters acceptable for applications where stationary flames may rest on the device.

5.1.2 Type II—Detonation flame arresters acceptable for applications where stationary flames are unlikely to rest on the device, and further methods are provided to prevent flame passage when a stationary flame occurs. One example of "further methods" is a temperature monitor and an automatic shutoff valve.

6. *Ordering Information*

6.1 Orders for detonation flame arresters under this specification shall include the following information as applicable:

6.1.1 Type (I or II).

6.1.2 Nominal pipe size.

6 1.3 Each gas or vapor in the system and the corresponding MESG.

6.1.4 Inspection and tests other than specified by this standard.

6.1.5 Anticipated ambient air temperature range.

6.1.6 Purchaser's inspection requirements (see section 10.1).

6.1.7 Description of installation.

[1] Footnotes appear at the end of this article.

6.1.8 Materials of construction (see section 7).

6.1.9 Maximum flow rate and the maximum design pressure drop for that maximum flow rate.

6.1.10 Maximum operating pressure.

7. *Materials*

7.1 The detonation flame arrester housing, and other parts or bolting used for pressure retention, shall be constructed of materials listed in ASTM F1155, or section VIII, Division 1 of the ASME Boiler and Pressure Vessel Code. Cast and malleable iron shall not be used; however, ductile cast iron in accordance with ASTM A395 may be used.

7.1.1 Arresters, elements, gaskets, and seals must be made of materials resistant to attack by seawater and the liquids and vapors contained in the system being protected (see section 6.1.3).

7.2 Nonmetallic materials, other than gaskets and seals, shall not be used in the construction of pressure retaining components of the detonation flame arrester.

7.2.1 Nonmetallic gaskets and seals shall be non-combustible and suitable for the service intended.

7.3 Bolting materials, other than that of section 7.1, shall be at least equal to those listed in Table 1 of ANSI B16.5.

7.4 The possibility of galvanic corrosion shall be considered in the selection of materials.

7.5 All other parts shall be constructed of materials suitable for the service intended.

8. *Other Requirements*

8.1 Detonation flame arrester housings shall be gas tight to prevent the escape of vapors.

8.2 Detonation flame arrester elements shall fit in the housing in a manner that will insure tightness of metal-to-metal contacts in such a way that flame cannot pass between the element and the housing.

8.2.1 The net free area through detonation flame arrester elements shall be at least 1.5 times the cross-sectional area of the arrester inlet.

8.3 Housings, elements, and seal gasket materials shall be capable of withstanding the maximum and minimum pressures and temperatures to which the device may be exposed under both normal and the specified fire test conditions in section 14, and shall be capable of withstanding the hydrostatic pressure test of section 9.2.3.

8.4 Threaded or flanged pipe connections shall comply with the applicable B16 standards in ASTM F1155. Welded joints shall comply with ASTM F722.

8.5 All flat joints of the housing shall be machined true and shall provide for a joint having adequate metal-to-metal contact.

8.6 Where welded construction is used for pressure retaining components, welded joint design details, welding and non-destructive testing shall be in accordance with Section VIII, Division 1, of the ASME Code and ASTM F722. Welders and weld procedures shall be qualified in accordance with section IX of the ASME Code.

8.7 The design of detonation flame arresters shall allow for ease of inspection and removal of internal elements for replacement, cleaning or repair without removal of the entire device from the system.

8.8 Detonation flame arresters shall allow for efficient drainage of condensate without impairing their efficiency to prevent the passage of flame. The housing may be fitted with one or more drain plugs for this purpose. The design of a drain plug should be such so that by cursory visual inspection it is obvious whether the drain has been left open.

8.9 All fastenings shall be protected against loosening.

8.10 Detonation flame arresters shall be designed and constructed to minimize the effect of fouling under normal operating conditions.

8.11 Detonation flame arresters shall be capable of operating over the full range of ambient air temperatures anticipated.

8.12 Detonation flame arresters shall be of first class workmanship and free from imperfections which may affect their intended purpose.

8.13 Detonation flame arresters shall be tested in accordance with section 9.

9. *Tests*

9.1 Tests shall be conducted by an independent laboratory capable of performing the tests. The manufacturer, in choosing a laboratory, accepts that it is a qualified independent laboratory by determining that it has (or has access to) the apparatus, facilities, personnel, and calibrated instruments that are necessary to test detonation flame arresters in accordance with this standard.

9.1.1 A test report shall be prepared by the laboratory which shall include:

9.1.1.1 Detailed drawings of the detonation flame arrester and its components (including a parts list identifying the materials of construction).

9.1.1.2 Types of tests conducted and results obtained. This shall include the maximum temperature reached and the length of testing time in section 14.2 in the case of Type II detonation flame arresters.

9.1.1.3 Description of approved attachments (reference 9.2.6).

9.1.1.4 Types of gases or vapors for which the detonation flame arrester is approved.

9.1.1.5 Drawings of the test rig.

9.1.1.6 Record of all markings found on the tested detonation flame arrester.

9.1.1.7 A report number.

9.2 One of each model Type I and Type II detonation flame arrester shall be tested. Where approval of more than one size of a detonation flame arrester model is desired, only the largest and smallest sizes need be tested provided it is demonstrated by calculation and/or other testing that intermediate size devices have equal or greater strength to withstand the force of a detonation and have equivalent detonation arresting characteristics. A change of design, material, or construction which may affect the corrosion resistance, or ability to resist endurance burning, deflagrations or detonations shall be considered a change of model for the purpose of this paragraph.

9.2.1 The detonation flame arrester shall have the same dimensions, configuration, and most unfavorable clearances expected in production units.

9.2.2 A corrosion test shall be conducted. In this test, a complete detonation flame arrester, including a section of pipe similar to that to which it will be fitted, shall be exposed to a 20% sodium chloride solution spray at a temperature of 25 °C for a period of 240 hours, and allowed to dry for 48 hours. Following this exposure, all movable parts shall operate properly and there shall be no corrosion deposits which cannot be washed off.

9.2.3 The detonation flame arrester shall be subjected to a hydrostatic pressure test of at least 350 psig for ten minutes without rupturing, leaking, or showing permanent distortion.

9.2.4 Flow characteristics as declared by the manufacturer, shall be demonstrated by appropriate tests.

9.2.5 Detonation flame arresters shall be tested for endurance burn and deflagration/detonation in accordance with the test procedures in section 14. Type I detonation flame arresters shall show no flame passage when subjected to both tests. Type II detonation flame arresters shall show no evidence of flame passage during the detonation/deflagration tests in section 14.3. Type II detonation flame arresters shall be tested for endurance burn in accordance with section 14.2. From the endurance burn test of a Type II detonation flame arresters, the maximum temperature reached and the test duration shall be recorded and provided as part of the laboratory test report.

9.2.6 Where a detonation flame arrester is provided with cowls, weather hoods and deflectors, etc., it shall be tested in each configuration in which it is provided.

9.2.7 Detonation flame arresters which are provided with a heating arrangement designed to maintain the surface temperature of the device above 85°C

shall pass the required tests at the maximum heated operating temperature.

9.2.8 Each finished detonation arrester shall be pneumatically tested at 10 psig to ensure there are no defects or leakage.

10. *Inspection*

10.1 The manufacturer shall afford the purchaser's inspector all reasonable access necessary to assure that the device is being furnished in accordance with this standard. All examinations and inspections shall be made at the place of manufacture, unless otherwise agreed upon.

10.2 Each finished detonation arrester shall be visually and dimensionally checked to ensure that the device corresponds to this standard, is certified in accordance with section 11 and is marked in accordance with section 12. Special attention shall be given to the checking of welds and the proper fit-ups of joints (see sections 8.5 and 8.6).

11. *Certification*

11.1 Manufacturer's certification that a detonation flame arrester meets this standard shall be provided in an instruction manual. The manual shall include as applicable:

11.1.1 Installation instructions and a description of all configurations tested (reference paragraph 9.2.6). Installation instructions to include the device's limitations.

11 1.2 Operating instructions.

11.1.3 Maintenance requirements.

11.1.3.1 Instructions on how to determine when arrester cleaning is required and the method of cleaning.

11.1.4 Copy of test report (see section 9.1.1).

11.1.5 Flow test data, maximum temperature and time tested (Type II).

11.1.6 The ambient air temperature range over which the device will effectively prevent the passage of flame.

(Note: Other factors such as condensation and freezing of vapors should be evaluated at the time of equipment specification.)

11.1.7 The maximum operating pressure for which the device is suitable.

12. *Marking*

12.1 Each detonation flame arrester shall be permanently marked indicating:

12.1.1 Manufacturer's name or trademark.

12.1.2 Style, type, model or other manufacturer's designation for the detonation flame arrester.

12.1.3 Size of the inlet and outlet.

12.1.4 Type of device (Type I or II).

12.1.5 Direction of flow through the detonation flame arrester.

12 1.6 Test laboratory and report number.

12.1.7 Lowest MESG of gases that the detonation flame arrester is suitable for.

12.1.8 ASTM designation of this standard.

12.1.9 Ambient air operating temperature range.

12.1.10 Maximum operating pressure.

13. *Quality Assurance*

13.1 Detonation flame arresters shall be designed, manufactured and tested in a manner that ensures they meet the characteristics of the unit tested in accordance with this standard.

13.2 The detonation flame arrester manufacturer shall maintain the quality of the arresters that are designed, tested and marked in accordance with this standard. At no time shall a detonation flame arrester be sold with this standard designation that does not meet the requirements herein.

14. *Test Procedures for Detonation Arresters*

14.1 *Media/Air Mixtures*

14.1.1 For vapors from flammable or combustible liquids with a MESG greater than or equal to 0.9 mm, technical grade hexane or gasoline vapors shall be used for all tests in this section except technical grade propane may be used for the deflagration/detonation tests in section 14.3. For vapors with a MESG less than 0.9 mm, the specific vapor (or alternatively, a media with a MESG less than or equal to the MESG of the vapor) must be used as the test medium in all Section 14 tests.

14.1.2 Hexane, propane, gasoline and other test vapors shall be mixed with air to form the most easily ignitable mixture. (5)

14.2 *Endurance Burn Test Procedure*

14.2.1 An endurance burning test shall be carried out as follows:

14.2.1.1 The test rig shall consist of an apparatus producing an explosive mixture, a small tank with a diaphragm, a prototype of the detonation flame arrester and a firing source in close proximity to the test device (see Figure 1). The detonation flame arrester shall be installed so that the mixture emission is vertically upwards, or installed in the position for which it is designed and which will cause the most severe heating of the device under the prescribed endurance burn conditions. In this position the mixture shall be ignited.

14.2.1.2 Endurance burn test shall start by using the most easily ignitable test vapor/air mixture with the aid of a pilot flame or a spark igniter at the outlet. The flammable mixture may be reignited as necessary in the course of the endurance burn.

14.2.1.3 Temperature measurement will be performed on the surface of the arrester element half way between the center and its edge.

14.2.1.4 By varying the proportions of the flammable mixture and the flow rate, the detonation flame arrester shall be heated by a stable flame on the surface of the arrester until the highest obtainable temperature is reached on the ignited side or until the temperature on the side which was not ignited (protected side) rises 100 °C.

14.2.1.5 The flammable mixture proportions will then be varied again until the conditions which result in the highest temperature on the protected side are achieved. This temperature shall be maintained for a period of ten minutes, after which the flow shall be stopped and the conditions observed. The highest attainable temperature is considered to have been reached when any subsequent rise of temperature does not exceed 0.5 °C per minute over a ten minute period.

14.2.1.6 If difficulty arises in establishing the highest attainable temperature on the protected side, the following criteria shall apply. When the increase in temperature on the protected side occurs so slowly that its temperature does not rise 100 °C, the conditions which produced the highest temperature on the ignited side of the arrester will be maintained for two hours. For the condition in which the temperature on the protected side continues to rise at a rate in excess of 0.5 °C per minute for a 10 minute period, endurance burning shall be continued, using the most severe conditions of flammable mixtures and flow rate, for a period of two hours. In either of these cases, at the end of the two hour period, the flow shall be stopped and the conditions observed. The two hour interval shall be measured commencing with the setting of the conditions which produced the most severe conditions of mixture and flow rate. For Type I detonation flame arresters, flame passage shall not occur during this test. For Type II detonation flame arresters, the maximum temperature obtained, and the time elapsed from the time when the most severe conditions are set to when flame passage occurs, shall be recorded. However, for Type II detonation flame arresters the test may be terminated 15 minutes after setting the most severe conditions on the protected side.

14.3 *Deflagration/Detonation Test Procedure*

14.3.1 A detonation flame arrester shall be installed at one end of a pipe of the same diameter as the inlet of the detonation flame arrester (see Figure 2). The length and configuration of the test pipe shall develop a stable detonation (6) at the device and shall be capable, by change in its length or configuration, of developing deflagrations and unstable (overdriven) detonations as measured on the side of the pipe where ignition occurs (run-up side). For deflagration testing, two test piping arrangements shall be used on the outlet side of the detonation flame arrester (the side which is not ignited). In both of the following end arrangements, the outlet side pipe diameter shall be equal to that on the run-up side. In one arrangement, the outlet side pipe shall be at least 10 pipe diameters long with a plastic bag over the free end. (Alternate end of pipe closures are also acceptable provided they easily give way during the course of the test, and the closure allows the required gas concentration to be maintained throughout the test piping arrangement.) In the other arrangement the outlet side pipe shall be fitted with a restriction located 0.6 meters from the outlet side arrester flange. The size of the restriction for each nominal size detonation flame arrester shall be as follows:

Nominal pipe diameter (inches)	Restriction diameter (inches)
3	½
4	½
6	1
8	1½
10	1½
12	2
18	2
24	2

The entire pipe shall be filled with the most easily ignitable vapor/air mixture to a test pressure corresponding to or greater than the upper limit of the device's maximum operating pressure (see 11.1.7). In order to obtain this test pressure, a device such as a bursting disc may be fitted on the open end of the device in place of the plastic bag. The concentration of the mixture should be verified by appropriate testing of the gas composition. The vapor/air mixture shall then be ignited.

14.3.2 Flame speeds shall be measured by optical devices capable of providing accuracy of −5%. These devices shall be situated no more than a distance equal to 3% of the length of the run-up pipe apart with one device no more than 8 inches from the end of the test pipe to which the detonation flame arrester is attached. In addition, each outlet arrangement described in paragraph 14.3.1 shall be fitted with an optical device located no more than 8 inches from the detonation flame arrester outlet. (7)

14.3.3 Explosion pressures within the pipe shall be measured by a high frequency transducer situated in the test pipe no more than 8 inches from the run-up side of the housing of the detonation flame arrester.

14.3.4 Using the first end arrangement (10 pipe diameter outlet) described in paragraph 14.3.1, a series of tests shall be conducted to determine the test pipe length and configuration that results in the maximum unstable (overdriven) detonation having the maximum measured flame speed at the detonation flame arrester. (These tests may also be carried out using a single length of pipe with igniters spaced at varying distances from the arrester.) The flame speeds, explosion pressures and test pipe configurations shall be recorded for each of these tests. The piping configuration that resulted in the highest recorded unstable (overdriven) detonation flame speed shall be used, and the device shall be subjected to at least four additional unstable (overdriven) detonations. In the course of testing, the device shall also demonstrate its ability to withstand five stable detonations, five deflagrations (as determined by flame speed) where $\Delta P/P_o$ was less than 1 and five deflagrations (as determined by flame speed) where $\Delta P/P_o$ was greater than 1 but less than 10. Initiation of deflagrations shall be at several locations to generate a range for $\Delta P/P_o$. Deflagration tests using the restricted outlet arrangement described in paragraph 14.3.1 shall then be conducted. In these tests the device shall demonstrate its ability to stop five deflagrations (as determined by flame speed) generated by the same configurations which resulted in $\Delta P/P_o$ being less than 1 during the deflagration tests which were conducted without the restricted end arrangements, and five deflagrations (as determined by flame speed) generated by the same configurations which resulted in $\Delta P/P_o$ being greater than 1 but less than 10 during the deflagration tests which were conducted without the restricted end arrangements. No evidence of flame passage shall occur during these tests. The flame speeds and explosion pressures for each of these tests shall be recorded.

14.3.5 A device that successfully passes the tests of 14.3.4 shall be considered to be directional (suitable for arresting a detonation advancing only from the direction as tested) except:

14.3.5.1 A device may be tested according to 14.3.4 for detonations approaching from either direction, or

14.3.5.2 The design of the device is symmetrical where each end may be considered to be identical when approached by a detonation from either direction.

(1) Available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

(2) Available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017.

(3) Available from the International Maritime Organization, 4 Albert Embankment, London SE1 7SR, England.

(4) Available from the International Electrotechnical Commission, 1 rue de Varembe, Geneva, Switzerland.

(5) See IEC Publication 79–1.

(6) Some data are available for the estimation of flame speeds in horizontal pipes without detonation flame arresters. Some data indicate that the presence of small obstacles, fittings or bends in the test pipe can accelerate the flame speeds appreciably.

(7) Other pressure and/or flame speed measuring techniques may be used if effective.

BILLING CODE 4910-14-M

FIGURE 1

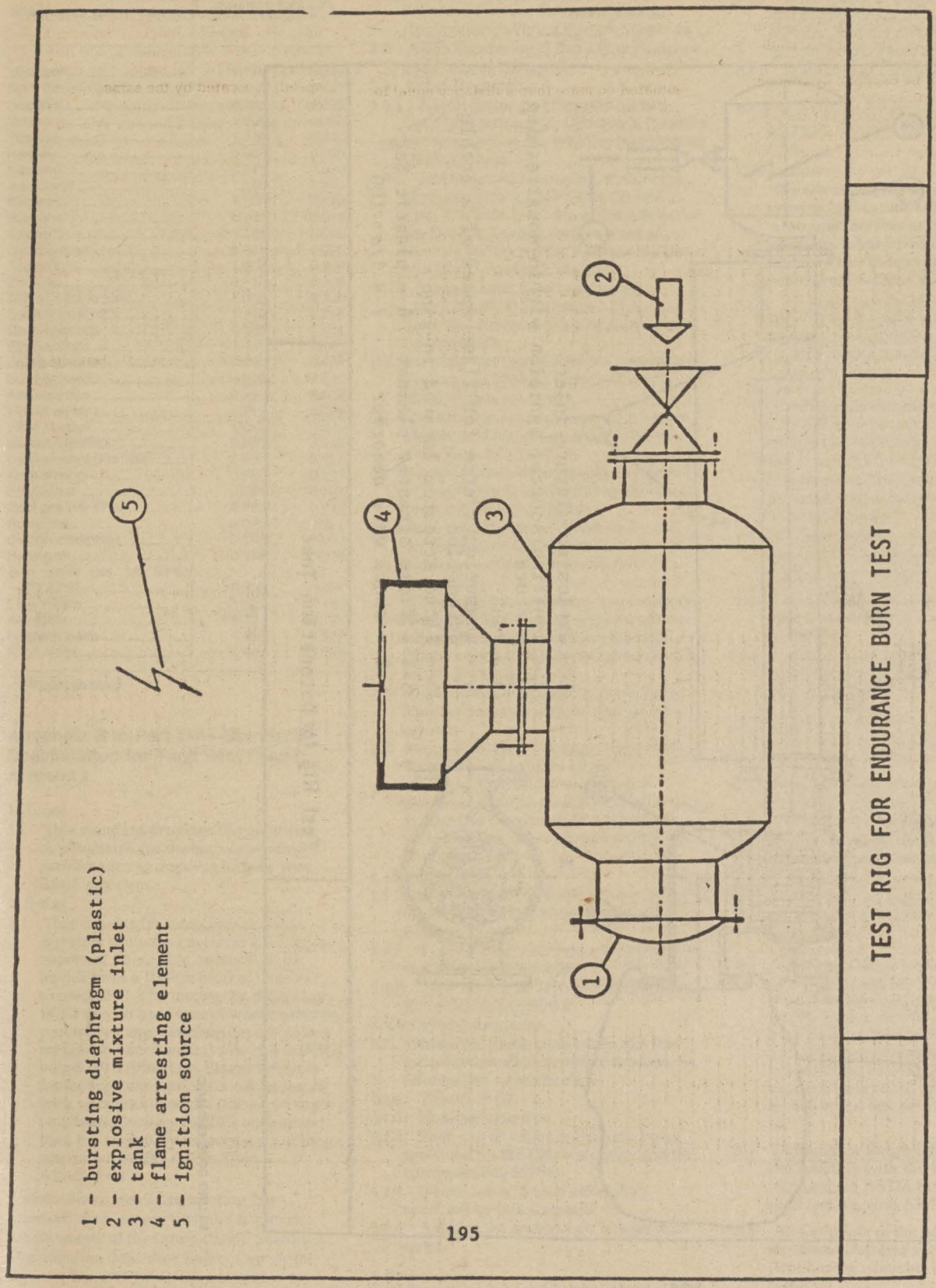
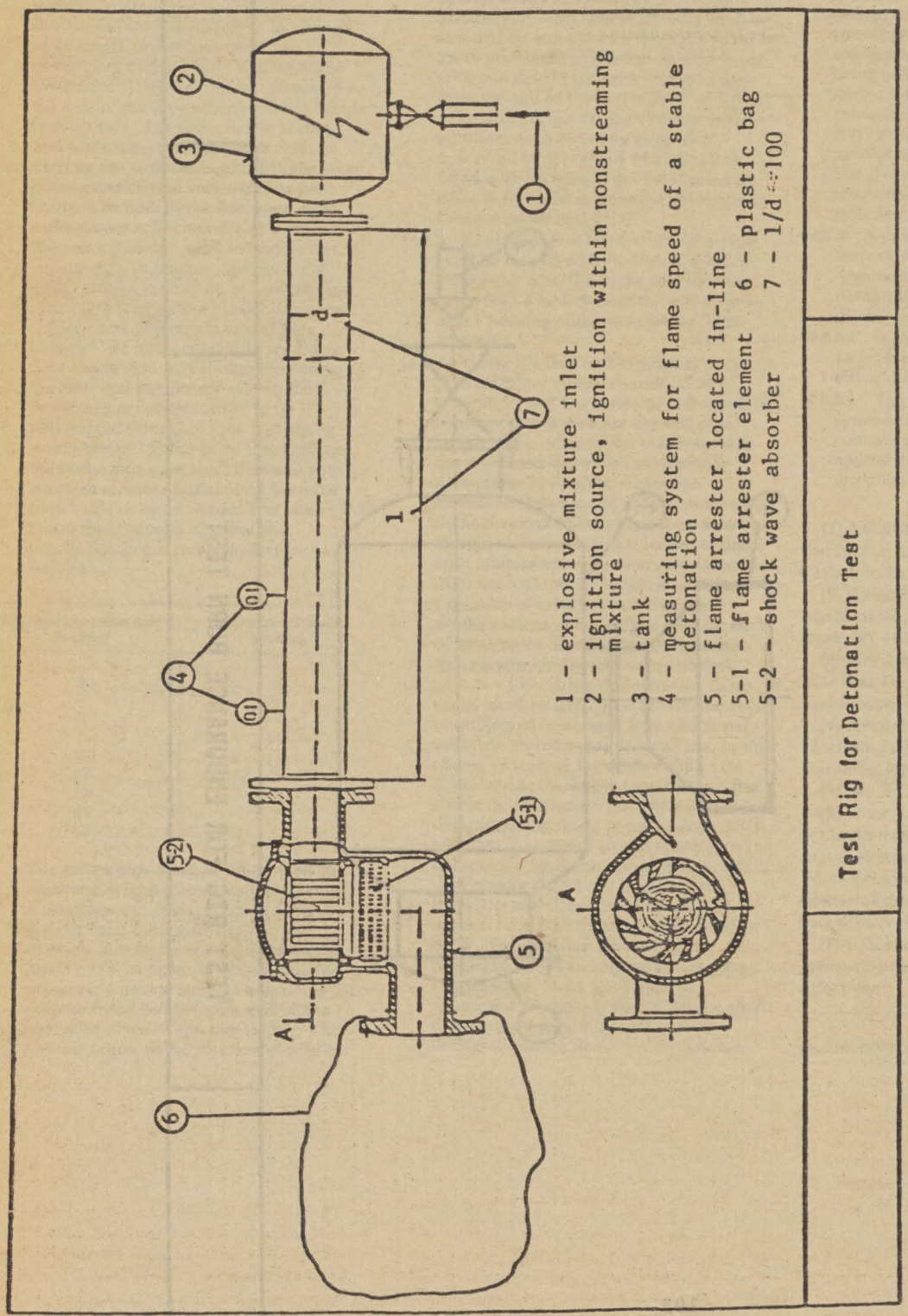

1 - bursting diaphragm (plastic)
2 - explosive mixture inlet
3 - tank
4 - flame arresting element
5 - ignition source
TEST RIG FOR ENDURANCE BURN TEST
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Figure 2



BILLING CODE 4910-14-C

ATTACHMENT 1

Inflammable gas or vapour	Experimental maximum safe gap	
	mm	in.
Methane	1.170	0.046
Blast furnace gas	1.193	0.047
Propane	0.965	0.038
Butane	1.066	0.042
Pentane	1.016	0.040
Hexane	0.965	0.038
Heptane	0.965	0.038
Iso-octane	1.040	0.041
Decane	1.016	0.040
Benzene	0.99	0.039
Xylene	1.066	0.042
Cyclohexane	0.94	0.037
Acetone	1.016	0.040
Ethylene	0.71	0.028
Methyl-ethyl-ketone	1.016	0.040
Carbon monoxide	0.915	0.036
Methyl-acetate	0.990	0.039
Ethyl-acetate	1.04	0.041
Propyl-acetate	1.04	0.041
Butyl-acetate	1.016	0.040
Amyl-acetate	0.99	0.039
Methyl alcohol	0.915	0.036
Ethyl alcohol	1.016	0.040
Iso-butyl-alcohol	0.965	0.038
Butyl-alcohol (Normal)	0.94	0.037
Amyl-alcohol	0.99	0.039
Ethyl-ether	0.864	0.034
Coal gas (H_2 57%)	0.482	0.019
Acetylene	<0.025	<0.001
Carbon disulphide	0.203	0.008
Hydrogen	0.102	0.004
Blue water gas (H_2 53% CO 47%)	0.203	0.008
Ethyl nitrate	<0.025	<0.001
Ammonia	[1] 3.33	[1] 0.133
Ethylene oxide	0.65	0.026
Ethyl nitrite	0.922	0.038

[1] Approximately.

Appendix B to Part 154—Standard Specification for Tank Vent Flame Arresters

1. *Scope*

1.1 This standard provides the minimum requirements for design, construction, performance and testing of tank vent flame arresters.

2. *Intent*

2.1 This standard is intended for flame arresters protecting systems containing vapors of flammable or combustible liquids with a flashpoint that does not exceed 60°C. The test media defined in 14.1.1 can be used except where arresters protect systems handling vapors with a maximum experimental safe gap (MESG) below 0.9 millimeters. Flame arresters protecting such systems must be tested with appropriate media (the same vapor or a media having a MESG no greater than the vapor). Various gases and their respective MESG are listed in Attachment 1.

Note: Flame arresters meeting this standard also comply with the minimum requirements of the International Maritime Organization, Maritime Safety Committee Circular No. 373 (MSC/Circ. 373/Rev. 1).

3. *Applicable Documents*

3.1 ASTM Standards (1)F722 Welded Joints for Shipboard Piping Systems; F1155 Standard Practice for Selection and Application of Piping System Materials

3.2 ANSI Standards (2) B16.5 Pipe Flanges and Flanged Fittings.

3.3 Other Documents

3.3.1 ASME Boiler and Pressure Vessel Code (2) section VIII, Division 1, Pressure Vessels; section IX, Welding and Brazing Qualifications.

3.3.2 International Maritime Organization, Maritime Safety Committee (3) MSC/Circ. 373/Rev. 1—Revised Standards for the Design, Testing and Locating of Devices to Prevent the Passage of Flame into Cargo Tanks in Tankers.

3.3.3 International Electrotechnical Commission (4) Publication 79.1—Electrical Apparatus for Explosive Gas Atmospheres.

(1) Available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103

(2) Available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, NY 10017.

(3) Available from the International Maritime Organization, 4 Albert Embankment, London SEl 7SR, England.

(4) Available from the International Electrotechnical Commission, 1 rue de Varembe, Geneva, Switzerland

4. *Terminology*

4.1 Flame arrester—A device to prevent the passage of flame in accordance with a specified performance standard. Its flame arresting element is based on the principle of quenching.

4.2 Flame speed—The speed at which a flame propagates along a pipe or other system.

4.3 Flame Passage—The transmission of a flame through a flame arrester.

4.4 Gasoline Vapors—A non-leaded petroleum distillate consisting essentially of aliphatic hydrocarbon compounds with a boiling range approximating 65 °C/75 °C.

5. *Classification*

5.1 The two types of flame arresters covered in this specification are classified as follows:

5.1.1 Type I—Flame arresters acceptable for end-of-line applications.

5.1.2 Type II—Flame arresters acceptable for in-line applications.

6. *Ordering Information*

6.1 Orders for flame arresters under this specification shall include the following information as applicable:

6.1.1 Type (I or II).

6.1.2 Nominal pipe size.

6.1.3 Each gas or vapor in the tank being protected by the flame arrester, and the corresponding MESG.

6.1.4 Inspection and tests other than specified by this standard.

6.1.5 Anticipated ambient air temperature range.

6.1.6 Purchaser's inspection requirements (see section 10.1).

6.1.7 Description of installation (distance and configuration of pipe between the arrester, and the atmosphere or potential ignition source) (see section 9.2.4.2).

6.1.8 Materials of construction (see section 7).

6.1.9 Maximum flow rate and the design pressure drop for that maximum flow rate.

7. *Materials*

7.1 The flame arrester housing, and other parts or bolting used for pressure retention, shall be constructed of materials listed in ASTM F1155, or section VIII, Division 1 of the ASME Boiler and Pressure Vessel Code.

7.1.1 Arresters, elements, gaskets, and seals must be of materials resistant to attack by seawater and the liquids and vapors contained in the tank being protected (see section 6.1.3).

7.2 Nonmetallic materials, other than gaskets and seals, shall not be used in the construction of pressure retaining components of the flame arrester.

7.2.1 Nonmetallic gaskets and seals shall be non-combustible and suitable for the service intended.

7.3 Bolting materials, other than that of Section 7.1, shall be at least equal to those listed in Table 1 of ANSI B16.5.

7.4 The possibility of galvanic corrosion shall be considered in the selection of materials.

7.5 All other parts shall be constructed of materials suitable for the service intended.

8. *Other Requirements*

8.1 Flame arrester housings shall be gas tight to prevent the escape of vapors.

8.2 Flame arrester elements shall fit in the housing in a manner that will insure tightness of metal-to-metal contacts in such a way that flame cannot pass between the element and the housing.

8.2.1 The net free area through flame arrester elements shall be at least 1.5 times the cross-sectional area of the arrester inlet.

8.3 Housings and elements shall be of substantial construction and designed for the mechanical and other loads intended during service. In addition, they shall be capable of withstanding the maximum and minimum pressures and temperatures to which the device may be exposed under both normal and the specified fire test conditions in section 14.

8.4 Threaded or flanged pipe connections shall comply with the applicable B16 standards in ASTM F1155. Welded joints shall comply with ASTM F722.

8.5 All flat joints of the housing shall be machined true and shall provide for a joint having adequate metal-to-metal contact.

(1) Footnotes appear at the end of this article.

8.6 Where welded construction is used for pressure retaining components, welded joint design details, welding and non-destructive testing shall be in accordance with section VIII, Division 1, of the ASME Code and ASTM F722. Welders and weld procedures shall be qualified in accordance with section IX of the ASME Code.

8.7 The design of flame arresters shall allow for ease of inspection and removal of internal elements for replacement, cleaning or repair without removal of the entire device from the system.

8.8 Flame arresters shall allow for efficient drainage of condensate without impairing their efficiency to prevent the passage of flame.

8.9 All fastenings shall be protected against loosening.

8.10 Flame arresters shall be designed and constructed to minimize the effect of fouling under normal operating conditions.

8.11 Flame arresters shall be capable of operating over the full range of ambient air temperatures anticipated.

8.12 End-of-line flame arresters shall be so constructed as to direct the efflux vertically upward.

8.13 Flame arresters shall be of first class workmanship and free from imperfections which may affect their intended purpose.

8.14 Tank vent flame arresters shall show no flame passage when subjected to the tests in 9.2.4.

9. *Prototype Tests*

9.1 Tests shall be conducted by an independent laboratory capable of performing the tests. The manufacturer, in choosing a laboratory, accepts that it is a qualified independent laboratory by determining that it has (or has access to) the apparatus, facilities, personnel, and calibrated instruments that are necessary to test flame arresters in accordance with this standard.

9.1.1 A test report shall be prepared by the laboratory which shall include:

9.1.1.1 Detailed drawings of the flame arrester and its components (including a parts list identifying the materials of construction).

9.1.1.2 Types of tests conducted and results obtained.

9.1.1.3 Specific advice on approved attachments (see section 9.2.4.1).

9.1.1.4 Types of gases or vapors for which the flame arrester is approved (see section 6.1.3).

9.1.1.5 Drawings of the test rig.

9.1.1.6 Record of all markings found on the tested flame arrester.

9.1.1.7 A report number.

9.2 One of each model Type I and Type II flame arrester shall be tested. Where approval of more than one size of a flame arrester model is desired, the largest and smallest sizes shall be tested. A change of design, material, or construction which may affect the corrosion resistance, endurance burn, or flashback capabilities of the flame arrester shall be considered a change of model for the purpose of this paragraph.

9.2.1 The flame arrester shall have the same dimensions, configuration, and the most unfavorable clearances expected in production units.

9.2.2 A corrosion test shall be conducted. In this test, a complete arrester, including a section of pipe similar to that to which it will be fitted, shall be exposed to a 20% sodium chloride solution spray at a temperature of 25 degrees C for a period of 240 hours, and allowed to dry for 48 hours. Following this exposure, all movable parts shall operate properly and there shall be no corrosion deposits which cannot be washed off.

9.2.3 Performance characteristics as declared by the manufacturer, such as flow rates under both positive and negative pressure, operating sensitivity, flow resistance, and velocity, shall be demonstrated by appropriate tests.

9.2.4 Tank vent flame arresters shall be tested for endurance burn and flashback in accordance with the test procedures in section 14. The following constraints apply:

9.2.4.1 Where a Type I flame arrester is provided with cowls, weather hoods and deflectors, etc., it shall be tested in each configuration in which it is provided.

9.2.4.2 Type II arresters shall be specifically tested with the inclusion of all pipes, tees, bends, cowls, weather hoods, etc., which may be fitted between the arrester and the atmosphere.

9.2.5 Devices which are provided with a heating arrangement shall pass the required tests at the heated temperature.

9.2.6 After all tests are completed, the device shall be disassembled and examined, and no part of the device shall be damaged or show permanent deformation.

10. *Inspection*

10.1 The manufacturer shall afford the purchaser's inspector all reasonable facilities necessary to assure that the material is being furnished in accordance with this standard. All examinations and inspections shall be made at the place of manufacture, unless otherwise agreed upon.

10.2 Each finished flame arrester shall be visually and dimensionally checked to ensure that the device corresponds to this standard, is certified in accordance with section 11 and is marked in accordance with section 12. Special attention shall be given to checking the proper fit-up of joints (see sections 8.5 and 8.6)

11. *Certification*

11.1 Manufacturer's certification that a flame arrester has been constructed in accordance with this standard shall be provided in an instruction manual. The manual shall include as applicable:

11.1.1 Installation instructions and a description of all configurations tested (reference paragraph 9.2.4.1 and 9.2.4.2). Installation instructions to include manufacturer's recommended limitations based on all configurations tested.

11.1.2 Operating instructions.

11.1.3 Maintenance requirements.

11.1.3.1 Instructions on how to determine when flame arrester cleaning is required and the method of cleaning.

11.1.4 Copy of test report (see section 9.1.1).

11.1.5 Flow test data, including flow rates under both positive and negative pressures, operating sensitivity, flow resistance, and velocity.

11.1.6 The ambient air temperature range over which the device will effectively prevent the passage of flame. (Note: Other factors such as condensation and freezing of vapors should be evaluated at the time of equipment specification.)

12. *Marking*

12.1 Each flame arrester shall be permanently marked indicating:

12.1.1 Manufacturer's name or trademark.

12.1.2 Style, type, model or other manufacturer's designation for the flame arrester.

12.1.3 Size of the inlet and outlet.

12.1.4 Type of device (Type I or II).

12.1.5 Direction of flow through the flame arrester.

12.1.6 Test laboratory and report number.

12.1.7 Lowest MESG of gases for which the flame arrester is suitable for.

12.1.8 Ambient air operating temperature range.

12.1.9 ASTM designation of this standard.

13. *Quality Assurance*

13.1 Flame arresters shall be designed, manufactured and tested in a manner that ensures they meet the characteristics of the unit tested in accordance with this standard.

13.2 The flame arrester manufacturer shall maintain the quality of the flame arresters that are designed, tested and marked in accordance with this standard. At no time shall a flame arrester be sold with this standard designation that does not meet the requirements herein.

14. *Test Procedures for Flame Arresters*

14.1 Media/Air Mixtures

14.1.1 For vapors from flammable or combustible liquids with a MESG greater than or equal to 0.9 mm, technical grade hexane or gasoline vapors shall be used for all tests in this section except technical grade propane may be used for the flashback test in Section 14.2. For vapors with a MESG less than 0.9 mm, the specific vapor (or alternatively, a media with a MESG less than or equal to the MESG of the vapor) must be used as the test medium in all section 14 tests.

14.1.2 Hexane, propane, gasoline and chemical vapors shall be mixed with air to form the most easily ignitable mixture.(5)

14.2 *Flashback Test*

14.2.1 A flashback test shall be carried out as follows:

14.2.1.1 The test rig shall consist of an apparatus producing an explosive mixture, a small tank with a diaphragm, a prototype of the flame arrester, a plastic bag (6) and a firing source in three positions (see Figure 1).(7)

14.2.1.2 The tank, flame arrester assembly and the plastic bag enveloping the prototype flame arrester shall be filled so that this volume contains the most easily ignitable vapor/air mixture.(8) The concentration of the mixture should be verified by appropriate testing of the gas composition in the plastic bag. Three ignition sources shall be installed along the axis of the bag, one close to the flame arrester, another as far away as possible therefrom, and the third at the midpoint between these two. These three sources shall be fired in succession, one during each of the three tests. Flame passage shall not occur during this test.

14.2.1.3 If flame passage occurs, the tank diaphragm will burst and this will be audible and visible to the operator by the emission of a flame. Flame, heat and pressure sensors may be used as an alternative to a bursting diaphragm.

14.3 *Endurance Burn Test*

14.3.1 An endurance burning test shall be carried out as follows:

14.3.1.1 The test rig as referred to in 14.2 may be used, without the plastic bag. The flame arrester shall be so installed that the mixture emission is vertical. In this position the mixture shall be ignited.

14.3.1.2 Endurance burning shall be achieved by using the most easily ignitable test vapor/air mixture with the aid of a pilot flame or a spark igniter at the outlet. By varying the proportions of the flammable mixture and the flow rate, the arrester shall be heated until the highest obtainable temperature on the cargo tank side of the arrester is reached. The highest attainable temperature may be considered to have been reached when the rate of rise of temperature does not exceed 0.5°C per minute over a ten minute period. This temperature shall be maintained for a period of ten minutes, after which the flow shall be stopped and the conditions observed. If difficulty arises in establishing the highest attainable temperature, the following criteria shall apply. When the temperature appears to be approaching the maximum temperature, using the most severe conditions of flammable mixtures and flow rate, but increases at a rate in excess of 0.5°C per minute over a ten minute period, endurance burning shall be continued for a period of two hours after which the flow shall be stopped and the conditions observed. Flame passage shall not occur during this test.

(5) See IEC Publication 79–1.

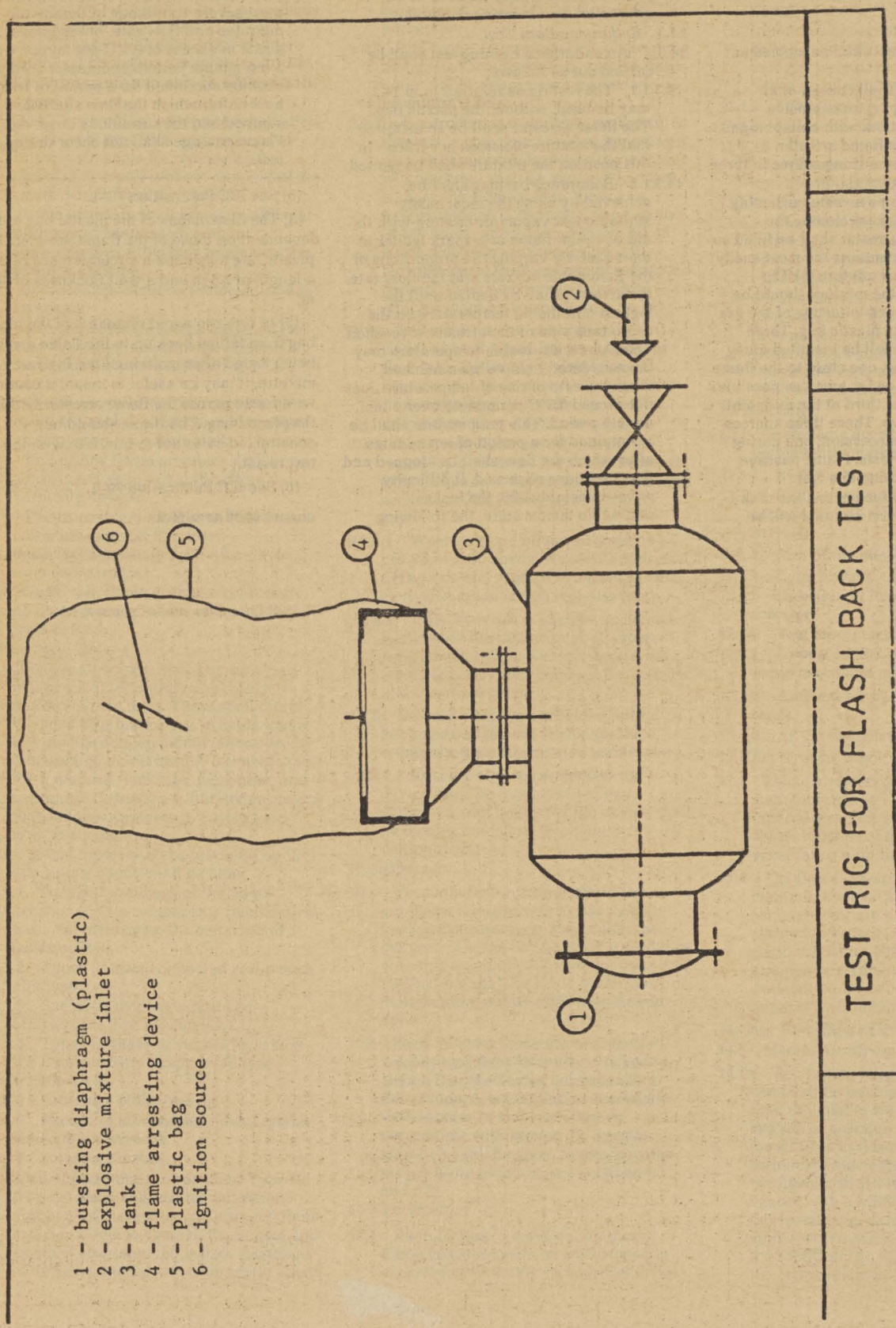
(6) The dimensions of the plastic bag are dependent on those of the flame arrester. The plastic bag may have a circumference of 2 m, a length of 2.5 m and a wall thickness of .05 m.

(7) In order to avoid remnants of the plastic bag from falling back on to the flame arrester being tested after ignition of the fuel/air mixture, it may be useful to mount a coarse wire frame across the flame arrester within the plastic bag. The frame should be constructed so as not to interfere with the test result.

(8) See IEC Publication 79–1.

BILLING CODE 4910–14–M

FIGURE 1



BILLING CODE 4910-14-C

Inflammable gas or vapor	Experimental maximum safe gap	
	mm	in.
Methane	1.170	0.046
Blast furnace gas	1.193	0.047
Propane	0.965	0.038
Butane	1.066	0.042
Pentane	1.016	0.040
Hexane	0.965	0.038
Heptane	0.965	0.038
Iso-octane	1.040	0.041
Decane	1.016	0.040
Benzene	0.99	0.039
Xylene	1.066	0.042
Cyclohexane	0.94	0.037
Acetone	1.016	0.040
Ethylene	0.71	0.028
Methyl-ethyl-ketone	1.016	0.040
Carbon monoxide	0.915	0.036
Methyl-acetate	0.990	0.039
Ethyl-acetate	1.04	0.041
Propyl-acetate	1.04	0.041
Butyl-acetate	1.016	0.040
Amyl-acetate	0.99	0.039
Methyl alcohol	0.915	0.036
Ethyl alcohol	1.016	0.040
Iso-butyl-alcohol	0.965	0.038
Butyl-alcohol (Normal)	0.94	0.037
Amyl-alcohol	0.99	0.039
Ethyl-ether	0.864	0.034
Coal gas (H_2 57%)	0.482	0.019
Acetylene	<0.025	<0.001
Carbon disulphide	0.203	0.008
Hydrogen	0.102	0.004
Blue water gas (H_2 53% CO 47%)	0.203	0.008
Ethyl nitrate	<0.025	<0.001
Ammonia	[1] 3.33	[1] 0.133
Ethylene oxide	0.65	0.026
Ethyl nitrite	0.922	0.038

[1] Approximately.

PART 155—[AMENDED]

6. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1903(b).

7. Section 155.750 is amended by adding paragraph (d) and a parenthetical to the end of the section to read as follows:

§ 155.750 Contents of oil transfer procedures.

* * * * *

(d) If a vessel is fitted with a vapor control system, the oil transfer procedures must contain a description of the vapor collection system on the vessel which includes:

(1) A line diagram of the vessel's vapor collection system piping, including the location of each valve, control device, pressure–vacuum relief valve, pressure indicator, flame arresters, and detonation arresters, if fitted;

(2) The location of spill valves and rupture disks, if fitted;

(3) The maximum allowable transfer rate determined in accordance with 46 CFR 39.30–1(d) (1) through (d)(3);

(4) The initial transfer rate for each tank that complies with 46 CFR 39.30–1(h);

(5) A table or graph of transfer rates and corresponding vapor collection system pressure drops calculated in accordance with 46 CFR 39.30–1(b);

(6) The relief settings of each spill valve, rupture disk, and pressure-vacuum relief valve; and

(7) A description of and procedures for operating the vapor collection system, including the:

(i) Pre-transfer equipment inspection requirements;

(ii) Vapor line connection;

(iii) Closed gauging system;

(iv) High level alarm system, if fitted; and

(v) Independent automatic shutdown system, if fitted.

(Approved by the Office of Management and Budget under control number 2115–0120)

PART 156—[AMENDED]

8. The authority citation for part 156 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1) (C) and (D); sec. 2, E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46. Subpart B is also issued under 46 U.S.C. 3715(b).

9. Section 156.120 is amended by adding paragraph (aa) and a parenthetical at the end of the section to read as follows:

§ 156.120 Requirements for oil transfer.

* * * * *

(aa) A transfer operation which includes collection of vapor emitted from a vessel's cargo tanks through a venting system not located on the vessel must have the following verified by the person in charge:

(1) Each manual valve in the vapor collection system is correctly positioned to allow the collection of cargo vapor;

(2) A vapor collection hose or arm is connected to the vessel's vapor connection;

(3) The electrical insulating device required by § 154.810(g) of this chapter or 46 CFR 39.40–3(c) is fitted between the facility vapor connection and the vessel vapor connection;

(4) The initial loading rate and the maximum transfer rate are determined;

(5) The maximum and minimum operating pressures at the facility vapor connection are determined;

(6) The tank barge overfill control system, if installed, is connected to the facility, tested, and operating properly;

(7) The following have been performed not more than 24 hours prior to the start of the transfer operation:

(i) Each alarm and automatic shutdown system required by subpart E of part 154 of this chapter and 46 CFR part 39 has been tested and found to be operating properly, and

(ii) Analyzers required by § 154.820(a), § 154.824 (d) and (e) of this chapter or 46 CFR 39.40–3(a) have been checked for calibration by use of a span gas;

(8) Each vapor recovery hose has no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapor through the hose material, and no external gouges, cuts, or slashes that penetrate the first layer of hose reinforcement; and

(9) The oxygen content of the vessel's cargo tanks, if inerted, is at or below 8 percent by volume.

(Approved by the Office of Management and Budget under control number 2115–0506)

10. Section 156.170 is amended by adding new paragraph (g) and a parenthetical at the end of the section to read as follows:

§ 156.170 Equipment tests and inspections.

* * * * *

(g) If a facility or vessel collects vapor emitted from a vessel cargo tank with a vapor control system, the system must not be used unless the following tests and inspections are satisfactorily completed:

(1) Each vapor hose, vapor collection arm, pressure or vacuum relief valve, and pressure sensor is tested and inspected in accordance with paragraphs (b), (c), and (f) of this section;

(2) Each remote operating or indicating device is tested for proper operation in accordance with paragraph (f) of this section;

(3) Each detonation arrester required by § 154.820, § 154.826(a), and § 154.828(a) of this chapter or 46 CFR 39.40–3(d), and each flame arrester required by § 154.826(a), § 154.828 (a) and (c) of this chapter has been inspected internally within the last year, or sooner if operational experience has shown that frequent clogging or rapid deterioration is likely; and

(4) Each hydrocarbon and oxygen analyzer required by § 154.820(a) and § 154.824 (d) and (e) of this chapter or 46 CFR 39.40–3(a) is calibrated:

(i) Within the previous two weeks, or

(ii) Within 24 hours prior to operation when the vapor control system is

operated less frequently than once a week.

(Approved by the Office of Management and Budget under control number 2115–0096)

TITLE 46—[AMENDED]

PART 30—[AMENDED]

11. The authority citation for part 30 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507.

12. Paragraph (b) of § 30.01–2 is amended by adding the following sections and OMB control numbers to the existing table to read as follows:

§ 30.01–2 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

§ 32.53–85	2115–0505
§ 35.35–30	2115–0506
§ 39.10–13	2115–0505

PART 32—[AMENDED]

13. The authority citation for part 32 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

14. Section 32.53–85 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 32.53–85 Instruction manual—T/ALL.

* * * * *

(b) If a vapor collection system required to meet part 39 of this subchapter is connected to the inert gas system, the instruction manual required by paragraph (a) of this section must include procedures relating to vapor collection operations.

PART 35—[AMENDED]

15. The authority citation for part 35 continues to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 3703, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

16. Section 35.35–20 is amended by adding paragraph (m) to read as follows:

§ 35.35–20 Inspection prior to transfer of cargo—TB/ALL.

* * * * *

(m) When a transfer operation includes collection of cargo vapor from a vessel's cargo tanks through a vapor control system not located on the vessel:

(1) Each part of the vapor collection system is aligned to allow vapor to flow to a facility vapor control system, or if lightering, to the other vessel;

(2) Vapor collection hoses or arms are connected to the vessel vapor collection connection;

(3) The electrical insulation requirements of 33 CFR 154.810(g) or § 39.40–3(c) of this subchapter are provided between the vessel vapor connection and the facility or service vessel vapor connection;

(4) The maximum cargo transfer rate is determined in accordance with § 39.30–1(d) of this subchapter;

(5) The maximum and minimum operating pressures at the facility vapor connection, or vessel vapor connection if lightering, are determined;

(6) The overfill control system on a tank barge, if fitted in accordance with § 39.20–9(b) of this subchapter, is connected to the facility, tested and operating properly;

(7) Each alarm required by §§ 39.20–7, 39.20–9 and 39.40–3(a) of this subchapter has been tested not more than 24 hours prior to the start of the transfer operation and is operating properly;

(8) Each vapor recovery hose has no unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapors through the hose material, and no gouges, cuts, or slashes that penetrate the first layer of hose reinforcement; and

(9) The oxygen content of the vessel's cargo tanks, if inerted, is at or below 8 percent by volume.

17. Section 35.35–30 is amended by adding paragraph (c) to read as follows:

§ 35.35–30 "Declaration of Inspection" for tankships—T/ALL.

* * * * *

(c) In addition to the requirements in paragraph (b) of this section, if a transfer operation includes the collection of cargo vapor from a vessel's cargo tanks through a vapor control system not located on the vessel, the Declaration of Inspection must include the following as an appendix:

(1) Is each part of the vapor collection system aligned to allow vapor to flow to the facility vapor connection or, if lightering, to the other vessel?

(2) Are the vapor collection hoses or arms connected to the vessel's vapor collection connection?

(3) Are the vessel and facility vapor connections electrically isolated?

(4) Have the initial transfer rate and the maximum transfer rate been determined?

(5) Have the maximum and minimum operating pressures at the facility vapor connection, or the vessel vapor connection if lightering, been determined?

(6) Have all alarms required by §§ 39.20–7, 39.20–9 and 39.40–3(a) of this subchapter been tested within 24 hours prior to the start of the transfer operation and found to be operating properly?

(7) Is each vapor recovery hose free of unrepaired loose covers, kinks, bulges, soft spots, or any other defect which would permit the discharge of vapors through the hose material, and gouges, cuts, or slashes that penetrate the first layer of hose reinforcement?

(8) Has the oxygen concentration of all inerted cargo tanks been verified to be 8 percent or less?

18. A new part 39 is added to read as follows:

PART 39—VAPOR CONTROL SYSTEMS

Subpart 39.10—General

Sec.

39.10–1 Applicability—TB/ALL.
39.10–3 Definitions—TB/ALL.
39.10–5 Incorporation by reference—TB/ALL.
39.10–9 Vessel vapor processing unit—TB/ALL.
39.10–11 Personnel training—TB/ALL.
39.10–13 Submission of vapor control system designs—TB/ALL.

Subpart 39.20—Design and Equipment

39.20–1 Vapor collection system—TB/ALL.
39.20–3 Cargo gauging system—TB/ALL.
39.20–7 Tankship liquid overfill protection—T/ALL.
39.20–9 Tank barge liquid overfill protection—B/ALL.
39.20–11 Vapor overpressure and vacuum protection—TB/ALL.
39.20–13 High and low vapor pressure protection for tankships—T/ALL.

Subpart 39.30—Operations

39.30–1 Operational requirements—TB/ALL.

Subpart 39.40—Lightering and Topping-Off Operations with Vapor Balancing

39.40–1 General requirements for vapor balancing—TB/ALL.
39.40–3 Design and equipment for vapor balancing—TB/ALL.
39.40–5 Operational requirements for vapor balancing—TB/ALL.

Authority: 33 U.S.C. 1231; 46 U.S.C. 3306, 3703, 3715(b); 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart 39.10—General

§ 39.10–1 Applicability—TB/ALL.

(a) Except as specified by paragraph (c) of this section, this part applies to each tank vessel operating in the navigable waters of the United States, when collecting vapors of crude oil, gasoline blends, or benzene emitted

from a vessel's cargo tanks through a vapor control system.

(b) A tank vessel which transfers vapors of flammable or combustible cargoes other than crude oil, gasoline blends, or benzene, to a facility covered by 33 CFR part 154 must meet the requirements prescribed by the Commandant (G–MTH).

(c) A tank vessel with an existing vapor collection system specifically approved by the Coast Guard for the collection of cargo vapor which was operating prior to July 23, 1990, is subject only to § 39.30–1 and § 39.40–5 of this part as long as it transfers cargo vapor only to the specific facilities for which it was approved.

(d) This part does not apply to the collection of vapors of liquefied flammable gases as defined in § 30.10–39 of this subchapter.

§ 39.10–3 Definitions—TB/ALL.

As used in this part:

Cargo deck area means that part of the weather deck that is directly over the cargo tanks.

Existing vapor collection system means a vapor collection system which was operating prior to July 23, 1990.

Facility vapor connection means the point in a facility's fixed vapor collection system where it connects with the vapor collection hose or the base of the vapor collection arm.

Independent as applied to two systems means that one system will operate with a failure of any part of the other system except power sources and electrical feeder panels.

Inerted means the oxygen content of the vapor space in a cargo tank is reduced to 8 percent by volume or less in accordance with the inert gas requirements of § 32.53 or § 153.500 of this chapter.

Lightering or *lightering operation* means the transfer of a bulk liquid cargo from a tank vessel to a service vessel.

Marine Safety Center means the Commanding Officer, U.S. Coast Guard Marine Safety Center, 400 Seventh Street, SW., Washington, DC 20590–0001.

Maximum allowable transfer rate means the maximum volumetric rate at which a vessel may receive cargo or ballast.

New vapor collection system means a vapor collection system which is not an existing vapor collection system.

Service vessel means a vessel which transports bulk liquid cargo between a facility and another vessel.

Topping-off operation means the transfer of a bulk liquid cargo from a service vessel to another vessel in order to load the receiving vessel to a deeper draft.

Vapor balancing means the transfer of vapor displaced by incoming cargo from the tank of a vessel receiving cargo into a tank of the vessel or facility delivering cargo via a vapor collection system.

Vapor collection system means an arrangement of piping and hoses used to collect vapor emitted from a vessel's cargo tanks and to transport the vapor to a vapor processing unit.

Vapor control system means an arrangement of piping and equipment used to control vapor emissions collected from a vessel. It includes the vapor collection system and vapor processing unit.

Vapor processing unit means the components of a vapor control system that recovers, destroys, or disperses vapor collected from a vessel.

Vessel vapor connection means the point in a vessel's fixed vapor collection system where it connects with the vapor collection hose or arm.

§ 39.10–5 Incorporation by reference—TB/ALL.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of change must be published in the **Federal Register** and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and at the U.S. Coast Guard, Marine Technical and Hazardous Materials Division (G–MTH), 2100 Second Street, SW., Washington, DC, 20593–0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected are:

American Petroleum Institute (API), 1220 L Street NW., Washington, DC 20005
- API Standard 2000, Venting Atmospheric and Low-Pressure Storage Tanks (Nonrefrigerated and Refrigerated), Third Edition, January 1982 (reaffirmed December 1987) 39.20–11

American National Standards Institute (ANSI), 1430 Broadway, New York, NY 10018
- ANSI B16.5, Steel Pipe Flanges and Flanged Fittings, 1981 ..... 39.20–1

American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103
- ASTM F1271—Standard Specification for Spill Valves for Use in Marine Tank Liquid Overpressure Protection Applications, December 29, 1989 ..... 39.20–9

International Electrotechnical Commission (IEC), Bureau Central de la Commission Electrotechnique Internationale, 1 rue de Varembe', Geneva, Switzerland
- IEC 309–1—Plugs, Socket-Outlets and Couplers for Industrial Purposes: Part 1, General Requirements, 1979 ..... 39.20–9
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- ANSI/NEMA WD6—Wiring Devices, Dimensional Requirements, 1988 ..... 39.20–9

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- NFPA 70—National Electrical Code, 1987 ..... 39.20–9

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- International Safety Guide for Oil Tankers and Terminals, Third Edition, 1988 .. 39.30–1

§ 39.10–9 Vessel vapor processing unit—TB/ALL.

Each vessel which has a vapor processing unit located on board must meet the requirements of 33 CFR part 154, subpart E to the satisfaction of the Commandant (G—MTH) in addition to complying with the requirements of this part.

§ 39.10.11 Personnel training—TB/ALL.

(a) A person in charge of a transfer operation utilizing a vapor collection system must have completed a training program covering the particular system installed on the vessel. Training must include drills or demonstrations using the installed vapor control system covering normal operations and emergency procedures.

(b) The training program required by paragraph (a) of this subpart must cover the following subjects:

(1) Purpose of a vapor control system;

(2) Principles of the vapor control system;

(3) Components of the vapor control system;

(4) Hazards associated with the vapor control system;

(5) Coast Guard regulations in this part;

(6) Operating procedures, including:

(i) Testing and inspection requirements,

(ii) Pre-transfer procedures,

(iii) Connection sequence,

(iv) Start-up procedures, and

(v) Normal operations; and

(7) Emergency procedures.

§ 39.10.13 Submission of vapor control system designs—TB/ALL.

(a) Plans, calculations, and specifications for a new vessel vapor collection system must be submitted to the Marine Safety Center for approval prior to installation.

(b) An existing vapor collection system installation not exempted by § 39.10–1(c) of this part must have plans, calculations, and specifications submitted to the Marine Safety Center for approval by January 23, 1991. Modifications required to bring the installation into compliance with this part must be completed July 23, 1992.

(c) An existing vapor collection system installation that has been Coast Guard approved to transfer cargo vapor to specific facilities must be reviewed and approved by the Marine Safety Center prior to transferring vapors to other facilities.

(d) The owners/operators of a foreign flag vessel may submit certification by the classification society which classes the vessel that the vessel meets the requirements of this part as an alternative to meeting the requirements in paragraphs (a) and (b) of this section.

(e) Upon satisfactory completion of plan review and inspection of the vapor collection system or receipt of the certification provided for in paragraph (d) of this section, the Officer in Charge, Marine Inspection, shall endorse the Certificate of Inspection for U.S. flag vessels, or the Certificate of Compliance for foreign flag vessels, that the vessel is acceptable for collecting the vapor from crude oil, gasoline blends, and benzene, or any other vapor it is found acceptable to collect.

Subpart 39.20—Design and Equipment

§ 39.20–1 Vapor collection system—TB/ALL.

(a) Each vapor collection system must meet the following requirements:

(1) Except as allowed by paragraph (a)(3) of this section or the Commandant (G–MTH), vapor collection piping must be permanently installed, with the vessel's vapor connection located as close as practical to the loading manifold;

(2) If the vessel collects vapors from incompatible cargoes simultaneously, it must keep the incompatible vapors separate throughout the entire vapor collection system;

(3) A vessel certified to carry cargo listed in Table 151.05 of part 151 or Table 1 of part 153 of this chapter may have vapor connections located in the vicinity of each tank in order to preserve segregation of cargo systems, in lieu of common header piping;

(4) A means must be provided to eliminate liquid condensate which may collect in the system, such as draining and collecting liquid from each low point in the line;

(5) Vapor collection piping must be electrically bonded to the hull and must be electrically continuous; and

(6) An inerted tankship must have a means to isolate the inert gas supply from the vapor collection system. The inert gas main isolation valve required by SOLAS 74, as amended, chapter II–2, Regulation 62.10.8 may be used to satisfy this requirement.

(b) The vapor collection system must not interfere with the proper operation of the cargo tank venting system.

(c) An isolation valve capable of manual operation must be provided at the vessel vapor connection. The valve must have an indicator to show clearly whether the valve is in the open or closed position, unless the valve position can be readily determined from the valve handle or valve stem.

(d) The last 1.0 meter (3.3 feet) of vapor piping before the vessel vapor connection must be:

(1) Painted red/yellow/red with:

(i) The red bands 0.1 meter (0.33 feet) wide, and

(ii) The middle yellow band 0.8 meter (2.64 feet) wide; and

(2) Labeled "VAPOR" in black letters at least 50 millimeters (2 inches) high.

(e) Each vessel vapor connection flange must have a permanently attached 0.5 inch diameter stud at least 1.0 inch long projecting outward from the flange face. The stud must be located at the top of the flange, midway between bolt holes, and in line with the bolt hole pattern.

(f) Each hose used for transferring vapors must:

(1) Have a design burst pressure of at least 25 psig;

(2) Have a maximum allowable working pressure of at least 5 psig;

(3) Be capable of withstanding at least 2.0 psi vacuum without collapsing or constricting;

(4) Be electrically continuous with a maximum resistance of ten thousand (10,000) ohms;

(5) Have flanges with:

(i) A bolt hole arrangement complying with the requirements for 150 pound class ANSI B16.5 flanges, and

(ii) One or more 0.625 inch diameter holes in the flange located midway between bolt holes and in line with the bolt hole pattern;

(6) Be abrasion resistant and resistant to kinking; and

(7) Have the last 1.0 meter (3.3 feet) of each end of the vapor hose marked in accordance with paragraph (d) of this section.

(g) Vapor hose handling equipment must be provided with hose saddles which provide adequate support to prevent kinking or collapse of hoses.

§ 39.20–3 Cargo gauging system—TB/ALL.

(a) Each cargo tank of a tank vessel that is connected to a vapor collection system must be equipped with a cargo gauging device which:

(1) Provides a closed gauging arrangement as defined in § 151.15.10 of this chapter that does not require opening the tank to the atmosphere during cargo transfer;

(2) Allows the operator to determine the liquid level in the tank for the full range of liquid levels in the tank;

(3) Indicates the liquid level in the tank at the location where cargo transfer is controlled; and

(4) If portable, is installed on the tank during the entire transfer operation.

(b) Except when a tank barge complies with § 39.20–9(a) of this part, each cargo tank of a barge must have a high level indicating device that:

(1) Provides a visual indication of the liquid level in the cargo tank when the cargo level is within 1.0 meter (3.28 feet) of the tank top;

(2) Has the maximum liquid level permitted under § 39.30–1(e) of this part at even keel conditions conspicuously and permanently marked on the indicating device; and

(3) Is visible from all cargo control areas on the tank barge.

§ 39.20-7 Tankship liquid overfill protection—T/ALL

(a) Each cargo tank of a tankship must be equipped with an intrinsically safe high level alarm and a tank overfill alarm.

(b) The high level alarm and tank overfill alarm required by paragraph (a) of this section, if installed after July 23, 1990 must:

(1) Be independent of each other;

(2) Alarm in the event of loss of power to the alarm system or failure of electrical circuitry to the tank level sensor; and

(3) Be able to be checked at the tank for proper operation prior to each transfer or contain an electronic self-testing feature which monitors the condition of the alarm circuitry and sensor.

(c) The high level alarm required by paragraph (a) of this section must:

(1) Alarm before the tank overfill alarm, but no lower than 95 percent of tank capacity;

(2) Be identified with the legend "High Level Alarm" in black letters at least 50 millimeters (2 inches) high on a white background; and

(3) Have audible and visible alarm indications that can be seen and heard on the vessel where cargo transfer is controlled.

(d) The tank overfill alarm required by paragraph (a) of this section must:

(1) Be independent of the cargo gauging system;

(2) Have audible and visible alarm indications that can be seen and heard on the vessel where cargo transfer is controlled and in the cargo deck area;

(3) Be identified with the legend "TANK OVERFILL ALARM" in black letters at least 50 millimeters (2 inches) high on a white background; and

(4) Alarm early enough to allow the person in charge of transfer operations to stop the transfer operation before the cargo tank overflows.

(e) If a spill valve is installed on a cargo tank fitted with a vapor collection system, it must meet the requirements of § 39.20-9(c) of this part.

(f) If a rupture disk is installed on a cargo tank fitted with a vapor collection system, it must meet the requirements of § 39.20-9(d) of this part.

§ 39.20-9 Tank barge liquid overfill protection—B/ALL

Each cargo tank of a tank barge must have one of the following liquid overfill protection arrangements.

(a) A system meeting the requirements of § 39.20-7 of this part which:

(1) Includes a self-contained power supply;

(2) Is powered by generators installed on the barge; or

(3) Receives power from a facility and is fitted with a shore tie cable and a 120 volt 20 amp explosion-proof plug which meets:

(i) ANSI/NEMA WD6;

(ii) NFPA 70, Articles 410-57 and 501-12; and

(iii) § 111.105-9 of this chapter.

(b) An intrinsically safe overfill control system which:

(1) Is independent of the cargo gauging device required by § 39.20-3(a) of this part;

(2) Actuates an alarm and automatic shutdown system at the facility overfill control panel, or on the vessel to be lightered if a lightering operation, 60 seconds before the tank becomes 100 percent liquid full;

(3) Is able to be checked at the tank for proper operation prior to each loading;

(4) Consists of components which, individually or in series, will not generate or store a total of more than 1.2 V, 0.1 A, 25 mW, or 20 microjoules;

(5) Has at least one tank overfill sensor switch with normally closed contacts per cargo tank;

(6) Has all tank overfill sensor switches connected in series;

(7) Has interconnecting cabling that meets § 111.105-15(b) of this chapter; and

(8) Has a male plug with a 5 wire, 16 amp connector body meeting IEC 309-1/309-2 which is:

(i) Configured with pins S2 and R1 for the tank overfill sensor circuit, pin G connected to the cabling shield, and pins N and T3 reserved for an optional high level alarm circuit meeting the requirements of this paragraph; and

(ii) Labeled "Connector for Barge Overflow Control System" and with the total inductance and capacitance of the connected switches and cabling.

(c) A spill valve which:

(1) Meets ASTM F1271;

(2) Relieves at a pressure higher than the pressure at which the pressure relief valves meeting the requirements of § 39.20-11 operate;

(3) Limits the maximum pressure at the cargo tank top during liquid overfill, at the maximum loading rate for the tank, to not more than the maximum design working pressure for the tank; and

(4) If the vessel is in ocean or coastwise service, has provisions to prevent opening due to cargo sloshing.

(d) A rupture disk arrangement which meets paragraphs (c)(2), (c)(3) and (c)(4) of this section and is approved by the Commandant (G-MTH).

§ 39.20-11 Vapor overpressure and vacuum protection—TB/ALL

(a) The cargo tank venting system required by § 32.55 of this chapter must:

(1) Be capable of discharging cargo vapor at 1.25 times the maximum transfer rate such that the pressure in the vapor space of each tank connected to the vapor collection system does not exceed:

(i) The maximum design working pressure for the tank, or

(ii) If a spill valve or rupture disk is fitted, the pressure at which the device operates;

(2) Not relieve at a pressure corresponding to a pressure in the cargo tank vapor space of less than 1.0 psig;

(3) Prevent a vacuum in the cargo tank vapor space, whether generated by withdrawal of cargo or vapor at maximum rates, that exceeds the maximum design vacuum for any tank connected to the vapor collection system; and

(4) Not relieve at a vacuum corresponding to a vacuum in the cargo tank vapor space of less than 0.5 psi below atmospheric pressure.

(b) Each pressure-vacuum relief valve must:

(1) Be tested for venting capacity in accordance with paragraph 1.5.1.3 of API 2000; and

(2) Have a means to check that the device operates freely and does not remain in the open position, if installed after July 23, 1991.

(c) The relieving capacity test required by paragraph (b)(1) of this section must be carried out with a flame screen fitted at the vacuum relief opening and at the discharge opening if the pressure-vacuum relief valve is not designed to ensure a minimum vapor discharge velocity of 30 meters (98.4 ft.) per second.

§ 39.20-13 High and low vapor pressure protection for tankships—T/ALL

Each tankship vapor collection system must be fitted with a pressure sensing device that senses the pressure in the main vapor collection line, which:

(a) Has a pressure indicator located on the vessel where the cargo transfer is controlled; and

(b) Has a high pressure and a low pressure alarm that:

(1) Is audible and visible on the vessel where cargo transfer is controlled;

(2) Alarms at a high pressure of not more than 90 percent of the lowest pressure relief valve setting in the cargo tank venting system; and

(3) Alarms at a low pressure of not less than four inches water gauge (0.144 psig) for an inerted tankship, or the

lowest vacuum relief valve setting in the cargo tank venting system for a non-inerted tankship.

Subpart 39.30—Operations

§ 39.30.1 Operational requirements—TB/ALL.

(a) Vapor from a tank vessel may not be transferred to:

(1) A facility in the United States which does not have its letter of adequacy endorsed as meeting the requirements of 33 CFR part 154, subpart E; or

(2) In the case of a lightering or topping off operation, a vessel which does not have its certificate of inspection or certificate of compliance endorsed as meeting the requirements of this part.

(b) The pressure drop through the vapor collection system from the most remote cargo tank to the vessel vapor connection must be:

(1) Determined for each cargo handled by the vapor collection system at the maximum transfer rate and at lessor transfer rates;

(2) Based on a 50 percent cargo vapor and air mixture, and a vapor growth rate appropriate for the cargo being loaded; and

(3) Included in the vessel's oil transfer procedures as a table or graph showing the liquid transfer rate versus the pressure drop.

(c) If a vessel carries vapor hoses, the pressure drop through the hoses must be included in the pressure drop calculations required by paragraph (b) of this section.

(d) The rate of cargo transfer must not exceed the maximum allowable transfer rate as determined by the lesser of the following:

(1) Eighty (80) percent of the total venting capacity of the pressure relief valves in the cargo tank venting system when relieving at the set pressure required by § 39.20–11(a) of this part;

(2) The total vacuum relieving capacity of the vacuum relief valves in the cargo tank venting system when relieving at the set pressure required by § 39.20.11(a) of this part;

(3) The rate based on pressure drop calculations at which, for a given pressure at the facility vapor connection, or if lightering at the vapor connection of the vessel receiving cargo, the pressure in any cargo tank connected to the vapor collection system exceeds 80 percent of the setting of any pressure relief valve in the cargo tank venting system.

(e) A cargo tank must not be filled higher than:

(1) 98.5 percent of the cargo tank volume; or

(2) The level at which an overfill alarm complying with § 39.20–7 or § 39.20–9(b)(2) of this part is set.

(f) A cargo tank must not be opened to the atmosphere during cargo transfer operations except as provided in paragraph (g) of this section.

(g) A cargo tank may be opened to the atmosphere for gauging or sampling while a tank vessel is connected to a vapor control system if the following conditions are met:

(1) The cargo tank is not being filled;

(2) Except when the tank is inerted, any pressure in the cargo tank vapor space is first reduced to atmospheric pressure by the vapor control system;

(3) The cargo is not required to be closed or restricted gauged by Table 151.05 of part 151 or Table 1 in part 153 of this chapter; and

(4) For static accumulating cargo, all metallic equipment used in sampling or gauging is electrically bonded to the vessel before it is put into the tank, remains bonded to the vessel until it is removed from the tank, and if the tank is not inerted, a period of 30 minutes has elapsed since loading of the tank was completed.

(h) For static accumulating cargo the initial transfer rate must be controlled in accordance with Section 7.4 of the OCIMF, International Safety Guide for Oil Tankers and Terminals, in order to minimize the development of a static electrical charge.

(i) If cargo vapor is collected by a facility that requires the vapor from the vessel to be inerted in accordance with 33 CFR 154.820(a) or (b), the oxygen content in the vapor space of each cargo tank connected to the vapor collection system must not exceed 8 percent by volume at the start of cargo transfer. The oxygen content of each tank must be measured at a point one meter (3.28 feet) below the tanktop and at a point equal to one-half of the ullage. Where tanks have partial bulkheads, the oxygen content of each area of that tank formed by each partial bulkhead must be measured at a point one meter (3.28 feet) below the tanktop and at a point equal to one-half of the ullage.

(j) If the vessel is equipped with an inert gas system, the isolation valve required by § 39.20–1(a)(6) of this part must remain closed during vapor transfer.

(k) Unless equipped with an automatic self-test and circuit monitoring feature, each high level alarm and tank overfill alarm required by § 39.20–7 or § 39.20–9 of this part, on a cargo tank being loaded, must be tested at the tank for proper operation within 24 hours prior to the start of cargo transfer.

Subpart 39.40—Lightering and Topping-Off Operations with Vapor Balancing

§ 39.40–1 General requirements for vapor balancing–TB/ALL.

(a) Except as provided in paragraph (b) of this section, each vessel which uses vapor balancing while conducting a lightering or topping-off operation must meet the requirements of this subpart in addition to the requirements of subparts 39.10, 39.20, and 39.30 of this part.

(b) An arrangement to control vapor emissions during a lightering or topping-off operation which does not use vapor balancing must receive approval from the Commandant (G–MTH).

(c) A vapor balancing operation must not use a compressor or blower to assist vapor transfer without approval from the Commandant (G–MTH).

(d) Vapor balancing is prohibited when the cargo tanks on a vessel discharging cargo are inerted and the cargo tanks on a vessel receiving cargo are not inerted.

(e) A vessel which intends to engage in a lightering or topping. off operation while collecting cargo vapor from other than crude oil, gasoline, or benzene must receive specific approval from the Commandant (G–MTH).

§ 39.40–3 Design and equipment for vapor balancing—TB/ALL.

(a) If the cargo tanks on a vessel discharging cargo and a vessel receiving cargo are inerted, the service vessel must:

(1) Have a means to inert the vapor transfer hose prior to transferring cargo vapor; and

(2) Have an oxygen analyzer with a sensor or sampling connection fitted within 3 meters (9.74 ft.) of the vessel vapor connection which:

(i) Activates an audible and visible alarm at a location on the service vessel where cargo transfer is controlled when the oxygen content in the vapor collection system exceeds 8 percent by volume;

(ii) Has an oxygen concentration indicator located on the service vessel where the cargo transfer is controlled; and

(iii) Has a connection for injecting a span gas of known concentration for calibration and testing of the oxygen analyzer.

(b) If the cargo tanks on a vessel discharging cargo are not inerted, the vapor collection line on the service vessel must be fitted with a detonation arrester that meets the requirements of

33 CFR 154.822(a) located within 3 meters (9.74 ft.) of the vessel vapor connection.

(c) An electrical insulating flange or one length of non-conductive hose must be provided between the vessel vapor connection on the service vessel and the vapor connection on the vessel being lightered or topped-off.

§ 39.40-5 Operational requirements for vapor balancing—TB/ALL.

(a) During a lightering or topping-off operation each cargo tank being loaded must be connected by the vapor collection system to a cargo tank which is being discharged.

(b) If the cargo tanks on both the vessel discharging cargo and the vessel receiving cargo are inerted, the following requirements must be met:

(1) Each tank on a vessel receiving cargo which is connected to the vapor collection system must be tested prior to cargo transfer to ensure that the oxygen content in the vapor space does not exceed 8 percent by volume. The oxygen content of each tank must be measured at a point one meter (3.28 feet) below the tanktop and at a point equal to one-half of the ullage. Where tanks have partial bulkheads, the oxygen content of each area of that tank formed by each partial bulkhead must be measured at a point one meter (3.28 feet) below the tanktop and at a point equal to one-half of the ullage;

(2) The oxygen analyzer required by § 39.40-3(a) must be tested for proper operation prior to the start of each transfer operation;

(3) The oxygen content of vapors being transferred must be continuously monitored during the transfer operation;

(4) Cargo transfer must be terminated if the oxygen content exceeds 8 percent by volume and must not be restarted until the oxygen content in the tanks of the vessel receiving cargo is reduced to 8 percent by volume or less; and

(5) The vapor transfer hose must be purged of air and inerted prior to starting vapor transfer.

(c) The isolation valve, required by § 39.20-1(c) of this part, located on the service vessel must not be opened until the pressure in the vapor collection system on the vessel receiving cargo exceeds the pressure in the vapor collection system on the vessel receiving cargo.

(d) The cargo transfer rate must be controlled from the vessel discharging cargo, and must not exceed the maximum allowable transfer rate for the vessel receiving cargo.

(e) The pressure in the vapor space of any cargo tank connected to the vapor collection line on either the vessel receiving cargo or the vessel discharging cargo must not exceed 80 percent of the lowest setting of any pressure relief valve during ballasting or cargo transfer.

(f) All impressed current cathodic protection systems must be deenergized during cargo transfer operations.

(g) Tank washing is prohibited unless the cargo tanks on both the vessel discharging cargo and the vessel receiving cargo are inerted or the tank is isolated from the vapor collection line.

Dated: March 14, 1990.

P.A. Yost,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 90-13758 Filed 6-15-90; 10:30 am]

BILLING CODE 4910-14-M

federal register

Thursday
June 21, 1990

Part III

Environmental Protection Agency

40 CFR Parts 260, 261, 264, 265, 270, 271
Hazardous Waste Treatment, Storage, and Disposal Facilities—Organic Air Emission Standards for Process Vents Equipment Leaks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 270, and 271

[FRL-3614-3]

Hazardous Waste Treatment, Storage, and Disposal Facilities—Organic Air Emission Standards for Process Vents and Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is today promulgating standards that limit organic air emissions as a class at hazardous waste treatment, storage, and disposal facilities (TSDF) requiring a permit under subtitle C of the Resource Conservation and Recovery Act (RCRA). Today's action is the first part of a multiphased regulatory effort to control air emissions at new and existing hazardous waste TSDF. The rule establishes final standards limiting organic emissions from (1) process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping operations that manage hazardous wastes with 10 parts per million by weight (ppmw) or greater total organics concentration, and (2) leaks from equipment that contains or contacts hazardous waste streams with 10 percent by weight or greater total organics. These standards were proposed in the **Federal Register** on February 5, 1987 (52 FR 3748).

The final standards are promulgated under the authority of section 3004 of the Hazardous and Solid Waste Amendments (HSWA) to the RCRA. The EPA is required by section 3004(n) of RCRA to promulgate standards for the monitoring and control of air emissions from hazardous waste TSDF as necessary to protect human health and the environment. The EPA plans to promulgate additional standards under this section in two further phases. Phase II will consist of air standards for organic emissions from surface impoundments, tanks, containers, and miscellaneous units. These standards are scheduled for proposal later this year. In Phase III, the residual risk from the first two phases will be assessed and, if necessary, EPA will develop further regulations or guidance to protect human health and the environment from the effects of TSDF air emissions.

EFFECTIVE DATE: This final rule is effective on December 21, 1990. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 5 and October 11, 1989.

ADDRESSES: The official record for this final rulemaking is contained in Docket No. F-90-AESF-FFFFF. This docket and the proposal docket (Docket No. F-86-AESP-FFFFF) are available for public inspection at the EPA RCRA Docket Office (OS-300) in room 2427M of the U.S Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Additional information concerning the development of the equipment leak standards is contained in Docket No. A-79-27, which is available for public inspection at EPA's Central Docket Section, room 2903B, Waterside Mall, 401 M Street SW., Washington, DC 20460. For further information, see the discussion of supporting documentation for the rules under section X of this preamble.

Background information document: The background information document (BID) for the final standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Background Information for Promulgated Organic Emission Standards for Process Vents and Equipment Leaks" (EPA-450/3-89-009). The EPA has prepared a technical guidance document to aid in implementation of these rules. This document may also be obtained from the U.S. EPA Library (see above address). Please refer to "Hazardous Waste TSDF—Technical Guidance Document for RCRA Air Emission Standards for Process Vents and Equipment Leaks" (EPA-450/3-89-21).

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll-free at (800) 424-9346. For further information on regulatory aspects of these standards, contact Rick Colyer, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5262. For further information on the technical aspects of these standards, contact Robert Lucas, Chemicals and Petroleum Branch, telephone number (919) 541-0884, at the same address. For further information on test methods associated with these standards, contact Terry Harrison, Emission Measurement Branch, telephone number (919) 541-5233, at the same address as above.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

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I. Authority

These regulations are promulgated under the authority of sections 1006, 2002, 3001-3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6905, 6912, 6921-6927, 6930, 6934, and 6974).

II. Summary of Final Standards

The standards limit emissions of organics from certain process vents and equipment leaks at new and existing hazardous waste TSDF requiring a permit under RCRA subtitle C (i.e.,

permitted TSDF and TSDF that need authorization to operate under RCRA section 3005(e)). This applicability includes all hazardous waste management units that require RCRA permits and recycling units that are not subject to RCRA permit requirements, if, independent of today's final rules, a RCRA permit is needed for another part of the facility operations.

A. Vents on Hazardous Waste Management Process Units

Today's final standards are applicable to vents on waste management units that manage hazardous waste with an annual average total organics concentration of 10 ppmw or greater (hereafter referred to as "process vents") and specifically include (1) process vents on distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping operations and vents on condensers serving these operations; and (2) process vents on tanks (e.g., distillate receivers, bottoms receivers, surge control tanks, separator tanks, and hot wells) associated with distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping processes if emissions from these process operations are vented through the tanks. Up-to-date information and data used to determine whether or not a hazardous waste management unit and its associated process vent(s) are subject to the subpart AA standards must be maintained in the facility operating record (§ 264.1035(f) and § 265.1035(f)). For example, documentation of a waste analysis showing that the waste managed in the unit is less than the 10-ppmw applicability criterion must be kept in the facility operating record.

The final rules for process vents require that owners or operators of TSDF subject to the provisions of new subpart AA: (1) Reduce total organic emissions from all affected process vents at the facility to below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr), or (2) install and operate a control device(s) that reduces total organic emissions from all affected process vents at the facility by 95 weight percent. The owner or operator of the facility must determine through test data or engineering judgment and calculations that the facility is not expected to exceed the emission rate limit of 1.4 kg/h and 2.8 Mg/yr. Facilities with organic emissions from affected vents that never exceed the emission rate limit will not be required to install controls or monitor process vent emissions under this rule. For all other affected facilities, the owner or operator must install controls to reduce total facility process vent emissions from all affected vents below the emission rate limit or to reduce total facility process vent organic emissions after primary recovery by 95 percent; if enclosed combustion devices are used, the owner/operator has the option of reducing the organic concentration of each affected vent stream at the facility to no more than 20 parts per million by volume (ppmv). Selection of the emission rate limit is addressed further in section VI.B below and in chapters 4.0 and 7.0 of the BID.

The final standards for process vents do not require the use of any specific types of equipment or add-on control devices. Condensers, carbon adsorbers, incinerators, and flares are demonstrated emission control equipment for the regulated processes, although the choice of control is not limited to these.

To demonstrate compliance with the process vent provisions, TSDF owners/operators must document process vent emissions and emission reductions achieved by add-on control devices and certify the emission reduction capability of the control equipment. Documentation must (1) identify affected process vents, provide the throughput and operating hours of each affected unit, and provide emission rate determinations for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility); and (2) show whether installed add-on control devices achieve the emission rate limit by design and during operation. Where the emission rate limit is not attained, documentation must show whether the add-on control devices achieve a 95-percent reduction in organics or the 20-ppmv organics concentration limit by design and during operation. The documentation must include the basis for determining the design emission reduction.

The rules for process vents require that specific control device operating parameters be monitored continuously and the monitoring information be recorded in the facility operating record to ensure that the devices perform according to their design and are properly operated and maintained. For facilities with final RCRA permits, periods when monitoring indicates that control device operating parameters exceed established tolerances for design specifications must be reported semiannually. The records and reports must include dates, duration, cause, and corrective measures taken. There are no reporting requirements for interim status facilities. These monitoring and recordkeeping requirements are discussed below in section V.B and in the BID in chapter 11.0, section 11.4.

B. Equipment Leaks on Hazardous Waste Management Process Units

The equipment leak standards apply to emissions from valves, pumps, compressors, pressure relief devices, sampling connection systems, and open-ended valves or lines. Under the final standards, controls for these sources are required at TSDF where the equipment contains or contacts hazardous waste streams with organic concentrations of 10 percent by weight or greater. The owner or operator of a facility may choose any of the applicable test methods identified in the final rules for determining the organic content.

To comply with the equipment leak standards, the facility owner/operator must identify all affected equipment (i.e., pumps, valves, compressors, etc., that contain or contact hazardous waste streams with at least 10-percent-by-weight organics), establish which of the affected equipment is in heavy liquid service, and determine which valves are unsafe or difficult to monitor. By the effective date of this regulation, the facility owner/operator must conduct the initial monthly monitoring survey of pumps and valves in gas/vapor or light liquid service. A number of portable volatile organic monitoring devices are capable of detecting equipment leaks. Any analyzer can be used, provided it meets the specifications and performance criteria set forth in EPA Reference Method 21 (contained in appendix A of 40 CFR part 60).

Affected compressors must have a dual mechanical seal system that includes a barrier fluid system or must be designated as having "no detectable emissions," which means an instrument reading of less than 500 ppm above background using EPA Reference Method 21. Sampling connections must have a closed-purge system. Open-ended valves or lines must have a cap, blind flange, plug, or second valve. Pressure relief devices must operate with "no detectable emissions."

Recordkeeping and monitoring are also required by the equipment leak provisions. For example, leaking equipment as determined by Method 21 must be tagged as specified in the rule, and records of repair attempts, delay of repair, etc., must be recorded in a log and included as part of the facility's operating record. Monitoring of control device operating parameters is also required if a closed-vent system and control device are installed as a result of the equipment leak standards. The standards and recordkeeping

requirements are discussed below at section V.C.

III. Background

A. Regulatory Authority

In 1984, Congress passed HSWA, amending RCRA. Section 3004(n) of RCRA, as amended by HSWA, directs EPA to "* * * promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment." The standards being promulgated today address, in part, this congressional directive and are applicable to all TSDF that require authorization to operate under section 3005 of RCRA. These regulations are being promulgated under the authority of sections 1006, 2002, 3001–3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6905, 6912, 6921–6927, 6930, 6934, and 6974).

B. Regulatory Scope of Today's Standards

Today's final rules apply to facilities that treat, store, or dispose of hazardous wastes as defined in 40 CFR 261.3 and, specifically, to certain hazardous waste management units at facilities requiring RCRA subtitle C permits. This includes facilities with permits and those operating under interim status. Today's rules, codified in new subparts AA and BB of 40 CFR parts 264 and 265, are applicable to the following units at TSDF: (1) Hazardous waste management units subject to the permitting requirements of part 270 (i.e., not 90-day accumulation tanks at TSDF), and (2) hazardous waste recycling units located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270. Under 40 CFR 260.10, the term "facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. (Note: This definition differs from the definition of "facility" for purposes of corrective action under RCRA section 3004(u). See 50 FR 28712, July 15, 1985.)

C. Air Standards Under RCRA Section 3004(n)

Air emissions from hazardous wastes are generated or released from numerous sources at TSDF, including distillation and other organic separation units, surface impoundments, tanks, containers, landfills, land treatment facilities, wastepiles, and leaks from equipment associated with these operations.

In considering the regulation of air emissions under RCRA section 3004(n) and within the RCRA regulatory framework, EPA has concluded that air emissions from hazardous waste management facilities that are subject to RCRA subtitle C should be regulated under the authority of RCRA section 3004(n). Air emissions from facilities or units that manage solid wastes that are not regulated as hazardous wastes pursuant to 40 CFR part 261 (e.g., cement kiln dust waste) and air emissions from hazardous waste from units or facilities that are exempt from the permitting provisions of 40 CFR 270.1(c)(2) (e.g., wastewater treatment units with National Pollutant Discharge Elimination System (NPDES) permits) will be subject to control techniques guidelines or standards developed as needed under either the Clean Air Act (CAA) or RCRA authority. Air emissions from wastes managed in units subject to subtitle D (nonhazardous solid wastes such as those managed in municipal landfills) also will be subject to guidelines or standards issued under CAA or RCRA authority as appropriate.

Air emissions from hazardous wastes include photochemically reactive and nonphotochemically reactive organics, some of which are toxic or carcinogenic, and also may include toxic or carcinogenic inorganic compounds. Depending on the source, particulates (including metals, aerosols of organics, dust, as well as toxics and carcinogens) also may be released or generated. These emissions, which are released to the atmosphere from a wide variety of sources within TSDF, present diverse health and environmental risks. Therefore, EPA has developed a multiphased approach for regulating TSDF organic air emissions. This approach, described generally below, reflects EPA's understanding of the problem and knowledge of applicable, effective controls at this time.

Organic emissions from TSDF managing hazardous wastes contribute to ambient ozone formation and increase cancer and other health risks. Phases I and II of EPA's TSDF regulatory approach will significantly reduce emissions of ozone precursors and air toxics and carcinogens from TSDF by controlling emissions of organics as a class rather than controlling emissions of individual waste constituents. The regulation of organics as a class has the advantage of being relatively straightforward because it can be accomplished with a minimum number of standards, whereas the control of individual toxic constituents will require multiple standards. Regulating organics as a class also makes efficient use of EPA resource, avoids many of the complexities of having multiple standards, and reduces the number of constituents for which separate standards may be required.

The health and environmental effects of ambient ozone are well documented measured in terms of monetary losses, they total hundreds of millions of dollars each year. Other health impacts of TSDF organic emissions are summarized in section VII.D of this preamble and are discussed in more detail in the BID that accompanies this final rule and in the draft BID for Phase II organic standards titled, "Hazardous Waste TSDF—Background Information for Proposed RCRA Air Emission Standards," available in Docket F–90–CESP–FFFFF. The substantial reductions in organic emissions achievable through implementation of Phase I and Phase II controls will reduce atmospheric ozone formation as a result of reductions in TSDF emissions of ozone precursors and will reduce nationwide cancer incidence and maximum individual risk due to exposure to air toxics and carcinogens emitted from TSDF.

Specifically, Phase I (which is being promulgated as final rules today) entails the promulgation of standards for the control of organic air emissions from selected hazardous waste management processes and equipment leaks. As discussed in the February 1987 proposal, EPA chose to develop this portion of its TSDF rulemaking first to prevent uncontrolled air emissions from land disposal restriction (LDR) treatment technologies. The technologies used in lieu of land disposal include the distillation/ separation processes subject to the Phase I rules. Publication of today's final rules for air emissions from hazardous waste management unit process vents from distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping processes and from leaks in piping and associated equipment handling hazardous wastes marks the completion of this first phase.

In the second phase, EPA will propose (in 1990) additional standards under section 3004(n) to control organic air emissions from other significant TSDF air emission sources not covered or not adequately controlled by existing standards. These sources include surface impoundments, tanks (including vents on closed, vented tanks), containers, and miscellaneous units.

The analyses of impacts indicate that, at some facilities, residual cancer risk to the most exposed individuals after implementing the first two phases of regulation will remain outside the risk range for other regulations promulgated under RCRA (which historically has been in the range of 1×10^{-4} to 1×10^{-6}). The EPA is therefore planning a third phase of the effort to control TSDF emissions in which various means for further reducing risk will be examined. In the interim, as explained in section VI.E, the omnibus permitting authority of RCRA is an available option for requiring additional emission and risk reductions beyond that achieved by today's final rules if it is decided, on a case-by-case basis, that additional control is needed to protect human health and the environment.

The EPA is currently involved in an effort to improve the data used in the current risk analyses and, in the third phase, will make use of any new data obtained. If additional constituent control is found to be necessary, the number of constituents for which additional control is needed is expected to be significantly less than if a constituent approach were used as the only means of regulating TSDF air emissions. Therefore, the EPA is convinced that the control of organics as a class followed by controls for individual toxic constituents, as necessary, will ultimately result in comprehensive standards that are protective while providing effective interim control.

Should additional regulation under Phase III be necessary, EPA is considering a variety of approaches for reducing residual risk associated with emissions from wastes managed at TSDF, and additional approaches may be developed in the future. For example, EPA could require additional technology control for toxic waste management (e.g., technology that ensures lower rates of leakage from equipment, if such technology can be developed for use at TSDF) or limit the quantities of specific constituents that can be managed at a TSDF. The constituents to be evaluated in Phase III will include those reported as being present in hazardous wastes managed by existing TSDF for which health effects have been established through the development of unit risk factors for carcinogens and reference doses for noncarcinogens.

D. Other RCRA Air Standards

The EPA has promulgated several standards under RCRA that reduce air emissions from TSDF. For example, several existing provisions in 40 CFR part 264 (40 CFR 264.251(f), 264.301(i), and 264.273(f)) require the implementation of general design and operating practices at permitted wastepiles, landfills, and land treatment operations to limit the release of particulate air emissions. The EPA has prepared a technical guidance document to aid in the implementation of these particulate rules; the document ("Hazardous Waste TSDF—Fugitive Particulate Matter Air Emissions Guidance Document," EPA–450/3–89–019) provides information on the sources of, and control technology for, particulate air emissions at TSDF. Additionally, 40 CFR part 264, subpart X, contains provisions that require prevention of air releases that may have adverse effects on human health or the environment at miscellaneous hazardous waste management units.

Air standards also have been promulgated for the control of air emissions from permitted hazardous waste incinerators (40 CFR part 264, subpart O). These standards require that incinerators be operated to achieve a destruction and removal efficiency (DRE) of at least 99.99 percent for those primary organic hazardous constituents listed in the facility permit. Higher efficiencies are required when the incinerator is burning certain specified waste types. These standards also limit air emissions of organics, hydrochloric acid, and particulates from incinerator stacks.

Air standards for interim status hazardous waste incinerators (40 CFR 265, subpart O) require monitoring of visible emissions and operating conditions. When burning specified wastes, these incinerators must receive a certification from the Assistant Administrator stating that the incinerator can meet the performance standards specified for permitted incinerators in 40 CFR 264, subpart O.

Interim status standards for other thermal treatment units are found in 40 CFR part 265, subpart P. These standards apply to facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion. The standards require monitoring of visible emissions and operating conditions of the combustion devices and prohibit open burning except for open burning and detonation of waste explosives.

The EPA has also proposed standards covering the burning of hazardous waste in boilers and industrial furnaces (52 FR 16987; May 6, 1987). These standards would require such burning to achieve a DRE of 99.99 percent for each principal organic hazardous constituent identified in the facility permit. In addition, a DRE of 99.99 percent must be achieved when burning certain specified constituents. The proposed standards also have provisions for burning low-risk wastes that allow an owner or operator to demonstrate that the burning of hazardous waste will not result in significant adverse health effects. To qualify for the low-risk waste exemption, an owner or operator would have to use dispersion modeling to demonstrate that emissions of carcinogenic compounds would not result in off-site ground-level concentrations that pose a risk to the most exposed individual of greater than 1×10^{5}. For noncarcinogenic compounds, the dispersion modeling would demonstrate that the resulting air concentrations would not exceed the reference air concentration (RAC) of individual hazardous compounds. The proposed standards would also limit emissions of carbon monoxide, metals, and hydrochloric acid from boilers and furnaces burning hazardous wastes.

E. Relationship of Air Standards to Other Subtitle C Rules

In addition to the air emission standards discussed above, EPA has ongoing programs that indirectly affect air emissions from hazardous waste. Today's rules are designed to complement other air standards under RCRA and the rules that might otherwise affect air emissions. Existing RCRA regulations that have the potential for affecting air emissions from hazardous waste TSDF include: (1) The LDR and (2) the corrective action program.

The LDR, developed under section 3004(m) of the HSWA, require that hazardous waste be treated to reduce concentrations of specific chemicals or hazardous properties to certain performance levels or by certain methods before the waste may be disposed of on land. Affected land disposal units include surface impoundments, wastepiles, landfills, and land treatment units. The EPA anticipates that LDR will substantially reduce the potential for air emissions from these land disposal sources. The first set of LDR, for certain dioxins and solvent-containing hazardous wastes, was promulgated on November 7, 1986 (51 FR 40572); the second set of restrictions, the "California list," was promulgated on July 8, 1987 (52 FR 25760); the "First Third" was promulgated on August 17, 1988 (53 FR 31138), and the "Second Third" on June 23, 1989 (54 FR 26597).

The treatment technologies evaluated under LDR for both wastewater and

nonwastewater spent solvents include distillation and other separation processes subject to the requirements of the Phase I rules. Today's standards are designed to protect human health and the environment by reducing air emissions from technologies expected to be used to treat wastes prior to land disposal.

Under the authority of RCRA section 3004(u), EPA is developing rules to address releases of hazardous waste or hazardous constituents from solid waste management units (SWMU) that pose a threat to human health and the environment. Because this authority applies to contamination of soil, water, and air media, organic air emissions from SWMU at some TSDF would be addressed by the corrective action program EPA intends to propose under a separate rulemaking. The draft rules would establish health-based trigger levels measured at the TSDF boundary for determining whether further remedial studies are required to assess air emissions from a particular SWMU. Health-based cleanup standards would then be set for air emission levels that exceed acceptable health-based levels at the point at which actual exposure occurs. When such exposure is determined either through monitoring or modeling techniques, corrective action will be required to reduce such emissions at the point of compliance.

The corrective action program is designed to achieve site-specific solutions based on an examination of a particular TSDF and its environmental setting. It is not intended to set national standards that regulate organic air emissions from all TSDF. At sites where there are releases from SWMU to the atmosphere, organic emissions will be controlled based on site-specific exposure concerns. Furthermore, releases from the SWMU that contain hazardous solid wastes will also be subject to corrective action. Therefore, for air emissions, corrective action is in part designed to expeditiously address threats to human health and the environment that are identified prior to implementation of more comprehensive air emission standards. In addition, because corrective action can address a wider universe of SWMU, it will address, in some respects, exposure concerns that today's final standards do not address.

F. Relationship of Today's Final Standards to CERCLA

The CERCLA, as amended by the Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9601 et seq., authorizes EPA to undertake removal and remedial actions to clean up releases of hazardous substances, pollutants, or contaminants. Removal actions typically are immediate or expedited activities necessary to minimize exposure or danger to human health and the environment from the release of a hazardous substance, pollutant, or contaminant. Remedial actions are longer term, planned activities performed at sites listed on the National Priorities List to permanently clean up hazardous substances, pollutants, or contaminants and any soils, surface waters, or ground waters contaminated by these materials. On-site remedial actions are required by CERCLA section 121(d)(2) to comply with the requirements of Federal and more stringent State public health and environmental laws that have been identified by EPA or the delegated State authority as applicable or relevant and appropriate requirements (ARAR) to the specific CERCLA site. In addition, the National Contingency Plan (NCP) provides that on-site CERCLA removal actions "should comply with Federal ARAR to the extent practicable considering the exigencies of the circumstances" (40 CFR 300.65(f)). Today's final standards may be considered ARAR for certain on-site remedial and removal actions.

A requirement under a Federal or State environmental law may either be "applicable" or "relevant and appropriate," but not both, to a remedial or removal action conducted at a CERCLA site. "Applicable requirements," as defined in the proposed revisions to the NCP, means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance found at a CERCLA site (40 CFR 300.5 (proposed), 53 FR 51475 (December 21, 1988)). "Relevant and appropriate requirements" means those Federal or State requirements that, while not applicable, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site (53 FR 51478).

Some waste management activities used for remedial and removal actions to clean up hazardous organic substances use the distillation/separation operations regulated under subpart AA of today's rules. For example, hazardous organic liquid wastes and ground and surface waters contaminated with hazardous wastes may be treated on site using air stripping processes. Therefore, the organic emission control requirements of today's subpart AA rules may be "applicable" for on-site remedial and removal action activities that use distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that treat substances that are identified or listed under RCRA as hazardous wastes and have a total organic concentration of 10 ppmw or greater. In addition, off-site storage, treatment, and disposal of all wastes classified under RCRA as hazardous waste must be performed at a TSDF permitted under RCRA subtitle C. Thus, CERCLA wastes that are defined as hazardous under RCRA, contain more than 10 ppmw of total organics, and are shipped off site for management in distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping operations, would be subject to today's final standards like any similar RCRA hazardous waste. The new subpart AA control requirements for process vents may also be "relevant and appropriate" to on-site CERCLA removal and remedial actions that use distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping operations to manage substances that contain organics that are not covered by this rule (e.g., organics less than 10 ppmw or organics from nonhazardous wastes).

Today's final rules do not include control requirements for process vents on operations not associated with organics distillation/separation but typically associated with CERCLA remedial or removal actions such as soil excavation, in situ soil vapor extraction, in situ steam stripping of soil, soil washing, stabilization, bioremediation (in situ or otherwise), dechlorination, and low temperature thermal desorption. Therefore, the final rule for process vents would not be "applicable" to remedial or removal actions involving these processes at CERCLA sites. Also, the final process vent standards may not be considered "relevant and appropriate" for these same activities at CERCLA sites. Waste management operations involving soil excavation, in situ soil vapor extraction, in situ steam stripping of soil, soil washing, bioremediation, dechlorination, and low temperature thermal desorption can be considerably different from the waste management operations (i.e., distillation/separation processes) regulated in subpart AA. Control technologies for reducing organic emissions from these types of processes

were not evaluated as part of today's rulemaking. However, the air emission potential of remedial and removal actions requiring excavation, land treatment, land farming, in situ treatment activities, and other treatment activities involving landfills and wastepiles should be determined, and, if necessary, the proper emission controls should be applied to these activities.

The organic emission control requirements of subpart BB for TSDF equipment leaks may also be considered as an ARAR for the equipment components (e.g., pumps and valves) installed at CERCLA cleanup sites that contain or contact substances containing 10 percent by weight or more total organics.

Although today's final standards would not be ARAR for all types of remedial and removal actions that are potential sources of organic air emissions, other existing RCRA or CAA regulations may qualify as ARAR for many of these activities. For example, subpart O of 40 CFR part 264 establishes standards of performance limiting organic emissions from thermal destruction processes (i.e., hazardous waste incinerators).

IV. Applicability and Requirements of Proposed Process Vent and Equipment Leak Standards

On February 5, 1987 (52 FR 3748), EPA proposed standards under RCRA section 3004(n) for the control of organic air emissions from certain equipment and process vents at hazardous waste TSDF. The proposed standards would have applied to equipment and process vents "in volatile hazardous air pollutant (VHAP) service" (i.e., containing or contacting liquids, gases, or other derivatives of hazardous waste in concentrations greater than 10 percent total organics) located at TSDF required to have a RCRA permit. The decision as to whether equipment or process vents would be covered by the rule (i.e., would ever contain or contact wastes greater than 10 percent total organics) could be based either on testing the waste and derivatives according to specified test procedures or on engineering judgment as to these materials, total organic content.

The proposed standards would have required a 95-percent reduction in organic emissions from vents in VHAP service on product accumulator vessels and on other process vent sources (e.g., vents on closed accumulator tanks on other processes). The preamble for the proposed standard, at 52 FR 3753, described "product accumulator vessels" as types of equipment that generate process emissions and include distillate receivers, surge control vessels, product separators, or hot-wells that are vented to the atmosphere either directly or through a vacuum-producing system. Product accumulator vessels included units used to distill and steam or air strip volatile components from hazardous waste; examples include distillation columns, steam stripping columns, air stripping units, and thin-film evaporation units at TSDF.

The proposed standards would have regulated actual reclamation processes for the first time. Only recycling units at TSDF already subject to RCRA permit requirements (e.g., because of storage activity on the facility) would have been subject to the proposed air standards. Both new and existing units would have been required to have add-on control devices designed to achieve a 95-percent reduction (based on the application of secondary condensers) and to operate within that design. Once in operation, the facilities would have demonstrated compliance by monitoring the operation of the control device.

The proposed standards also would have required implementation of a monthly leak detection and repair (LDAR) program for valves, pumps, compressors, pressure relief devices, and closed-vent systems used to handle hazardous wastes and their derivatives at TSDF. Control systems, leak definition methodology, leak definitions, and repair schedules were based on existing equipment leak standards developed under sections 111 and 112 of the CAA.

Since proposal, EPA has made several important changes to the standards based on the public comments received after proposal and analyses resulting from these comments. The applicability and requirements of the final standards, including the changes made since proposal, are discussed in section V. The EPA's responses to the major comments are summarized in section VI. Additional information is presented in the BID for the final standards.

V. Applicability and Requirements of Today's Final Standards

This section provides a detailed summary of the final standards as they apply to the affected TSDF community and to process vents and equipment subject to today's rule. Also summarized is the relationship of the final standards to existing exemptions under the RCRA regulatory program.

A. Scope of Final Standards

Today's final standards limit organic air emissions as a class at TSDF that are subject to regulation under subtitle C of RCRA. This action is the first part of a multiphased regulatory effort to control air emissions at new and existing hazardous waste TSDF. These rules establish final standards limiting organic emissions from (1) process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping operations that manage hazardous wastes with 10 ppmw or greater total organics concentration on an annual average basis, and (2) leaks from equipment that contain or contact hazardous waste streams with 10 percent by weight or greater total organics.

The final standards do not expand the RCRA-permitted community for the purposes of air emissions control. As promulgated, the final standards control organic emissions only from process vents and equipment leaks at hazardous waste TSDF that are subject to permitting requirements under RCRA section 3005 and are applicable only to specific hazardous waste management units. The rules apply to hazardous waste management units that are subject to the permitting requirements of part 270 and to hazardous waste recycling units that are located at facilities otherwise subject to the permitting requirements of part 270. Exempt units, other than recycling units (e.g., 90-day accumulation tanks and wastewater treatment units as specified in § 270.1(c)(2)), are not subject to the rules even when they are part of a permitted facility. Permitting aspects are further discussed in section IX.

The term "organics" is used in the final standards instead of "volatile organics" to avoid confusion with "volatile organic compounds" (VOC) that are regulated as a class under the CAA. To be subject to the standards, a TSDF: (1) Must have equipment that contains or contacts hazardous wastes that are 10 percent or more by weight total organics, or (2) must have distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that treat or process hazardous wastes with total organics concentrations of 10 ppmw or greater on a time-weighted annual average basis.

The final regulations require the facility owners or operators to determine whether their equipment is subject to the equipment leak rules, subpart BB of parts 264 and 265. The owner or operator of a facility may rely on engineering judgment for this determination, or, if the waste's organic content is questionable, the owner or operator may choose any of the test methods identified in the final rule for

determining whether a piece of equipment contains or contacts hazardous wastes that are 10 percent or more total organics by weight. As proposed, these methods include: ASTM Methods D–2267–88, E 169–87, E 168–88, and E 260–85 and Methods 9060 and 8240 of SW–846. The owner or operator also may use any other test method for determining total organic content that is demonstrated to be equivalent to the test methods identified in the rule using the petition process described in 40 CFR 260.21. The test method selected should be the one best suited for the characteristics of the waste stream. Regardless of the method chosen, the final standard requires the facility owner or operator to determine that the organic content is never expected to exceed 10 percent. The determination of organic content of the waste must at all times be appropriate to the wastes currently being managed in the relevant units. If any action is taken that would result in the determination no longer being appropriate to the facility's or a particular unit's operations (e.g., an upstream process change that results in a change in a waste's organic content), then a new determination is required.

To determine whether a particular hazardous waste management unit of the type specified in the rule (e.g., a steam stripping or air stripping unit) is subject to the provisions of subpart AA of parts 264 and 265, the owner/operator is required to determine the total organic concentration of the waste managed in the unit initially (by the effective date of the standards or when the waste is first managed in the waste management unit) and thereafter on a periodic basis (for continuously generated wastes). A waste determination for subpart AA applicability would not be necessary when an owner/operator manages the waste in a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping unit that is controlled for organic emissions and meets the substantive requirements of subpart AA.

Determination that the time-weighted, annual average total organic concentration of the waste managed in the unit is less than 10 ppmw must be performed by direct measurement or by knowledge of the waste as described later in this section. Direct measurement of the waste's total organic concentration must be performed by collecting individual grab samples of the waste and analyzing the samples using one of the approved reference methods identified in the rule.

The EPA is requiring that analytical results for a minimum of four samples be used to determine the total organic concentration for each waste stream managed in the unit. In setting the minimum number of samples at four, EPA will obtain sufficient data to characterize the total organic concentration of a waste without imposing an unnecessary burden on the owner/operator to collect and analyze the samples.

Waste determinations must be performed under process conditions expected to result in the maximum waste organic concentration. For waste generated on site, the samples must be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation/separation operation. For waste generated off site, the samples must be collected at the inlet to the first waste management unit that receives the waste, provided the waste has been transferred to the facility in a closed system such as a tank truck, and the waste is not diluted or mixed with other waste.

The location where the waste's total organic content is determined is important because sampling location can greatly affect the results of the determination. This effect occurs because the concentration level can decrease significantly after generation as the waste is transferred to (and managed in) various waste management units.

If the waste is directly or indirectly exposed to ambient air at any point, a portion of the organics in the waste will be emitted to the atmosphere, and the concentration of organics remaining in the waste will decrease. For example, for highly volatile organic compounds such as butadiene, all of the compound would evaporate within a few seconds of exposure to air. To ensure that the determination of total organic concentration is an accurate representation of the emission potential of a waste upon generation, it is essential that the waste determination be performed at a point as near as possible to where the waste is generated, before any exposure to the atmosphere can occur.

For the reasons stated above, the waste determination must be based on the waste composition before the waste is exposed, either directly or indirectly, to the ambient air. Direct exposure of the waste to the ambient air means the waste surface interfaces with the ambient air. Indirect exposure of the waste to the ambient air means the waste surface interfaces with a gas stream that subsequently is emitted to the ambient air. If the waste determination is performed using direct measurement, the standards would require that waste samples be collected from an enclosed pipe or other closed system that is used to transfer the waste after generation to the first hazardous waste management unit. If the waste determination is performed using knowledge of the waste, the standards would require that the owner or operator have documentation attesting to the organic concentration of the waste before any exposure to the ambient air.

The location where the waste determination would be made for any one facility will depend on several factors. One factor is whether the waste is generated and managed at the same site or generated at one site and transferred to a commercial TSDF for management. Another important factor is the mechanism used to transfer the waste from the location where the waste is generated to the location of the first waste management unit (e.g., pipeline, sewer, tank truck). For example, if a waste is first accumulated in a tank using a direct, enclosed pipeline to transfer the waste from its generation process, then the waste determination could be made based on waste samples collected at the inlet to the tank. In contrast, if the waste is first accumulated in a tank using an open sewer system to transfer the waste from its generation process then the waste determination would need to be made based on waste samples collected at the point where the waste enters the sewer before the waste is exposed to the ambient air. Where the waste is generated off site, the owner or operator may make the determination based on samples collected at the inlet to the first waste management unit at the TSDF that receives the waste, provided the waste has been transferred to the TSDF in a closed system such as a tank truck and the waste is not diluted or mixed with other waste. If a waste determination indicates that the total organic concentration is equal to or greater than the applicability criterion, then the owner or operator would be required to comply with the standards.

As an alternative to using direct measurement, an owner/operator is allowed to use knowledge of the waste as a means of determining that the total organic concentration of the waste is less than 10 ppmw. Examples of information that might be considered by EPA to constitute sufficient knowledge

include: (1) Documentation that organics are not involved in the process generating the waste, (2) documentation that the waste is generated by a process that is identical to a process at the same or another facility that has previously been determined by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or (3) previous speciation analysis results from which the total concentration of organics in the waste can be computed and it can be documented that no process changes have occurred since the analysis that could affect the waste's total organic concentration. The final standards include the provision that EPA can require that the waste be analyzed using Method 8240 if EPA believes that the documentation is insufficient to determine an exception by knowledge of the waste (§§ 264.1034(f) and 265.1034(f)).

To address the temporal variability that can occur both within a particular waste stream and within the various waste streams managed in a hazardous waste management unit, the final rules require a time-weighted, annual average concentration to characterize the waste managed in the unit. The final rules require that an owner/operator repeat the waste determination whenever there is a change in the waste being managed or a change in the process that generates or treats the waste that may affect the regulatory status of the waste or, if the waste and process remain constant, at least annually. For example, continuous processes are more likely to generate a more homogeneous waste than batch operations; batch operations involve processes that may frequently involve change in materials or process conditions. Batch operations, therefore, usually generate wastes with varying characteristics, including such characteristics as organics content. Ground water concentrations would also be expected to show significant variation if more than one well provides influent to a waste management unit such as an air stripper and the wells that feed the unit are varied over time or if the proportions from the wells that make up the influent are changed. This is because there is typically considerable spatial variability in contaminated ground water concentrations. The situation where feed wells are changed and the change is not accounted for in the initial waste determination would be considered a process change or change in the waste being managed that would require a new determination.

With the time-weighted, annual average applicability criterion, a hazardous waste management unit would not be subject to this rule if it occasionally treats wastes that exceed 10 ppmw if at other times the wastes being treated in the unit are such that the weighted annual average total organic concentration of all wastes treated is less than 10 ppmw. The time-weighted, annual average is calculated using the annual quantity of each waste stream managed in the unit and the mean organic concentration of each waste stream.

Determining the applicability of the standards to affected processes, units, and facilities is of paramount importance to the TSDF owner or operator in complying with the final standards. A mistake even an inadvertent one, will not excuse a facility owner or operator from the obligation to comply with either the requirements of the standards or with potential enforcement actions. Accurate determinations of what equipment and vents must be controlled are crucial to ensuring that all equipment and vents subject to this rule are in fact controlled. When the facility owner/operator and the Regional Administrator disagree on the determination of emissions or emission reduction achieved, then a performance test conducted as specified in the rules must be used to resolve the disagreement. In situations where the owner/operator and Regional Administrator disagree on whether a unit manages a waste with 10 ppmw or greater organics content or a piece of equipment contains or contacts a waste with 10 percent or more organics content, then procedures that conform to the test methods referenced in the rules may be used to resolve the disagreement.

Consistent with section 3010 of RCRA, the final standards for process vent and equipment leak control and monitoring become effective 6 months from today. Owners and operators must come into compliance with these requirements by the effective date; however, where compliance involves the installation of a control device, EPA is requiring that installation be completed as soon as possible but no later than 24 months from the date the regulatory action affecting the unit is published or promulgated. To obtain the extended time for compliance (18 months beyond the effective date), a facility must show that installation cannot reasonably be expected to be completed earlier. In these circumstances, an owner/operator must develop an implementation schedule that indicates when the installation will be completed and shows that additional time is necessary. The implementation schedule must be included in the operating record by the effective date of the rules. Changes in the implementation schedule are allowed within the 24-month time frame if the owner/operator documents that the change cannot reasonably be avoided.

B. Standards for Process Vents

Affected Equipment

A "process vent" is a pipe, stack, or other opening through which emissions from a hazardous waste management unit are released to the atmosphere either directly, through a vacuum-producing system, or indirectly, through another tank. The process vents that would have been covered by the proposed standard included vents associated with any hazardous waste management process or waste management unit.

Review of the hazardous waste TSDF industry has shown that process vents are most typically associated with processes related to distillation or other separation operations. These technologies were also the type being evaluated under the LDR for spent solvents. Therefore EPA concentrated its analysis of process vents on those hazardous waste management units that are involved in solvent or other organic chemical separation or reclamation by distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations. This should include the largest segment of process vents at TSDF and address those sources with the greatest emission potential. Vents on other types of waste management units (e.g. vents on storage tanks) are being addressed in the Phase II rulemaking.

Two basic changes have been made since proposal that clarify the applicability of the final vent standard. First, to avoid confusion with tanks not associated with the processing of waste streams, the term "product accumulator vessel" has been deleted from the final standard and affected equipment is more specifically defined. The applicability of the final standard for process vents also has been clarified since proposal to exclude air emissions from vents on other closed (covered) and vented tanks not associated with the specified distillation/separation processes to avoid regulatory duplication of the Phase II standards as discussed above.

Thus, the final vent standards apply to: (1) Vents on distillation fractionation, thin-film evaporation, solvent extraction, and air or steam stripping

processes and vents on condensers serving these processes; and (2) vents on tanks (e.g., distillate receivers, bottoms receivers, surge control tanks, separator tanks, and hot wells associated with distillation, fractionation, thin-film evaporation, solvent extraction, and air or steam stripping processes) if emissions from these processes are vented through the tank. For example, *uncondensed overhead* emitted from a distillate receiver (which fits the definition of a tank) serving a hazardous waste distillation process unit is subject to these Phase I air controls. On the other hand, emissions from vents on tanks or containers that do not derive from a process unit specified above are not covered by these rules. For example, if the condensed (recovered) solvent is pumped to an intermediate holding tank following the distillate receiver mentioned in the above example, and the intermediate storage tank has a pressure-relief vent (e.g., a conservation vent) serving the tank, this vent will not be subject to the process vent standards. Emissions from vents that are not covered under today's rules will be addressed by Phase II of the air standards under section 3004(n).

Second, the terms "VHAP" and "in VHAP service" have been deleted from the final rule in response to public comments. Commenters found the terms inappropriate for transfer from equipment leak standards developed under section 111 or 112 of the CAA to RCRA standards for organic emissions from hazardous waste. The EPA agrees with these commenters; these terms can be confusing and they are unnecessary for these rules. Therefore, the cross-reference to part 61 has been eliminated and the wording of the final regulation has been revised to reflect applicability based on clearly specified hazardous waste management processes or unit operations that manage wastes with a 10 ppmw or greater total organic content.

Requirements of Final Standard for Process Vents

In response to public comments, several changes have been made to the proposed standard for process vents. While the proposed 95-percent emission reduction standard would have applied to individual process vents emitting organics with concentrations of 10 percent or greater by weight, the final process vent 95-percent emission reduction standard applies to total organic emissions from the combination of all affected vents (i.e., vents subject to the provisions of subpart AA) at the facility. As discussed in section VI of this preamble and in the BID for the final rules, the term "facility" refers to the entire site that is under control of the owner or operator engaged in hazardous waste management. Thus, organic emissions from affected process vents anywhere on the hazardous waste management facility are subject to the standards.

The 10-percent concentration criterion for process vents has not been included in the final rules because the promulgated standards contain a facility-based emission rate limit of 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr) that is more effective in controlling emissions from affected sources and excluding facilities with little emission reduction potential. Based on emissions and health risk analyses conducted in response to comments, this emission rate limit represents an emission level from process vents that is protective of human health and the environment and below which additional meaningful reductions in nationwide health risk and environmental impacts attributable to process vents cannot be achieved. Control of facilities with process vent emissions less than the emission rate limit would not result in further reductions of either cancer risk or incidence on a nationwide basis. Facilities with organic emissions from process vents that do not exceed these emission rates will not have to install controls or monitor emissions from affected process vents. Selection of the emission rate limit is addressed in section VI.B of this preamble and in chapters 4.0 and 7.0 of the BID.

Because the emission rate limits (3 lb/h and 3.1 ton/yr) provide health-based limits, EPA considered dropping completely the organic content criterion (i.e., at least 10 percent total organics). However, EPA decided not to completely eliminate the organic content criterion because it is not clear that the same controls can be applied to very low concentration streams as can be applied to the higher concentration streams that generally are associated with emission rates greater than the limits. For low-concentration streams, EPA questions whether controls are needed on a national or generic basis but is unable to resolve this question at this time. Thus, EPA decided to defer controlling very low concentration streams until it is better able to characterize and assess these streams and the appropriate controls.

Once EPA decided to consider facilities that manage very low concentration organic wastes as a separate category, there remained the problem of determining the appropriate criterion. The EPA examined existing data on air strippers, the treatment device most commonly used with low-concentration streams; it appeared that the quantity of emissions and the risk associated with air strippers treating streams with concentrations below 10 ppmw may be relatively small, thus minimizing the potential harm of deferring control until a later time. Examples of facilities managing low-concentration wastes are sites where ground water is undergoing remedial action under CERCLA or corrective action pursuant to RCRA. Given the limited set of precise data available, and the comments that the 10-percent criterion was too high, EPA determined that an appropriate criterion would be 10 parts per million (ppm) total organics in the waste by weight.

The 10-ppmw criterion is not an exemption from regulation; it is intended only as a way for EPA to divide the air regulations into phases. The EPA is deferring action on very low concentration streams (i.e., ones with less than 10 ppmw total organic content) from the final rule today but will evaluate and announce a decision later on whether to regulate these waste streams.

To comply with the final standards for process vents, the TSDF owner or operator is required to identify all process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, and stripping processes that are treating hazardous waste with a 10-ppmw or greater total organics concentration on a time-weighted annual average basis (i.e., vents affected by the rules). Organic emission rates for each affected vent and for the entire facility from all affected vents must be determined. The facility process vent emission rate must then be compared to the short- and long-term process vent emission rate limits (3 lb/h or 3.1 ton/yr) to determine whether additional emission controls are required. If the process vent emission rate limit is exceeded, the owner or operator must take appropriate action to reduce total facility emissions from affected process vents to below the cutoff level or install additional emission controls to reduce total facility process vent organic emissions by 95 weight percent. If an incinerator, process heater, or boiler is used as a control device, the volume concentration standard of 20 ppmv can be met instead of the 95-weight-percent reduction (§§ 264.1033(c), 264.1060, 265.1033(c), and 265.1060).

Because the final rules could apply to dilute process vent streams and the rule is formatted in terms of a weight-percent

reduction standard, it is necessary to include the volume concentration standard in the final control device standards to account for the technological limitations of enclosed combustion devices (48 FR 48933, October 21, 1983), one of the control technologies examined as part of the rulemaking, treating dilute streams. Below a critical concentration level, the maximum achievable efficiency for enclosed combustion devices decreases as inlet concentration decreases; thus, for streams with low organic vapor concentrations, the 95-percent mass reduction may not be technologically achievable in all cases. Available data show that 20 ppmv is the lowest outlet concentration of total organic compounds achievable with control device inlet streams below approximately 2,000 ppmv total organics. Therefore, a concentration limit of 20 ppmv has been added as an alternative standard for incinerators, process heaters, and boilers to allow for the drop in achievable destruction efficiency with decreasing inlet organics concentration. For consistency, the 20-ppmv concentration is expressed as the sum of the actual individual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen. For facilities that do not meet the emission rate limit, the final process vent standards require that control devices achieve a 95-percent reduction in total organic emissions for the facility or, in the case of enclosed combustion devices, a reduction of each process vent stream to a concentration of no more than each process vent stream to a concentration of no more than 20 ppmv total organic compounds.

The final standards for process vents do not require the use of any specific equipment or add-on control device; the standards can be met using several types of controls. Depending on the characteristics of the process vent stream, either a condenser or a carbon adsorber will likely be the control technology of choice. However, other control devices such as flares, incinerators, process heaters, and boilers, as well as any other device of the owner or operator's choice, also can be used where applicable to achieve compliance.

Operating requirements for closed-vent systems and control devices are included in §§ 264.1033 and 265.1033. A closed-vent system means a system not open to the atmosphere and composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device. If vapor recovery systems such as condensers and adsorbers are used as control devices, they must be designed and operated to recover the organic vapors vented to them with an efficiency of 95 percent or more unless the total organic emission limits for affected process vents (§§ 264.1032 and 265.1032) can be attained at efficiencies less than 95 percent. Vapor recovery systems whose primary function is the recovery of organics for commercial or industrial use or reuse (e.g., a primary condenser on a waste solvent distillation unit) are not considered a control device and should not be included in the 95-percent emission reduction determination.

If enclosed combustion devices such as incinerators, boilers, or process heaters are used, they must be designed and operated to achieve a total organic compound emission reduction efficiency of 95 percent or more or must provide a minimum residence time of 0.5 s at a minimum temperature of 760 °C. The latter are general design criteria established by EPA, and used in numerous rulemakings, that can be used by facilities in lieu of conducting a site-specific design for enclosed combustion devices. The operating requirements for closed-vent systems and control devices include a provision allowing enclosed combustion devices to reduce organic emissions to a total organic compound concentration of 20 ppmv, by compound, rather than achieve the 95-weight percent reduction.

If flares are used, they must be designed and operated with no visible emissions as determined by the procedures of Reference Method 22, except for periods not to exceed a total of 5 min during any 2 consecutive hours. The final standard specifies that flares must be operated with a flame present at all times and must be operated at all times when emissions may be vented to them. In addition, flares must provide a net heating value of the gas being combusted of 11.2 megajoules per standard cubic meter (MJ/scm) or more, be steam-assisted or air-assisted, or provide a net heating value of 7.45 MJ/scm or more if the flare is nonassisted. Specific design and operating requirements for steam-assisted, air-assisted and nonassisted flares also are included in the final standard. Calculations and procedures for determining the net heating value of the gas being combusted the actual exit velocity and the maximum allowed velocity are included in the final provisions for closed-vent systems and control devices (see §§ 264.1033(d) and 265.1033(d)).

Facilities must maintain documentation in the operating record supporting waste determinations, identifying affected process vents, affected waste management unit throughputs and operating hours, emission rates for each affected vent and for the overall facility, and the basis for determining the emission rates (§§ 264.1035(b)(2) and 265.1035(b)(2)). Regardless of the type of control device used, the documentation must certify that add-on control devices achieve the emission rate limit by design and during operation, or that add-on control devices achieve a 95-percent reduction in organics or achieve the 20-ppmv organics concentration limit by design and during operation where the emission rate limit is not attained. The design documentation must present the basis for determining the design emission reduction and establish the basic values for operating parameters used to monitor the control device s operation and maintenance. The design control level (i.e., the emission reduction needed to achieve the emission rate cutoff or 95-percent emission reduction) can be documented by vendor/manufacturer certifications, by engineering calculations, or through source tests to show that the control device removes the required percentage of organics entering the device. All required information and documentation must be kept in the facility s operating record. The facility's waste determinations and process vent emission rate determinations must at all times reflect the facility's current waste management unit designs and wastes managed. If the owner/ operator takes any action that would result in the determination no longer being appropriate to the facility's operations (e.g., if a waste of different composition is managed, the operating hours of the affected management units are increased beyond what was originally considered, or a new affected unit is added that may impact its regulatory status), then a new determination is required (§§ 264.1035(b)(2)(ii) and 265.1035(b)(2)(ii)). In addition, certain information regarding the facility's emission determination and control device design must be included in the facility's part B permit application.

The final rules require the continuous monitoring of specific parameters on all control devices needed to meet the standards to ensure that the devices perform according to their design (§§ 264.1033(f) and 265.1033(f)). The final rules clarify the general parameters listed in the proposal by describing the requirements in greater detail. Operating

parameters are specified for condensers, carbon adsorbers, flares, incinerators, and other enclosed combustion devices. Although minimum operating conditions are identified for organic vapor destruction devices (e.g., incinerators and flares) to ensure 95-percent destruction, values or ranges of values for recovery device (i.e., condensers and carbon adsorbers) operating parameters cannot be specified on an industry-wide basis. Therefore, a recovery device must be designed for the particular application and monitored to ensure that it is being operated within design specifications. Proper design shall be determined through engineering calculations vendor certification, and/or emission testing.

The owner/operator is required to record the control device monitoring information, including the basis for the operating parameters used to monitor control device performance, in the facility operating record. Periods when monitoring indicates control device operating parameters are outside established tolerances on design specifications must be recorded. Facilities with final permits incorporating these standards (i.e., facilities subject to the provisions of 40 CFR part 264 subpart AA) must report exceedances that are not corrected within 24 hours to the Regional Administrator on a semiannual basis. The records and reports must include the dates, duration, cause, and corrective measures taken. (See §§ 264.1036(a) and 264.1065(a)(4).)

The specific monitoring requirements for control device operating parameters include: (1) Continuous monitoring of coolant fluid temperature and exhaust gas temperatures or the concentration level of organic compounds in the exit gas stream for condensers; (2) continuous monitoring of exhaust gas organic breakthrough for carbon adsorbers; (3) continuous monitoring of combustion zone temperature for incinerators, boilers and process heaters; and (4) the presence of a pilot flame using a thermocouple or any other equivalent device to detect the presence of a flame for flares.

The final standards would require that emission control equipment is properly designed, installed, operated, and maintained. Also, as previously described, the standards would require continuous monitoring of specific control device operating parameters. A control device monitor reading outside the operating range allowed by the standards (referred to in this preamble as a "control device exceedance") indicates that the control device is not operating normally or is malfunctioning (i.e., not operating at the design setting necessary to achieve at least 95 percent organic emission control efficiency). Action must be taken by the owner or operator to return the control device to operating at the design setting. When a control device exceedance cannot be corrected within 24 hours of detection, the final standards would require the owner or operator to record specific information concerning the control device exceedance. Facilities with final RCRA permits must report this information to EPA on a semiannual basis; interim status facilities are not required to report control device exceedances. The exceedance report would need to describe the nature and period of each control device exceedance and to explain why the control device could not be returned to normal operation within 24 hours. A report would need to be submitted to EPA only if control device exceedances have occurred during the past 6-month reporting period. These reports would serve to aid EPA in determining the owner's or operator's ability to properly operate and maintain the control device. The EPA recognizes that a control device malfunction may occur due to circumstances beyond the control of the owner or operator (e.g., defective equipment supplied by the manufacturer). Therefore, a single control device exceedance may not necessarily be indicative of improper control device operation or maintenance.

C. Equipment Leak Standards

Affected Equipment

The final standards apply to each valve, pump, compressor, pressure relief device, open-ended valve or line, flange or other connector, and associated air emission control device or system that contains or contacts hazardous waste streams with 10 percent or more total organics by weight.

In response to public comments, EPA has changed the applicability of the final LDAR standards for pumps and valves to better relate to the volatility of the wastes managed and thus to air emission potential. The requirements for pumps and valves have been revised to include the heavy liquid provisions contained in EPA's new source performance standard (NSPS) for equipment leaks of VOC in the synthetic organic chemicals manufacturing industry (SOCMI) (40 CFR part 60, part VV). The heavy liquid provisions (§§ 264.1058 and 265.1058) exempt pumps and valves processing lower vapor pressure substances from the routine leak detection monitoring requirements of the standards. By their nature, heavy liquids exhibit much lower volatilities than do light liquids, and because equipment leak rates and emissions have been shown to vary with stream volatility, emissions from heavy liquids are less than those for lighter, more volatile streams. For example, EPA analyses indicate that emissions from valves in heavy liquid service are more than 30 times lower than the emissions from valves in light liquid service.

Pumps and valves are in light liquid service if the vapor pressure of one or more or the components being handled by the piece of equipment is greater than 0.3 kilopascal (kPa) at 20 °C, if the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight, and if the fluid is a liquid at operating conditions. Pumps and valves not in light liquid service are defined to be in heavy liquid service.

The regulations governing equipment leaks also have been incorporated and reprinted in the final standards to eliminate cross-referencing to part 61 regulations and to consolidate the requirements under RCRA.

Equipment Leak Control Requirements

The control requirements for valves are based on LDAR requirements. Valves in light liquid or gas/vapor service (§§ 264.1057 and 265.1057) must be monitored using Reference Method 21; an instrument reading at or above 10,000 ppm indicates the presence of a leak. If a leak is detected, the valve must be repaired as soon as practicable but no later than 15 days after the leak is detected. A first attempt to repair the valve must be made no later than 5 days after the leak is detected. First attempts at repair include, but are not limited to, tightening or replacing bonnet bolts tightening packing gland nuts, or injecting lubricant into the lubricated packing.

Monthly monitoring is required; however, any valve for which a leak is not detected for 2 successive months may be monitored the first month of each succeeding quarter until a leak is detected (§§ 264.1057(c) and 265.1057(c)). If a leak is detected the valve must be monitored monthly until a leak is not detected for 2 successive months.

In addition, monthly monitoring is not required if: (1) A leakless valve, such as a sealed-bellows valve, is used to achieve a no-detectable-emissions limit (500 ppm above background, as measured by Method 21, with an annual performance test; §§ 264.1057(f) and

265.1057(f); (2) the owner or operator meets a performance level of 2 percent of all valves leaking (§§ 264.1061 and 265.1061); (3) the owner or operator elects to comply with a skip-period leak detection and repair program as described for valves (§§ 264.1062 and 265.1062); or (4) the valve is designated by the owner or operator as unsafe-to-monitor or difficult-to-monitor (§§ 264.1057 (g) and (h) and 265.1057 (g) and (h)). A valve may be designated as unsafe-to-monitor if monitoring personnel would be exposed to an immediate danger as a consequence of monitoring and if the owner or operator adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times. A valve may be designated as difficult-to-monitor if the valve cannot be monitored without elevating monitoring personnel more than 2 m above a support surface, the valve is in an existing hazardous waste management unit and the owner or operator follows a written plan that requires monitoring at least once a year.

The EPA is continuing to study the status of new technology available for the control of air emissions from valves. The EPA has issued a separate notice in the **Federal Register** that discusses available information on leakless valve technology (54 FR 30228, July 19, 1989). Public comments were requested in that notice on several aspects of the technology to assist EPA in determining applications for which leakless valve technology would be appropriate at hazardous waste TSDF.

The final standards also require monitoring for pumps at TSDF containing or contacting wastes with greater than 10 percent organics (§§ 264.1052 and 265.1052). Each pump in light liquid service must be monitored monthly with a portable vapor analyzer following the EPA Reference Method 21 protocol. In addition, each pump in light liquid service must be checked weekly by visual inspection for indications of liquids dripping from the pump seal. A pump is determined to be leaking if an instrument reading of 10,000 ppm or greater is measured or there are indications of liquids dripping from the pump seal. When a leak is detected, it must be repaired as soon as practicable, but not later than 15 days after it is detected unless the delay-of-repair provisions specified in the rule apply. The first attempt at repair must be made within 5 calendar days of the leak being detected.

Pumps in light liquid service are exempt from the monitoring requirements under §§ 264.1052 (d) and (e) and 265.1052 (d) and (e) if: (1) The pump is equipped with a dual mechanical seal system that includes a barrier fluid between the two seals, (2) a magnetically coupled or diaphragm pump is used to achieve a no-detectable-emissions limit (indicated by a portable organic vapor analyzer reading of less than 500 ppm above background), or (3) the pump is equipped with a closed-vent system capable of transporting any leakage from the seal or seals to a 95-percent efficient control device. If pumps are equipped with a dual mechanical seal system, emissions from the barrier fluid reservoir must be vented to a control device designed and operated to achieve a 95-percent control efficiency, the barrier fluid must be purged and added to the hazardous waste stream, or the pressure of the barrier fluid must be maintained at a level above the pressure in the pump or exhauster stuffing box. A pressure or level indicator to detect any failure of the seal system or the barrier fluid system is required, with the indicator checked daily or equipped with an alarm to signal failure of the system. If leakless equipment is used, such as magnetically coupled or diaphragm pumps, the standards require an annual performance test by Method 21 to verify the no-detectable-emissions status of the equipment.

Compressors must be equipped with a seal system that includes a barrier fluid system that prevents leakage of organic emissions to the atmosphere. The seal system must be operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure, be equipped with a barrier fluid system that is connected by a closed-vent system to a control device that meets the design and operating requirements established in §§ 264.1060 and 265.1060, or be equipped with a system that purges the barrier fluid into a hazardous waste stream with zero total organic emissions to the atmosphere. In addition, the barrier fluid system must be equipped with a sensor that detects failure of the seal system, barrier fluid system, or both. A compressor is determined to be leaking if the sensor indicates failure of the seal system, the barrier fluid system, or both. When a leak is detected, it must be repaired as soon as practicable, but not later than 15 calendar days after it is detected; a first attempt at repair must be made within 5 calendar days.

Except during emergency pressure releases, each pressure relief device in gas/vapor service must be operated with no detectable emissions (500 ppm above background, as measured by Reference Method 21) (§§ 264.1054 and 265.1054). No later than 5 calendar days after any pressure release, the device must be returned to a condition of no detectable emissions and be monitored to confirm that status. Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage to a control device that meets the requirements of §§ 264.1060 and 265.1060 is exempt from these requirements.

Each open-ended valve or line must be equipped with a cap, blind flange, plug, or second valve (§§ 264.1056 and 265.1056). The cap, blind flange, plug, or second valve must seal the open end at all times except during operation requiring hazardous waste stream flow through the open-ended valve or line. Operational requirements for second valves and double block and bleed systems also are specified in the final regulation.

Pumps and valves in heavy-liquid service, pressure relief devices in light-liquid or heavy-liquid service, and flanges and other connectors must be monitored within 5 days by Reference Method 21 if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method (§§ 264.1058 and 265.1058). A leak is detected if an instrument reading of 10,000 ppm or greater is measured. When a leak is detected, it shall be repaired as soon as practicable but not later than 15 calendar days after detection. The first attempt at repair must be made within 5 calendar days of the leak being detected.

The final standards also include provisions for delay of repair (§§ 264.1059 and 265.1059). Delay of repair of leaking equipment is allowed if the repair is technically infeasible without a hazardous waste management unit shutdown (i.e., a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit). However, repair of the leak must be performed before the end of the next shutdown of that unit. Delay of repair also is allowed for equipment (i.e., either pumps or valves) that is isolated from the hazardous waste management unit and is prevented from containing or contacting a hazardous waste with 10 percent or more organic content. For valves, delay of repair is allowed if: (1) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair, and (2) when the valve is repaired the purged materials are

collected and destroyed or recovered in a control device complying with the requirements of the standards. Delay of repair beyond a hazardous waste management unit shutdown is allowed only if valve assembly replacement is necessary during the next shutdown of the unit, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before supplies were depleted (i.e., the owner/operator has made a good-faith effort to maintain adequate spare parts). For pumps, delay of repair is allowed if: (1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system, and (2) repair is completed as soon as practicable, but not later than 6 months after the leak is detected.

The final standards also include design and operating requirements for closed-vent systems that may be used to comply with the equipment leak standards (§§ 264.1060 and 265.1060). Closed-vent systems must be designed for and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background by Reference Method 21. A leak on a closed-vent system, indicated by an instrument reading of 500 ppm or by visual inspection, must be repaired within 15 calendar days after detection; a first attempt at repair must be made no later than 5 calendar days after detection. Monitoring must be conducted initially, annually, and at other times as requested by the Regional Administrator, to confirm the no-detectable-emissions status of the system. Like other control devices, closed-vent systems must be operated at all times when any emissions may be vented to them.

The provisions of 40 CFR 61.244, subpart V, which provide a formal mechanism for applying for use of an alternative means of emission limitation, were specifically not included in the proposed TSDF process vent and equipment leak rules and have not been included in these final standards. The alternative means of emission limitation provisions are not considered self-implementing; i.e., these provisions cannot be satisfied without the need for detailed explanation or negotiation between the facility owner/operator and EPA, and thus are not appropriate as requirements for interim status facilities under part 265. Therefore, the alternative means of emission limitation provisions were not included in the final subpart AA and BB rules. An owner or operator, however, may use an alternative means of emission limitation to comply with the process vent or equipment leak standards of part 264. The owner/operator can use part B of the permit application to provide information that demonstrates the effectiveness of any alternative means of emission limitation and can use the negotiation process associated with issuance of a final permit to establish conditions for use of an alternative means of emission limitation. The owner or operator would be responsible for collecting and verifying test data to document that the emission reduction achieved by the alternative is equal to or greater than the emission reduction achieved by the equipment, design, or operational requirements in the standard.

Additional general recordkeeping requirements include information on pump, valve, compressor, and pressure relief device leak repair attempts; reasons for repair delays; and design criteria for sampling connection systems and closed-vent systems and control devices. There are also recordkeeping and monitoring requirements for pieces of equipment covered by alternative requirements.

Compliance with the equipment leak standards will be assessed through plant inspections and the review of records that document implementation of the requirements as required by the final standards.

D. Summary of Changes from Proposal

Several changes have been made to the standards since proposal as the result of EPA's evaluation of comments and of additional information gathered in response to comments. These changes respond primarily to commenters' concerns that additional controls are unnecessary for TSDF process vents and equipment with very low emissions and that the applicability, implementation, and compliance provisions of the standards should be clarified. The EPA has addressed these problems in the final rules.

The proposed standards would have required that organic emissions from all process vents that emit organics in concentrations of 10 percent or greater on all TSDF waste management units be reduced by 95 percent. The final rules apply to process vents on specific hazardous waste management units that treat wastes with total organics concentrations of 10 ppmw or greater and include (1) process vents on distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations and vents on condensers serving these operations and (2) process vents on tanks associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations if emissions from these process operations are vented through the tanks.

While the proposed standard would have required 95 percent emission reduction from each affected vent, the final vent standard's weight-percent reduction applies to total emissions from the combination of all affected vents at each facility. The final rules also add facility-based emission rate limits for all affected process vents of 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr) (§§ 264.1032(a)(1) and 265.1032(a)(1)). Facilities with organic emissions from vents below the emission rate limits will not have to reduce process vent organic emissions. The owner or operator of the facility must determine and document that emissions from affected vents will not exceed the emission rate limits. The EPA estimates that baseline emissions will be reduced by about 90 percent by controlling process vent emissions from about 55 percent of affected facilities, i.e., those with emissions above the emission rate limit.

Another major change affects the applicability of the final standards for pumps and valves to better relate to the volatility of the wastes managed and thus to air emission LDAR potential. The proposed LDAR requirements for pumps and valves have been revised to distinguish between equipment in heavy liquid service and equipment in gas/light liquid service. The provisions exempt pumps and valves processing relatively low vapor pressure substances (heavy liquids) from the routine instrument monitoring requirements of the standards. These provisions are included to avoid requiring unnecessary controls on equipment that poses little emission problem even when leaking.

Because of commenters' concerns with the administrative problems associated with obtaining a major permit modification, the final standards do not require modifications of RCRA permits issued before the effective date of these rules (§§ 264.1030(c) and 264.1050(c)). In such cases, requirements for affected hazardous waste management units and associated requirements for process vents and equipment must be added or incorporated into the facility's permit at review under § 270.50 or at reissue under § 124.15. However, in the forthcoming Phase II air rules, EPA will be proposing to modify §§ 264.1030(c) and 264.1050(c) as they apply to control of air emissions under subparts AA and BB. This action, if adopted, would mean that the air rules promulgated under RCRA section 3004(n) would be

applicable to all facilities as of the effective date of the Phase II rules. More details regarding implementation are presented in section IX of this preamble.

The proposed air emission standards for process vents and equipment leaks would have added part 269, Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. For consistency with standards for other TSDF sources under RCRA, the final standards have been incorporated into part 264, for permitted facilities, and part 265, for interim status facilities. In addition, whereas at proposal the equipment leak requirements of 40 CFR part 61, subpart V, were incorporated by reference, these provisions have been written into subpart BB with editorial revisions appropriate for a standard promulgated under RCRA authority rather than CAA authority.

E. Relationship of RCRA Exemptions to Final Standards

Under 40 CFR 261.4(c), hazardous wastes that are generated in process-related equipment such as product or raw material storage tanks or pipelines are exempt from RCRA regulation. This exemption applies until the waste is physically removed from the unit in which it was generated, unless the unit is a surface impoundment or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials. This exemption is not affected by this rule. Therefore, units such as *product* (not hazardous waste) distillation columns generating hazardous waste still bottoms containing organics are not subject to the standard while the wastes are in the product distillation column. However, distillation columns that receive hazardous wastes and that are used in hazardous waste treatment (i.e., hazardous waste management units) are subject to this standard if the waste's organic content exceeds the 10-ppmw applicability criterion. As discussed in the preamble to the proposed standard, only those recycling units that are part of a facility already subject to RCRA permit requirements are subject to the air standards. The EPA's authority to control air emissions from solvent reclamation operations not part of closed-loop systems is discussed further in section VI of this preamble and in the BID.

Totally enclosed treatment facilities also are exempt from RCRA subtitle C requirements under 40 CFR 264.1(g)(5), 40 CFR 265.1(c)(9), and 270.1(c)(2). A "totally enclosed treatment facility" is a hazardous waste treatment facility that is "directly connected to an industrial production process and which is constructed and operated in a manner that prevents the release of any hazardous waste or any constituent thereof into the environment during treatment" (40 CFR 260.10).

Treatment facilities located off the site of generation are not directly connected to an industrial process. Thus, commercial waste treatment facilities with equipment affected by the final standards, such as solvent reclamation facilities, by definition ordinarily would not be totally enclosed. In addition, storage facilities, disposal facilities, and ancillary equipment not used for treating hazardous waste do not fall within the definition of a totally enclosed treatment facility.

The EPA believes that many on-site treatment facilities also are not totally enclosed. Distillation columns and other treatment technologies typically are designed to release emissions into the air. Therefore, by definition, these on-site technologies generally are not totally enclosed. (See 45 FR 33218, May 19, 1980 (no constituents released to air during treatment).)

Two important characteristics define a totally enclosed treatment facility. The key characteristic of a totally enclosed treatment facility is that it does not release any hazardous waste or constituent of hazardous waste into the environment during treatment. Thus, if a facility leaks, spills, or discharges waste or waste constituents, or emits waste or waste constituents into the air during treatment, it is not a totally enclosed treatment facility within the meaning of these regulations. The second important characteristic is that it must be directly connected to an industrial production process.

The EPA also excludes elementary neutralization and wastewater treatment tanks as defined by 40 CFR 260.10 from regulation under the hazardous waste rules. The EPA amended these definitions (see 53 FR 34080, September 2, 1988) to clarify that the scope of the exemptions applies to the tank systems, not just the tank. For example, if a wastewater treatment or elementary neutralization unit is not subject to RCRA subtitle C hazardous waste management standards, neither is ancillary equipment connected to the exempted unit. The amendments also clarify that, for a wastewater treatment unit to be covered by the exemption, it must be part of an onsite wastewater treatment facility. Thus, emissions from process vents associated with distillation, fractionation thin-film evaporation, solvent extraction, or air or steam stripping operations and ancillary equipment (piping, pumps, etc.) that are associated with a tank that is part of the wastewater treatment system subject to regulation either under sections 402 or 307(b) of the Clean Water Act are not subject to these standards. However, air emission sources not subject to RCRA may be subject to CAA guidance and/or standards.

As noted in the preamble to the proposal, under 40 CFR 262.34, generators that accumulate hazardous waste in tanks and containers for 90 days or less are not subject to RCRA permitting requirements, provided they comply with the provisions of 40 CFR 262.34, which include the substantive requirements for tanks and containers storing hazardous waste, 40 CFR part 265, subparts I and J. This remains unchanged, and the final standards do not apply to generator tanks that accumulate hazardous waste for 90 days or less. However, as part of the Phase II TSDF air emission regulations, EPA intends to propose to modify the exemption conditions to require that 90-day tanks meet the control requirements of the Phase I and Phase II standards.

Today's final rules regulate the activity of reclamation at certain types of RCRA facilities for the first time. The EPA is amending 40 CFR 261.6 under its RCRA authority over reclamation to allow covering reclamation of hazardous wastes in waste management units affected by today's final rules. It should be recognized, however, that these final rules apply only at facilities otherwise needing a RCRA permit. In addition, the closed-loop reclamation exemption in § 261.4(a)(8) is not changed by these rules. Therefore, not all reclamation units will necessarily be affected by these rules.

VI. Summary of Comments and Responses

Numerous comments on the proposed rule were received that relate to nearly all aspects of the RCRA standards development process. The comment summaries cover topics relating to regulatory issues, applicability of the standards, control technologies impact analyses and implementation and compliance issues. Detailed responses to these and other comments are included in the BID for the promulgated standards, which is available in the public docket for this rule.

A. Regulatory Issues

Statutory Authority

Comment: Several commenters argued that TSDF air emissions should be regulated under the CAA rather than RCRA because (1) CAA standards under sections 111 and 112 are already in place in the SOCMI and petroleum refining industries; (2) air emissions at some TSDF have already been permitted under State implementation plans (SIP), new source review programs, or under State regulations for VOC or air toxics control; (3) VOC and ozone control are the province of the CAA, not RCRA; and (4) a statutory mechanism already exists under the CAA for evaluating the risk posed by air emissions.

Response: Congress has required EPA to promulgate air emission monitoring and control requirements at hazardous waste TSDF, under section 3004(n) of RCRA, as may be necessary to protect human health and the environment. Congress was aware of the existence and scope of the CAA when it enacted section 3004(n) of RCRA. There is no indication that Congress intended that all air regulations be issued within the confines of the CAA. On the contrary, when adding section 3004(n), Congress specifically recognized EPA's dual authority to regulate these air pollutants (S. Rep. 98–284, page 63).

The EPA has conducted an analysis of current State and Federal controls and concluded that further regulation under section 3004(n) is necessary to protect human health and the environment. The EPA examined State regulations, as well as existing Federal standards (and those under development), to determine the potential for overlapping rules and permitting requirements. The EPA found that 6 States have established air toxics programs, 21 States have established generic standards for VOC independent of Federal regulations, and several States have extended control techniques guidelines (CTG) for VOC to TSDF. However, the standards vary widely in scope and application and in many cases controls have not been required when emissions are below 40 ton/yr, even in the 37 States with ozone nonattainment areas. The EPA believes that today's action will help alleviate the nonuniformity among the States' efforts and will help achieve emission reductions necessary to protect human health and the environment.

A few commenters also argued that the standards would duplicate existing CAA standards that apply to the SOCMI and petroleum refineries. The EPA disagrees because the standards being promulgated today apply to waste management sources whereas the CAA standards previously promulgated apply to the production process.

The EPA also disagrees with contentions that it is outside the province of RCRA to address VOC and ozone. As noted, section 3004(n) standards, like all RCRA subtitle C standards, are to protect "human health and the environment." VOC and ozone are threats to human health and the environment and thus are well within the regulatory scope of section 3004(n).

Organic emissions from TSDF contribute to ambient ozone formation. In fact, TSDF are estimated to emit nearly 12 percent of all VOC from stationary sources, and thus any reductions in these emissions will contribute to reducing ozone formation and associated health and environmental problems.

RCRA Authority Over Recycling

Comment: Several commenters argued that EPA does not have regulatory authority under RCRA to control solvent reclamation operations or units or equipment managing materials destined for reclamation such as spent solvent because they are producing or managing products and not wastes.

Response: The EPA disagrees with the commenters regarding EPA's authority to control solvent reclamation operations. In response to a court opinion (*American Mining Congress* v. *EPA*, 824 F.2d 1177, DC Circuit Court of Appeals, July 31, 1987) concerning the scope of EPA's RCRA authority, EPA proposed amendments to the RCRA definition of "solid waste" that would clarify when reclamation operations can be considered to be managing solid and hazardous wastes (53 FR 519, January 8, 1988). The EPA has accepted comments on its interpretation and proposed amendments. The EPA has not yet taken final action on this proposal. Thus, EPA is addressing the scope of its authority over reclamation operations under RCRA in the context of that rulemaking. This rule is based on EPA's current interpretation of its RCRA authority, as described in the January 1988 proposal.

The following summarizes EPA's proposed position. In general, the proposed amendments would exclude from RCRA control only those spent solvents reclaimed as part of a continuous, ongoing manufacturing process where the material to be reclaimed is piped (or moved by a comparably closed means of conveyance) to a reclamation device, any storage preceding reclamation is in a tank, and the material is returned after being reclaimed, to the original process where it was generated. (Other conditions on this exclusion relate to duration and purpose of the reclamation process. See proposed § 261.4(a)(8).)

However, processes (or other types of recycling) involving an element of "discard" are (or can be) within RCRA subtitle C authority. When spent materials are being reclaimed, this element of discard can arise in two principal ways. First, when spent materials are reclaimed by someone other than the generator, normally in an off-site operation, the generator of the spent material is getting rid of the material and so is discarding it. In addition, the spent material itself, by definition, is used up and unfit for further direct use; the spent material must first be restored to a usable condition. This type of operation has been characterized by some of the worst environmental damage incidents involving recycling (50 FR 658–661, January 4, 1985). Moreover, storage preceding such reclamation has been subject to the part 264 and 265 standards since November 19, 1980. (See generally 53 FR 522 and underlying record materials.) The *American Mining Congress* opinion itself indicates that such materials are solid wastes (824 F.2d at 1187).

When a spent material is reclaimed on site in something other than a closed-loop process, EPA also considers that the spent material is discarded (i.e., spent solvents removed from the process, transferred to an on-site distillation unit, and regenerated have been removed from the production process). The EPA's reasoning is that these materials are no longer available for use in an ongoing process and have been disposed of from that operation, even if the reclamation operation is on site. Finally, EPA also considers that when hazardous secondary materials are reclaimed but then burned as fuels, the entire operation—culminating in thermal combustion—constitutes discarding via destructive combustion (53 FR 523). Consequently, under this reading, any intermediate reclamation step in these types of fuel production operations remains within EPA's subtitle C authority.

In summary, under EPA's current interpretation of the court's opinion, air emissions from distillation, fractionation, thin-film evaporation, solvent extraction, and stripping processes involving reclamation of spent solvent and other spent hazardous secondary materials can be regulated under RCRA subtitle C whenever the reclamation system is not part of the type of closed-loop reclamation system described in proposed part 261.4(a)(8). Any changes to this interpretation as

part of the solid waste definition final rule may affect the scope of this rule.

Selection of Source Category

Comment: Several commenters disagreed with the selection of TSDF and Waste Solvent Treatment Facility (WSTF) process vents and equipment leaks for regulation because they believed that (1) out-of-date data or extrapolated data were used in the analysis and, as a result, the estimate of the number of affected facilities nationwide and the number affected by the proposed rule is far too low; (2) the role of State regulations was not considered; (3) EPA should control larger, more hazardous air emission sources at TSDF, such as storage tanks, before controlling process vents and equipment leaks; and (4) air emissions from waste solvent reclamation operations do not pose a health risk warranting control.

Response: The EPA generally disagrees with the commenters that the selection of TSDF process vents and equipment leaks was inappropriate. However, EPA agrees that the standards will affect more than the 100 WSTF estimated at proposal. To respond to these and other comments, EPA conducted additional technical analyses. The EPA developed an industry profile using results of the 1986 National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (hereafter called the "Screener Survey"). The Screener Survey data represent all of the TSDF active in 1985 with interim status or final RCRA permits, which totalled about 3,000 facilities. The Screener Survey data are for operations in 1985, the latest year for which such comprehensive data are available. A review of the Screener Survey data shows a total of about 450 facilities that need authorization to operate under RCRA section 3005 and report solvent recovery by operations such as batch distillation, fractionation, thin-film evaporation, or steam stripping at the facility; i.e., operations that would have process vents subject to the standards. The EPA used these facility counts together with the reported 1985 waste solvent throughputs as the basis for the final process vent standards impacts analyses. In addition, EPA estimates that about 1,000 on site and off site permitted TSDF that do not practice solvent recovery do manage hazardous waste streams containing 10 percent or more total organics and would be subject to the equipment leak requirements. In total, about 1,400 facilities are potentially subject to the provisions of subpart BB.

State and Federal regulations also were reviewed to help EPA better estimate baseline emission control levels. Although a few States have controls in place, it appears that there are no general control requirements for TSDF process vents. Moreover, because TSDF with solvent recycling generally are small operations, any new waste management units with process vents would likely have potential VOC emissions of less than 40 ton/yr; thus, prevention of significant deterioration (PSD) permit requirements would not apply. In addition, EPA sent section 3007 information requests to several large and small TSDF; respondents to the EPA section 3007 questionnaires did not indicate control requirements for process vents. Several of the facilities that were asked to provide information reported requirements for obtaining air contaminant source operating permits, but they reported no permit requirements for controlling process vent emissions. Therefore, the revised emission estimates (that are based on site-specific emission data) should reasonably reflect the current level of control of process vent emissions.

With respect to those commenters who argued that other air emission sources should be controlled instead of process vents and equipment leaks, it should be pointed out that section 3004(n) of RCRA requires EPA to promulgate regulations for the monitoring and control of air emissions from hazardous waste TSDF, *including but not limited to* open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment. Organic emissions are generated from process vents on distillation and separation units such as air strippers, steam strippers, thin-film evaporators, fractionation columns, batch distillation units, pot stills, and condensers and distillate receiving vessels that vent emissions from these units. Distillation and separation processes may be found in solvent reclamation operations, wastewater treatment systems, and in other pretreatment processes. Organic emissions also are released from equipment leaks associated with these processes as well as from nearly all other hazardous waste management units.

As discussed in section III.D of this preamble, the EPA chose to develop the process vent and equipment leak portion of its TSDF rulemaking as the first phase of the TSDF air emission rules partly to prevent uncontrolled air emissions from LDR treatment technologies since these technologies were likely to have increased use. In addition, EPA already had control technology information to support these regulations, and thus earlier development of these rules was possible. This is principally because effective controls now in place under the CAA to control emissions from the same types of emission points in chemical production facilities and petroleum refineries can be applied to reduce the health risk posed by air emissions from uncontrolled distillation, fractionation, thin-film evaporation, solvent extraction, and stripping processes and equipment leaks at TSDF. The EPA has limited the applicability of today's final standards to those types of process vents for which control techniques are well developed, i.e., those associated with processes designed to drive the organics from the waste, such as distillation, fractionation, thin-film evaporation, solvent extraction, and stripping operations.

Organic emissions also are generated from numerous other sources at TSDF. Preliminary estimates indicate that nationwide organic emissions (after control of process vents associated with distillation/separation units and equipment leaks) are about 1.8 million Mg/yr. The EPA is in the process of developing standards for these sources under section 3004(n) of RCRA, and the standards are scheduled for proposal in 1990. Source categories being examined include tanks, surface impoundments, containers, and miscellaneous units. These other TSDF source categories require different data and engineering evaluations; thus, standards for these other sources are on a separate rulemaking schedule. The emissions and risk analyses needed to support extension of the process vent standards to other closed (covered), vented tanks are also being developed in conjunction with this future rulemaking. These include vent emissions that are incidental to the process, such as emissions caused by loading or by agitation/ aeration of the waste in a treatment tank.

The EPA has determined that organic emissions from TSDF/WSTF process vents and equipment leaks pose a significant risk to human health and the environment and that section 3004(n) provides authority to control TSDF air emissions from these sources. Therefore, EPA has decided to take measures to reduce the atmospheric release of organic air pollutants from these sources as quickly as possible. The fact that distillation, fractionation, thin-film evaporation, solvent extraction, and stripping processes and equipment leaks are regulated before other sources is not

germane. There is no reason to delay these rules while others are under development.

Other commenters criticized the selection of the source category for regulation because their process vent emissions either are already controlled or are low enough so as not to pose a threat to human health and the environment. However, EPA's analysis of process vent emissions and impacts indicates that for a large segment of the industry, TSDF process vent emissions can pose significant environmental and health risks. These facilities are the target of the subpart AA process vent standards. As discussed in section VI.B of this preamble, the final standards include facility process vent emission rate limits designed to avoid control of facilities where meaningful reductions in nationwide risk to human health and the environment cannot be achieved.

Several commenters also criticized the source category for regulation because emissions from generators who conduct on-site reclamation and off-site reclaimers with no prior storage (i.e., those recycling activities conducted at facilities not requiring a RCRA permit) would not be controlled.

The standards being promulgated today (under section 3004[n]) apply only to waste management facilities that need authorization to operate under section 3005 of RCRA. Air emissions from subtitle C waste management facilities that are excluded from RCRA permit requirements will be subject to regulation under either the CAA or RCRA authority as appropriate. Waste management facilities that fall under the requirements of subtitle D (i.e., nonhazardous waste operations) will also be subject to regulation under the CAA. The EPA limited the scope of the standards at proposal and in this final rule to facilities required to have a permit under RCRA to minimize disruption to the current permitting system (i.e., not expand the permit universe) and not impose a permit burden on facilities not otherwise subject to RCRA permits. Although EPA is controlling only some sources in this rule, other sources of significant levels of air emissions will also be controlled; i.e., it is a matter of timing rather than a decision not to control these other sources. This phased regulatory approach is discussed in section III.C of this preamble.

RCRA Decision Criteria

Comment: Several commenters alleged that the standards do not meet the mandate of RCRA section 3004(n) because (1) the standards are not protective in all cases; (2) the standards are inconsistent with RCRA section 3004(m) that requires treatment standards based on best demonstrated available technology (BDAT); and (3) neither the RCRA statute nor its legislative history allows consideration of costs.

Response: The EPA believes that the standards promulgated today appreciably reduce health risks that are presented by air emissions at TSDF and provide protection to human health and the environment as required by section 3004(n) of RCRA, for the vast majority of the air emissions affected by these standards. The EPA's analysis of residual cancer risk after implementation of the standards for process vents indicates that maximum individual risk, even at the upper-bound emission rate, is well within the residual risk for other standards promulgated under RCRA, which historically has been in the range of 1×10^{-4} to 1×10^{-6}. On the other hand, the analysis indicates that residual cancer risk after implementing the equipment leak standards is higher than the residual risk for other standards promulgated under RCRA. However, EPA believes that the equipment leak standards achieve significant reductions in emissions and risk and, that after control, the vast majority of facilities are well within the risk range of other RCRA standards.

As was already described, EPA will be promulgating regulations to control TSDF air emissions in phases. Thus, in Phase III, EPA will be evaluating the need for additional control (e.g., control of individual toxic constituents after implementation of these standards) for cases where the risk from air emissions after implementation of the Phase I and II standards is higher than desirable. (This regulatory approach is discussed in section III.C of this preamble.) During the interim, permit writers should use EPA's omnibus permitting authority to require more stringent controls at facilities where a high residual risk remains after implementation of the standards for volatile organics. The permitting authority cited by section 3005 of RCRA and codified in § 270.32(b)(2) states that permits "* * * shall contain such terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment." This section allows permit writers to require emission controls that are more stringent than those specified by a standard.

As has been described above, the approach that EPA is using to control TSDF air emissions is to proceed with promulgation of regulations to control organic emissions as a class (Phases I and II) and to follow this with regulations that would require more stringent controls for cases where the risk after implementing the organic standards remains high. The EPA believes that this approach will ultimately be protective of human health and the environment for all TSDF air emissions on a nationwide basis.

The question of whether these standards implement the requirements of RCRA section 3004(m) is irrelevant. Regulations implementing section 3004(m), which is a pretreatment-based program that defines when hazardous wastes can be land-disposed, have been (and will continue to be) separately promulgated by EPA. For example, see 40 FR 268 (November 7, 1986) and 52 FR 25787 (July 8, 1987). In contrast, today's regulations under section 3004(n) of RCRA do not specify technology-based treatment levels for hazardous wastes but regulate air emissions from treatment units as necessary to protect human health and the environment. Therefore, in developing today's rule EPA has focused on achieving acceptable levels of health and environmental protection rather than on specifying pretreatment levels for hazardous wastes. The two regulatory efforts (i.e., 3004(m) and 3004(n) rules) are integrated and coordinated to the extent possible to reduce duplicate and conflicting regulations. Furthermore, today's rules are designed to ensure that treatment required under 3004(m) is protective of human health and the environment.

The role of costs as a decision criterion under RCRA in subtitle C is not explicitly addressed in the statute. The EPA's position is that it can consider cost information as a basis for choosing among alternatives either (1) when they all achieve protection of human health and the environment or (2) for alternatives that are estimated to provide substantial reductions in human health and environmental risks but do not achieve the historically acceptable levels of protection under RCRA, when they are equally protective. However, EPA does not believe that the cost burden on industry is a basis for reducing the stringency of standards EPA considers necessary to protect human health and the environment.

Total Organics Approach

Comment: Commenters argued that applicability should be limited to known or suspected carcinogens. In addition, several commenters argued that applicability of the standards should be based on volatility and not on total

organic content because the relative amount of organic content by weight does not determine potential air emissions and subsequent health effects.

Response: First, it should be pointed out that ozone presents a threat to human health and the environment that warrants control under RCRA. The EPA agrees that total organic content may not be a completely accurate gauge of potential environmental (e.g., ozone) or health (e.g., cancer) impacts for a source such as process vents, but it is a readily measurable indicator. In addition, the final rule's substantive control requirements do apply only to vents and equipment containing volatile components.

The final vent standard applies to certain process vents emitting organics if the vent is associated with one of the processes specified in the rule. A process vent is determined to be affected by the standard if the vent is part of a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping unit that manages wastes with 10 ppmw or more total organics; this includes vents on tanks (e.g., distillate receivers or hot wells) if emissions from the process operations are vented through the tank. Total organic content of the vent stream (i.e., the emissions to the atmosphere) is not a consideration in determining process vent applicability. As public commenters pointed out, the 10-percent total organics concentration cutoff for the vent stream does not limit total emissions or relate to emissions that escape capture by existing control devices and therefore was not included in the final rules.

Furthermore, the process vents covered by this rule are typically associated with distillation/separation processes used to recycle spent solvents and other organic chemicals. By definition, distillation is a process that consists of driving gas or vapor from liquids or solids by heating and then condensing the vapor(s) to liquid products. Wastes treated by distillation are expected to contain organics that are driven off in the process. Thus, by their nature, process vent emissions contain volatile organics.

Under the final standards, the term "organic emissions" is used in lieu of "volatile organic emissions" to avoid confusion with "volatile organic compounds." As at proposal, the final rule applies to total organics. Because of the hundreds of hazardous constituents that could be contained in and contacted by the equipment covered by today's rules, EPA recognizes the potential for the residual risk at some facilities to remain higher than the residual risk for other standards promulgated under RCRA. Regulations based only on specific constituents will therefore be developed, as necessary, in Phase III of EPA's regulatory approach. The constituents to be evaluated will include those reported as being present in hazardous wastes managed by existing TSDF for which health effects have been established through the development of unit risk factors for carcinogens and reference doses for noncarcinogens.

As is discussed in section VI.B of this preamble, emission potential from equipment leaks also was considered by incorporating the light-liquid definition in the section 111 CAA standards. Light liquids exhibit much higher volatilities than do heavy liquids, which are relatively nonvolatile. Equipment leak rates and emissions have been shown to vary with stream volatility; emissions from heavy liquids are far less than those for lighter, more volatile streams. For example, EPA analyses indicate that emissions from valves in heavy-liquid service are more than 30 times lower than the emissions from valves in light-liquid service (see the BID, § 4.6). The EPA examined the emissions and risk associated with light- and heavy-liquid waste streams and found that light-liquid streams are the overwhelming contributors to both emissions and risk. Thus, the final standards take into account the volatility of emissions and the subsequent impact on health and the environment.

Application of CAA Equipment Leak Standards

Comment: Several commenters did not agree that the standards should be based on the transfer of technology from the section 112 standards for benzene (40 CFR, subpart V) because TSDF waste streams and processes differ from the chemical plants and petroleum refineries upon which the CAA standards are based.

Response: Data used in establishing the benzene fugitive standards under CAA section 112 are based on extensive emission and process data collected at a variety of petroleum refinery and SOCMI operating units. Data were obtained for equipment and chemical component mixtures that include many of the same organic compounds that are treated, stored, and disposed of in hazardous waste management units. Because hazardous waste management units such as distillation units have the same sources of fugitive organic emissions (such as pumps and valves) and handle the same chemicals as do chemical manufacturing plants and petroleum refineries, it is reasonable to expect similar performance and efficiency of the technology for controlling organic emissions at hazardous waste management units. The EPA has no reason to believe that the equipment standards would not be applicable to TSDF. Moreover, although EPA has not conducted actual equipment leak testing at TSDF, observations of equipment during plant visits have confirmed that the assumptions and analyses used in other equipment leak standards apply to TSDF as well.

Changes have been made in the final standards and analyses to incorporate provisions included in the CAA standards that reflect the effect of volatility on emissions. As is discussed in section V of this preamble, the LDAR requirements for pumps and valves have been revised to include the light-liquid provisions in EPA's NSPS for VOC equipment leaks in the SOCMI. Correspondingly, the emission and health risk analyses have been revised to reflect this change to the standards. Additional information on the appropriateness of the CAA data on the SOCMI and petroleum refineries is presented in the next section.

B. Standards and Applicability

Standards for Accumulator Vessels

Comment: Commenters contended that the regulatory approach of applying a single standard to the wide varieties of accumulator vessels irrespective of the chemical constituents that are present and the size of the vessel is not appropriate because the proposed standards result in the control of already low emission rates at disproportionately high costs. Standards for tanks (whether accumulation or storage tanks) should be conditioned by the size of the vessel, the vapor pressure of the material being stored, and the type of units that pose a risk to human health and the environment. The EPA's approach should be similar to or consistent with the CAA NSPS for petroleum liquid storage vessels (40 CFR part 60, subpart Ka). These standards exempt vessels that store liquids less than 1.5 psia or that store less than 40,000 gal.

Response: Commenters recommending that the air emission standards be conditioned by the size of the tank and the vapor pressure of the material being stored have misinterpreted the applicability of the proposed standards. To clarify the applicability of the standards, the term "product accumulator vessel" has been dropped

from the promulgated rule, including the equipment definition, and the process vent definition has been revised to be specific to the applicable emission sources. "Process vent" is defined to mean "any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations." Similarly, the definition of "vented" has been revised to specifically exclude the passage of liquids, gases, or fumes "caused by tank loading and unloading (working losses)." Because tank working and breathing losses are not considered process emissions, the comments concerning vapor pressure and tank size exemptions are not relevant. (It should be noted, however, that EPA intends to regulate hazardous waste storage tanks, along with various other TSDF air emission sources in the Phase II, section 3004(n), TSDF air standards now being developed and evaluated by the Agency.)

In conducting the impact analysis of the WSTF/TSDF process vent standards, EPA considered and took into account the relative size of WSTF process units and the wide range of chemicals processed in the WSTF industry. For example, three sizes of WSTF model units were defined for analysis of emissions, health risks, and economic impacts in the final rulemaking (see section VI.D). In addition, the final standards for process vents promulgated by EPA contain emission rate limits and require controls only at facilities whose total process vent emissions are greater than 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr). More detailed descriptions of the model units and the process vent emission rate limits are provided in chapters 5.0 and 7.0, respectively, of the BID.

Comment: Several commenters objected to the proposed standard for process vents that requires a fixed 95-percent emission reduction. They believe that the process vent standard is inequitable because some operations could reduce emissions by 95 percent and still have higher emissions than some small uncontrolled operations and because facilities would have to install control devices on all condenser and still vents regardless of emissions or risk posed to human health or the environment. A few commenters asked EPA to consider exemptions for small solvent operations that have low emissions and thus pose little health risk.

Response: In response to these comments, EPA estimated the TSDF/WSTF air quality and health impacts using updated model unit, emission rate, and facility throughput data. Although total facility waste solvent throughputs were available, the data base did not contain any information on the number or capacities of process units at each site. Therefore, the risk analysis is based on overall facility operations and total facility process vent emissions as opposed to individual process vent emissions. The impacts analysis results show that nationwide reductions in emissions, maximum individual risk (MIR), and cancer incidence level off (i.e., yield only insubstantial incremental reductions) at a facility emission rate of about 2.8 Mg/yr (3.1 ton/yr). At a typical rate of 2,080 h/yr of operation, this annual emission rate corresponds to 1.4 kg/h (3 lb/h) of organic emissions. Control of facilities with process vent emissions less than these values does not result in further reductions of nationwide MIR or cancer incidence. At this emission level, larger facilities (i.e., those with uncontrolled emissions above the emission rate limit) that are controlled to a 95-percent emission reduction result in MIR values higher than the remaining uncontrolled small facilities (i.e., those with uncontrolled emissions below the limit). The same holds true for nationwide cancer incidence. The reduction in cancer incidence achieved by controlling facilities below the limit is not significant relative to the nationwide reductions achieved by controlling the larger facilities.

Consequently, the analysis results indicate that provision of small facility emission rate limits of 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr) for process vent emissions provides essentially the same level of protection for human health and the environment (in terms of risk, incidence, and emissions) as does covering all facilities. In addition, the MIR after control is within the range of residual risk for other standards promulgated under RCRA. As a result, the final rule requires control of only those facilities emitting greater than 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr) organic emissions from all process vents. A more detailed discussion of the process vent emission rate limits is contained in chapter 7.0 of the BID.

Because the final standards contain process vent emission rate limits, it is anticipated that small solvent recovery operations would not be substantially affected by the final process vent standards. The EPA estimates, based on the high emission rates and 1985 waste solvent throughput data, indicate that about 45 percent of the WSTF identified in the industry profile will have process vent emissions of less than 2.8 Mg/yr (3.1 ton/yr). Consequently, it is expected that a large number of small facilities would not be required to install additional process vent controls.

Selection of 10-Percent Cutoff

Comment: Commenters believed that the 10-percent level proposed is comparable to 100,000 ppm and may be too high, particularly when compared to the 10,000-ppm level that defines an equipment leak, and that EPA should evaluate the health and environmental impacts associated with the proposed limit. The 10-percent limit will allow excessive emissions from leaking equipment and is based on costs, not technical limitations. Commenters also argued that the 10-percent limit does not adequately protect the environment because emissions could be substantial if there are numerous leaking components with relatively dilute streams and that controls, such as carbon adsorbers, are available to capture emissions from dilute streams.

Response: First, for clarification, the 10-percent organic content limit for equipment leaks in no way relates to the 10,000-ppm leak definition. The leak definition, which is a Method 21 instrument reading used to define when a leak is detected, is discussed in a later comment. As proposed, the 10-percent total organics cutoff level for applicability of the standards covered both equipment leak (fugitive) emissions and process vent emissions. Control technologies for fugitive emissions comprise the use of control equipment, inspection of equipment, and repair programs to limit or reduce emissions from leaking equipment. These control technologies have been studied and evaluated for equipment containing fluids with more than 10 percent organics (EPA–450/3–80–32b, EPA–450/3–80–33b, EPA–450/3–82–010, and EPA–450/3–86–002). The 10-percent criterion was chosen in EPA's original benzene/SOCMI studies to focus the analyses on air emissions from equipment containing relatively concentrated organics and presumably having the greatest potential for air emissions. Available data from the original benzene/SOCMI studies do not suggest that fugitive emissions from leaking equipment (e.g., pumps and valves) handling streams containing less than 10 percent organics are significant or that the 10-percent cutoff allows excessive emissions from dilute streams

However, to reevaluate this would require several years to conduct field studies to collect and analyze additional emissions and control effectiveness data for equipment leaks. Because available data support the need for, and effectiveness of, standards for equipment handling streams containing at least 10 percent organics, the EPA does not believe that a delay in rulemaking to assess emissions and controls for equipment handling streams containing less than 10 percent organics is warranted.

The effectiveness of fugitive emission control technologies has been thoroughly evaluated for equipment containing fluids with at least 10 percent organics, and fugitive emission standards have been proposed or established under both sections 111 and 112 of the CAA. (See 46 FR 1136, January 5, 1981; 46 FR 1165, January 5, 1981; 48 FR 279, January 4, 1983; 48 FR 37598, August 18, 1983; 48 FR 48328, October 18, 1983; 49 FR 22598, May 30, 1984; 49 FR 23498, June 6, 1984; and 49 FR 23522, June 6, 1984.) As elaborated in these rulemakings, a 10-percent cutoff deals with the air emissions from equipment most likely to cause significant human health and environmental harm.

With regard to process vent emissions, EPA agrees with the commenter. Emission test data show that the 10-percent cutoff potentially may allow significant emissions from process vents on a mass-per-unit-time basis (e.g., kg per hour or Mg per yr). As public commenters pointed out, the 10-percent cutoff for process vents does not limit total emissions, nor does it relate to emissions that escape capture by existing control devices. Therefore the 10-percent cutoff may not be appropriate; as a result, EPA has eliminated the 10-percent cutoff as it applies to process vents. The EPA believes that an emission rate limit more effectively relates to emissions, emission potential, and health risks than does a 10-percent organic concentration cutoff. Accordingly, a health-risk-based facility process vent emission rate limit has been added to the final rules in lieu of the 10-percent cutoff.

Because the emission rate limits (3 lb/h and 3.1 ton/yr) provide health-based limits, EPA considered dropping completely the organic content criterion (i.e., at least 10 percent total organics). However, EPA decided not to eliminate completely the organic content criterion because it is not clear that the same controls can be applied to very low concentration streams as can be applied to the higher concentration streams that generally are associated with emission rates greater than the limits. For low-concentration streams, EPA questions whether controls are needed on a national or generic basis, but is unable to resolve this question at this time. Thus, EPA decided to defer controlling very low concentration streams until it is able to better characterize and assess these streams and the appropriate controls.

Once EPA decided to consider facilities that manage very low concentration organic wastes as a separate category, there remained the problem of determining the appropriate criterion. The EPA examined existing data on air strippers, the treatment device most commonly used with low-concentration streams; it appeared that the quantity of emissions and the risk associated with air strippers treating streams with concentrations below 10 ppmw may be relatively small, thus minimizing the potential harm of deferring control until a later time. Examples of facilities managing low-concentration wastes are sites where ground water is undergoing remedial action under CERCLA or corrective action pursuant to RCRA. Based on the limited set of precise data available, and the comments that the 10-percent criterion was too high, EPA determined that an appropriate criterion would be 10 ppm total organics in the waste by weight.

The 10-ppmw criterion is not an exemption from regulation; it is intended only as a way for EPA to divide the air regulations into phases. The EPA is deferring action on very low concentration streams (i.e., ones with less than 10 ppmw total organic content) from the final rule today but will evaluate and announce a decision later on whether to regulate these waste streams.

Exemptions

Comment: Several commenters disagreed with EPA's interpretation that the definition of "totally enclosed treatment units" (which are exempt from regulation) may in certain circumstances include on-site treatment units that use engineered controls to prevent the release of emissions. One commenter stated that on-site treatment facilities directly tied with process equipment have the same potential for emissions as do other sources not exempted by the proposed regulation.

Response: This rule does not create or modify any exemption for totally enclosed treatment facilities; rather, the existing definition of an exemption for totally enclosed treatment facilities remains in effect, and existing regulatory interpretations remain in effect as well. Although the preamble to the proposed rule repeated the existing definition, it also contained a request for comments on an interpretation of the totally enclosed facility exemption whereby the "use of effective controls such as those required by the proposed standards" would meet the criteria of 40 CFR 260.10. Upon consideration of the comments, EPA has determined that this interpretation would have conflicted with the regulatory definition and previous interpretations of the exemption and, therefore, has decided to withdraw it.

As presented in the preamble to the proposed rule, under 40 CFR 264.1(g)(5) and 40 CFR 265.1(c)(9), totally enclosed treatment facilities are exempt from RCRA regulation. A "totally enclosed treatment facility" is a facility treating hazardous waste that is "directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or constituent thereof into the environment during treatment" (40 CFR 260.10). Therefore, as stated in the proposal preamble, process equipment designed to release air emissions are not "totally enclosed."

The EPA agrees with the commenter that on-site treatment facilities associated with process equipment generally are designed to release air emissions and, thus, are not "totally enclosed." The EPA specifically stated this in the preamble to the proposed rule. To be considered "totally enclosed," units must meet the test of preventing the release of any hazardous constituent from the unit not only on a routine basis but also during a process upset. Thus, the risks from these units are expected to be less than from units that are not totally enclosed.

Comment: Commenters stated that the exemption for tanks storing or treating hazardous wastes that are emptied every 90 days and that meet the tank standards of 40 CFR 262.34 is not justified based on risk, as RCRA requires. The exclusion of less-than-90-day storage tanks from air emission control requirements will increase the use of the 90-day storage exemption and the resultant air emissions.

Response: In 40 CFR part 270, hazardous waste generators who accumulate waste on site in containers or tanks for less than the time periods provided in § 262.34 are specifically excluded from RCRA permitting requirements. To qualify for the exclusions in § 262.34, generators who accumulate hazardous waste on site for up to 90 days must comply with 40 CFR

265, subpart I or J (depending on whether the waste is accumulated in containers or tanks) and with other requirements specified in § 262.34. Small-quantity generators (i.e., generators who generate more than 100 kilograms but less than 1,000 kilograms per calendar month) are allowed to accumulate waste on site for up to 180 days or, if they must ship wasteoff site for a distance of 200 miles or more, and if they meet certain other requirements set out in § 262.34, for up to 270 days.

The promulgated regulation does not create a new exemption for 90-day accumulation, nor does it modify the existing regulation. As the commenter notes, EPA is considering what changes (if any) should be made to § 262.34 (the "90-day rule") under a separate rulemaking (51 FR 25487, July 14, 1986). As part of that effort, EPA currently is evaluating whether air emissions from these and other accumulator tanks, mentioned above, at the generator site should be subject to additional control requirements. Preliminary analysis indicates that 90-day tanks and containers may have significant organic air emissions; consequently, as part of the second phase of TSDF air emission regulations, EPA is considering proposing to modify the exemption to require that 90-day tanks meet the control requirements of the Phase I and II standards. (The multiphased standards development approach for regulating organic air emissions is discussed in section III.C of this preamble.) Until a final decision is made on regulating the emissions from these units, they will not be subject to additional controls. However, EPA does not believe that more generators will use the 90-day exemption if air emission controls are not imposed on these units. Those generators who are eligible for inclusion under § 262.34 are probably already taking advantage of the provision now by storing their hazardous wastes for less than 90 days.

LDAR Program

Comment: Several commenters criticized the incorporation of the national emission standard for hazardous air pollutants (NESHAP) for benzene because of differences in scope from the SOCMI NSPS in that (1) the NSPS distinguishes between light and heavy liquids and the proposed standards based on the benzene NESHAP do not; (2) the NSPS does not require testing of all SOCMI units because process fluid vapor pressure is the overriding consideration in predicting leak frequencies and leak rates (the proposed standards incorporating the NESHAP do not recognize vapor pressure and require testing of all SOCMI units); and (3) the NSPS exempts facilities from routine fugitive emission monitoring, inspection, and repair provisions if a heavy-liquid product from a heavy-liquid raw material is produced and limits monitoring of equipment in heavy-liquid service only to where there is evidence of a potential leak.

Response: The EPA agrees with the commenters that the provisions for light and heavy liquids in the SOCMI NSPS should be incorporated in the section 3004(n) standards, even though the subpart V NESHAP does not contain the distinction. No distinction was made for the benzene NESHAP because benzene is a light liquid. By their nature, heavy liquids exhibit much lower volatilities than do light liquids and because equipment leak emissions have been shown to vary with stream volatility, emissions for heavy liquids are less than those for lighter and more volatile ones. As previously noted, EPA analyses have determined that the emission rate for a valve in heavy-liquid service is more than 30 times less than the emission rate for a valve in light-liquid service. In response to these comments, EPA examined the emission and risk associated with light- and heavy-liquid waste streams and found that light-liquid streams are the overwhelming contributors to both emissions and risk. Therefore, a routine LDAR monthly inspection is not necessary for heavy liquids.

Thus, the final regulations have been changed to incorporate the light/heavy-liquid service provisions for pumps and valves (40 CFR parts 264 and 265, subpart BB, §§ 264.1052, 264.1057 265.1052, and 265.1057). Equipment is in light-liquid service if the vapor pressure of one or more of the components is greater than 0.3 kPa at 20 °C, if the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight, and if the fluid is a liquid at operating conditions. The 0.3-kPa vapor pressure criterion is based on fugitive emission data gathered in various EPA and industry studies (EPA–450/3–82–010). Equipment processing organic liquids with vapor pressures above 0.3 kPa leaked at significantly higher rates and frequencies than did equipment processing streams with vapor pressures below 0.3 kPa. Therefore, EPA elected to exempt equipment processing lower vapor pressure substances (i.e., heavy liquids) from the routine LDAR requirements of the standards. In addition, monitoring of equipment in heavy-liquid service is required only where there is evidence by visual audible olfactory, or any other detection method of a potential leak.

Comment: Several commenters asked EPA to consider exemptions from fugitive emission monitoring for small facilities based on volume (as was done in the benzene NESHAP and the SOCMI NSPS), emission threshold, product applicability threshold or equipment component count, or equipment size. In support, the commenters pointed to similar exemptions in the CAA rules that were in the proposed standards.

Response: The commenters suggest that EPA consider other exemptions for fugitive emission monitoring that are applied in the benzene NESHAP or SOCMI NSPS (e.g., small facilities with the design capacity to produce less than 1,000 Mg/yr). The EPA recognizes that estimated emissions and health risks from small facilities should be considered in the final rules. With regard to the SOCMI NSPS small-facility exemption, the cutoff was based on a cost-effectiveness analysis. Under section 111 of the CAA, EPA may exempt units where costs of the standards are unreasonably high in comparison to the emission reduction achievable. Under RCRA, the statutory criterion is protection of human health and the environment. Therefore, any cutoff for RCRA standards must be risk-based. Cost effectiveness is only a relevant factor for choosing among alternatives either (1) when they all achieve protection of human health and the environment or (2) for alternatives that are estimated to provide substantial reductions in human health and environmental risks but do not achieve the historically acceptable levels of protection under RCRA, when they are equally protective.

In the benzene NESHAP (49 FR 23498, June 6, 1984), EPA concluded that control of units producing less than 1,000 Mg/yr did not warrant control based on the small health-risk potential. The benzene standards, however, did not have to deal with the many different pollutants covered by the TSDF process vent and equipment leak standards, some of which are much more carcinogenic than benzene. In addition to unit size (or throughput), fugitive emissions are also a function of the chemical characteristics of the hazardous wastes being handled.

Typically, TSDF have a variety of hazardous waste management processes (e.g., container storage, tank storage, treatment tanks, incinerators, injection wells, and terminal loading operations) located at the same facility, all of which have associated pumps, valves,

sampling connections, etc., and therefore, fugitive emissions from equipment leaks. Also, several different types of hazardous waste typically are managed at a facility. Because of the various factors affecting facility fugitive emissions from equipment leaks (e.g., equipment leak emissions are a function of component counts rather than waste throughput), it would be very difficult to determine a small-facility exemption based on risk but expressed as volume throughput. For these reasons, EPA did not include exemptions for fugitive emission monitoring such as those applied in the benzene NESHAP or SOCMI NSPS (i.e., small process units with the design capacity to produce less than 1,000 Mg/yr).

Comment: Commenters stated that the TSDF fugitive emission standards should conform to the benzene NESHAP, which allows exemptions for vacuum systems, systems with no emissions, and systems whose leakage rate is demonstrated to be below 2 percent.

Response: The EPA has included in the final TSDF standards (§§ 264.1050 and 265.1050) the exemption for equipment "in vacuum service" found in the benzene NESHAP (40 CFR part 61, subpart V, 61.242–1). Also included are the identification requirements contained in the regulation. "In vacuum service" means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure. The EPA has concluded that it is unnecessary to cover equipment "in vacuum service" because such equipment has little if any potential for emissions and, therefore, does not pose a threat to human health and the environment. Accordingly, this equipment has been excluded from the equipment leak fugitive emission requirements.

The proposed standards stated that owners and operators of facilities subject to the provisions of the rule must comply with the requirements of 40 CFR part 61, subpart V (equipment leak standards for hazardous air pollutants), except as provided in the rule itself. The provisions of the proposed rule did not exclude §§ 61.243–1 and 61.243–2 (alternative standards for valves in VHAP service), and the alternative standards have been incorporated as §§ 264.1061, 264.1062, 265.1061, and 265.1062 of the final rule. Therefore, an owner or operator may elect to have all valves within a TSDF hazardous waste management unit comply with an alternative standard that allows a percentage of valves leaking of equal to or less than 2 percent (§§ 264.1061 and 265.1061), or may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of §§ 264.1062 and 265.1062.

Comment: One commenter suggested that releases from pressure relief devices in gas service should be directed to control equipment at least equal in performance to those for other process sources or an alternative means provided to prevent an uncontrolled discharge. According to the commenter, rupture discs or closed-vent systems restrict small leaks but not major releases; a closed-vent system connected to a control device is needed to capture releases. The commenter concluded that EPA has provided no data to support exempting flanges and pressure relief devices in liquid service from LDAR requirements and should not rely on operators to see, hear or smell leaks from this equipment.

Response: Pressure relief devices allow the release of vapors or liquids until system pressure is reduced to the normal operating level. The standards are geared toward control of routine low-level equipment leaks that may occur independently of emergency discharges. Pressure relief discharges are an entirely different source of emissions than equipment leaks or process vents and were not covered in the original equipment leak standards under the CAA. The new subpart BB rules require that pressure relief devices in gas service be tested annually by Method 21 (and within 5 days of any relief discharge) to ensure that the device is maintained at no detectable emissions by means of a rupture disc. In addition, because a pressure discharge constitutes a process upset that in many cases can lead to hazardous waste management unit downtime and might also pose a risk to workers, a facility has the incentive to minimize the occurrence of these events.

The frequency, duration, and air emissions associated with such emergency discharges at TSDF waste management units currently cannot be estimated with any certainty on a nationwide basis. However, if a pressure discharge does occur, records and reports (maintained at the site under §§ 264.1054, 264.1064, 265.1054, and 265.1064 of subpart BB) will indicate the frequency of such discharges, the estimated volume of excess emissions and other relevant information. If pressure discharges appear to be a problem at any facility the RCRA permitting system provides State or EPA permit writers the flexibility to require closed-vent systems for these discharges on a site-specific basis.

The LDAR program transferred from the CAA standards does not exempt pressure relief devices in light liquid or heavy liquid service and flanges, but requires formal monitoring of these sources if operators see, smell, or hear discharges. The EPA considers that this is the most practical way to manage these sources. Although scheduled routine maintenance may be a way of avoiding the need for formal monitoring, it may not be a successful method for all sites in eliminating leaks due to the numerous variables affecting leak occurrence. For example, flanges may become fugitive emission sources when leakage occurs due to improperly chosen gaskets, poorly assembled flanges, or thermal stress resulting in the deformation of the seal between the flange faces. In these situations, operators will be able to detect such leaks by sight, smell, or sound. Support for this approach was presented and evaluated in developing several CAA rulemakings (EPA–450/3–83–016b, EPA–450/3–80–033b, and EPA–450/3–81–015b).

Comment: One commenter stated that the LDAR program should require preventive maintenance, such as the periodic replacement of valve packings, before waiting for the valve to fail. In support, the commenter argued that EPA's own data show that directed maintenance could reduce leaks from valves to below 10,000 ppm. The commenter also criticized the 10,000-ppm leak definition as being too high and states that EPA must consider the level in terms of the health effects.

Response: The key criterion for selecting a leak definition is the overall mass emission reduction demonstrated to be achievable. The EPA has not concluded that an effective lower leak definition has been demonstrated. Most data developed for current CAA standards (EPA–450/3–82–010) on leak repair effectiveness have applied 10,000 ppm as the leak definition and therefore do not indicate the effectiveness of repair for leak definitions between 1,000 and 10,000 ppm. Even though limited data between these values were collected for support of CAA standards, they are not sufficient to support a leak definition below 10,000 ppm. Data are insufficient to determine at what screening value maintenance efforts begin to result in increased emissions.

As the commenter noted, although there is some evidence that directed maintenance is more effective, available data are insufficient to serve as a basis

for requiring directed maintenance for all sources.

(Note: In "directed maintenance" efforts, the tightening of the packing is monitored simultaneously and is continued only to the extent that it reduces emissions. In contrast, "undirected" repair means repairs such as tightening valve packings without simultaneously monitoring the result to determine whether the repair is increasing or decreasing emissions.)

The EPA's rationale for selecting the 10,000-ppmv leak definition and for not requiring directed maintenance under the CAA LDAR program also has been discussed in the proposal and promulgation BIDs for benzene emissions from coke by-product recovery plants (EPA–450/3–83–016 a and b), for SOCMI fugitive emissions (EPA–450/3–80–033 a and b), for petroleum refinery fugitive emissions (EPA–450/3–81–015 a and b), and for benzene fugitive emissions (EPA–450/3–80–032 a and b). (See also the "Response to Public Comments on EPA's Listing of Benzene Under section 112" (EPA–450/5–82–003) "Fugitive Emission Sources of Organic Compounds—Additional Information on Emissions, Emission Reductions, and Costs" (EPA–450/3–82–010), and EPA's "Response to Petition for Reconsideration" (50 FR 34144, August 23, 1985).)

The commenter also criticizes EPA for not reanalyzing the health effects of the 10,000-ppmv level before applying the limit to TSDF under RCRA. Because section 112 of the CAA and 3004(n) of RCRA are comparable in their recognition of health risk as the predominant decision factor, the EPA believes that the leak definition has been adequately analyzed under the CAA and that further evaluation is not needed prior to transferring it as part of the LDAR program under RCRA. It must also be pointed out that transfer of the CAA equipment leak standards is only the first phase of EPA's regulatory actions related to control of TSDF air emissions. In thisphase, EPA transferred a known technology to reduce emissions. If new data show that a lower leak definition is appropriate, EPA will then consider whether it is appropriate to change the rules.

C. Control Technology

Feasibility of Condensers

Comment: Several commenters did not agree that condensers provide a feasible means of meeting the 95-percent emission reduction requirement for affected process vents in the proposed standard. Problems cited by the commenters limiting the application of condensers included the presence of water in the waste stream in the TSDF portion of the facility and the wide variety of waste solvents treated by WSTF. One commenter claimed that a higher emission reduction efficiency could be achieved through an increased condenser area or a different condenser refrigerant with a lower boiling point than was used in the analysis for the proposal.

Response: In response to this comment, the feasibility of using condensers to achieve a 95-percent reduction of emissions from WSTF process vent streams was reexamined using a state-of-the-art chemical engineering computerized process simulator that includes a refrigeration unit capable of producing a coolant at a temperature as low as −29 °C (−20 °F) and a primary water-cooled heat exchanger to remove water vapor from the vent stream.

A variety of chemical constituents and operating conditions were examined to determine the organic removal efficiency achievable through condensation. The constituents selected for the condenser analysis (toluene, methyl ethyl ketone (MEK), 1,1,1 trichloroethane (TCE), and methylene chloride) were judged to be representative of the solvents recycled by the WSTF industry, based on a review of a National Association of Solvent Recyclers (NASR) survey, numerous site-specific plant trip reports, and responses to EPA section 3007 information requests. Three of these four solvents had been used in the proposal analysis; methylene chloride, at the lower end of the solvent boiling point range (i.e., more difficult to condense), was added to provide a broader range of volatilities for the condenser analysis. A total of 40 WSTF model unit cases consisting of combinations of organic emission rates, concentrations, and exhaust gas flows representing the wide range of operating conditions found at WSTF were included in the condenser analysis.

The results of the condenser analysis indicate that condensers cannot universally achieve a 95-percent emission reduction when applied to WSTF process vents. With regard to increasing organic removal efficiency by increasing condenser area or changing the condenser refrigerant, the analysis shows that there are technical limits on condenser efficiency that go beyond the condenser design and operating parameters. Specifically, the physical properties of the solvents being condensed and the solvent concentration in the gas stream affect condenser efficiency. In some situations, the partial pressure of the organic constituent in the vapor phase was too low to support a liquid phase thermodynamically regardless of the refrigerant used or condensation area; as a result, no appreciable condensation could occur. Therefore, the analysis shows that condensers are not universally applicable to the control of WSTF process vents. However, the facility process vent emission reduction requirements are not based solely on the use of condensers; carbon adsorption and incinerators/flares are capable of attaining a 95-percent control efficiency for all WSTF organics, including cases where condensation is not feasible. In summary, although condensers may not by themselves achieve a 95-percent emission reduction at all process vents, condensers do provide a practical and economic means of reducing process vent emissions, and these devices will likely be the initial choice of control technology for cases where condensation is feasible.

Feasibility of Carbon Adsorbers

Comment: Several commenters objected to the identification of carbon adsorption as a control technique because of technical and safety concerns related to the application of carbon adsorbers to low organic concentration and multicomponent solvent streams. However, one commenter did cite authorities that support a 98-percent removal for this type of control device.

Response: First it should be noted that carbon adsorption is one of several control technologies that could be used to attain the standards. Other technologies include condensers, flares, incinerators, and any other device that the owner or operator can show will meet the standards.

Regarding carbon adsorption applications, EPA acknowledges that safety is an important consideration, but concludes that any safety problems can be avoided through proper design and sorbent selection. Multicomponent systems potentially can lead to excessive heat buildup (hot spots), particularly in large carbon beds with low flow rates, which in turn can lead to fire and explosion hazards. Multicomponent vapor streams can also lead to reduced removal efficiencies for particular components. However, these technical and efficiency problems can be overcome through proper design, operation, and maintenance.

In general, coal-based carbons have fewer heat generation problems than do wood-based carbons, and small diameter beds promote good heat transfer. The bed must be designed with

consideration for the least heat adsorbent (or fastest) component in the mix, as well as the component concentrations and overall flow rate. Other considerations include component interaction, gas stream relative humidity, and close monitoring of the bed effluent for breakthrough.

In response to these comments, the EPA examined carbon adsorption design, operation, and performance data from a number of plants in a wide variety of industries; in addition, the EPA has reexamined, with the help of carbon manufacturers and custom carbon adsorption equipment designers, the elements that affect carbon adsorption efficiency. This analysis has reinforced EPA's original conclusion that a well-designed, -operated, and -maintained adsorption system can achieve a 95-percent control efficiency for all organics under a wide variety of stream conditions over both short-term and long-term averaging periods. The major factors affecting performance of an adsorption unit are temperature, humidity, organics concentration, volumetric flow rate "channelling" (nonuniform flow through the carbon bed), regeneration practices, and changes in the relative concentrations of the organics admitted to the adsorption system. The WSTF/TSDF process vent stream characteristics are typically well within design limits in terms of gas temperature, pressure, and velocity for carbon adsorbers. For example, the bed adsorption rate decreases sharply when gas temperatures are above 38 °C (100 °F); a review of plant field data showed no high-temperature streams in WSTF/TSDF process vents. If high-temperature gas streams are encountered, the gas stream can be cooled prior to entering the carbon bed. Also, gas velocity entering the carbon bed should be low to allow time for adsorption to take place. The WSTF/TSDF stream flows are typically quite low and, as a result, bed depth should not be excessive.

Therefore, EPA concluded that, for WSTF/TSDF process vent streams, carbon adsorption can reasonably be expected to achieve a 95-percent control efficiency provided the adsorber is supplied with an adequate quantity of high-quality activated carbon, the gas stream receives appropriate conditioning (e.g., cooling or filtering) before entering the carbon bed, and the carbon beds are regenerated or replaced before breakthrough. The data gathered in the EPA carbon adsorption performance study do not support a higher control efficiency (i.e., 98 percent as opposed to 95 percent) for carbon adsorption units applied to WSTF/TSDF process vents on an industrywide basis, particularly in light of the design considerations related to controlling multicomponent vent streams when the organic mix is subject to frequent change.

When carbon adsorption is used to remove organics from a gas stream, the carbon must periodically be replaced or regenerated when the capacity of the carbon to adsorb organics is reached. When either regeneration or removal of carbon takes place, there is an opportunity for organics to be released to the atmosphere unless the carbon removal or regeneration is carried out under controlled conditions. There would be no environmental benefit in removing organics from an exhaust gas stream using adsorption onto activated carbon if the organics are subsequently released to the atmosphere during desorption or during carbon disposal. The EPA therefore expects that owners or operators of TSDF using carbon adsorption systems to control organic emissions take steps to ensure that proper emission control of regenerated or disposed carbon occurs. For on-site regenerable carbon adsorption systems, the owner or operator must account for the emission control of the desorption and/or disposal process in the control efficiency determination. In the case of off-site regeneration or disposal, the owner or operator should supply a certification, to be placed in the operating file of the TSDF, that all carbon removed from a carbon adsorption system used to comply with subparts AA and BB is either (1) regenerated or reactivated by a process that prevents the release of organics to the atmosphere. (**Note:** The EPA interprets "prevents" as used in this paragraph to include the application of effective control devices such as those required by these rules) or (2) incinerated in a device that meets the performance standards of subpart O.

Feasibility of Using Controls in Series

Comment: One commenter stated that EPA should evaluate carbon adsorption in series with a condenser because condensers work best with concentrated streams and carbon adsorbers with low concentration streams. The two systems together could yield an overall efficiency of 99 percent, even if each unit were only 90-percent effective.

Response: As discussed in section VII.E, the MIR from process vents after control (i.e., 4×10^{-5}) is within the range of what has been considered acceptable under RCRA. Consequently, no further control for process vents was considered necessary at this time. Nonetheless, in response to these comments, EPA evaluated the feasibility of using a carbon adsorber in series with a condenser to control WSTF/TSDF process vent emissions. The objective of the analysis was to determine if the combination of control devices would yield an overall control efficiency greater than the 95 percent that is achievable using a single device. For example, if a 99-percent overall control efficiency is desired and it is assumed that the carbon adsorber is capable of achieving a 95-percent control efficiency in all cases (a reasonable assumption for a properly designed, operated, and maintained system), then a minimum efficiency of 80 percent would be required for the condenser followed in series by the 95-percent efficient carbon bed. However, in the EPA condenser analysis conducted for the WSTF model unit cases, an 80-percent control was not achieved for 16 of the 40 cases examined. (See section 7.7 of the BID.) In 7 of the 40 cases, the analysis showed that no appreciable condensation would occur because of low solvent concentration and/or the high volatility of some solvents. Because the model unit cases are considered representative of current WSTF operations, EPA does not believe that the use of carbon adsorption and condensation in series to achieve a 99-percent control is a technically feasible control option on an industrywide basis. Such control strategies will be considered further for Phase III standards for individual facilities, if necessary, should additional analyses reveal unexpectedly high risks in specific situations.

Feasibility of Flares

Comment: Several commenters objected to the use of flares at recycling facilities because of technical and safety concerns. A few commenters cite the requirement of a constant emission source for efficient flare operation, and other commenters contend that flares are not suitable on intermittent sources or the low-level emissions typical of recycling operations. With regard to safety, flares present the danger of explosion, especially if they malfunction; according to one commenter, many State laws prohibit the use of flares at recycling facilities.

Response: Available information on WSTF operations indicates that condensers, carbon adsorbers, and incinerators are the most widely used control technologies; therefore, they are expected to be the technologies of choice to reduce organic emissions at WSTF. The final technical analyses show that a 95-percent control efficiency can be achieved with secondary

condensers for many WSTF process vents or with carbon adsorbers in cases where secondary condensers are not feasible. Flares are not required controls, but are an available option for facilities so equipped provided they meet the criteria established in the final rules. Where State laws prohibit the use of flares at recycling facilities, other technologies are available.

With regard to the safety of flares, EPA has determined that the use of flares to combust organic emissions from TSDF process vents would not create safety problems if engineering precautions such as those used in the SOCMI are taken in the design and operation of the system. The following are typical engineering precautions. First, the flare should not be located in such proximity to a process unit being vented that ignition of vapors is a threat to safety. In the analysis conducted for this standard at proposal, it was assumed that the flare would be located as far as 122 meters from the process unit. Second, controls such as a fluid seal or flame arrestor are available that would prevent flashback. These safety precautions were considered in EPA's analysis for the proposed rule. Finally, the use of a purge gas, such as nitrogen, plant fuel gas, or natural gas and/or the careful control of total volumetric flow to the flare would prevent flashback in the flare stack caused by low off-gas flow.

Feasibility of LDAR Program

Comment: One commenter opposed the fugitive standards as proposed because they failed to require the proper technology to control releases from pumps and valves. The commenter claimed that the standards should require a 100-percent control, based on what available technology (e.g., sealed bellows valves, sealless pumps, or dual mechanical seals for pumps) can achieve. According to the commenter, superior emission controls cannot be rejected under RCRA solely on the basis of cost effectiveness.

Response: Control technologies for fugitive emissions from equipment leaks, as required by the proposed standards, include the use of control equipment, inspection of process equipment, and repair programs to limit or reduce emissions from leaking equipment that handle streams with total organic concentrations of greater than 10 percent. These control technologies have been studied and evaluated extensively by EPA for equipment containing fluids with 10 percent or more organics and are similar to those required by national emission standards for chemical, petrochemical, and refining facilities under the CAA.

A monthly LDAR program was proposed for WSTF/TSDF pumps and valves. Based on results of the EPA's LDAR model, once a monthly monitoring plan is in place, emission reductions of 73 percent and 59 percent can be expected for valves in gas and light liquid service, respectively, and a 61-percent reduction in emissions can be achieved for pumps in light-liquid service. For compressors, the use of mechanical seals with barrier fluid systems and control of degassing vents (95 percent) are required, although compressors are not expected to be commonly used at WSTF/TSDF. The use of control equipment (rupture disc systems or closed-vent systems to flares or incinerators) is the technical basis for control of pressure relief devices. Closed purge sampling is the required control for sampling connection systems and is the most stringent feasible control. For open-ended valves or lines the use of caps, plugs, or any other equipment that will close the open end is required; these are the most stringent controls possible. Flanges and pressure relief devices in liquid service are excluded from the routine LDAR requirements but must be monitored if leaks are indicated. For operations such as those expected at WSTF/TSDF, total reductions in fugitive emissions from equipment leaks of almost 75 percent are estimated for the entire program.

The EPA agrees with the commenter that the level of control required by the LDAR program does not result in the highest level of control that could be achieved for fugitive emissions from pumps and valves in certain applications. In some cases, there are more stringent, technologically feasible controls. For example, leakless equipment for valves, such as diaphragm and sealed bellows valves, when usable, eliminates the seals that allow fugitive emissions; thus, control efficiencies in such cases are virtually 100 percent as long as the valve does not fail. In appropriate circumstances, pumps can be controlled by dual mechanical seals that would capture nearly all fugitive emissions. An overall control efficiency of 95 percent could be achieved with dual mechanical seals based on venting of the degassing reservoir to a control device.

With regard to leakless valves, the applicability of these types of valves is limited for TSDF, as noted by EPA in the proposal preamble. The design problems associated with diaphragm valves are the temperature and pressure limitations of the elastomer used for the diaphragm. It has been found that both temperature extremes and process liquids tend to damage or destroy the diaphragm in the valve. Also, operating pressure constraints will limit the application of diaphragm valves to low-pressure operations such as pumping and product storage facilities.

There are two main disadvantages to sealed bellows valves. First, they are, for the most part, only available commercially in configurations that are used for on/off valves rather than for flow control. As a result, they cannot be used in all situations. Second, the main concern associated with this type of valve is the uncertainty of the life of the bellows seal. The metal bellows are subject to corrosion and fatigue under severe operating conditions.

Over 150 types of industries are included in the TSDF community, and EPA does not believe that leakless valves can be used in an environmentally sound manner on the wide variety of operating conditions and chemical constituents found nationwide in TSDF waste streams, many of which are highly corrosive. Corrosivity is influenced by temperature and such factors as the concentration of corrosive constituents and the presence of inhibiting or accelerating agents. Corrosion rates can be difficult to predict accurately; underestimating corrosion can lead to premature and catastrophic failures. Even small amounts (trace quantities) of corrosives in the stream can cause corrosion problems for sealed bellows valves; these tend to aggressively attack the metal bellows at crevices and cracks (including welds) to promote rapid corrosion. Sealed bellows valves particularly are subject to corrosion because the bellows is an extremely thin metallic membrane.

At proposal, it was estimated that 20 percent of all plants process halogenated compounds, which tend to be highly corrosive. The subsequently obtained 1986 Screener Survey data show that, of the TSDF indicating solvent recovery operations, at least 33 percent of the total handle halogenated organics. Furthermore, of the 12 major chemicals determined from site-specific data to be commonly occurring in waste solvent streams, all of the chemicals determined to be carcinogenic are halogenated (i.e., methylene chloride, chloroform, and carbon tetrachloride). Similarly, of the 52 constituents in TSDF waste streams contributing to the emission-weighted unit risk factor, about 50 percent are halogenated and account for the vast majority of the estimated nationwide emissions of

carcinogens. Thus, TSDF are known to routinely handle and treat chemicals that may destroy sealed bellows and diaphragm valves.

The durability of metal bellows is highly questionable if the valve is operated frequently; diaphragm and bellows valves are not recommended in the technical literature for general service. The EPA does not believe that the application of sealed bellows and diaphragm valves is technologically feasible for all TSDF valve conditions or that their application would lead to a significant reduction in emissions and health risks. Valve sizes, configurations, operating temperatures and pressures, and service requirements are some of the areas in which diaphragm, pinch, and sealed bellows valves have limitations that restrict service. With regard to the emission reductions achieved by sealed bellows, diaphragm, and pinch valve technologies, these valves are not totally leakless. The technologies do eliminate the conventional seals that allow leaks from around the valve stem; however, these valves do fail in service from a variety of causes and, when failure occurs, these valves can have significant leakage. This is because these valves generally are not backed up with conventional stem seals or packing. The EPA currently is reevaluating the control efficiencies assigned to these technologies. Because these leakless types of equipment are limited in their applicability and in their potential for reducing health risks, EPA did not consider their use as an applicable control alternative at this time for nationwide TSDF standards. The EPA has requested, in a separate **Federal Register** notice (54 FR 30220, July 19, 1989), additional information on the applicability and use of leakless valves at TSDF.

For pumps, the most effective controls that are technologically feasible (e.g., dual seals) in some cases also were not selected as the basis for equipment leak standards. The impact analysis indicates that including LDAR results in less emission and risk reduction than does including equipment requirements for pumps. However, the difference in the emission and health risk reductions attributable to implementing a monthly LDAR program rather than the more stringent equipment standards for pumps appears to be small in comparison to the results of the overall standards (about 5 percent). The overall standards, including a LDAR program for pumps and valves, would achieve an expected emission reduction for TSDF equipment leaks of about 19,000 Mg/yr (21,000 ton/yr). The estimated MIR from equipment leak emissions would be reduced to 1×10^{-3} from 5×10^{-3} based on the TSDF equipment leak emission-weighted unit risk factor; cancer incidence would be reduced to 0.32 case/yr from 1.1 cases/yr. In comparison, including dual seals for pumps could achieve an additional fugitive emission reduction of about 1,200 Mg/yr (1,320 ton/yr) and an additional incidence reduction of about 0.06 case/yr. The MIR, with leakless controls for pumps, at 1×10^{-3} would be unchanged from that achieved by the LDAR program.

Given the small magnitude and the imprecise nature of the estimated emission and risk reductions associated with including dual seals for pumps in the overall standard, EPA considers the two control alternatives (i.e., LDAR and dual seals) as providing essentially the same level of protection. The data and models on which the risk estimates are based are not precise enough to quantify risk meaningfully to a more exact level. The data and models include uncertainties from the emission estimates, the air dispersion modeling, and the risk assessment that involves unit risk factor, facility location, population, and meteorologic uncertainties (see section VII.E).

The EPA considered these factors when deciding whether to require TSDF to install dual seals on pumps to control air emissions rather than to rely on monthly LDAR. Considering the limited applicability of additional equipment controls and the low potential for additional reductions in health risks of applying equipment controls for valves at TSDF and the estimated emissions and risk reductions if leakless equipment for pumps were required, EPA is not requiring leakless equipment at this time.

In Phase III, EPA will further examine the feasibility and impacts of applying additional control technology beyond the level required by today's standards. For example, dual mechanical seals may be an appropriate emission control method when applied selectively to wastes with high concentrations of toxic chemicals. In such applications, the reduction in toxic emissions (and consequently the reduction in residual risk) may be significant for select situations. A summary of the health impacts is presented in section VII.E of this preamble.

D. Impact Analyses Methodologies

Environmental Impacts Analysis

Comment: Numerous commenters criticized the environmental impact estimates for the proposed standards because (1) no actual data from operating facilities were used; (2) emission estimates were not supported by any technical data base; and (3) the waste constituents used in the analyses were not representative of waste solvent recycling operations and TSDF operations in general. Commenters also stated that the model plant solvent reclamation rates (throughputs), vent flow rates, and emission rates used at proposal were not representative of the industry.

Response: In response to these comments, EPA reviewed all available site-specific data on WSTF and TSDF, data submitted by commenters, and information generated through RCRA section 3007 questionnaires mailed to a limited number of small and large facilities. Based on all this information, EPA has revised both the TSDF model units and emission factors that serve as the bases for the impacts analyses.

With regard to the model unit revisions, the industry profile developed by EPA includes a frequency distribution of the waste volumes processed during 1985. Of the 450 facilities in the Screener Survey reporting solvent recovery by operations such as batch distillation, fractionation, or steam stripping that involved some form of hazardous waste, 365 reported the total quantity of waste recycled in 1985. The median facility throughput was slightly more than 189,000 L/yr (50,000 gal/yr); the mean throughput was about 4.5×10^{6} L/yr (1.2×10^{6} gal/yr). Based on the industry profile, three sizes of model units (small, medium, and large) were defined to facilitate the post-proposal analyses for control costs, emission reductions, health risks, and economic impacts.

The organic emission rates also were revised for the model units based on emission source testing conducted for EPA. The test data show that organic emission rates for primary condensers varied from a few hundredths of a kilogram (pound) to nearly 4.5 kg/h (10 lb/h), with six of the nine measurements less than 0.45 kg/h (1 lb/h). The two secondary condensers tested showed emission rates of 0.9 and 2.3 kg/h (2 and 5 lb/h), respectively.

The flow rate of 26 standard cubic feet per minute (scfm) used at proposal was found not to be generally valid for application to waste solvent recyclers. The flow rates specified for the revised model units, 3.9, 0.6, and 0.3 L/s, equivalent to 8.3, 1.2, and 0.6 scfm for the large, medium, and small model units, respectively, are based on a review of site-specific data from field

tests documented in site visit reports. The large and medium TSDF process vent unit flow rates also agree with those documented in the SOCMI Distillation NSPS BID (see Docket No. F–86–AESP, item S0008) as characterizing distillation units with low overhead gas flows. The revised impact analyses are based on actual data from the industry and provide a reasonable characterization of the industry's operations and environmental impacts.

The constituents selected for the analysis of control technologies are considered to be representative of the industry, based on a review of relevant information and literature, including (1) a survey of member companies submitted by NASR, (2) 23 site-specific plant visit reports, (3) responses to the EPA section 3007 Questionnaires from 6 small and 11 large facilities (two respondents provided information for 4 facilities each), (4) the Industrial Studies Data Base (ISDB) and (5) a data base created by the Illinois EPA. The NASR survey provided information on the types of solvents most frequently recycled at member facilities; the site-specific information and EPA survey responses included waste composition data. The ISDB is a compilation of data from ongoing, in-depth surveys by EPA's Office of Solid Waste (OSW) on designated industries that are major waste generators. The Illinois EPA data base contains information from about 35,000 permit applications. Generators must submit one application for each hazardous and special nonhazardous waste stream managed in the State of Illinois. Each of these data bases contains waste stream characterization data for numerous generic spent solvent waste streams (EPA Hazardous Wastes F001–F005) and D001 wastes (ignitable), which information from the Screener Survey indicates also are recycled.

The three constituents used for the model facilities in the proposal analysis were toluene (with a boiling point (bp) of 110 °C), MEK (bp of 79 °C), and TCE (bp of 74 °C). Methylene chloride (bp of 40 °C) was added to the list of constituents evaluated in the final analysis to provide an even greater range of solvent volatilities for the analysis. Therefore, the technical feasibility and costs of applying the recommended control techniques were evaluated for constituents representing the range of characteristics and volatilities of commonly recycled solvents at TSDF.

Comment: Commenters also stated that it is inappropriate to apply the fugitive emission factors to TSDF that were developed to estimate leaks from a typical hydrocarbon plant because they do not relate to the design, operating conditions, maintenance practices, or controls associated with processing of waste solvents and other toxic wastes. According to the commenters, the emission factors and model units also need adjustment to account for volatility because not accounting for differences in vapor pressure overestimates risk as well as emissions and underestimates costs for controls.

Response: The EPA disagrees; the data used in establishing the fugitive emission standards for TSDF are based on emission and process data collected at a variety of petroleum refinery and SOCMI operating units. The EPA Industrial Environmental Research Laboratory (IERL) coordinated a study to develop information on fugitive emissions in the SOCMI. A total of 24 chemical process units were tested; these data covered thousands of screened sources (pumps, valves, flanges, etc.) and included units handling such chemicals as acetone, phenol, MEK, ethylene dichloride, TCE, trichloroethylene, and perchloroethylene.

Refinery studies on fugitives also include tests on units handling both toluene and xylene. These same chemicals are included in those listed by the NASR as solvents commonly recycled by member facilities and are found in other sources of waste solvent constituent information that are described in the BID. The chemicals commonly recycled at TSDF are those produced in SOCMI operating units and handled in petroleum refineries, and the equipment involved in these industries is typically the same (pumps, valves, etc.). Therefore, it is reasonable to conclude that the emissions associated with these chemicals and equipment are similar and to expect similar emission control performance and efficiencies at hazardous waste management units.

The EPA agrees that the equipment leak standards should take component volatility into consideration. Previous EPA and industry studies have shown that the volatility of stream components, as a process variable, does correlate with fugitive emission and leak rates. An analysis of the vapor pressures and emission rates has shown that substances with vapor pressures of 0.3 kPa or higher had significantly higher emission and leak rates than did those with lower vapor pressures (EPA–450/3–82–010). This result led to the separation of equipment component emissions by service: gas/vapor, light liquid, and heavy liquid. These classifications have been used in most CAA fugitive emission standards to effectively direct the major effort toward equipment most likely to leak. Therefore the rules have been revised to account for volatility. For example, pumps and valves in heavy-liquid service must be monitored only if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method. The determination of light- and heavy-liquid service is based on the vapor pressure of the components in the stream (less than 0.3 kPa at 20 °C defines a heavy liquid).

All of the constituents used in the model unit analysis, representing the ranges of characteristics of commonly recycled solvents, are light liquids to which the benzene and SOCMI fugitive emission factors are applicable. Therefore, the revised risk and cost analyses for WSTF equipment leak fugitive emissions are based on the fugitive emission factors used in the proposal analysis. The analyses of risk and cost impacts on TSDF with affected fugitive emission sources also were revised after proposal to account for the differences in light and heavy liquids.

Health Risk Impacts Analysis

Comment: Several commenters objected to the limited support provided for selection and derivation of the unit risk factors used in the analysis of cancer risks and contend that the risk analysis and unit risk factors are not representative of the wide variety of wastes handled. A few of the commenters stated that the upper-bound risk factor was too high, and others stated it was too low.

Response: The selection of the range of unit risk factors (i.e., 2×10^{-7} and 2×10^{-5} $(\mu g/m^3)^{-1}$ used at proposal to estimate the cancer risk resulting from TSDF emissions was based on an analysis of the organic chemicals associated with TSDF operations. This analysis found that carbon tetrachloride is the organic chemical with the most individual impact vis-a-vis emissions and risk. Thus, it was used as the upper bound on the range of unit risk factors used to calculate health impacts (i.e., cancer risk) at proposal. However, this range of unit risk factors was not used in the final analysis.

Based on public comments, EPA revised its health risk impacts analysis. To estimate the cancer potency of TSDF air emissions in the revised analysis, an emission-weighted composite unit cancer risk estimate approach was used by EPA to address the problem of dealing with the large number of toxic chemicals that are present at many TSDF. Use of the emission-weighted

composite factor rather than individual component unit cancer risk factors simplifies the risk assessment so that calculations do not need to be performed for each chemical emitted. The composite unit cancer risk factor is combined with estimates of ambient concentrations of total organics and population exposure to estimate risk due to nationwide TSDF emissions. In calculating the emission-weighted average unit risk factor, the emission estimate for a compound is first multiplied by the unit cancer risk factor for that compound; then the emission-weighted average is computed by summing these products and dividing the sum by the total nationwide TSDF emission value, which includes both carcinogenic and noncarcinogenic organic emissions. Using this type of average would give the same results as calculating the risk for each chemical involved. However, only those carcinogens for which unit risk factors are available were included in the analysis of cancer risk under this approach.

Through use of the EPA's TSDF Waste Characterization Data Base (WCDB) (discussed in appendix D of the BID) and a computerized model developed for analysis of the regulatory options for TSDF emission sources, EPA estimated total nationwide TSDF organic emissions by specific waste constituent. Thirty-nine chemicals were identified as TSDF organic air pollutant emission constituents emitted from equipment leaks at all types of TSDF waste management processes. Unit cancer risk factors for these constituents were then averaged based on both individual constituent and total nationwide TSDF equipment leak organic emissions to calculate an emission-weighted composite mean TSDF cancer unit risk factor.

Numerous constituents with higher unit risk factors than carbon tetrachloride (including acrylonitrile and ethylene oxide) were included in the calculation of the emission-weighted unit cancer risk factor for TSDF equipment leaks. This emission-weighted unit risk factor value was determined to be $4.5\times10^{-6}(\mu g/m^3)^{-1}$ and was used to determine the health-related impacts associated with TSDF equipment leak (fugitive) emissions rather than the range of the unit cancer risk factors used at proposal that represented a limited number of chemical compounds emitted at WSTF. A more detailed discussion of the hazardous waste TSDF unit risk factor determination is contained in appendix B of the BID.

Characterization of WSTF waste streams in the final analysis indicates that the constituents used at proposal in the risk analysis are appropriate and representative of the waste solvent recycling industry. However, insufficient nationwide data on WSTF (a subset of the TSDF industry) waste stream chemical constituent quantities and concentrations were available to develop an emission-weighted, arithmetic mean cancer unit risk factor for WSTF process vents. While information on a small number of process vent streams was available for the revised analysis, the data were too limited to support the conclusion that the mix and percentage of constituents found were representative of the entire industry.

The WSTF waste streams and their associated process vent emissions were found to contain a variety of chemical constituents. Those constituents with established risk factors were, in all cases for the plant-specific data, the halogenated organics; these halogenated organic constituent concentrations tended to be quite low, generally less than 1 percent of organics emitted. Therefore, EPA judged, based on the limited data available, that use of a midrange unit risk factor would be appropriate in estimating nationwide health impacts associated with WSTF process vents. The unit cancer risk factor assumed at proposal, $2\times10^{-6}(\mu g/m^3)^{-1}$, was the geometric midrange between the highest and lowest unit risk factor for the constituents found in the WSTF process vent streams. The composite unit cancer risk factor calculated for the equipment leak emissions agrees favorably with the process vent number used at proposal. Because it is not unreasonable to assume a similar mix of constituents in process vents as in equipment leaks, and because available data do not suggest otherwise, for the purpose of estimating impacts, the same unit cancer risk factor was used for both process vents and equipment leaks, $4.5\times10^{-6}(\mu g/m^3)^{-1}$.

Comment: Several commenters also stated that the failure to address the weight of evidence for carcinogenicity is inconsistent with EPA's risk assessment guidelines and the principles for assessing cancer risk.

Response: Early in the rulemaking for TSDF, EPA looked at the contribution to total estimated risk (annual incidence) by weight of evidence. At that time, "C" carcinogens accounted for about 5 percent of the total risk, and "A" carcinogens about 10 percent. Thus, for all practical purposes, calculating separate risk estimates for chemicals in each weight of evidence category adds little to the risk assessment. Moreover, EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992) and Guidelines for the Health Risk Assessment of Chemical Mixtures (51 FR 34014) do not describe a means to quantitatively incorporate weight of evidence into risk assessments. Thus, there is no inconsistency between the risk assessment guidelines and the presentation of health risk in this rulemaking.

Comment: Other commenters believed that the risk assessment for the proposed standards was flawed because EPA did not consider noncancer health effects and because large uncertainties are introduced when the additive or synergistic effects of carcinogens and the interindividual variability in response are not factored in.

Response: The EPA does recognize that health effects other than cancer may be associated with both short-term and long-term human exposure to the organic chemicals emitted to the air at WSTF/TSDF. The EPA believes, however, that a risk assessment based on cancer serves as the clearest basis for evaluating the health effects associated with exposure to air emissions from TSDF. A quantitative assessment of the potential nationwide noncancer health impacts (e.g., developmental, neurological, immunological, and respiratory effects) was not conducted due to deficiencies at this time in the health data base for these types of effects.

Although unable to numerically quantify noncancer health risks, EPA did conduct a screening analysis of the potential adverse noncancer health effects associated with short-term and long-term exposure to individual waste constituents emitted from TSDF. This analysis was based on a comparison of relevant health data to the highest short-term or long-term modeled ambient concentrations for chemicals at each of two selected TSDF. (A detailed presentation of the screening analysis is contained in the BID, appendix B.)

Results of this analysis suggest that adverse noncancer health effects are unlikely to be associated with acute or chronic inhalation exposure to TSDF organic emissions. It should be noted that the health data base for many chemicals was limited particularly for short-term exposures. The conclusions reached in this preliminary analysis should be considered in the context of the limitations of the health data; the uncertainties associated with the characterization of wastes at the

facilities; and the assumptions used in estimating emissions, ambient concentrations, and the potential for human exposure. Additional evaluation of noncancer health effects may be undertaken as part of the third phase of the TSDF regulatory program. To that effect, in the proposal preamble for the Phase II TSDF air rules, EPA is specifically requesting comments from the public on methodologies and use of health data for assessing the noncancer health effects of TSDF organic emissions. In addition, because there is a potential for cancer and noncancer health effects from TSDF chemicals from indirect pathways such as ingestion of foods contaminated by air toxics that have deposited in the soil, EPA will evaluate the need to include an indirect pathway element in the TSDF health risk analysis in the future.

The EPA is aware of the uncertainties inherent in predicting the magnitude and nature of toxicant interactions between individual chemicals in chemical mixtures. In the absence of toxicity data on the specific mixtures of concern, and with insufficient quantitative information on the potential interaction among the components (i.e., additivity, synergism, or antagonism), the EPA has assumed additivity to estimate the carcinogenicity of the mixtures of concern. This is consistent with guidance provided in the 1986 "EPA Guidelines for the Health Risk Assessment of Chemical Mixtures" (51 FR 34014).

The EPA also recognizes that there are uncertainties associated with the variability of individual human responses following exposures to toxicants. As stated in the 1986 "EPA Guidelines for Carcinogen Risk Assessment" (51 FR 33992) human populations are variable with respect to genetic constitution, diet, occupational and home environment, activity patterns, and other cultural factors. Because of insufficient data, however, the EPA is unable to determine the potential impact of these factors on the estimates of risk associated with exposure to carcinogens emitted from TSDF.

Cost Impacts Analysis

Comment: Various commenters questioned the cost estimates used in the analysis for carbon adsorbers and condensers as well as the nationwide recovery credits for WSTF and TSDF. Commenters contend that the costs for carbon adsorbers estimated at proposal are low because a device is needed for each vent if manifolding is not practiced as a result of (1) the potential for cross-contamination of new or recycled materials and (2) additional incurred costs when the carbon is regenerated or disposed of.

Response: In response to these comments EPA evaluated controls for 40 model unit cases representing ranges and combinations of solvent physical properties, total flow rates, and organic concentrations in the vent stream. Both carbon canisters and fixed-bed regenerable carbon systems were costed for process vent streams where condensers would not achieve a 95-percent reduction because of stream conditions. The analysis showed that, for a stream with an emission rate greater than 0.45 kg/h (1 lb/h), a carbon bed can achieve the same emission reduction at lower cost than can a carbon canister. Thus, there is a level of emissions at which the facility owner or operator for economic reasons will switch from the use of replaceable carbon canisters to the use of a fixed-bed regenerable carbon adsorption system. The capital costs (1986 $) of the fixed-bed regenerable carbon systems ranged from $97,300 up to $202,000, and annual operating costs ranged from $40,200 to $43,500 (from $33,100 to $43,100 when a recovery credit is included). The capital cost (1986 $) of a carbon canister was $1,050, and annual operating costs ranged from $7,890 to $24,800 (carbon canisters are not regenerated on site and a recovery credit is not included). The fixed-bed, regenerable carbon system operating costs include regeneration/disposal of spent carbon; carbon canister operating costs include carbon replacement and disposal. Thus, these costs were used in conducting the final impact analyses.

With regard to the requirement of a control device for each vent, EPA acknowledges that there are instances where vent manifolding is not allowed because of potential product contamination. However the product has already been recovered from the process prior to exhaust gases passing to the vents, which are sources of organic emissions to the atmosphere; therefore, manifolding of the vent streams should not lead to a product contamination problem.

In the absence of the site-specific information needed to determine control device requirements, for the purposes of estimating cost impacts, it was assumed in the revised analysis that one control device would be needed per WSTF. Although this assumption may underestimate the control cost for a facility that chooses to install carbon adsorbers on more than one vent, it is potentially a very small underestimate because the total annual cost of a carbon canister, for example, is comprised almost totally of annual operating costs, which are directly proportional to the emissions removed. Thus the potential underestimate in total annual cost resulting from assuming one carbon adsorber per facility is not significant. Furthermore, the addition of the process vent emission limit to the rules based on the total facility emission rate lessens the likelihood that a facility will need to control multiple process vents to attain the allowable emission rate of 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 ton/yr).

Several commenters also questioned the nationwide cost credit for secondary condensers estimated at proposal, stating that secondary condensers actually would result in substantial costs and that the cost estimates do not account for the more sophisticated systems needed in high-humidity areas to allow for equipment deicing or water removal. In response to concerns regarding the estimated condenser yields and the requirement for more sophisticated systems in high-humidity areas, EPA utilized a state-of-the-art computerized process simulator known as the Advanced System for Process Engineering (ASPEN) for reevaluating analyses of condenser design and cost. The ASPEN condenser configuration included an optional primary water-cooled heat exchanger to reduce the size of the refrigeration unit and to remove water vapor in order to avoid freezing problems because the condenser temperature is low enough to cause ice buildup on heat transfer surfaces. Therefore, the revised cost estimates account for water removal.

The model unit cases represent industrywide ranges and combinations of vent stream characteristics. For the large model unit cases (3.9 L/s total flow rate), total annual cost with recovery credit ranged from a credit of $4,980 up to a net of no cost. For the medium model unit cases (0.6 L/s total flow rate), the total annual cost with recovery credit ranged from $630 up to $2,000. For the small model unit cases (0.3 L/s total flow rate), the total annual cost with recovery credit ranged from $1,770 up to $2,000. Therefore, in many cases, the use of secondary condensers does result in positive costs; these costs, however do not result in adverse economic impacts.

The model unit control cost estimates and the WSTF industry profile were used to generate nationwide control cost estimates of implementing the process vent regulations. The cost estimates are for 73 large facilities and 167 medium facilities. The 208 small facilities (less than 189,000 L (50,000 gal) throughput/yr

as defined in the post-proposal analysis) would not have to install additional controls because their emissions are less than the facility process vent cutoff.

Because there was insufficient site-specific information available to determine which facilities could apply condensation rather than carbon adsorption, upper- and lower-bound estimates were generated. The upperbound cost estimate is based on the assumption that fixed-bed, regenerable carbon adsorption systems would be required to control process vents at all facilities with emissions above the emission rate cutoff. Similarly the lower-bound cost estimate is based on the assumption that condensers could be used to control process vents at all facilities with emissions above the emission rate cutoff. The range in estimates of nationwide total annual cost is from a credit of $68,000 up to a cost of $12.9 million, assuming the installation of one control device per facility.

Finally, EPA agrees that a recovery credit is not applicable to TSDF in general because most of the hazardous wastes handled at TSDF are destined for disposal. In contrast, at a WSTF, the air emissions resulting from equipment leaks are potentially recyclable solvents. Thus, no recovery credit was applied for TSDF other than WSTF in the analyses for the final equipment leak standards.

E. Implementation and Compliance

Test Methods

Comment: Commenters argued that the test methods proposed for use in determining whether waste streams contain more than 10 percent total organics are inappropriate primarily because they do not measure volatile organics. One commenter objected to the use of weight percent when defining "in VHAP service" based on liquid sample analyses.

Response: The EPA recognized that each of the various test methods proposed for determining the organic content of waste streams had limitations and that none was universally applicable. The determination of subpart BB applicability should not require precise measurement of the 10 percent total organics by weight in most cases. The EPA anticipates that most waste streams will have an organic content much lower or much higher than 10 percent. Furthermore, because the regulation requires control if the organic content of the waste stream ever equals or exceeds the 10-percent value. EPA believes that few owners or operators will claim that a waste stream is not subject to the requirements of the standard based on a sample analysis with results near 10 percent. Therefore, a precise measurement of waste stream total organic content is not likely to be needed to determine applicability of the equipment leak standards.

If the facility does decide to test the waste, the choice of the appropriate method must be based on a knowledge of the process and waste. The EPA has prepared a guidance document that includes information to aid TSDF owners/operators and enforcement and permitting personnel in implementing the regulations. Additional detail is provided in the guidance document to aid in choosing the most appropriate test method. (Refer to "Hazardous Waste TSDF—Technical Guidance Document for RCRA Air Emission Standards for Process Vents and Equipment Leaks." EPA–450/3–89–21.)

In response to the commenters' concerns that volatility of the waste stream should be considered, the LDAR provisions of the regulation were changed to establish two potential levels of required monitoring. Those processes with the greater emission potential are designated to be in light-liquid service and are required to implement a more restrictive LDAR program. Those processes with a lesser emission potential are designated to be in heavy-liquid service and are required to implement a less restrictive LDAR program. The determination of being in light-liquid service is based on the concentration of organic components in a waste whose pure vapor pressure exceeds 0.3 kPa. This addresses the commenters' concerns that volatility of the waste stream should be considered. For the process vent portion of the regulation, if an organic is present at the vent, it is presumed to be volatile. Therefore, volatility is considered by virtue of where the determination of applicability is made.

With reference to the use of weight percent when defining "in VHAP service" (a term that has been dropped from the promulgated regulations), EPA believes that weight percentage is the unit of choice when the determination of organic content is made on a solid, liquid, or sludge waste. It is also commonly associated with those types of wastes. For gaseous streams that exceed 10 percent organics by weight, the commenter's point is well taken. Volume fractions are more commonly reported for gaseous streams. However, it is not easier to calculate the volume percent rather than weight percent. Additional information on the calibration standard used, the carrier gas in the standard, and both the organic and other inorganic gases in the sample are required in both cases. For simplicity, the units of the standard are uniformly weight percent regardless of waste type.

Implementation Schedule

Comment: Several commenters objected to the time periods contained in the proposed standards for implementation schedules and requested that EPA not dictate a step-by-step schedule.

Response: The EPA agrees with the commenters that EPA should not dictate step-by-step implementation schedules for installing the control devices and closed-vent systems required to comply with these regulations because each affected facility needs some flexibility to budget funds, perform engineering evaluations, and complete construction. Therefore, EPA has dropped the interim dates in the schedule and retained only the final period of 2 years from the promulgation for completing engineering design and evaluation studies and for installing equipment. The final rules require that all affected facilities comply with the standards on the effective date; however, the rules allow up to 24 months from the promulgation date (i.e., 18 months after the effective date) for facilities to comply if they are required to install a control device and they can document that installation of the emission controls cannot reasonably be expected to be completed earlier. Existing waste management units that become newly regulated units subject to the provisions of subpart AA or BB because of a new statutory or regulatory amendment under RCRA (e.g., a new listing or identification of a hazardous waste) will have up to 18 months after the effective date of the statutory or regulatory amendments that render the facility subject to the provisions of subparts AA or BB to complete installation of the control device. New hazardous waste management units starting operation after the effective date of subparts AA and BB must meet the standards upon startup. This subject is discussed further in section IX. Implementation, of this preamble. The final standards require that both permitted and interim status facilities maintain the schedules and the accompanying documentation in their operating records. The implementation schedule must be in the operating record on the effective date of today's rule, which is 6 months after promulgation. No provisions have been made in the standards for extensions beyond 24 months after promulgation.

Permitting Requirements

Comment: Several commenters suggested that RCRA part B information requirements be limited to the units already included in the part B application. Units that must comply with this regulation because the facility is subject to RCRA permit requirements for other reasons should not be required to be added to the part B permit application. Other commenters objected to statements in the preamble regarding the role of the omnibus permitting authority under RCRA section 3005(c)(3). The commenters questioned the absence of criteria for establishing when such authority would be applied to require more stringent controls and argued that authorizing permit writers to impose more stringent controls based on unenforceable guidance is not a substitute for regulations.

Response: The EPA is aware that extending specific part B information requirements to those hazardous waste management units that are not subject to RCRA permitting but are located at facilities that are otherwise subject to RCRA permit requirements could result in the need for those facilities to modify RCRA permits or their part B applications. However, EPA believes that extending the part B information requirements to hazardous waste management units not subject to RCRA permitting is necessary to ensure compliance with the subpart AA and subpart BB standards.

The EPA also agrees that requiring a modification of RCRA permits (and part B applications) as part of this rule could result in delays in processing and issuing final RCRA permits. Therefore, the final rules do not require facilities to modify permits issued before the effective date of these rules. Consistent with 40 CFR 270.4, a facility with a final permit issued prior to the effective date is generally not required to comply with new part 264 standards until its permit is reissued or reviewed by the Regional Administrator. Hazardous waste management units and associated process vents and equipment affected by these standards must be added or incorporated into the facility permit when the permit comes up for review under § 270.50 or reissue under § 124.15. As previously noted, EPA intends to propose to modify this policy in the forthcoming Phase II rules such that permitted facilities must comply with the interim-status air rules.

Facilities that have obtained RCRA interim status, as specified in 40 CFR 270.70 (i.e., compliance with the requirements of section 3010(a) of RCRA pertaining to notification of hazardous waste activity and the requirements of 40 CFR 270.10 governing submission of part A applications), will be subject to the part 265 standards on the effective date. Interim status facilities that have submitted their part B application prior to the effective date of the regulation will be required to modify their part B applications to incorporate today's requirements.

The omnibus permitting authority of § 270.32 allows permit writers to require, on a case-by-case basis, emission controls that are more stringent than those specified by a standard. The EPA has a mandate to use this authority for situations in which regulations have not been developed or in which special requirements are needed to protect human health and the environment. For example, this authority could be used in situations where, in the permit writers judgment, there is an unacceptably high risk after application of controls required by an emission standard. This aspect of the permitting process is discussed further in section IX of this preamble. The EPA is currently preparing guidance to be used by permit writers to help identify facilities that would potentially have high residual risk due to air emissions. The guidance will include procedures to be used to identify potentially high-risk facilities and will include guidance for making a formal, site-specific risk assessment.

Recordkeeping and Reporting

Comment: Commenters asked EPA to include a provision in the final standards to provide for the elimination of recordkeeping requirements that may be duplicative of State or Federal requirements for equipment leaks. Commenters also asked whether TSDF are subject to any notification requirements if their waste stream is less than 10 percent organics.

Response: The EPA agrees that duplicative recordkeeping and reporting should generally be eliminated to the extent possible. Because of the difficulties in foreseeing all situations in which this could occur, a provision to this effect has not been added to the final standards. However, when records and reports required by States are substantially similar, a copy of the information submitted to the State will generally be acceptable to EPA. When similar records and reports are required by other EPA programs (such as the visual observations required for pumps and valves associated with storage tanks and incinerators), EPA suggests that owners or operators of TSDF coordinate monitoring and recordkeeping efforts to reduce labor and costs. One set of records should be maintained with emphasis on the more detailed monitoring records required by these standards. The EPA considers that the monitoring required for equipment leaks under these standards differs significantly from the monitoring required for ground water protection purposes under other RCRA rules. However, the monitoring and recordkeeping programs can be combined for efficiency.

There are no notification requirements in the equipment leak rules for waste streams that have been determined never to exceed 10 percent total organics by weight.

VII. Summary of Impacts of Final Standards

A. Overview of the Source Category

Hazardous waste TSDF are facilities that store, treat, or dispose of hazardous wastes. A TSDF may generate and manage hazardous waste on the same site, or it may receive and manage hazardous waste generated by others.

The EPA has conducted a number of surveys to collect information about the TSDF industry. The most recent of these surveys, the 1986 National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities, lists more than 2,300 TSDF nationwide. Available survey data further indicate that the majority (96 percent) of waste managed at TSDF is generated and managed on the same site and identifies more than 150 different industries, primarily manufacturing, that generate hazardous waste. Approximately 500 TSDF are commercial facilities that manage hazardous waste generated by others.

The types of wastes managed at TSDF and the waste management processes used are highly variable from one facility to another. The physical characteristics of wastes managed at TSDF include dilute wastewaters (representing more than 90 percent by weight of the total waste managed), organic and inorganic sludges, and organic and inorganic solids. Waste management processes differ according to waste type and include storage and treatment in tanks, surface impoundments, and wastepiles; handling or storage in containers such as drums, tank trucks, tank cars, and dumpsters; and disposal of waste in landfills, surface impoundments, injection wells, and by land treatment. In addition, hazardous waste may be managed in "miscellaneous units" that do not meet the RCRA definition of any of the processes listed above. Hazardous waste may also be handled

in research, development, and demonstration units as described in 40 CFR 270.65.

The promulgated standards limit organic emissions from (1) hazardous waste management unit process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, and air and stream stripping operations that manage waste with 10 ppmw or greater total organics concentration, and (2) leaks from equipment at new and existing hazardous waste management units that contain or contact hazardous waste streams with 10 percent or more total organics. The final equipment leak standards apply to each pump valve, compressor, pressure relief device, sampling connection, open-ended valve or line, flange, or other connector associated with the affected hazardous waste management unit. About 1,400 facilities are estimated to be potentially subject to the equipment leak standards (i.e., TSDF managing hazardous waste containing at least 10 percent organics). Of these, 450 are estimated to have process vents subject to the vent standards in subpart AA.

B. Use of Models in the Regulatory Development Process

In estimating baseline (i.e., unregulated) emissions, emission impacts of the regulatory options, and control costs for the options for equipment leaks, EPA made use of a combination of analytical and physical models of waste management processes. This approach was selected because insufficient facility-specific data are available to conduct a site-specific characterization of the entire TSDF industry. For example, the physicalmodels of waste management processes (or units) were used as simplified representations of the equipment component mix expected to be associated with each particular hazardous waste management process. The model unit provides an estimate of the number of pumps, valves, open-ended lines, pressure relief valves, and sampling connections that are used in the waste management process. Although these models are not exact for each type of process, they provide a reasonable approximation of what can be expected on average; precise equipment counts for each unit at each facility are not available.

In the absence of sufficient site-specific data, EPA developed a model to calculate nationwide health, environmental, and cost impacts associated with hazardous waste TSDF. Details of the national impacts model can be found in the BID, appendix D. This national impacts model was used to estimate the nationwide impacts necessary for comparison of the various TSDF equipment leak emission control options. The national impacts model is a complex computer program that uses a wide variety of information and data concerning the TSDF industry to calculate nationwide impacts through summation of approximate individual facility results. Information processed by the model includes results of TSDF industry surveys as well as characterizations and simulations of TSDF processes and wastes, emission factors of each type of management unit, the efficiencies and costs of emission control technologies, and exposure and health impacts of TSDF pollutants. This information is contained in several independent data files developed by EPA for use as inputs to the model. These data files are briefly described below.

Industry profile data identify the name, location, primary standard industrial classification (SIC) code, waste management processes, waste types, and waste volumes for each TSDF. The industry data were obtained from three principal sources: A 1986 National Screening Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities; the Hazardous Waste Data Management System's RCRA part A permit applications; and the 1981 National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA. The industry data are used in the model to define the location and the SIC code for each facility and to identify the waste management units at each facility as well as the types and quantities of waste managed in each unit.

The hazardous waste characterization consists of waste data representative of typical wastes handled by facilities in each SIC code. The waste data are linked to specific facilities by the SIC code and the RCRA waste codes identified for that facility in the industry profile. The waste characterization data include chemical properties information that consists of constituent-specific data on the physical, chemical, and biological properties of a group of surrogate waste constituents that were developed to represent the more than 4,000 TSDF waste constituents identified in the waste data base. The surrogate categories were defined to represent actual organic compounds based on a combination of their vapor pressures, Henry's law constants, and biodegradability. The use of surrogate properties was instituted to compensate for a lack of constituent-specific physical and chemical property data and to reduce the number of chemicals to be assessed by the model.

The emission factors data consist of emission factors, expressed as emissions per unit of waste throughput, for each combination of surrogate waste constituent and model waste management process. Each model waste management process was, in effect, a "national average model unit" that represented a weighted average of the operating parameters of existing waste management units. The EPA's LDAR model was used to develop emission control efficiencies and emission reductions for the TSDF equipment leak emission factors used in the analysis. This LDAR model is based on the Agency's extensive experience with equipment leaks in the petrochemical and synthetic organic chemical manufacturing industries.

Incidence data consist of estimates of annual cancer incidence for the population within 50 km of each TSDF. This information was developed using EPA's Human Exposure Model, 1980 census data, and local meteorological data summaries. Because some of the data used in the national impacts model are based on national average values rather than actual facility-specific data, maximum risk numbers generated by the model are not considered to be representative of facility-specific risks. Maximum individual risk has meaning only at the facility level. Therefore, EPA chose to use another methodology for estimating MIR for equipment leaks. This is discussed further in section VII.E.

Data related to emission control technologies and costs include information that describes control efficiencies, capital investment, and annual operating costs for each emission control option that is applicable to a particular waste management process. These data were obtained through engineering analyses of control device operations and the development of engineering cost estimates.

To make use of all of these data, the national impacts model contains procedures that (1) identify TSDF facilities, their waste management processes, waste compositions, and annual waste throughputs; (2) assign chemical properties to waste constituents and assign control devices to process units; and (3) calculate uncontrolled emissions, emissions reductions, control costs, and health impacts. Results produced by the model include, on a nationwide basis, uncontrolled emissions, controlled

emissions, capital investment costs, annual operating costs, annualized costs for controls, and annual cancer incidence. As previously stated, these nationwide values are obtained by summing the results of individual facility analyses across all facilities.

The primary objective and intended use of the national impacts model are to provide reasonable estimates of TSDF impacts on a nationwide basis. Because of the complexity of the hazardous waste management industry and the current lack of detailed information for individual TSDF, the model was developed to utilize national average data where site-specific data are not available. As a result, the estimated emissions and cancer incidence from the model do not represent the impacts for a specific individual facility. However, with national average data values used where site-specific data were missing, EPA believes that the estimates are reasonable on a nationwide basis and are adequate for decisionmaking.

C. Emission Impacts

Since proposal in February 1987, EPA has reviewed all available site-specific information and data on WSTF and TSDF, much of which has only become available since proposal. For example, EPA is conducting a multiyear project to collect information on the Nation's generation of hazardous waste and the capacity available to treat, store, dispose of, and recycle that waste. The initial phase of the project was the 1986 National Screening Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities, which identified and collected summary information from all hazardous waste treatment, storage, disposal, and recycling facilities in the United States. The results of this "Screener Survey" together with data from other existing data bases (such as the Hazardous Waste Data Management System's RCRA part A applications; the National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981; the Industry Studies Database; a data base of 40 CFR 261.32 hazardous wastes from specific sources; the WET Model Hazardous Waste Data Base; and a data base created by the Illinois EPA) were used to support the development and analysis of these air emission regulations for hazardous waste TSDF. Additional sources of data on TSDF and waste solvent recycling operations included EPA field reports on hazardous waste facilities and responses to RCRA section 3007 information requests sent to a limited number of both large and small facilities. Based on all of this information, EPA has revised and expanded the impact analyses, including estimates of emissions, risks, costs, and the economic impact on small businesses and on the industry as a whole.

Using the revised impact analyses, nationwide (unregulated) baseline equipment leak organic emissions from TSDF waste streams of 10 percent or greater total organics are estimated at 26,200 Mg/yr. This estimate includes equipment leak emissions from waste solvent treatment facilities and from other TSDF with hazardous waste management processes handling wastes with organic concentrations of 10 percent or greater, a total of about 1,400 facilities. The bases for these estimates are contained in the BID, appendix D.

Nationwide (unregulated) organic emissions from process vents at about 450 TSDF with solvent recovery operations range from 300 Mg/yr (based on lower-bound emission rates) to 8,100 Mg/yr (based on upper-bound emission rates). This wide emission range occurs because of variations in primary condenser recovery efficiencies and the use of secondary condensers at some sites. The lower-bound rate represents high recovery efficiencies at all facilities, and the upper-bound rate represents low recovery efficiencies at all facilities. Actual nationwide emissions should fall between these values.

With the implementation of the standards, nationwide TSDF equipment leak emissions will be reduced to about 7,200 Mg/yr; nationwide organic emissions from process vents will be reduced to a range from 270 Mg/yr (lower-bound emission rates) to 900 Mg/yr (upper-bound emission rates).

D. Ozone Impacts

Reductions in organic emissions from TSDF sources will have a positive impact on human health and the environment by reducing atmospheric ozone formation as a result of reductions in emissions of ozone precursors, primarily organic compounds. Ozone is a major problem in most larger cities, and EPA has estimated that more than 100 million people live in areas that are in violation of the ambient ozone standards. Ozone is a pulmonary irritant that can impair the normal functions of human lungs, may increase susceptibility to bacterial infections, and can result in other detrimental health effects. In addition, ozone can reduce the yields of citrus, cotton, potatoes, soybeans, wheat, spinach, and other crops, and can cause damage to conifer forests and a reduction in the fruit and seed diets of wildlife. Because TSDF organic emissions account for about 12 percent of total nationwide organic emissions from stationary sources, today's rules will contribute to a reduction in ozone-induced health and environmental effects and will assist in attainment and maintenance of the ambient air quality standards for ozone. Table 1 summarizes the emissions and health risk impact estimates.

Ozone precursors and chlorofluorocarbons, whose emissions will be reduced by this rulemaking, are both considered greenhouse gases (i.e., gases whose accumulation in the atmosphere has been related to global warming). Although the regulation's direct impact on global warming has not been quantified, the direction being taken is a positive one. Implementation of these rules will reduce tropospheric ozone, which contributes to global warming.

E. Health Risk Impacts

Human health risks posed by exposure to TSDF air emissions are typically quantified in two forms: Annual cancer incidence and MIR. Annual cancer incidence is the estimated number of cancer cases per year due to exposure to TSDF emissions nationwide. The MIR, on the other hand, represents the potential risk to the one hypothetical individual who lives closest to a reasonable worst-case TSDF for a lifetime of 70 years. The MIR is derived from modeling a reasonable worst-case scenario and is not based on actual measurement of risk. It is not representative of the entire industry, and, in fact, may be experienced by few, if any, individuals. As explained in appendix B of the BID, there are great uncertainties in both these types of health risk estimates. These two health risk forms were used as an index to quantify health impacts related to TSDF emissions and emission controls. As discussed in section VI.D., an equipment-leak-specific, emission-weighted unit risk factor of 4.5×10^{-6} $(\mu g/m^3)^{-1}$ was used to estimate the nationwide annual cancer incidence and the MIR of contracting cancer associated with TSDF equipment leak organic emissions. See appendix B of the BID for a detailed analysis of the health risk impacts.

At proposal, order-of-magnitude health impacts were estimated for cancer risks from exposure to organic air emissions from WSTF and TSDF. The Human Exposure Model (HEM) was used to calculate the magnitude of risks posed by WSTF at both typical and maximum emission rates. Based on an

estimated urban/rural distribution, EPA selected six WSTF to represent the nationwide WSTF industry in performing the risk assessment. Using the results of the analysis of these "typical" facilities, health impacts were extrapolated to all WSTF and TSDF in general to provide nationwide estimates.

In the revised health impacts analysis for the final rules, annual cancer incidence and MIR were again used to quantify health impacts for the control alternatives for process vents and equipment leaks. However, in this followup analysis, the HEM was run using site-specific data on facility waste throughputs, emission rates, meteorology, and population density for each WSTF and TSDF nationwide identified in the various data bases.

The facility-specific information was obtained from three principal sources. Waste quantity and solvent recycling data were taken from the 1986 National Screener Survey; waste management processing schemes and waste types managed in each facility were based on the Hazardous Waste Data Management System's (HWDMS) RCRA part A applications; the National Survey of Hazardous Waste Generators and Treatment, Storage, and Disposal Facilities Regulated Under RCRA in 1981 (Westat Survey); and the 1986 National Screener Survey.

In revising the methodology applied in assessing cancer risks, EPA conducted facility-specific HEM computer runs for nearly all of the 448 WSTF that reported, in the 1986 National Screener Survey, recycling and/or reuse of solvents and other organic compounds (i.e., TSDF expected to have the specified process vents) and for each of the more than 1,400 TSDF in the industry profile of 2,300 TSDF that were determined to manage wastes with at least 10 percent organic content. These HEM results were used to estimate nationwide cancer incidence for both TSDF equipment leaks and process vents.

The nationwide annual incidence resulting from uncontrolled TSDF equipment leaks is estimated at 1.1 cases of cancer per year. Based on the estimated lower-bound emission rates, the nationwide cancer incidence from uncontrolled process vents is 0.015 case/yr. Based on the upper-bound emission rate, the incidence from process vents is 0.38 case/yr. With the application of the final process vent standards, based on lower-bound emission rates, the annual cancer incidence will be reduced to 0.001 from 0.015 case/yr. Based on upper-bound emission rates, annual incidence will be reduced to 0.027 case/yr from 0.38 case/yr. With the implementation of the LDAR programs for equipment leak emissions, the annual cancer incidence associated with fugitive emissions will be reduced to about 0.32 case/yr.

TABLE 1. SUMMARY OF NATIONWIDE ENVIRONMENTAL AND HEALTH RISK IMPACTS OF TSDF AIR EMISSION REGULATIONS

TSDF source category	Nationwide emissions, Mg/yr		Annual incidence [a], cases/yr		Maximum individual risk [a]	
	Uncontrolled	Controlled	Uncontrolled	Controlled	Uncontrolled	Controlled
Process vents [b]						
Lower bound	300	270	0.015	0.001	3×10^{-5}	2×10^{-6}
Upper bound	8,100	900	0.38	0.027	8×10^{-4}	4×10^{-5}
Equipment leaks	26,200	7,200	1.1	0.32	5×10^{-3}	1×10^{-3}

[a] Annual incidence and MIR are based on an emission-weighted average unit risk factor for TSDF.
[b] The lower- and upper-bound process vent emission estimates reflect the range of primary condensers' removal efficiencies and the use of secondary condensers on some primary condenser vents.

The HEM results were also used to estimate the MIR for process vents. For estimates of MIR associated with TSDF equipment leaks, a separate methodology was used for reasons discussed below.

There are three major problems in applying the methodology used to estimate cancer incidence, a nationwide value, to estimate MIR from equipment leaks, a site-specific value. The first problem concerns the emission estimation technique. Equipment count, and not the amount of waste handled, is the major determining factor for emission estimates from equipment leaks. Equipment counts do not double or triple accordingly as throughput is increased. Because the size of the model plant (and thus the equipment count) assigned to a waste management process was based on the amount of waste handled, emissions from equipment leaks will be overstated for larger facilities and understated for smaller facilities. This averages out on a nationwide basis, but individual facility estimates are not considered accurate for estimates of MIR.

The second problem deals with the waste compositions and forms (e.g., wastewater and concentrated organics) attributed to each RCRA waste code (e.g., F001). A waste code may involve wastes in several forms. The determination of impacts was based on the national average waste form distribution for each particular waste code occurring at each facility. For example, if on average across the Nation, a particular organic waste solvent appears as an aqueous waste (very dilute organics) 20 percent of the time, as a sludge 50 percent of the time, and as an organic liquid 30 percent of the time, those percentages were applied to every facility that was identified to handle that type of waste regardless of the actual percentages of waste form found at the facility. In some cases, this resulted in larger facilities being assigned a much greater percentage of an organic liquid form than would actually be the case. Again, this averages out on a nationwide basis, but for site-specific estimates such as MIR more refined determinations are required.

The third problem with using the HEM for equipment leaks is that the HEM does not model area sources directly; it collocates all emission sources at one central point and models the emissions as point sources. This is appropriate for estimates for process vents that are actual point sources, but not for equipment leaks. A typical TSDF would have several hundred equipment components with the potential for leaks that could be located over the entire facility area.

In estimating MIR for equipment leaks, EPA based its hypothetical, reasonable worst-case facility, in large part, on an actual facility. The EPA was able to characterize the facility in sufficient detail that dispersion estimates could be generated using a true area source dispersion model. This was possible because more detailed site-specific information has become

available on a limited basis since proposal. The preliminary results of a multiyear project to collect information on the Nation's generation of hazardous waste and the capacity available to treat, store, dispose of, and recycle that waste were used as the basis of the analysis. In the survey, all active treatment, storage, disposal, and recycling facilities (TSDR) were sent a detailed package of questionnaires appropriate to the processes they operate. The completed questionnaires were reviewed for technical accuracy; after independent verification, the information collected was entered into a complex data base. The TSDR survey questionnaire responses contain the most detailed up-to-date nationwide information regarding the hazardous waste management technologies each facility has on site. For each facility, detailed information is available in the data base, including facility area, numbers of hazardous waste management units by process type (i.e., number of surface impoundments, incinerators, recycling units), annual throughput by process unit, and types of waste (i.e., RCRA waste codes) managed by each unit at the facility. The availability of this information in computerized format made it possible to use the TSDR survey data base to identify facilities that represent the population of worst-case facilities with regard to equipment leak emissions and the potential for high MIR values. A detailed discussion of the health impacts methodologies is presented in appendix B of the BID.

The MIR estimate was made first by screening detailed TSDR Survey data for more than 1,400 TSDF to identify the facility that has the highest potential equipment leak emissions and the highest potential for these emissions to result in high ambient air concentrations (i.e., high emissions on a small facility area). Next, it was assumed that this facility handles hazardous wastes that have carcinogens with an emission-weighted potency equal to that of the nationwide average and that an individual was residing at the shortest distance from the TSDF management units to the nearest apparent residence. The highest annual-average ambient concentration, resulting from this high emission-rate facility, predicted to occur at the residence nearest the facility was then determined by dispersion modeling. The Industrial Source Complex Long-Term (ISCLT) dispersion model was used in the equipment leak MIR analysis to model the worst-case facility as a true area source with the actual facility area of about 1 acre as input. The highest annual average out of the results of 5 years of meteorological data modeled for each of the eight cities used to characterize nationwide meteorology was selected for use in the MIR calculation. Thus, this MIR estimate is considered a reasonable worst-case estimate for the industry and should not be interpreted to represent a known risk posed by any actual facility in the industry.

The MIR resulting from TSDF baseline (or uncontrolled) equipment leak emissions is estimated at 5×10^{-3}, i.e., 5 chances in 1,000. Based on the estimated lower-bound emission rates for process vents, the MIR for uncontrolled process vents is about 3 chances in 100,000 (3×10^{-5}); based on the upper-bound emission rate, the MIR is 8×10^{-4}. Because of the uncertainties inherent in nationwide emission and risk estimates that must characterize the many different constituents present in a variety of TSDF operations, EPA considered the upper-bound estimates in its decisionmaking.

With the application of the final process vent standards, based on lower-bound emission rates, the MIR will be reduced to 2×10^{-6} from 3×10^{-5}. Based on the upper-bound emission rates, the MIR will be reduced to 4×10^{-5} from 8×10^{-4}. With the implementation of control requirements for equipment leak emissions that include monthly LDAR requirements for pumps and valves, caps for open-ended lines, closed-purge sampling, and rupture discs for pressure relief devices, the MIR associated with fugitive emissions will be reduced to about 1×10^{-3} from 5×10^{-3}. Appendix B of the BID, EPA 450/3–89–009, presents a detailed explanation of the derivation of these risk estimates.

The MIR estimate for equipment leaks is sensitive to several factors. Emissions are the most obvious factor controlling risk. The facility associated with the reported MIR for equipment leaks is one of the highest emitting TSDF in terms of equipment leaks, in the upper 99.5 percent for potential equipment leak emissions. If the analysis were to use the 85-percentile emissions (i.e., 85 percent of the TSDF nationwide have lower equipment leak emissions than this value), then MIR would drop from 1×10^{-3} to 5×10^{-4} with all other factors held constant.

Another factor affecting the MIR estimates is area of the emitting source. For these types of sources, risk is inversely proportional to the area of the emitting source. For example, given equal emissions, a facility located over 10 acres generally poses less risk than a facility on 1 acre. For the facility presenting the highest risk in this rule, the MIR would drop from 1×10^{-3} to 2×10^{-4} if 10 acres were used in the estimate rather than 1 acre. It should also be pointed out that for the more than 1,400 TSDF surveyed in the EPA 1987 TSDR Survey, the median facility area was greater than 50 acres.

Distance to the nearest resident is another key variable in the risk estimate. The actual distance to the nearest residence (i.e., 250 ft) for the worst-case facility was used in calculating the reported MIR value; however, the median distance in a random sample of distances to the nearest residence reported in a survey of the hazardous waste generators was 1,000 ft. If this median distance were used in the estimate, even with the high emissions and the small area, the maximum risk value would drop from 1×10^{-3} to 2×10^{-4}. Meteorology is also a factor; the worst-case dispersion was used in the reported estimate. If an average case were used, then risk would drop to 6×10^{-4} with all other factors held constant.

As the above examples show, facilities with anything other than the combined worst-case factors would pose significantly less risk than the MIR reported for equipment leaks. The MIR estimates presented are, for the most part, based on worst-case or conservative assumptions; the one exception is the weighted-average cancer potency value, or unit risk factor (URF), used. The EPA believes it is unreasonable to make all worst-case assumptions for a single facility. However, because of the overall conservative nature of the analysis, for the industry as a whole, the vast majority of TSDF would pose significantly lower risk from equipment leak emissions than the reported reasonable, worst-case value.

F. Cost Impacts

The EPA developed a detailed estimate of the total capital investment, annual operating costs, and total annual costs of each emission control technology applied to each affected waste management unit. Total capital investment represents the total original cost of the installed control device. Total annual cost represents the total payment each year to repay the capital investment for the control device as well as to pay for the control device (or work practice) operating and maintenance expenses. The costs of attaining the 95-percent control or emission reduction for process vents are based on the use of condensers to control process vent streams for which condensation is

technically feasible and on the use of carbon adsorption systems to control the remaining process vent streams subject to the regulations. Because site-specific information was insufficient to determine which facilities could apply condensers rather than carbon adsorbers industry-wide, upper- and lower-bound cost estimates were generated for process vent controls. The upper-bound cost estimates are based on the assumption that fixed-bed, regenerable carbon adsorption systems would be required to control process vents at all facilities with emissions above the emission rate limit. Similarly, the lower-bound cost estimate is based on the assumption that condensers could be used to control process vents at all facilities with emissions above the emission rate limit.

The nationwide capital investment and total annual cost of implementing the requirements of today's rule for process vent controls are estimated at $24.6 million and $12.9 million/year, respectively, for the upper-bound case. For the lower-bound case, capital investment is $1.5 million and total annual costs represent a small savings of $70,000/yr. These costs are based on an industry profile that includes 73 large recycling facilities and 167 medium-sized recycling facilities. The more than 200 small recycling facilities are not included in the cost estimates because they are projected not to have to install additional controls to meet the facility emission rate limit.

The capital investment and total annual costs of controlling TSDF equipment leak emissions with the LDAR program together with some equipment specifications are estimated at $126.6 million and $32.9 million/yr, respectively. Table 2 summarizes capital and annual costs associated with the final rules.

Further information on the economic impacts of the final standards for organic control from TSDF process vents and equipment leaks is presented in section VIII of this preamble. Details of the analysis are presented in the BID, chapter 9.0.

TABLE 2.—SUMMARY OF NATIONWIDE COST IMPACTS OF TSDF AIR EMISSION REGULATIONS

TSDF source category	Nationwide capital cost, $ millions (1986)	Nationwide annualized cost [a], $ millions/yr
Process vents [b]		
Lower bound	1.5	(0.1)
Upper bound	24.6	12.9
Equipment leaks	126.6	32.9

( ) indicates a cost credit.
[a] Includes a recovery credit for recycling. No recovery credit was applied for TSDF without recycling processes.
[b] The lower-bound cost estimates assume that condensers could be used to control process vents at all facilities with emissions above the emission rate limit; the upper-bound cost estimates assume that carbon adsorbers would be required to control process vents at all facilities with emissions above the emission rate limit.

VIII. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility under section 7002.

Prior to the HSWA of 1984, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g)(1) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. The EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

Today's rule is promulgated pursuant to section 3004(n) of RCRA, a provision added by HSWA. Therefore, EPA is adding the requirements to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in this section of the preamble.

The EPA will implement today's rule in authorized States until (1) they modify their programs to adopt these rules and receive final authorization for the modification or (2) they receive interim authorization as described below. Because this rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or section 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire automatically on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that authorized States must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline for State program modifications for this rule is July 1, 1991 (or July 1, 1992, if a State statutory change is needed). These deadlines can be extended in certain cases [40 CFR 271.21(e)(3)]. Once EPA approves the modification, the State requirements become subtitle C RCRA requirements.

A State that submits its official application for final authorization less than 12 months after the effective date of these standards is not required to include standards equivalent to these standards in its application. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their applications. Section 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

States that are authorized for RCRA may already have requirements under State law similar to those in today's rules. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

IX. Implementation

As proposed, the air emission standards for process vents and equipment leaks were included as subpart C of part 269, Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. Part 269 was to be added to the CFR with the promulgation of these standards. For consistency with standards for other TSDF sources under RCRA, the final standards have been incorporated into parts 264 and 265. Subpart AA applies to process vents and subpart BB to equipment leaks. In addition, whereas at proposal the equipment leak requirements of 40 CFR part 61, subpart V, were incorporated by reference, these provisions have been included in subpart BB with revisions appropriate for a standard promulgated under RCRA authority rather than CAA authority.

Under the current RCRA permitting system, a facility that has received a final permit must comply with all of the following requirements as specified in 40 CFR 270.4: (1) The specific conditions written into the permit (including conditions that demonstrate compliance with part 264 regulations); (2) self-implementing statutory requirements; and (3) regulations promulgated under 40 CFR part 268 restricting the placement of hazardous waste in or on the land. When new regulations are promulgated after the issuance of a permit, EPA may reopen the permit to incorporate the new requirements as stated in § 270.41. Otherwise, the new regulatory requirements are incorporated into a facility's permit at the time of permit reissuance, or at the 5-year review for land disposal facilities.

Facilities that have not been issued a final permit and that have fully complied with the requirements for interim status must comply with the regulations specified in CFR part 265. New regulations that are added to part 265 become applicable to interim status facilities on their effective dates.

Although EPA has the authority to reopen permits to incorporate the requirements of new standards, EPA is concerned about the resource burdens of this approach. To reopen permits for each new regulation at the time it is promulgated would impose a large administrative burden on both EPA and the regulated community because a major permit modification would generally require the same administrative procedures as are required for initial permits (e.g., development of a draft permit, public notice, and opportunity for public hearing). As a consequence, the requirements of new standards are usually incorporated into a permit when it is renewed. For standards implemented through the RCRA permit system, the effect of this policy is to "shield" facilities that have been issued a final permit from any requirements promulgated after the issuance of the permit until the time that the permit must be renewed and the new requirements are written into the permit. Thus, this policy is often referred to as the "permit-as-a-shield" policy. Although this policy is generally applied, EPA may evaluate the need to accelerate the implementation of standards developed under RCRA and, if warranted, make exceptions to the permit-as-a-shield policy. In today's rules, the permit-as-a-shield provision applies to control of air emissions from process vents and equipment leaks regulated under section 3004(n). However, as previously noted, in the Phase 11 TSDF air rules, EPA intends to propose modifications to permit-as-a-shield provisions as they apply to control of air emissions under these new subparts. With this proposed action, air rules promulgated under RCRA section 3004(n) would be applicable to all facilities, regardless of permit status.

Both interim status and permitted facilities must comply with the substantive control requirements of the final standards. However, facilities that have already been issued a final permit prior to the effective date of today's final rules are not required to comply with the rules until such time as the permit is reviewed or is reissued. Interim status facilities that have submitted their part B permit application are required to modify their part B applications to incorporate the requirements of today's rules.

The EPA considers that the part 265 standards promulgated here can be satisfied without the need for detailed explanation or negotiation between the facility owner/operator and EPA and therefore, interim status facilities can comply without awaiting permit action. The self-implementing nature of these rules is achieved by including specific criteria for facility owners or operators to identify waste management units that are subject to the regulation and by clearly specifying the emission control and administrative requirements of the rules.

The criteria for applicability are that certain hazardous waste management units at new and existing TSDF that need authorization to operate under RCRA section 3005 are covered by the rules. The applicability includes all hazardous waste management units and recycling units at facilities that require RCRA permits. For the equipment leak standards to apply, the equipment must contain or contact hazardous wastes with a 10-percent-or-more total organics concentration. For the process vent standards to apply, the vents must be associated with specific hazardous waste management units, i.e., distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations, that manage wastes with 10 ppmw or greater total organics concentration.

Control requirements in the final regulation include specific design requirements for equipment and specific performance criteria (i.e., a weight-percent reduction and a volume concentration limit) for emission control devices. Provisions of the final standards also list specific types of equipment required. Owners and operators who use one of the listed types of equipment within the specified design and operational parameters would therefore be in compliance with the regulation as long as the required design, inspection, monitoring, and maintenance provisions were met. Specifications for emission controls that achieve at least a 95-weight-percent reduction in volatile organic emissions are somewhat less specific, but engineering design practices are sufficiently established that the combination of a good control device design and subsequent monitoring of operating parameters, as required by the final regulation, would offer reasonable assurance that the specified emission reduction is being achieved. Regardless of the type of control selected, owners and operators must maintain their own

records of control device design, installation, and monitoring and must submit reports identifying exceeders of monitored control device parameters. Periodic review of the required reports and records by EPA may be used to ensure compliance.

Because today's rules are promulgated under HSWA, all affected facilities must comply with these requirements on the effective date of the rule, regardless of the authorization status of the State in which they are located. In addition, because EPA will implement these rules in every State on the effective date, all reports should be sent to the EPA Regional Offices until the State receives authorization to implement these rules. Therefore, owners and operators of TSDF with existing waste management units subject to the provisions of subparts AA and BB must achieve compliance with the process vent and equipment leak control and monitoring requirements on the effective date of these rules (i.e., 6 months following promulgation) except where compliance would require the installation of a closed-vent system and control device. Information developed under other EPA regulations has shown that in some cases, the design, construction, and installation of a closed-vent system and control device can take as long as 24 months to complete. As a result, EPA is allowing up to 24 months from the promulgation date of the regulation for existing facilities to complete installation if they are required to install a closed-vent system and control device and if they can document that installation of the emission controls cannot reasonably be expected to be completed earlier. In these circumstances, owners/operators are required to develop an implementation schedule that indicates dates by which the design, construction, and operation of the necessary emission controls will be completed. This implementation schedule must document that installation of closed-vent systems and control devices required by the final standards would be achieved within a period of no more than 2 years from today and must be included as part of the facility's operating record on the effective date of these final rules (i.e., 6 months after promulgation). Changes in the implementation schedule are allowed within the 24-month timeframe if the owner or operator documents that the change cannot reasonably be avoided.

This extension would also apply to those existing facilities that are brought under regulation because of new statutory or regulatory amendments under RCRA that render the facility subject to the provisions of subpart AA or BB (e.g., units handling wastes newly listed or identified as hazardous by EPA). That is, the owner or operator may be allowed up to 18 months from the effective date of the statutory or regulatory amendment to complete installation of a control device. However, for facilities adding new waste management units, EPA believes that the lead time involved in such actions provides adequate time for owners and operators to design, procure, and install the required controls. Therefore, all new units must comply with the rules immediately (i.e., must have control equipment installed and operating upon startup of the unit).

Under the approach discussed above, the standards promulgated today for process vents and equipment leaks would be implemented on the following schedule for existing TSDF:

—180 days following promulgation, the new subparts AA and BB standards become effective; all facilities become subject to the new standards.
—On the effective date of the standards, compliance with the standards is required. Each facility that does not have the control devices required by the standards in place and operating must have one of the following in the facility's operating record: (1) An implementation schedule indicating when the controls will be installed, or (2) a process vent emission rate determination that documents that the emission rate limit is not exceeded (therefore, controls are not required).
—No later than 18 months following the effective date (2 years following promulgation), any control devices required by the standards for process vents and equipment leaks must be installed at all facilities.
—All permits issued after the effective date must incorporate the standards.

An existing solid waste management unit may become a hazardous waste management unit requiring a RCRA permit when a waste becomes newly listed or identified as hazardous. Owners and operators of facilities not previously requiring a RCRA permit who have existing units handling newly listed or identified hazardous waste can submit a part A application and obtain interim status. The air emission standards promulgated today would be implemented at these newly regulated facilities on the following schedule:

—180 days following the date the managed waste is listed or identified as hazardous, the standards become effective; facilities become subject to the subpart AA and/or BB standards.
—On the effective date of the standards, each facility that does not have the control devices required by the process and/or equipment leak standards in place must have one of the following in the facility's operating record: (1) An implementation schedule indicating when the controls will be installed, or (2) a process vent emission rate determination that documents that the emission rate limit is not exceeded (therefore, controls are not required).
—No later than 18 months following the effective date (2 years following promulgation), the controls required by the standards must be installed at all facilities.

Newly constructed TSDF are required to submit part A and part B permit applications and to receive a final permit prior to construction as required by § 270.10. Following the effective date of the standards promulgated today, a part B application for a new facility must demonstrate compliance with the standards as contained in part 264, if applicable. Therefore, all controls required by the standards would have to be in place and operating upon startup.

Similarly, new waste management units added to existing facilities would have to be equipped with the required controls prior to startup. For a new unit added to an existing permitted facility, a permit modification would be necessary. Where a new unit is added to a facility in interim status, the owner or operator must submit a revised part A application (§ 270.72[c]), including an explanation of the need for the new unit, and then receive approval from the permitting authority.

For facilities with hazardous waste management units that previously were not subject to control requirements because the wastes in the units did not contain organics in concentrations greater than the applicability criterion of 10 ppmw or 10 percent, the owner or operator would be required to comply with all subpart AA or BB requirements on the date that the facility or waste management unit becomes affected by the rules (i.e., the date the facility begins to manage wastes in the units with organic concentrations greater than 10 ppmw for subpart AA or greater than 10 percent for subpart BB) irrespective of any change in permit status that is required by the change in waste concentration. In this situation, should the facility owner or operator elect to use a control device to comply with the process vent or equipment leak provisions, the control device must be installed and operating on the date when the unit becomes subject to the

rules; the 24-month extension is not applicable in this case. For the process vent emission rate limit, the situation is somewhat different. TSDF process vents associated with the distillation/separation operations specified in the rule that manage wastes with organics concentrations of 10 ppmw or greater are affected by the regulation regardless of whether the facility emissions are above or below the emission rate limit. Therefore, any change in the facility operations that results in a TSDF going above or below the emission rate limit does not cause a change in the applicability of the facility to subpart AA. The rules require that affected TSDF reduce total process vent organic emissions from all affected vents by 95 percent or reduce the facility's total process vent emissions to or below 1.4 kg/h and 2.8 Mg/yr. One of these conditions must be met at all times; the facility's emission rate determination, which documents the facility's status regarding compliance with the process vent standards, must also at all times reflect current design and operation and wastes managed in the affected units.

The permitting authority cited by section 3005 of RCRA and codified in § 270.32(b)(2) states that permits issued under this section "* * * shall contain such terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment." This section, in effect, allows permit writers to require, on a case-by-case basis, emission controls that are more stringent than those specified by a standard. This omnibus authority could be used in situations where,in the permit writer's judgment, there is an unacceptably high residual risk after application of controls required by an emission standard. As has been stated, the approach that EPA is using in today's regulatory action is to proceed with promulgation of regulations to control organic emissions and to follow this with regulations that would require more stringent controls for individual hazardous constituents or would otherwise reduce risk where necessary. Until then, permit writers should use their omnibus permitting authority to require more stringent controls at facilities where a high residual risk remains after implementation of the standards for volatile organics.

X. Administrative Requirements

A. Regulatory Impact Analysis

Executive Order No. 12291 (E.O. 12291) requires each Federal agency to determine whether a regulation is a "major" rule as defined by the order and, "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or
2. A major increase in costs or prices for consumers or individual industries; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

The final rule establishes the specific emission levels and emission control programs that facilities must meet in reducing air emissions from hazardous waste management units. A complete assessment of the costs,impacts, and benefits of these rules has been conducted by EPA. This analysis indicates that the requirements of the rules for TSDF equipment leaks and process vents result in none of the economic effects set forth in section 1 of the E.O. 12291 as grounds for finding a regulation to be major. The industry-wide annualized costs of the standards are estimated to be $46 million, which is less than the $100 million established as the first criterion for a major regulation in E.O. 12291. Price increases associated with the final standards are not considered a "major increase in costs or prices" specified as the second criterion in E.O. 12291. The final standard's effect on the industry would not result in any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion in E.O. 12291).

The final rule was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). This analysis is not necessary, however, if the Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities. The EPA has established guidelines for determining whether an RFA is required to accompany a rulemaking package. The guidelines state that if at least 20 percent of the universe of "small entities" is affected by the rule, then an RFA is required. In addition, the EPA criteria are used to evaluate if a regulation will have a "significant impact" on small entities. If any one of the following four criteria is met, the regulation should be assumed to have a "significant impact:"

1. Annual compliance costs increase the relevant production costs for small entities by more than 5 percent.
2. The ratio of compliance costs to sales will be 10 percent higher for small entities than for large entities.
3. Capital costs of compliance will represent a significant portion of the capital available to small entities, taking into account internal cash flow plus external financing capabilities.
4. The costs of the regulation will likely result in closures of small entities.

At proposal, EPA's Administrator certified that the rule would not have a significant impact on small businesses because the only entities subject to the rule are those required to have a permit for treatment, storage, and disposal of hazardous waste. Few, if any, of these facilities are small entities. Based on comments received at proposal, EPA reviewed this conclusion in light of the revisions made to the proposed standards and closely examined the potential impacts on the industry segment comprised primarily of small commercial recyclers. As a result of the revisions made to exempt small facilities from having to install control devices, EPA again concluded that the economic impact on small businesses will be minimal and did not prepare a formal RFA in support of the rule.

Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. Therefore, this regulation does not require an RFA.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2060–0195.

Public reporting burden resulting from this rulemaking is estimated to be about 9 hours per response (on average), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Recordkeeping requirements are estimated to require 180 hours a year for each facility.

Send comments regarding the burden estimate or any other aspect of this

collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs (Paperwork Reduction Project (2060-0195)), Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Supporting Documentation

The dockets for this rulemaking (Docket No. F-86-AESP-FFFFF, which covers the development of the rules up to proposal, and Docket No. F-90-AESF-FFFFF, which covers development of the final rules from proposal to promulgation) are available for public inspection at the EPA RCRA Docket Office (OS-300) in room 2427M of the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket room is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials and should call (202) 475-9327 for appointments. Docket A-79-27, containing support information used in developing the National Emission Standard for Hazardous Air Pollutants; Benzene Fugitive Emissions, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section, room 2903B, Waterside Mall, 401 M Street SW., Washington, DC 20460. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $0.20/page. The docket contains a copy of all references cited in the BID for the proposed and final rules, as well as other relevant reports and correspondence.

E. List of Subjects

40 CFR Part 260

Air stripping operation, Closed-vent system, Condenser, Control device, Distillation operation, Equipment, Fractionation operation, Process vent, Solvent extraction operation, Steam stripping operation, Thin-film evaporation operation, Vapor incinerator, Vented, Incorporation by reference.

40 CFR Part 261

Hazardous waste, Recyclable materials, Recycling, Hazardous waste management units.

40 CFR Parts 264 and 265

Hazardous waste, Treatment, storage, and disposal facilities, Air emission standards for process vents, Air emission standards for equipment leaks, Incorporation by reference, Process vents, Closed-vent systems, Control devices' Pumps, Valves, Pressure relief devices, Sampling connection systems, Open-ended lines, Alternative standards, Test methods, Recordkeeping requirements, Reporting requirements.

40 CFR Part 270

Administrative practices and procedures, Hazardous waste permit program, Process vents, Equipment leaks, Reporting and recordkeeping requirements.

40 CFR Part 271

Hazardous waste, State hazardous waste programs, Process vent and equipment leak air emission standards for TSDF.

Dated June 13, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, chapter I, title 40, of the Code of Federal Regulations, parts 260, 261, 264, 265, 270, and 271, are amended as follows.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, and 6939.

2. Section 260.11 is amended by adding the following references to paragraph (a):

§ 260.11 References.

(a) * * *

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"ASTM Standard Method for Analysis of Reformed Gas by Gas Chromatography," ASTM Standard D 1946-82, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)," ASTM Standard D 2382-83, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," ASTM Standard E 169-87, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis," ASTM Standard E 168-88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Practice for Packed Column Gas Chromatography," ASTM Standard E 260-85, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," ASTM Standard D 2267-88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"ASTM Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteriscope," ASTM Standard D 2879-86, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6921, 6922, and 6937.

Subpart A—General

4. In § 261.6, paragraph (c)(1) is revised and paragraphs (c)(2)(iii) and (d) are added to read as follows:

§ 261.6 Requirements for recyclable materials.

* * * * *

(c)(1) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A through L, AA, and BB of parts 264 and 265, and under parts 124, 266, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation except as provided in § 261.6(d).)

(2) * * *

(iii) Section 261.6(d) of this chapter.

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of part 264 or 265 of this chapter.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart B—General Facility Standards

6. Section 264.13 is amended by revising paragraph (b)(6) to read as follows:

§ 264.13 General waste analysis.

* * * * *

(b) * * *

(6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 264.17, 264.314, 264.341, 264.1034(d), 264.1063(d), and 268.7 of this chapter.

* * * * *

7. Section 264.15 is amended by revising the last sentence of paragraph (b)(4) to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) * * * At a minimum, the inspection schedule must include the terms and frequencies called for in §§ 264.174, 264.194, 264.226, 264.253, 264.254, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, and 264.1058, where applicable.

* * * * *

Subpart E—Manifest System, Recordkeeping, and Reporting

8. Section 264.73 is amended by revising paragraphs (b)(3) and (b)(6) to read as follows:

§ 264.73 Operation record.

* * * * *

(b) * * *

(3) Records and results of waste analyses performed as specified in §§ 264.13, 264.17, 264.314, 264.341, 264.1034, 264.1063, 268.4(a), and 268.7 of this chapter.

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F and §§ 264.226, 264.253, 264.254, 264.276, 264.278, 264.280, 264.303, 264.309, 264.347, 264.602, 264.1034(c)–264.1034(f), 264.1035, 264.1063(d)–264.1063(i), and 264.1064.

* * * * *

9. Section 264.77 is amended by revising paragraph (c) to read as follows:

§ 264.77 Additional reports.

* * * * *

(c) As otherwise required by subparts F, K through N, AA, and BB.

10. 40 CFR part 264 is amended by adding subpart AA to read as follows:

Subpart AA—Air Emission Standards for Process Vents

264.1030 Applicability.
264.1031 Definitions.
264.1032 Standards: Process vents.
264.1033 Standards: Closed-vent systems and control devices.
264.1034 Test methods and procedures.
264.1035 Recordkeeping requirements.
264.1036 Reporting requirements.
264.1037–264.1049 [Reserved]

Subpart AA—Air Emission Standards for Process Vents

§ 264.1030 Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in § 2641).

(b) Except for §§ 264.1034(d) and 264.1035(e), this subpart applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10-ppmw, if these operations are conducted in:

(1) Units that are subject to the permitting requirements of part 270, or

(2) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270.

(c) If the owner or operator of process vents subject to the requirements of §§ 264.1032 through 264.1036 has received a permit under section 3005 of RCRA prior to December 21, 1990 the requirements of §§ 264.1032 through 264.1036 must be incorporated when the permit is reissued under § 124.15 or reviewed under § 270.50.

[Note: The requirements of §§ 264.1032 through 264.1036 apply to process vents on hazardous waste recycling units previously exempt under paragraph 261.6(c)(1). Other exemptions under §§ 261.4, 262.34, and 264.1(g) are not affected by these requirements.]

§ 264.1031 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and parts 260–266.

Air stripping operation is a desorption operation employed to transfer one or more volatile components from a liquid mixture into a gas (air) either with or without the application of heat to the liquid. Packed towers, spray towers, and bubble-cap, sieve, or valve-type plate towers are among the process configurations used for contacting the air and a liquid.

Bottoms receiver means a container or tank used to receive and collect the heavier bottoms fractions of the distillation feed stream that remain in the liquid phase.

Closed-vent system means a system that is not open to the atmosphere and that is composed of piping, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

Condenser means a heat-transfer device that reduces a thermodynamic fluid from its vapor phase to its liquid phase.

Connector means flanged, screwed, welded, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. For the purposes of reporting and recordkeeping, connector means flanged fittings that are not covered by insulation or other materials that prevent location of the fittings.

Continuous recorder means a data-recording device recording an instantaneous data value at least once every 15 minutes.

Control device means an enclosed combustion device, vapor recovery system, or flare. Any device the primary function of which is the recovery or capture of solvents or other organics for use, reuse, or sale (e.g., a primary condenser on a solvent recovery unit) is not a control device.

Control device shutdown means the cessation of operation of a control device for any purpose.

Distillate receiver means a container or tank used to receive and collect liquid material (condensed) from the overhead condenser of a distillation unit and from which the condensed liquid is pumped to larger storage tanks or other process units.

Distillation operation means an operation, either batch or continuous, separating one or more feed stream(s) into two or more exit streams, each exit stream having component concentrations different from those in the feed stream(s). The separation is

achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Equipment means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange, and any control devices or systems required by this subpart.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flow indicator means a device that indicates whether gas flow is present in a vent stream.

First attempt at repair means to take rapid action for the purpose of stopping or reducing leakage of organic material to the atmosphere using best practices.

Fractionation operation means a distillation operation or method used to separate a mixture of several volatile components of different boiling points in successive stages, each stage removing from the mixture some proportion of one of the components.

Hazardous waste management unit shutdown means a work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit. An unscheduled work practice or operational procedure that stops operation of a hazardous waste management unit or part of a hazardous waste management unit for less than 24 hours is not a hazardous waste management unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping operation are not hazardous waste management unit shutdowns.

Hot well means a container for collecting condensate as in a steam condenser serving a vacuum-jet or steam-jet ejector.

In gas/vapor service means that the piece of equipment contains or contacts a hazardous waste stream that is in the gaseous state at operating conditions.

In heavy liquid service means that the piece of equipment is not in gas/vapor service or in light liquid service.

In light liquid service means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the components in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20 °C is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

In situ sampling systems means nonextractive samplers or in-line samplers.

In vacuum service means that equipment is operating at an internal pressure that is at least 5 kPa below ambient pressure.

Malfunction means any sudden failure of a control device or a hazardous waste management unit or failure of a hazardous waste management unit to operate in a normal or usual manner, so that organic emissions are increased.

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the pressure relief device.

Process heater means a device that transfers heat liberated by burning fuel to fluids contained in tubes, including all fluids except water that are heated to produce steam.

Process vent means any open-ended pipe or stack that is vented to the atmosphere either directly, through a vacuum-producing system, or through a tank (e.g., distillate receiver, condenser, bottoms receiver, surge control tank, separator tank, or hot well) associated with hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations.

Repaired means that equipment is adjusted, or otherwise altered, to eliminate a leak.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Separator tank means a device used for separation of two immiscible liquids.

Solvent extraction operation means an operation or method of separation in which a solid or solution is contacted with a liquid solvent (the two being mutually insoluble) to preferentially dissolve and transfer one or more components into the solvent.

Startup means the setting in operation of a hazardous waste management unit or control device for any purpose.

Steam stripping operation means a distillation operation in which vaporization of the volatile constituents of a liquid mixture takes place by the introduction of steam directly into the charge.

Surge control tank means a large-sized pipe or storage reservoir sufficient to contain the surging liquid discharge of the process tank to which it is connected.

Thin-film evaporation operation means a distillation operation that employs a heating surface consisting of a large diameter tube that may be either straight or tapered, horizontal or vertical. Liquid is spread on the tube wall by a rotating assembly of blades that maintain a close clearance from the wall or actually ride on the film of liquid on the wall.

Vapor incinerator means any enclosed combustion device that is used for destroying organic compounds and does not extract energy in the form of steam or process heat.

Vented means discharged through an opening, typically an open-ended pipe or stack, allowing the passage of a stream of liquids, gases, or fumes into the atmosphere. The passage of liquids, gases, or fumes is caused by mechanical means such as compressors or vacuum-producing systems or by process-related means such as evaporation produced by heating and not caused by tank loading and unloading (working losses) or by natural means such as diurnal temperature changes.

§ 264.1032 Standards: Process vents.

(a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations managing hazardous wastes with organic concentrations of at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of paragraph (a) of this section the closed-vent system and control device must meet the requirements of § 264.1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of § 264.1034(c).

(d) When an owner or operator and the Regional Administrator do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the procedures in § 264.1034(c) shall be used to resolve the disagreement.

§ 264.1033 Standards: Closed-vent systems and control devices.

(a)(1) Owners or operators of closed-vent systems and control devices used to comply with provisions of this part shall comply with the provisions of this section.

(2) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 18 months after the effective date that the facility becomes subject to this subpart for installation and startup. All units that begin operation after December 21, 1990, must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 2-year implementation schedule does not apply to these units.

(b) A control device involving vapor recovery (e.g., a condenser or adsorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of § 264.1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (e)(1) of this section, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in paragraph (f)(2)(iii) of this section.

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (e)(2) of this section.

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than 18.3 m/s (60 ft/s), except as provided in paragraphs (d)(4) (ii) and (iii) of this section.

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(4) of this section and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(5) of this section.

(6) A flare used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\left[\sum_{i=1}^{n} C_i H_i\right]$$

where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 °C;

K = Constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 °C;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946–82 (incorporated by reference as specified in § 260.11); and

H_i = Net heat of combustion of sample component i, kcal/9 mol at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382–83 (incorporated by reference as specified in § 260.11) if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{max}, for a flare complying with paragraph (d)(4)(iii) of this section shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

where:

28.8 = Constant,

31.7 = Constant,

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(5) The maximum allowed velocity in m/s, V_{max}, for an air-assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084\ (H_T)$$

where:

8.706 = Constant,

0.7084 = Constant,

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(f) The owner or operator shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control

device inlet but before the point at which the vent streams are combined.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser, or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed at a location in the exhaust vent stream from the condenser, and a second temperature sensor shall be installed at a location in the coolant fluid exiting the condenser.

(vii) For a carbon adsorption system that regenerates the carbon bed directly in the control device such as a fixed-bed carbon adsorber, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by paragraphs (1) and (2) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(g) An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of § 264.1035(b)(4)(iii)(F).

(h) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule, and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of § 264.1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of § 264.1035(b)(4)(iii)(G).

(i) An alternative operational or process parameter may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with these standards and the control device's design specifications.

(j) An owner or operator of an affected facility seeking to comply with the provisions of this part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(k)(1) Closed-vent systems shall be designed for and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the methods specified as § 264.1034(b).

(2) Closed-vent systems shall be monitored to determine compliance with this section during the initial leak detection monitoring, which shall be conducted by the date that the facility becomes subject to the provisions of this section, annually, and at other times as requested by the Regional Administrator.

(3) Detectable emissions, as indicated by an instrument reading greater than 500 ppm and visual inspections, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected.

(4) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(l) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

§ 264.1034 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in § 264.1033(k), the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the

procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with § 264.1032(a) and with the total organic compound concentration limit of § 264.1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 in 40 CFR part 60 for organic content.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

$$E_h = Q_{sd}\left\{\sum_{i=1}^{n} C_i MW_i\right\}[0.0416][10^{-6}]$$

where:

E_h = Total organic mass flow rate, kg/h;

Q_{sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416 = Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);

10^{-6} = Conversion from ppm, ppm^{-1}.

(v) The annual total organic emission rate shall be determined by the following equation:

$$E_A = (E_h)(H)$$

where:

E_A = Total organic mass emission rate, kg/y;

E_h = Total organic mass flow rate for the process vent, kg/h;

H = Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (E_h as determined in paragraph (c)(1)(iv) of this section) and by summing the annual total organic mass emission rates (E_A, as determined in paragraph (c)(1)(v) of this section) for all affected process vents at the facility.

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in paragraph (c)(1) of this section.

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Regional Administrator's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this subpart, the owner or operator must make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the waste using the following procedures:

(i) The owner or operator must take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

(ii) For waste generated onsite, the grab samples must be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples must be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8240 of SW-846 (incorporated by reference under § 260.11).

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each waste stream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-

weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit.

(2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) The determination that distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted, annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of this subpart or by the date when the waste is first managed in a waste management unit, whichever is later, and

(2) For continuously generated waste, annually, or

(3) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the procedures in Method 8240 may be used to resolve the dispute.

§ 264.1035 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

(1) For facilities that comply with the provisions of § 264.1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be in the facility operating record by the effective date that the facility becomes subject to the provisions of this subpart.

(2) Up-to-date documentation of compliance with the process vent standards in § 264.1032, including:

(i) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (e.g., managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan must include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with § 264.1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records including the dates of each compliance test required by § 264.1033(k).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Regional Administrator that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with paragraphs (b)(4)(iii)(A) through (b)(4)(iii)(G) of this section may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average

temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in § 264.1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of § 264.1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of § 264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of this part shall be recorded and kept up-to-date in the facility operating record. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with § 264.1033 (f)(1) and (f)(2).

(3) Monitoring, operating, and inspection information required by paragraphs (f) through (k) of § 264.1033.

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 second at a minimum temperature of 760 °C, period when the combustion temperature is below 760 °C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 weight percent or greater period when the combustion zone temperature is more than 28 °C below the design average combustion zone temperature established as a requirement of paragraph (b)(4)(iii)(A) of this section.

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 °C below the average temperature of the inlet vent stream established as a requirement of paragraph (b)(4)(iii)(B) of this section, or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of paragraph (b)(4)(iii)(B) of this section.

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 °C below the design average flame zone temperature established as a requirement of paragraph (b)(4)(iii)(C) of this section, or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of paragraph (b)(4)(iii)(C) of this section.

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with § 264.1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(vii) For a condenser that complies with § 264.1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 °C above the design average exhaust vent stream temperature established as a requirement of paragraph (b)(4)(iii)(E) of this section; or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 °C above the design average coolant fluid temperature at the condenser outlet established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with § 264.1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with § 264.1033(f)(2)(vii)(B),

period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(5) Explanation for each period recorded under paragraph (4) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For a carbon adsorption system operated subject to requirements specified in § 264.1033(g) or § 264.1033(h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For a carbon adsorption system operated subject to requirements specified in § 264.1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3)–(c)(8) of this section need be kept only 3 years.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Regional Administrator will specify the appropriate recordkeeping requirements.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in § 264.1032 including supporting documentation as required by § 264.1034(d)(2) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.

(Approved by the Office of Management and Budget under control number 2060–0195)

§ 264.1036 Reporting requirements.

(a) A semiannual report shall be submitted by owners and operators subject to the requirements of this subpart to the Regional Administrator by dates specified by the Regional Administrator. The report shall include the following information:

(1) The Environmental Protection Agency identification number, name, and address of the facility.

(2) For each month during the semiannual reporting period, dates when the control device exceeded or operated outside of the design specifications as defined in § 264.1035(c)(4) and as indicated by the control device monitoring required by § 264.1033(f) and such exceedances were not corrected within 24 hours, or that a flare operated with visible emissions as defined in § 264.1033(d) and as determined by Method 22 monitoring, the duration and cause of each exceedance or visible emissions, and any corrective measures taken.

(b) If, during the semiannual reporting period, the control device does not exceed or operate outside of the design specifications as defined in § 264.1035(c)(4) for more than 24 hours or a flare does not operate with visible emissions as defined in § 264.1033(d), a report to the Regional Administrator is not required.

(Approved by the Office of Management and Budget under control number 2060–0195)

§§ 264.1037–264.1049 [Reserved].

11. 40 CFR part 264 is amended by adding subpart BB to read as follows:

Subpart BB—Air Emission Standards for Equipment Leaks

264.1050 Applicability.
264.1051 Definitions.
264.1052 Standards: Pumps in light liquid service.
264.1053 Standards: Compressors.
264.1054 Standards: Pressure relief devices in gas/vapor service.
264.1055 Standards: Sampling connecting systems.
264.1056 Standards: Open-ended valves or lines.
264.1057 Standards: Valves in gas/vapor service or in light liquid service.
264.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.
264.1059 Standards: Delay of repair.
264.1060 Standards: Closed-vent systems and control devices.
264.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.
264.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.
264.1063 Test methods and procedures.
264.1064 Recordkeeping requirements.
264.1065 Reporting requirements.
264.1066–264.1079 [Reserved]

Subpart BB—Air Emission Standards for Equipment Leaks

§ 264.1050 Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in § 264.1).

(b) Except as provided in § 264.1064(k), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in:

(1) Units that are subject to the permitting requirements of part 270, or

(2) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270.

(c) If the owner or operator of equipment subject to the requirements of §§ 264.1052 through 264.1065 has received a permit under section 3005 of RCRA prior to December 21, 1990, the requirements of §§ 264.1052 through 264.1065 must be incorporated when the permit is reissued under § 124.15 or reviewed under § 270.50.

(d) Each piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(e) Equipment that is in vacuum service is excluded from the requirements of § 264.1052 to § 264.1060 if it is identified as required in § 264.1064(g)(5).

[**Note:** The requirements of §§ 264.1052 through 264.1065 apply to equipment associated with hazardous waste recycling units previously exempt under § 261.6(c)(1). Other exemptions under §§ 261.4, 262.34, and 264.1(g) are not affected by these requirements.]

§ 264.1051 Definitions.

As used in this subpart, all terms shall have the meaning given them in § 264.1031, the Act, and parts 260–266.

§ 264.1052 Standards: Pumps in light liquid service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 264.1063(b), except as provided in paragraphs (d), (e), and (f) of this section.

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If a instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is

detected, except as provided in § 264.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (a) of this section, *provided* the following requirements are met:

(1) Each dual mechanical seal system must be:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of § 264.1060, or

(iii) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(4) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in paragraph (d)(3) of this section must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.

(ii) The owner or operator must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (d)(5)(ii) of this section, a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 264.1059.

(iii) A first attempt at repair (e.g., relapping the seal) shall be made no later than 5 calendar days after each leak is detected.

(e) Any pump that is designated, as described in § 264.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a), (c), and (d) of this section if the pump meets the following requirements:

(1) Must have no externally actuated shaft penetrating the pump housing.

(2) Must operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in § 264.1063(c).

(3) Must be tested for compliance with paragraph (e)(2) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 264.1060, it is exempt from the requirements of paragraphs (a) through (e) of this section.

§ 264.1053 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of § 264.1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.

(c) The barrier fluid must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in paragraph (d) of this section shall be checked daily or shall be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 264.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of § 264.1060, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in § 264.1064(g)(2), for no detectable emissions as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 264.1063(c).

(2) Is tested for compliance with paragraph (i)(1) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

§ 264.1054 Standards: Pressure relief devices in gas/vapor service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 264.1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 264.1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as

measured by the method specified in § 264.1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 264.1060 is exempt from the requirements of paragraphs (a) and (b) of this section.

§ 264.1055 Standards: Sampling connecting systems.

(a) Each sampling connection system shall be equipped with a closed purge system or closed-vent system.

(b) Each closed-purge system or closed-vent system as required in paragraph (a) shall:

(1) Return the purged hazardous waste stream directly to the hazardous waste management process line with no detectable emissions to atmosphere, or

(2) Collect and recycle the purged hazardous waste stream with no detectable emissions to atmosphere, or

(3) Be designed and operated to capture and transport all the purged hazardous waste stream to a control device that complies with the requirements of § 264.1060.

(c) *In situ* sampling systems are exempt from the requirements of paragraphs (a) and (b) of this section.

§ 264.1056 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous waste stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

§ 264.1057 Standards: Valves in gas/vapor service or in light liquid service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in § 264.1063(b) and shall comply with paragraphs (b) through (e) of this section, except as provided in paragraphs (f), (g), and (h) of this section, and §§ 264.1061 and 264.1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for two successive months.

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 264.1059.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts.

(2) Replacement of bonnet bolts.

(3) Tightening of packing gland nuts.

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in § 264.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (a) of this section if the valve:

(1) Has no external actuating mechanism in contact with the hazardous waste stream.

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in § 264.1063(c).

(3) Is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

(g) Any valve that is designated, as described in § 264.1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section.

(2) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in § 264.1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

§ 264.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within 5 days by the method specified in § 264.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 264.1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under § 264.1057(e).

§ 264.1059 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous waste management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous waste management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with § 264.1060.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous waste management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous waste management unit shutdown will not be allowed unless the next hazardous waste management unit shutdown occurs sooner than 6 months after the first hazardous waste management unit shutdown.

§ 264.1060 Standards: Closed-vent systems and control devices.

Owners or operators of closed-vent systems and control devices shall comply with the provisions of § 264.1033.

§ 264.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.

(a) An owner or operator subject to the requirements of § 264.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard that allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(1) An owner or operator must notify the Regional Administrator that the owner or operator has elected to comply with the requirements of this section.

(2) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Regional Administrator.

(3) If a valve leak is detected, it shall be repaired in accordance with § 264.1057(d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in § 264.1057 within the hazardous waste management unit shall be monitored within 1 week by the methods specified in § 264.1063(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in § 264.1057 for which leaks are detected by the total number of valves subject to the requirements in § 264.1057 within the hazardous waste management unit.

(d) If an owner or operator decides to comply with this section no longer, the owner or operator must notify the Regional Administrator in writing that the work practice standard described in § 264.1057(a) through (e) will be followed.

§ 264.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

(a)(1) An owner or operator subject to the requirements of § 264.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

(2) An owner or operator must notify the Regional Administrator before implementing one of the alternative work practices.

(b)(1) An owner or operator shall comply with the requirements for valves, as described in § 264.1057, except as described in paragraphs (b)(2) and (b)(3) of this section.

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves subject to the requirements in § 264.1057.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves subject to the requirements in § 264.1057.

(4) If the percentage of valves leaking is greater than 2 percent, the owner or operator shall monitor monthly in compliance with the requirements in § 264.1057, but may again elect to use this section after meeting the requirements of § 264.1057(c)(1).

(Approved by the Office of Management and Budget under control number 2060-0195)

§ 264.1063 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Leak detection monitoring, as required in §§ 264.1052-264.1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in §§ 264.1052(e), 264.1053(i), 264.1054, and 264.1057(f), the test shall comply with the following requirements:

(1) The requirements of paragraphs (b)(1) through (4) of this section shall apply.

(2) The background level shall be determined as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) In accordance with the waste analysis plan required by § 264.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following:

(1) Methods described in ASTM Methods D 2267-88, E 169-87, E 168-88, E 260-85 (incorporated by reference under § 260.11);

(2) Method 9060 or 8240 of SW-846 (incorporated by reference under § 260.11); or

(3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that shall

be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in paragraph (d)(1) or (d)(2) of this section.

(f) When an owner or operator and the Regional Administrator do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the procedures in paragraph (d)(1) or (d)(2) of this section can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D–2879–86 (incorporated by reference under § 260.11).

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of § 264.1034(c)(1) through (c)(4).

§ 264.1064 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

(1) For each piece of equipment to which Subpart BB of Part 264 applies:

(i) Equipment identification number and hazardous waste management unit identification.

(ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(iii) Type of equipment (e.g., a pump or pipeline valve).

(iv) Percent-by-weight total organics in the hazardous waste stream at the equipment.

(v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(vi) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(2) For facilities that comply with the provisions of § 264.1033(a)(2), an implementation schedule as specified in § 264.1033(a)(2).

(3) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in § 264.1035(b)(3).

(4) Documentation of compliance with § 264.1060, including the detailed design documentation or performance test results specified in § 264.1035(b)(4).

(c) When each leak is detected as specified in §§ 264.1052, 264.1053, 264.1057, and 264.1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with § 264.1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for 2 successive months as specified in §§ 264.1057(c) and no leak has been detected during those 2 months.

(d) When each leak is detected as specified in §§ 264.1052, 264.1053, 264.1057, and 264.1058, the following information shall be recorded in an inspection log and shall be kept in the facility operating record:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with § 264.1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) "Above 10,000" if the maximum instrument reading measured by the methods specified in § 264.1063(b) after each repair attempt is equal to or greater than 10,000 ppm.

(6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with § 264.1059(c).

(8) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown.

(9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of § 264.1060 shall be recorded and kept up-to-date in the facility operating record as specified in § 264.1035(c). Design documentation is specified in § 264.1035 (c)(1) and (c)(2) and monitoring, operating, and inspection information in § 264.1035(c)(3)-(c)(8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, the Regional Administrator will specify the appropriate recordkeeping requirements.

(g) The following information pertaining to all equipment subject to the requirements in §§ 264.1052 through 264.1060 shall be recorded in a log that is kept in the facility operating record:

(1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart.

(2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of §§ 264.1052(e), 264.1053(i), and 264.1057(f).

(ii) The designation of this equipment as subject to the requirements of §§ 264.1052(e), 264.1053(i), or 264.1057(f) shall be signed by the owner or operator.

(3) A list of equipment identification numbers for pressure relief devices required to comply with § 264.1054(a).

(4)(i) The dates of each compliance test required in §§ 264.1052(e), 264.1053(i), 264.1054, and 264.1057(f).

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(h) The following information pertaining to all valves subject to the requirements of § 264.1057 (g) and (h) shall be recorded in a log that is kept in the facility operating record:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in the facility operating record for valves complying with § 264.1062:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept in the facility operating record:

(1) Criteria required in § 264.1052(d)(5)(ii) and § 264.1053(e)(2) and an explanation of the design criteria.

(2) Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in the applicability section of this subpart and other specific subparts:

(1) An analysis determining the design capacity of the hazardous waste management unit.

(2) A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in §§ 264.1052 through 264.1060 and an analysis determining whether these hazardous wastes are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in §§ 264.1052 through 264.1060. The record shall include supporting documentation as required by § 264.1063(d)(3) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action (e.g., changing the process that produced the waste) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in §§ 264.1052 through 264.1060, then a new determination is required.

(l) Records of the equipment leak information required by paragraph (d) of this section and the operating information required by paragraph (e) of this section need be kept only 3 years.

(m) The owner or operator of any facility that is subject to this subpart and to regulations at 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to determine compliance with this subpart by documentation either pursuant to § 264.1064 of this subpart, or pursuant to those provisions of 40 CFR part 60 or 61, to the extent that the documentation under the regulation at 40 CFR part 60 or part 61 duplicates the documentation required under this subpart. The documentation under the regulation at 40 CFR part 60 or part 61 shall be kept with or made readily available with the facility operating record.

(Approved by the Office of Management and Budget under control number 2060-0195)

§ 264.1065 Reporting requirements.

(a) A semiannual report shall be submitted by owners and operators subject to the requirements of this subpart to the Regional Administrator by dates specified by the Regional Administrator. The report shall include the following information:

(1) The Environmental Protection Agency identification number, name, and address of the facility.

(2) For each month during the semiannual reporting period:

(i) The equipment identification number of each valve for which a leak was not repaired as required in § 264.1057(d).

(ii) The equipment identification number of each pump for which a leak was not repaired as required in § 264.1052 (c) and (d)(6).

(iii) The equipment identification number of each compressor for which a leak was not repaired as required in § 264.1053(g).

(3) Dates of hazardous waste management unit shutdowns that occurred within the semiannual reporting period.

(4) For each month during the semiannual reporting period, dates when the control device installed as required by § 264.1052, 264.1053, 264.1054, or 264.1055 exceeded or operated outside of the design specifications as defined in § 264.1064(e) and as indicated by the control device monitoring required by § 264.1060 and was not corrected within 24 hours, the duration and cause of each exceedance, and any corrective measures taken.

(b) If, during the semiannual reporting period, leaks from valves, pumps, and compressors are repaired as required in §§ 264.1057 (d), 264.1052 (c) and (d)(6), and 264.1053 (g), respectively, and the control device does not exceed or operate outside of the design specifications as defined in § 264.1064(e) for more than 24 hours, a report to the Regional Administrator is not required.

(Approved by the Office of Management and Budget under control number 2060-0195)

§§ 264.1066-264.1079 [Reserved]

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6095, 6912(a), 6924, 6925, and 6935.

Subpart B—General Facility Standards

13. Section 265.13 is amended by revising paragraph (b)(6) to read as follows:

§ 265.13 General waste analysis.

* * * * *

(b) * * *

(6) Where applicable, the methods that will be used to meet the additional waste analysis requirements for specific waste management methods as specified in §§ 265.193, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034(d), 265.1063(d), and 268.7 of this chapter.

14. Section 265.15 is amended by revising the last sentence of paragraph (b)(4) to read as follows:

§ 265.15 General inspection requirements.

* * * * *

(b) * * *

(4) * * * At a minimum, the inspection schedule must include the terms and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, and 265.1058.

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Subpart E—Manifest System, Recordkeeping, and Reporting

15. Section 265.73 is amended by revising paragraphs (b)(3) and (b)(6) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(3) Records and results of waste analyses and trial tests performed as specified in §§ 265.13, 265.193, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034, 265.1063, 268.4(a), and 268.7 of this chapter.

* * * * *

(6) Monitoring, testing or analytical data when required by §§ 265.90, 265.94, 265.191, 265.193, 265.195, 265.276, 265.278, 265.280(d)(1), 265.347, 265.377, 265.1034(c)–265.1034(f), 265.1035, 265.1063(d)–265.1063(i), and 265.1064.

* * * * *

16. Section 265.77 is amended by adding paragraph (d) as follows:

§ 265.77 Additional reports.

* * * * *

(d) As otherwise required by Subparts AA and BB.

17. 40 CFR part 265 is amended by adding Subpart AA to read as follows:

Subpart AA—Air Emission Standards for Process Vents

265.1030 Applicability.
265.1031 Definitions.
265.1032 Standards: Process vents.
265.1033 Standards: Closed-vent systems and control devices.
265.1034 Test methods and procedures.
265.1035 Recordkeeping requirements.
265.1036—265.1049 [Reserved]

Subpart AA—Air Emission Standards for Process Vents

§ 265.1030 Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in § 265.1).

(b) Except for §§ 265.1034(d) and 265.1035(d), this subpart applies to process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations that manage hazardous wastes with organic concentrations of at least 10 ppmw, if these operations are conducted in:

(1) Units that are subject to the permitting requirements of part 270, or

(2) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270.

[Note: The requirements of §§ 265.1032 through 265.1036 apply to process vents on hazardous waste recycling units previously exempt under paragraph 261.6(c)(1). Other exemptions under §§ 261.4, 262.34, and 265.1(c) are not affected by these requirements.]

§ 265.1031 Definitions.

As used in this subpart, all terms shall have the meaning given them in § 264.1031, the Act, and parts 260–266.

§ 265.1032 Standards: Process vents.

(a) The owner or operator of a facility with process vents associated with distillation, fractionation, thin-film evaporation, solvent extraction or air or steam stripping operations managing hazardous wastes with organic concentrations at least 10 ppmw shall either:

(1) Reduce total organic emissions from all affected process vents at the facility below 1.4 kg/h (3 lb/h) and 2.8 Mg/yr (3.1 tons/yr), or

(2) Reduce, by use of a control device, total organic emissions from all affected process vents at the facility by 95 weight percent.

(b) If the owner or operator installs a closed-vent system and control device to comply with the provisions of paragraph (a) of this section, the closed-vent system and control device must meet the requirements of § 265.1033.

(c) Determinations of vent emissions and emission reductions or total organic compound concentrations achieved by add-on control devices may be based on engineering calculations or performance tests. If performance tests are used to determine vent emissions, emission reductions, or total organic compound concentrations achieved by add-on control devices, the performance tests must conform with the requirements of § 265.1034(c).

(d) When an owner or operator and the Regional Administrator do not agree on determinations of vent emissions and/or emission reductions or total organic compound concentrations achieved by add-on control devices based on engineering calculations, the test methods in § 265.1034(c) shall be used to resolve the disagreement.

§ 265.1033 Standards: Closed-vent systems and control devices.

(a)(1) Owners or operators of closed-vent systems and control devices used to comply with provisions of this part shall comply with the provisions of this section.

(2) The owner or operator of an existing facility who cannot install a closed-vent system and control device to comply with the provisions of this subpart on the effective date that the facility becomes subject to the provisions of this subpart must prepare an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The controls must be installed as soon as possible, but the implementation schedule may allow up to 18 months after the effective date that the facility becomes subject to this subpart for installation and startup. All units that begin operation after December 21, 1990 must comply with the rules immediately (i.e., must have control devices installed and operating on startup of the affected unit); the 2-year implementation schedule does not apply to these units.

(b) A control device involving vapor recovery (e.g., a condenser or adsorber) shall be designed and operated to recover the organic vapors vented to it with an efficiency of 95 weight percent or greater unless the total organic emission limits of § 265.1032(a)(1) for all affected process vents can be attained at an efficiency less than 95 weight percent.

(c) An enclosed combustion device (e.g., a vapor incinerator, boiler, or process heater) shall be designed and operated to reduce the organic emissions vented to it by 95 weight percent or greater; to achieve a total organic compound concentration of 20 ppmv, expressed as the sum of the actual compounds, not carbon equivalents, on a dry basis corrected to 3 percent oxygen; or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame combustion zone of the boiler or process heater.

(d)(1) A flare shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (e)(1) of this section, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(2) A flare shall be operated with a flame present at all times, as determined by the methods specified in paragraph (f)(2)(iii) of this section.

(3) A flare shall be used only if the net heating value of the gas being combusted is 11.2 MJ/scm (300 Btu/scf) or greater, if the flare is steam-assisted or air-assisted; or if the net heating value of the gas being combusted is 7.45 MJ/scm (200 Btu/scf) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (e)(2) of this section.

(4)(i) A steam-assisted or nonassisted flare shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, of less than 18.3 m/s (60 ft/s), except as provided in paragraphs (d)(4) (ii) and (iii) of this section.

(ii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, equal to or greater than 18.3 m/s (60 ft/s) but less than 122 m/s (400 ft/s) is allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) A steam-assisted or nonassisted flare designed for and operated with an exit velocity, as determined by the methods specified in paragraph (e)(3) of this section, less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(4) of this section, and less than 122 m/s (400 ft/s) is allowed.

(5) An air-assisted flare shall be designed and operated with an exit velocity less than the velocity, V_{max}, as determined by the method specified in paragraph (e)(5) of this section.

(6) A flare used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(e)(1) Reference Method 22 in 40 CFR part 60 shall be used to determine the compliance of a flare with the visible emission provisions of this subpart. The observation period is 2 hours and shall be used according to Method 22.

(2) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\left[\sum_{i=1}^{n} C_i H_i\right]$$

where:

H_T = Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to 1 mol is 20 °C;

K = Constant, 1.74×10^{-7} (1/ppm) (g mol/scm) (MJ/kcal) where standard temperature for (g mol/scm) is 20 °C;

C_i = Concentration of sample component i in ppm on a wet basis, as measured for organics by Reference Method 18 in 40 CFR part 60 and measured for hydrogen and carbon monoxide by ASTM D 1946–82 (incorporated by reference as specified in § 260.11); and

H_i = Net heat of combustion of sample component i, kcal/g mol at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D 2382–83 (incorporated by reference as specified in § 260.11) if published values are not available or cannot be calculated.

(3) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Reference Methods 2, 2A, 2C, or 2D in 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(4) The maximum allowed velocity in m/s, V_{max}, for a flare complying with paragraph (d)(4)(iii) of this section shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

where:

H_T = The net heating value as determined in paragraph (e)(2) of this section.

28.8 = Constant,

31.7 = Constant.

(5) The maximum allowed velocity in m/s, V_{max}, for an air-assisted flare shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084\,(H_T)$$

where:

8.706 = Constant.

0.7084 = Constant.

H_T = The net heating value as determined in paragraph (e)(2) of this section.

(f) The owner or operator shall monitor and inspect each control device required to comply with this section to ensure proper operation and maintenance of the control device by implementing the following requirements:

(1) Install, calibrate, maintain, and operate according to the manufacturer's specifications a flow indicator that provides a record of vent stream flow from each affected process vent to the control device at least once every hour. The flow indicator sensor shall be installed in the vent stream at the nearest feasible point to the control device inlet, but before being combined with other vent streams.

(2) Install, calibrate, maintain, and operate according to the manufacturer's specifications a device to continuously monitor control device operation as specified below:

(i) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(ii) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(iii) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(iv) For a boiler or process heater having a design heat input capacity less than 44 MW, a temperature monitoring device equipped with a continuous recorder. The device shall have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. The temperature sensor shall be installed at a location in the furnace downstream of the combustion zone.

(v) For a boiler or process heater having a design heat input capacity greater than or equal to 44 MW, a monitoring device equipped with a continuous recorder to measure a parameter(s) that indicates good combustion operating practices are being used.

(vi) For a condenser, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the condenser; or

(B) A temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C or ±0.5 °C, whichever is greater. One temperature sensor shall be installed at a location in the exhaust vent stream from the condenser, and a second temperature sensor shall be installed at a location in the coolant fluid exiting the condenser.

(vii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly in the control device, either:

(A) A monitoring device equipped with a continuous recorder to measure the concentration level of the organic compounds in the exhaust vent stream from the carbon bed, or

(B) A monitoring device equipped with a continuous recorder to measure a

parameter that indicates the carbon bed is regenerated on a regular, predetermined time cycle.

(3) Inspect the readings from each monitoring device required by paragraphs (f) (1) and (2) of this section at least once each operating day to check control device operation and, if necessary, immediately implement the corrective measures necessary to ensure the control device operates in compliance with the requirements of this section.

(g) An owner or operator using a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device, shall replace the existing carbon in the control device with fresh carbon at a regular, predetermined time interval that is no longer than the carbon service life established as a requirement of § 265.1035(b)(4)(iii)(F).

(h) An owner or operator using a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device shall replace the existing carbon in the control device with fresh carbon on a regular basis by using one of the following procedures:

(1) Monitor the concentration level of the organic compounds in the exhaust vent stream from the carbon adsorption system on a regular schedule and replace the existing carbon with fresh carbon immediately when carbon breakthrough is indicated. The monitoring frequency shall be daily or at an interval no greater than 20 percent of the time required to consume the total carbon working capacity established as a requirement of § 265.1035(b)(4)(iii)(G), whichever is longer.

(2) Replace the existing carbon with fresh carbon at a regular, predetermined time interval that is less than the design carbon replacement interval established as a requirement of § 265.1035(b)(4)(iii)(G).

(i) An owner or operator of an affected facility seeking to comply with the provisions of this part by using a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system is required to develop documentation including sufficient information to describe the control device operation and identify the process parameter or parameters that indicate proper operation and maintenance of the control device.

(j)(1) Closed-vent systems shall be designed for and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and by visual inspections, as determined by the methods specified as § 265.1034(b).

(2) Closed-vent systems shall be monitored to determine compliance with this section during the initial leak detection monitoring which shall be conducted by the date that the facility becomes subject to the provisions of this section, annually, and at other times as requested by the Regional Administrator.

(3) Detectable emissions, as indicated by an instrument reading greater than 500 ppm and visual inspections, shall be controlled as soon as practicable, but not later than 15 calendar days after the emission is detected.

(4) A first attempt at repair shall be made no later than 5 calendar days after the emission is detected.

(k) Closed-vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

§ 265.1034 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) When a closed-vent system is tested for compliance with no detectable emissions, as required in § 265.1033(j), the test shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The background level shall be determined as set forth in Reference Method 21.

(6) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(7) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(c) Performance tests to determine compliance with § 265.1032(a) and with the total organic compound concentration limit of § 265.1033(c) shall comply with the following:

(1) Performance tests to determine total organic compound concentrations and mass flow rates entering and exiting control devices shall be conducted and data reduced in accordance with the following reference methods and calculation procedures:

(i) Method 2 in 40 CFR part 60 for velocity and volumetric flow rate.

(ii) Method 18 in 40 CFR part 60 for organic content.

(iii) Each performance test shall consist of three separate runs; each run conducted for at least 1 hour under the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. For the purpose of determining total organic compound concentrations and mass flow rates, the average of results of all runs shall apply. The average shall be computed on a time-weighted basis.

(iv) Total organic mass flow rates shall be determined by the following equation:

$$E_h = Q_{sd}\left[\sum_{i=1}^{n} C_i MW_i\right][0.0416][10^{-6}]$$

where:

E_h = Total organic mass flow rate, kg/h;

Q_{sd} = Volumetric flow rate of gases entering or exiting control device, as determined by Method 2, dscm/h;

n = Number of organic compounds in the vent gas;

C_i = Organic concentration in ppm, dry basis, of compound i in the vent gas, as determined by Method 18;

MW_i = Molecular weight of organic compound i in the vent gas, kg/kg-mol;

0.0416=Conversion factor for molar volume, kg-mol/m³ (@ 293 K and 760 mm Hg);
10^{-6}=Conversion from ppm, ppm^{-1}.

(v) The annual total organic emission rate shall be determined by the following equation:

$E_A = (E_h)(H)$

where:

E_A=Total organic mass emission rate, kg/y;
E_h=Total organic mass flow rate for the process vent, kg/h;
H=Total annual hours of operations for the affected unit, h.

(vi) Total organic emissions from all affected process vents at the facility shall be determined by summing the hourly total organic mass emission rates (E_h, as determined in paragraph (c)(1)(v) of this section) and by summing the annual total organic mass emission rates (E_A, as determined in paragraph (c)(1)(v) of this section) for all affected process vents at the facility.

(2) The owner or operator shall record such process information as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(3) The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods specified in paragraph (c)(1) of this section.

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(4) For the purpose of making compliance determinations, the time-weighted average of the results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Regional Administrator's approval, be determined using the average of the results of the two other runs.

(d) To show that a process vent associated with a hazardous waste distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation is not subject to the requirements of this subpart, the owner or operator must make an initial determination that the time-weighted, annual average total organic concentration of the waste managed by the waste management unit is less than 10 ppmw using one of the following two methods:

(1) Direct measurement of the organic concentration of the waste using the following procedures:

(i) The owner or operator must take a minimum of four grab samples of waste for each waste stream managed in the affected unit under process conditions expected to cause the maximum waste organic concentration.

(ii) For waste generated onsite, the grab samples must be collected at a point before the waste is exposed to the atmosphere such as in an enclosed pipe or other closed system that is used to transfer the waste after generation to the first affected distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation. For waste generated offsite, the grab samples must be collected at the inlet to the first waste management unit that receives the waste provided the waste has been transferred to the facility in a closed system such as a tank truck and the waste is not diluted or mixed with other waste.

(iii) Each sample shall be analyzed and the total organic concentration of the sample shall be computed using Method 9060 or 8240 of SW-846 (incorporated by reference under § 260.11).

(iv) The arithmetic mean of the results of the analyses of the four samples shall apply for each waste stream managed in the unit in determining the time-weighted, annual average total organic concentration of the waste. The time-weighted average is to be calculated using the annual quantity of each waste stream processed and the mean organic concentration of each waste stream managed in the unit.

(2) Using knowledge of the waste to determine that its total organic concentration is less than 10 ppmw. Documentation of the waste determination is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to generate a waste stream having a total organic content less than 10 ppmw, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) The determination that distillation fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operations manage hazardous wastes with time-weighted annual average total organic concentrations less than 10 ppmw shall be made as follows:

(1) By the effective date that the facility becomes subject to the provisions of this subpart or by the date when the waste is first managed in a waste management unit, whichever is later; and

(2) For continuously generated waste, annually; or

(3) Whenever there is a change in the waste being managed or a change in the process that generates or treats the waste.

(f) When an owner or operator and the Regional Administrator do not agree on whether a distillation, fractionation, thin-film evaporation, solvent extraction, or air or steam stripping operation manages a hazardous waste with organic concentrations of at least 10 ppmw based on knowledge of the waste, the procedures in Method 8240 can be used to resolve the dispute.

§ 265.1035 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

(1) For facilities that comply with the provisions of § 265.1033(a)(2), an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation. The schedule must also include a rationale of why the installation cannot be completed at an earlier date. The implementation schedule must be in the facility operating record by the effective date that the facility becomes subject to the provisions of this subpart.

(2) Up-to-date documentation of compliance with the process vent standards in § 265.1032, including:

(i) Information and data identifying all affected process vents, annual

throughput end operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan); and

(ii) Information and data supporting determinations of vent emissions and emission reductions achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, determinations of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates or vent stream organic compounds and concentrations) that represent the conditions that result in maximum organic emissions, such as when the waste management unit is operating at the highest load or capacity level reasonably expected to occur. If the owner or operator takes any action (e.g., managing a waste of different composition or increasing operating hours of affected waste management units) that would result in an increase in total organic emissions from affected process vents at the facility, then a new determination is required.

(3) Where an owner or operator chooses to use test data to determine the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan. The test plan must include:

(i) A description of how it is determined that the planned test is going to be conducted when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur. This shall include the estimated or design flow rate and organic content of each vent stream and define the acceptable operating ranges of key process and control device parameters during the test program.

(ii) A detailed engineering description of the closed-vent system and control device including:

(A) Manufacturer's name and model number of control device.

(B) Type of control device.

(C) Dimensions of the control device.

(D) Capacity.

(E) Construction materials.

(iii) A detailed description of sampling and monitoring procedures, including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(4) Documentation of compliance with § 265.1033 shall include the following information:

(i) A list of all information references and sources used in preparing the documentation.

(ii) Records including the dates of each compliance test required by § 265.1033(j).

(iii) If engineering calculations are used, a design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Regional Administrator that present basic control device design information. Documentation provided by the control device manufacturer or vendor that describes the control device design in accordance with paragraphs (b)(4)(iii)(A) through (b)(4)(iii)(G) of this section may be used to comply with this requirement. The design analysis shall address the vent stream characteristics and control device operation parameters as specified below.

(A) For a thermal vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperature in the combustion zone and the combustion zone residence time.

(B) For a catalytic vapor incinerator, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average temperatures across the catalyst bed inlet and outlet.

(C) For a boiler or process heater, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also establish the design minimum and average flame zone temperatures, combustion zone residence time, and description of method and location where the vent stream is introduced into the combustion zone.

(D) For a flare, the design analysis shall consider the vent stream composition, constituent concentrations, and flow rate. The design analysis shall also consider the requirements specified in § 265.1033(d).

(E) For a condenser, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and design average temperatures of the coolant fluid at the condenser inlet and outlet.

(F) For a carbon adsorption system such as a fixed-bed adsorber that regenerates the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design exhaust vent stream organic compound concentration level, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total steam flow over the period of each complete carbon bed regeneration cycle, duration of the carbon bed steaming and cooling/drying cycles, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of carbon.

(G) For a carbon adsorption system such as a carbon canister that does not regenerate the carbon bed directly onsite in the control device, the design analysis shall consider the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature. The design analysis shall also establish the design outlet organic concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(iv) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(v) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 percent or greater unless the total organic concentration limit of § 265.1032(a) is achieved at an efficiency less than 95 weight percent or the total organic emission limits of § 265.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent. A statement provided by the control device manufacturer or vendor certifying that the control equipment meets the design specifications may be used to comply with this requirement.

(vi) If performance tests are used to demonstrate compliance, all test results.

(c) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of this part shall be recorded and kept up-to-date in the facility operating record. The information shall include:

(1) Description and date of each modification that is made to the closed-vent system or control device design.

(2) Identification of operating parameter, description of monitoring device, and diagram of monitoring sensor location or locations used to comply with § 265.1033(f)(1) and (f)(2).

(3) Monitoring, operating and inspection information required by paragraphs (f) through (j) of § 265.1033.

(4) Date, time, and duration of each period that occurs while the control device is operating when any monitored parameter exceeds the value established in the control device design analysis as specified below:

(i) For a thermal vapor incinerator designed to operate with a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C, period when the combustion temperature is below 760 °C.

(ii) For a thermal vapor incinerator designed to operate with an organic emission reduction efficiency of 95 percent or greater, period when the combustion zone temperature is more than 28 °C below the design average combustion zone temperature established as a requirement of paragraph (b)(4)(iii)(A) of this section.

(iii) For a catalytic vapor incinerator, period when:

(A) Temperature of the vent stream at the catalyst bed inlet is more than 28 °C below the average temperature of the inlet vent stream established as a requirement of paragraph (b)(4)(iii)(B) of this section; or

(B) Temperature difference across the catalyst bed is less than 80 percent of the design average temperature difference established as a requirement of paragraph (b)(4)(iii)(B) of this section.

(iv) For a boiler or process heater, period when:

(A) Flame zone temperature is more than 28 °C below the design average flame zone temperature established as a requirement of paragraph (b)(4)(iii)(C) of this section; or

(B) Position changes where the vent stream is introduced to the combustion zone from the location established as a requirement of paragraph (b)(4)(iii)(C) of this section.

(v) For a flare, period when the pilot flame is not ignited.

(vi) For a condenser that complies with § 265.1033(f)(2)(vi)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the condenser are more than 20 percent greater than the design outlet organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(vii) For a condenser that complies with § 265.1033(f)(2)(vi)(B), period when:

(A) Temperature of the exhaust vent stream from the condenser is more than 6 °C above the design average exhaust vent stream temperature established as a requirement of paragraph (b)(4)(iii)(E) of this section; or

(B) Temperature of the coolant fluid exiting the condenser is more than 6 °C above the design average coolant fluid temperature at the condenser outlet established as a requirement of paragraph (b)(4)(iii)(E) of this section.

(viii) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with § 265.1033(f)(2)(vii)(A), period when the organic compound concentration level or readings of organic compounds in the exhaust vent stream from the carbon bed are more than 20 percent greater than the design exhaust vent stream organic compound concentration level established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(ix) For a carbon adsorption system such as a fixed-bed carbon adsorber that regenerates the carbon bed directly onsite in the control device and complies with § 265.1033(f)(2)(vii)(B), period when the vent stream continues to flow through the control device beyond the predetermined carbon bed regeneration time established as a requirement of paragraph (b)(4)(iii)(F) of this section.

(5) Explanation for each period recorded under paragraph (3) of the cause for control device operating parameter exceeding the design value and the measures implemented to correct the control device operation.

(6) For carbon adsorption systems operated subject to requirements specified in § 265.1033(g) or § 265.1033(h)(2), date when existing carbon in the control device is replaced with fresh carbon.

(7) For carbon adsorption systems operated subject to requirements specified in § 265.1033(h)(1), a log that records:

(i) Date and time when control device is monitored for carbon breakthrough and the monitoring device reading.

(ii) Date when existing carbon in the control device is replaced with fresh carbon.

(8) Date of each control device startup and shutdown.

(d) Records of the monitoring, operating, and inspection information required by paragraphs (c)(3) through (c)(8) of this section need be kept only 3 years.

(e) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.

(f) Up-to-date information and data used to determine whether or not a process vent is subject to the requirements in § 265.1032 including supporting documentation as required by § 265.1034(d)(2) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used, shall be recorded in a log that is kept in the facility operating record.

(Approved by the Office of Management and Budget under control number 2060–0195)

§§ 265.1036–265.1049 [Reserved]

18. 40 CFR part 265 is amended by adding subpart BB to read as follows:

Subpart BB—Air Emission Standards for Equipment Leaks

265.1050 Applicability.
265.1051 Definitions.
265.1052 Standards: Pumps in light liquid service.
265.1053 Standards: Compressors.
265.1054 Standards: Pressure relief devices in gas/vapor service.
265.1055 Standards: Sampling connecting systems.
265.1056 Standards: Open-ended valves or lines.
265.1057 Standards: Valves in gas/vapor service or in light liquid service.
265.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.
265.1059 Standards: Delay of repair.
265.1060 Standards: Closed-vent systems and control devices.
265.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.
265.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.
265.1063 Test methods and procedures.
265.1064 Recordkeeping requirements.
265.1065–265.1079 [Reserved]

Subpart BB—Air Emission Standards for Equipment Leaks

§ 265.1050 Applicability.

(a) The regulations in this subpart apply to owners and operators of facilities that treat, store, or dispose of hazardous wastes (except as provided in § 265.1).

(b) Except as provided in § 265.1064(j), this subpart applies to equipment that contains or contacts hazardous wastes with organic concentrations of at least 10 percent by weight that are managed in:

(1) Units that are subject to the permitting requirements of part 270, or

(2) Hazardous waste recycling units that are located on hazardous waste management facilities otherwise subject to the permitting requirements of part 270.

(c) Each piece of equipment to which this subpart applies shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

(d) Equipment that is in vacuum service is excluded from the requirements of § 265.1052 to § 265.1060 if it is identified as required in § 265.1064(g)(5).

[Note: The requirements of §§ 265.1052 through 265.1064 apply to equipment associated with hazardous waste recycling units previously exempt under paragraph 261.6(c)(1). Other exemptions under §§ 261.4, 262.34, and 265.1(c) are not affected by these requirements.]

§ 265.1051 Definitions.

As used in this subpart, all terms shall have the meaning given them in § 264.1031, the Act, and parts 260–266.

§ 265.1052 Standards: Pumps in light liquid service.

(a)(1) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in § 265.1063(b), except as provided in paragraphs (d), (e), and (f) of this section.

(2) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

(b)(1) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) If there are indications of liquids dripping from the pump seal, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(d) Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (a), *provided* the following requirements are met:

(1) Each dual mechanical seal system must be:

(i) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure, or

(ii) Equipped with a barrier fluid degassing reservoir that is connected by a closed-vent system to a control device that complies with the requirements of § 265.1060, or

(iii) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to the atmosphere.

(2) The barrier fluid system must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(3) Each barrier fluid system must be equipped with a sensor that will detect failure of the seal system, the barrier fluid system or both.

(4) Each pump must be checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(5)(i) Each sensor as described in paragraph (d)(3) of this section must be checked daily or be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly.

(ii) The owner or operator must determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(6)(i) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in paragraph (d)(5)(ii) of this section, a leak is detected.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.

(iii) A first attempt at repair (e.g., relapping the seal) shall be made no later than 5 calendar days after each leak is detected.

(e) Any pump that is designated, as described in § 265.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraphs (a), (c), and (d) of this section if the pump meets the following requirements:

(1) Must have no externally actuated shaft penetrating the pump housing.

(2) Must operate with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in § 265.1063(c).

(3) Must be tested for compliance with paragraph (a)(2) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of § 265.1060, it is exempt from the requirements of paragraphs (a) through (e) of this section.

§ 265.1053 Standards: Compressors.

(a) Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of total organic emissions to the atmosphere, except as provided in paragraphs (h) and (i) of this section.

(b) Each compressor seal system as required in paragraph (a) of this section shall be:

(1) Operated with the barrier fluid at a pressure that is at all times greater than the compressor stuffing box pressure, or

(2) Equipped with a barrier fluid system that is connected by a closed-vent system to a control device that complies with the requirements of § 265.1060, or

(3) Equipped with a system that purges the barrier fluid into a hazardous waste stream with no detectable emissions to atmosphere.

(c) The barrier fluid must not be a hazardous waste with organic concentrations 10 percent or greater by weight.

(d) Each barrier fluid system as described in paragraphs (a) through (c) of this section shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

(e)(1) Each sensor as required in paragraph (d) of this section shall be checked daily or shall be equipped with an audible alarm that must be checked monthly to ensure that it is functioning properly unless the compressor is located within the boundary of an unmanned plant site, in which case the sensor must be checked daily.

(2) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates

failure of the seal system, the barrier fluid system or both.

(f) If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined under paragraph (e)(2) of this section, a leak is detected.

(g)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.

(2) A first attempt at repair (e.g., tightening the packing gland) shall be made no later than 5 calendar days after each leak is detected.

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of § 265.1060, except as provided in paragraph (i) of this section.

(i) Any compressor that is designated, as described in § 265.1064(g)(2), for no detectable emission as indicated by an instrument reading of less than 500 ppm above background is exempt from the requirements of paragraphs (a) through (h) of this section if the compressor:

(1) Is determined to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 265.1063(c).

(2) Is tested for compliance with paragraph (i)(1) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

§ 265.1054 Standards: Pressure relief devices in gas/vapor service.

(a) Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 265.1063(c).

(b)(1) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 265.1059.

(2) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the method specified in § 265.1063(c).

(c) Any pressure relief device that is equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 265.1060 is exempt from the requirements of paragraphs (a) and (b) of this section.

§ 265.1055 Standards: Sampling connecting systems.

(a) Each sampling connection system shall be equipped with a closed-purge system or closed-vent system.

(b) Each closed-purge system or closed-vent system as required in paragraph (a) shall:

(1) Return the purged hazardous waste stream directly to the hazardous waste management process line with no detectable emissions to atmosphere, or

(2) Collect and recycle the purged hazardous waste stream with no detectable emissions to atmosphere, or

(3) Be designed and operated to capture and transport all the purged hazardous waste stream to a control device that complies with the requirements of § 265.1060.

(c) *In situ* sampling systems are exempt from the requirements of paragraphs (a) and (b) of this section.

§ 265.1056 Standards: Open-ended valves or lines.

(a)(1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve.

(2) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring hazardous waste stream flow through the open-ended valve or line.

(b) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the hazardous waste stream end is closed before the second valve is closed.

(c) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (a) of this section at all other times.

§ 265.1057 Standards: Valves in gas/vapor service or in light liquid service.

(a) Each valve in gas/vapor or light liquid service shall be monitored monthly to detect leaks by the methods specified in § 265.1063(b) and shall comply with paragraphs (b) through (e) of this section, except as provided in paragraphs (f), (g), and (h) of this section' and §§ 265.1061 and 265.1062.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) Any valve for which a leak is not detected for two successive months may be monitored the first month of every succeeding quarter, beginning with the next quarter, until a leak is detected.

(2) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for 2 successive months.

(d)(1) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in § 265.1059.

(2) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(e) First attempts at repair include, but are not limited to, the following best practices where practicable:

(1) Tightening of bonnet bolts.

(2) Replacement of bonnet bolts.

(3) Tightening of packing gland nuts.

(4) Injection of lubricant into lubricated packing.

(f) Any valve that is designated, as described in § 265.1064(g)(2), for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of paragraph (a) of this section if the valve:

(1) Has no external actuating mechanism in contact with the hazardous waste stream.

(2) Is operated with emissions less than 500 ppm above background as determined by the method specified in § 265.1063(c).

(3) Is tested for compliance with paragraph (f)(2) of this section initially upon designation, annually, and at other times as requested by the Regional Administrator.

(g) Any valve that is designated, as described in § 265.1064(h)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section.

(2) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

(h) Any valve that is designated, as described in § 265.1064(h)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (a) of this section if:

(1) The owner or operator of the valve determines that the valve cannot be monitored without elevating the

monitoring personnel more than 2 meters above a support surface.

(2) The hazardous waste management unit within which the valve is located was in operation before June 21, 1990.

(3) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

§ 265.1058 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

(a) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within 5 days by the method specified in § 265.1063(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(b) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(c)(1) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 265.1059.

(2) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) First attempts at repair include, but are not limited to, the best practices described under § 265.1057(e).

§ 265.1059 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a hazardous waste management unit shutdown. In such a case, repair of this equipment shall occur before the end of the next hazardous waste management unit shutdown.

(b) Delay of repair of equipment for which leaks have been detected will be allowed for equipment that is isolated from the hazardous waste management unit and that does not continue to contain or contact hazardous waste with organic concentrations at least 10 percent by weight.

(c) Delay of repair for valves will be allowed if:

(1) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the emissions likely to result from delay of repair.

(2) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with § 265.1060.

(d) Delay of repair for pumps will be allowed if:

(1) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system.

(2) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

(e) Delay of repair beyond a hazardous waste management unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the hazardous waste management unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next hazardous waste management unit shutdown will not be allowed unless the next hazardous waste management unit shutdown occurs sooner than 6 months after the first hazardous waste management unit shutdown.

§ 265.1060 Standards: Closed-vent systems and control devices.

Owners or operators of closed-vent systems and control devices shall comply with the provisions of § 265.1033.

§ 265.1061 Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.

(a) An owner or operator subject to the requirements of § 265.1057 may elect to have all valves within a hazardous waste management unit comply with an alternative standard which allows no greater than 2 percent of the valves to leak.

(b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(1) An owner or operator must notify the Regional Administrator that the owner or operator has elected to comply with the requirements of this section.

(2) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Regional Administrator.

(3) If a valve leak is detected, it shall be repaired in accordance with § 265.1057 (d) and (e).

(c) Performance tests shall be conducted in the following manner:

(1) All valves subject to the requirements in § 265.1057 within the hazardous waste management unit shall be monitored within 1 week by the methods specified in § 265.1063(b).

(2) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(3) The leak percentage shall be determined by dividing the number of valves subject to the requirements in § 265.1057 for which leaks are detected by the total number of valves subject to the requirements in § 265.1057 within the hazardous waste management unit.

(d) If an owner or operator decides no longer to comply with this section, the owner or operator must notify the Regional Administrator in writing that the work practice standard described in § 265.1057 (a) through (e) will be followed.

§ 265.1062 Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.

(a)(1) An owner or operator subject to the requirements of § 265.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

(2) An owner or operator must notify the Regional Administrator before implementing one of the alternative work practices.

(b)(1) An owner or operator shall comply with the requirements for valves, as described in § 265.1057, except as described in paragraphs (b)(2) and (b)(3) of this section.

(2) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods for the valves subject to the requirements in § 265.1057.

(3) After five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip three of the quarterly leak detection periods for the valves subject to the requirements in § 265.1057.

(4) If the percentage of valves leaking is greater than 2 percent, the owner or operators hall monitor monthly in compliance with the requirements in § 265.1057, but may again elect to use this section after meeting the requirements of § 265.1057(c)(1).

§ 265.1063 Test methods and procedures.

(a) Each owner or operator subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Leak detection monitoring, as required in §§ 265.1052–265.1062, shall comply with the following requirements:

(1) Monitoring shall comply with Reference Method 21 in 40 CFR Part 60.

(2) The detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air).

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions, as required in §§ 265.1052(e), 265.1053(i), 265.1054, and 265.1057(f), the test shall comply with the following requirements:

(1) The requirements of paragraphs (b)(1) through (4) of this section shall apply.

(2) The background level shall be determined, as set forth in Reference Method 21.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) In accordance with the waste analysis plan required by § 265.13(b), an owner or operator of a facility must determine, for each piece of equipment, whether the equipment contains or contacts a hazardous waste with organic concentration that equals or exceeds 10 percent by weight using the following:

(1) Methods described in ASTM Methods D 2267–88, E 169–87, E 168–88, E 260–85 (incorporated by reference under § 260.11);

(2) Method 9060 or 8240 of SW–846 (incorporated by reference under § 260.11); or

(3) Application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced. Documentation of a waste determination by knowledge is required. Examples of documentation that shall be used to support a determination under this provision include production process information documenting that no organic compounds are used, information that the waste is generated by a process that is identical to a process at the same or another facility that has previously been demonstrated by direct measurement to have a total organic content less than 10 percent, or prior speciation analysis results on the same waste stream where it can also be documented that no process changes have occurred since that analysis that could affect the waste total organic concentration.

(e) If an owner or operator determines that a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the determination can be revised only after following the procedures in paragraph (d)(1) or (d)(2) of this section.

(f) When an owner or operator and the Regional Administrator do not agree on whether a piece of equipment contains or contacts a hazardous waste with organic concentrations at least 10 percent by weight, the procedures in paragraph (d)(1) or (d)(2) of this section can be used to resolve the dispute.

(g) Samples used in determining the percent organic content shall be representative of the highest total organic content hazardous waste that is expected to be contained in or contact the equipment.

(h) To determine if pumps or valves are in light liquid service, the vapor pressures of constituents may be obtained from standard reference texts or may be determined by ASTM D–2879–86 (incorporated by reference under § 260.11).

(i) Performance tests to determine if a control device achieves 95 weight percent organic emission reduction shall comply with the procedures of § 265.1034 (c)(1) through (c)(4).

§ 265.1064 Recordkeeping requirements.

(a)(1) Each owner or operator subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(2) An owner or operator of more than one hazardous waste management unit subject to the provisions of this subpart may comply with the recordkeeping requirements for these hazardous waste management units in one recordkeeping system if the system identifies each record by each hazardous waste management unit.

(b) Owners and operators must record the following information in the facility operating record:

(1) For each piece of equipment to which subpart BB of part 265 applies:

(i) Equipment identification number and hazardous waste management unit identification.

(ii) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(iii) Type of equipment (e.g., a pump or pipeline valve).

(iv) Percent-by-weight total organics in the hazardous waste stream at the equipment.

(v) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(vi) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(2) For facilities that comply with the provisions of § 265.1033(a)(2), an implementation schedule as specified in § 265.1033(a)(2).

(3) Where an owner or operator chooses to use test data to demonstrate the organic removal efficiency or total organic compound concentration achieved by the control device, a performance test plan as specified in § 265.1035(b)(3).

(4) Documentation of compliance with § 265.1060, including the detailed design documentation or performance test results specified in § 265.1035(b)(4).

(c) When each leak is detected as specified in §§ 265.1052, 265.1953, 265.1057, and 265.1058, the following requirements apply:

(1) A weatherproof and readily visible identification, marked with the equipment identification number, the date evidence of a potential leak was found in accordance with § 265.1058(a), and the date the leak was detected, shall be attached to the leaking equipment.

(2) The identification on equipment, except on a valve, may be removed after it has been repaired.

(3) The identification on a valve may be removed after it has been monitored for 2 successive months as specified in § 265.1057(c) and no leak has been detected during those 2 months.

(d) When each leak is detected as specified in §§ 265.1052, 265.1053, 265.1057, and 265.1058, the following information shall be recorded in an inspection log and shall be kept in the facility operating record:

(1) The instrument and operator identification numbers and the equipment identification number.

(2) The date evidence of a potential leak was found in accordance with § 265.1058(a).

(3) The date the leak was detected and the dates of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) "Above 10,000" if the maximum instrument reading measured by the methods specified in § 265.1063(b) after

each repair attempt is equal to or greater than 10,000 ppm.

(6) "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(7) Documentation supporting the delay of repair of a valve in compliance with § 265.1059(c).

(8) The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a hazardous waste management unit shutdown.

(9) The expected date of successful repair of the leak if a leak is not repaired within 15 calendar days.

(10) The date of successful repair of the leak.

(e) Design documentation and monitoring, operating, and inspection information for each closed-vent system and control device required to comply with the provisions of § 265.1060 shall be recorded and kept up-to-date in the facility operating record as specified in § 265.1035(c). Design documentation is specified in § 265.1035 (c)(1) and (c)(2) and monitoring, operating, and inspection information in § 265.1035 (c)(3)–(c)(8).

(f) For a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system, monitoring and inspection information indicating proper operation and maintenance of the control device must be recorded in the facility operating record.

(g) The following information pertaining to all equipment subject to the requirements in §§ 265.1052 through 265.1060 shall be recorded in a log that is kept in the facility operating record:

(1) A list of identification numbers for equipment (except welded fittings) subject to the requirements of this subpart.

(2)(i) A list of identification numbers for equipment that the owner or operator elects to designate for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, under the provisions of §§ 265.1052(e), 265.1053(i), and 265.1057(f).

(ii) The designation of this equipment as subject to the requirements of §§ 265.1052(e), 265.1053(i), or 265.1057(f) shall be signed by the owner or operator.

(3) A list of equipment identification numbers for pressure relief devices required to comply with § 265.1054(a).

(4)(i) The dates of each compliance test required in §§ 265.1052(e), 265.1053(i), 265.1054, and 265.1057(f).

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

(5) A list of identification numbers for equipment in vacuum service.

(h) The following information pertaining to all valves subject to the requirements of § 265.1057 (g) and (h) shall be recorded in a log that is kept in the facility operating record:

(1) A list of identification numbers for valves that are designated as unsafe to monitor, an explanation for each valve stating why the valve is unsafe to monitor, and the plan for monitoring each valve.

(2) A list of identification numbers for valves that are designated as difficult to monitor, an explanation for each valve stating why the valve is difficult to monitor, and the planned schedule for monitoring each valve.

(i) The following information shall be recorded in the facility operating record for valves complying with § 265.1062:

(1) A schedule of monitoring.

(2) The percent of valves found leaking during each monitoring period.

(j) The following information shall be recorded in a log that is kept in the facility operating record:

(1) Criteria required in §§ 265.1052(d)(5)(ii) and 265.1053(e)(2) and an explanation of the criteria.

(2) Any changes to these criteria and the reasons for the changes.

(k) The following information shall be recorded in a log that is kept in the facility operating record for use in determining exemptions as provided in the applicability section of this subpart and other specific subparts:

(1) An analysis determining the design capacity of the hazardous waste management unit.

(2) A statement listing the hazardous waste influent to and effluent from each hazardous waste management unit subject to the requirements in §§ 265.1052 through 265.1060 and an analysis determining whether these hazardous wastes are heavy liquids.

(3) An up-to-date analysis and the supporting information and data used to determine whether or not equipment is subject to the requirements in §§ 265.1052 through 265.1060. The record shall include supporting documentation as required by § 265.1063(d)(3) when application of the knowledge of the nature of the hazardous waste stream or the process by which it was produced is used. If the owner or operator takes any action (e.g., changing the process that produced the waste) that could result in an increase in the total organic content of the waste contained in or contacted by equipment determined not to be subject to the requirements in §§ 265.1052 through 265.1060, then a new determination is required.

(l) Records of the equipment leak information required by paragraph (d) of this section and the operating information required by paragraph (e) of this section need be kept only 3 years.

(m) The owner or operator of any facility that is subject to this subpart and to regulations at 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to determine compliance with this subpart by documentation either pursuant to § 265.1064 of this subpart, or pursuant to those provisions of 40 CFR part 60 or 61, to the extent that the documentation under the regulation at 40 CFR part 60 or part 61 duplicates the documentation required under this subpart. The documentation under the regulation at 40 CFR part 60 or part 61 shall be kept with or made readily available with the facility operating record.

(Approved by the Office of Management and Budget under control number 2060–0195)

§§ 265.1065–265.1079 [Reserved]

PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

19. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6921–6927, 6930, 6934, 6935, 6937–6939, and 6974.

Subpart B—Permit Application

20. Section 270.14 is amended by revising the last sentence of paragraph (b)(5) and by revising paragraphs (b)(8)(iv), (v), and by adding paragraph (b)(8)(vi) to read as follows:

§ 270.14 Contents of Part B: General requirements

* * * * *

(b) * * *

(5) * * * Include, where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, and 264.1058.

* * * * *

(8) * * *

(iv) Mitigate effects of equipment failure and power outages;

(v) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and

(vi) Prevent releases to atmosphere.

* * * * *

Section 270.24 is added to read as follows:

§ 270.24 Specific Part B information requirements for process vents.

Except as otherwise provided in § 264.1, owners and operators of facilities that have process vents to which subpart AA of part 264 applies must provide the following additional information:

(a) For facilities that cannot install a closed-vent system and control device to comply with the provisions of 40 CFR 264 subpart AA on the effective date that the facility becomes subject to the provisions of 40 CFR 264 or 265 subpart AA, an implementation schedule as specified in § 264.1033(a)(2).

(b) Documentation of compliance with the process vent standards in § 264.1032, including:

(1) Information and data identifying all affected process vents, annual throughput and operating hours of each affected unit, estimated emission rates for each affected vent and for the overall facility (i.e., the total emissions for all affected vents at the facility), and the approximate location within the facility of each affected unit (e.g., identify the hazardous waste management units on a facility plot plan).

(2) Information and data supporting estimates of vent emissions and emission reduction achieved by add-on control devices based on engineering calculations or source tests. For the purpose of determining compliance, estimates of vent emissions and emission reductions must be made using operating parameter values (e.g., temperatures, flow rates, or concentrations) that represent the conditions that exist when the waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(3) Information and data used to determine whether or not a process vent is subject to the requirements of § 264.1032.

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with the requirements of § 264.1032, and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in § 264.1035(b)(3).

(d) Documentation of compliance with § 264.1033, including:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records including the dates of each compliance test required by § 264.103(k).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Regional Administrator that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is or would be operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater unless the total organic emission limits of § 264.1032(a) for affected process vents at the facility can be attained by a control device involving vapor recovery at an efficiency less than 95 weight percent.

(Approved by the Office of Management and Budget under control number 2060-0195)

22. Section 270.25 is added as follows:

§ 270.25 Specific part B information requirements for equipment.

Except as otherwise provided in § 264.1, owners and operators of facilities that have equipment to which subpart BB of part 264 applies must provide the following additional information:

(a) For each piece of equipment to which subpart BB of part 264 applies:

(1) Equipment identification number and hazardous waste management unit identification.

(2) Approximate locations within the facility (e.g., identify the hazardous waste management unit on a facility plot plan).

(3) Type of equipment (e.g., a pump or pipeline valve).

(4) Percent by weight total organics in the hazardous waste stream at the equipment.

(5) Hazardous waste state at the equipment (e.g., gas/vapor or liquid).

(6) Method of compliance with the standard (e.g., "monthly leak detection and repair" or "equipped with dual mechanical seals").

(b) For facilities that cannot install a closed-vent system and control device to comply with the provisions of 40 CFR 264 subpart BB on the effective date that the facility becomes subject to the provisions of 40 CFR 264 or 265 subpart BB, an implementation schedule as specified in § 264.1033(a)(2).

(c) Where an owner or operator applies for permission to use a control device other than a thermal vapor incinerator, catalytic vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system and chooses to use test data to determine the organic removal efficiency or the total organic compound concentration achieved by the control device, a performance test plan as specified in § 264.1035(b)(3).

(d) Documentation that demonstrates compliance with the equipment standards in §§ 264.1052 to 264.1059. This documentation shall contain the records required under § 264.1064. The Regional Administrator may request further documentation before deciding if compliance has been demonstrated.

(e) Documentation to demonstrate compliance with § 264.1060 shall include the following information:

(1) A list of all information references and sources used in preparing the documentation.

(2) Records including the dates of each compliance test required by § 264.1033(j).

(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "ATPI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in § 260.11) or other engineering texts acceptable to the Regional Administrator that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in § 264.1035(b)(4)(iii).

(4) A statement signed and dated by the owner or operator certifying that the operating parameters used in the design analysis reasonably represent the conditions that exist when the hazardous waste management unit is operating at the highest load or capacity level reasonably expected to occur.

(5) A statement signed and dated by the owner or operator certifying that the control device is designed to operate at an efficiency of 95 weight percent or greater.

[Approved by the Office of Management and Budget under control number 2060-0915]

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

23. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

24. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1. REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	* *	*	*
[Insert date of publication].	Process Vent and Equipment Leak Organic Air Emission Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.	[Insert FR reference on date of publication].	[Insert effective date.]

[FR Doc. 90-14260 Filed 6-20-90; 8:45 am]

BILLING CODE 6560-50-M

federal register

Thursday
June 21, 1990

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al
Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Interim and Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 5, 6, 7, 8, 9, 13, 14, 15, 19, 25, 28, 31, 32, 36, 45, 52, and 53

[Federal Acquisition Circular 84-58]

RIN 9000-AD33, 9000-AD39, 9000-AD42, 9000-AB73, 9000-AD67, 9000-AD25, 9000-AD64, 9000-AC79, 9000-AD10, 9000-AD80, 9000-AD62, 9000-AD06, 9000-AD75, 9000-AC95, 9000-AD68, 9000-AD69, 9000-AD74, 9000-AC71, 9000-AD22, 9000-AD07

Federal Acquisition Regulation (FAR); Miscellaneous Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments, and final rules.

SUMMARY: Federal Acquisition Circular (FAC) 84-58 amends the Federal Acquisition Regulation (FAR) with respect to the following: Women-Owned Business Subcontract Reporting (SF 295); Certification of Commercial Pricing; Independent Price Determination Certificate Outside the United States; Small Business Act Notice Thresholds and Small Business—Small Purchase Set-Aside; Timely Completion of Justifications; Technical Corrections to FAR subpart 7.3; Vehicle Leasing Certification; First Article Test Pricing; Price Reasonableness Threshold; Thresholds—part 14; Size Standards; Microprocessor Chips; Revaluation of Assets; Independent Research and Development and Bid and Proposal Cost (IR&D/B&P); Advance Payments—Alternate Provision; Special Tooling/Special Test Equipment (ST/STE), Eliminate Remarking; Return of Inventory to Suppliers; Interpretation of Overtime Policy; Revision of Preaward Survey Forms; Standard Forms 294 and 295; Editorial Corrections; Nonmanufacturers Rule; Commerce Patent Regulation, Pub. L. 98-620; and FAR Index Revision through FAC 84-58.

DATES: *Effective Date:* July 23, 1990, except for (the interim rule, Item I) 53.219(b) and the related Standard Form (SF) 295 in 53.301-295 that are effective June 21, 1990.

Comment Date: Comments on the interim rule, Item I, should be submitted to the FAR Secretariat at the address shown below on or before August 20, 1990, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAC 84-58, Item I, in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 84-58.

SUPPLEMENTARY INFORMATION:

A. Determination to Issue an Interim Rule

FAC 84-58, Item I. A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Item I of FAC 84-58 as an interim rule. It is determined that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

B. Background

FAC 84-58, Item II. On November 18, 1988 (53 FR 46792), Certification of Commercial Pricing, was published as a proposed rule implementing Pub. Laws 98-577 (applicable to civilian agencies), and 98-525 and 98-591 (applicable to DoD, NASA, and the Coast Guard) requiring that acquisitions of commercial items be subject to a certification regarding the lowest price charged the public for items.

This final rule revises the interim rule currently in the FAR and published as Item III in FAC 84-10, in the **Federal Register** on July 3, 1985 (50 FR 27560).

FAC 84-58, Item X. Part 14 contains a $10,000 threshold for the inclusion of several provisions and clauses in construction contracts. Given the extremely narrow class of construction contracts that fall under $10,000, this threshold is no longer justified. This rule deletes this threshold in FAR parts 14 and 52.

Additionally, the requirement in 14.201-6(d) and the provision at 52.214-8 are satisfied by the rule found at 4.904 and the provision at 52.204-3. Consequently, this rule deletes 14.201-6(d) and the clause at 52.214-8 in their entireties.

FAC 84-58, Item XIV. Section 203 of Pub. L. 91-441, as amended by section 208 of Pub. L. 96-342, authorizes periodic adjustment of the threshold amounts at which advance agreements must be negotiated covering independent research and development and bid and proposal costs. Effective October 1, 1989, the Department of Defense has raised these thresholds to $5,400,000 for companies and $675,000 for profit centers. This change is being incorporated into 31.205-18.

FAC 84-58, Item XV. FAR 32.409-3(e) currently permits contracting officers to omit the requirement for deposit of advance payments in a special bank account in connection with advance payment agreements with instrumentalities of the Government, a State, a local government, or agencies or instrumentalities of State or local governments, if the official approving the advance payment determines that adequate security exists to protect the Government. Special bank accounts are also not required in connection with advance payments by letters of credit (see FAR 32.409-3(g)). FAR 32.412(f) authorizes contracting officers to omit the terms pertaining to a special bank account if the requirement for a special bank account is eliminated in accordance with 32.409-3(e) or (g), but places the burden on contracting officers to delete the related language from the clause at 52.232-12.

Since the deletion of language pertaining to special bank accounts is a complex task, this rule establishes an alternate clause with pertinent language deleted to facilitate use of the option provided by 32.409-3 (e) and (g). No change in existing requirements is intended or made in this final rule.

FAC 84-58, Item XVI. FAR 45.506(c) requires contractors to mark Government-owned special tooling and special test equipment with a serial number and the identity of the agency owning the property. When property is transferred to contracts awarded by another agency, re-marking is required.

This rule requires marking to identify a serial number and an indication of Government ownership, as opposed to agency ownership, which is consistent with the requirement for marking plant equipment in 45.506(d).

FAC 84-58, item XVII. FAR 45.605-2 states that Plant Clearance Officers shall encourage contractors to return allocable quantities of excess Government-owned, contractor-acquired property for appropriate credit. FAR 45.606-3(b) states that Plant Clearance Officers shall verify that contractors have endeavored to effect such returns.

The terms "encourage" and "verify" have led to some confusion regarding the Government's responsibilities in this area.

The most practical way to determine whether contractors are attempting to return inventories to suppliers, where appropriate, is during property control system surveys. Thus, compliance is reviewed on a system basis rather than by individual transactions.

FAC 84–58, Item XVIII. A question has been raised concerning whether or not during the FAR preparation a substantive change was intended with respect to the overtime policy in the clause at 52.222–2, Payment for Overtime Premiums. Recent interpretations of the policy appear to impose a two-part requirement for the legitimacy of all overtime. Not only must the overtime be covered by a dollar amount, as specified in paragraph (a) of the clause, it must also only be of the type described under subparagraphs (a)(1) through (a)(4) of the clauses. Clarification of the policy had been requested.

C. Regulatory Flexibility Act

FAC 84–58, Items I, II, III, IV, IX, XIII, XV, and XX. DoD, GSA, and NASA certify that these final rules in FAC 84–58 will not have a significant economic impact on a substantial number of small entities under the Regulatoy Flexibility Act (5 U.S.C. 601, et seq.) because—

Item I. Small businesses are exempt from the requirement to submit the report form.

Item II. Information required should be readily available to small businesses since they are less likely to have decentralized sales records and the large volume of sales transactions normally associated with larger businesses. No public comments were received from small entities that addressed the Initial Regulatory Flexibility Analysis published with the proposed rule. A Final regulatory Flexibility Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration.

Item III. There is no cost or administrative impact on U.S. contractors or offerors. It affects only contractors and offerors outside the United States, its possessions, and Puerto Rico.

Item IV. The final rule implements statutory direction by amending the FAR to increase the small business, small purchase set-aside threshold from $10,000 to $25,000. This revision will result in an increase in the number of procurement actions reserved for small business participation, thereby benefiting such firms. The threshold increase for Commerce Business Daily (CBD) notices of pending procurement actions may affect those small businesses which rely exclusively upon the CBD for their information about pending procurements. However, our experience indicates that a preponderance of small purchase awards are made to firms which have responded to solicitations issued pursuant to bidders' mailing lists or which have learned of pending procurements through local posting of the requirements.

Item IX. Existing regulations address the establishment of a special category of set-asides, for acquisitions of supplies or services that have an anticipated dollar value of $25,000 or less. This rule does not affect those set-asides. It merely reduces the Government's administrative costs for low dollar value set-asides.

Item XIII. Most contracts awarded to small entities are awarded on a competitive fixed-price basis and the cost principles do not apply.

Item XV. No changes to existing rules are being made. An alternate contract clause is being added to the FAR to facilitate use of a clause which current rules require contracting officers to modify on a case-by-case basis.

Item XX. Small businesses are exempt from the requirement to submit the report forms.

Therefore, the Regulatory Flexibility Act does not apply.

FAC 84–58, Items V, VI, VII, X, XI, XII, XIV, XVI, XVII, XVIII, and XIX. The Regulatory Flexibility Act (Pub. L. 96–354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501–1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or have a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98–525 and section 302 of Pub. L. 98–577 pertaining to publication of proposed regulations (as implemented in FAR subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

However, comments from small entities concerning the affected FAR sections will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 90–610 in correspondence pertaining to the appropriate item in FAC 84–58.

FAC 84–58, Item VIII. It is expected that this final rule will have a significant impact on a number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). A final Regulatory Flexibility Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration.

D. Paperwork Reduction Act

FAC 84–58, Item I. The information collection requirements in this rule, pertaining to Standard Form (SF) 295, have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq. under OMB Control Number 9000–0007.

FAC 84–58, Item II. The information collection requirements in this rule, pertaining to Certification of Commercial Pricing, have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq. under OMB Control Number 9000–0105.

FAC 84–58, Items III through XIX. The Paperwork Reduction Act (Pub. L. 96–511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

FAC 84–58, Item XX. The information collection requirements in this rule, pertaining to Standard Form (SF) 294, have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501, et seq. under OMB Control Number 9000–0006.

E. Public Comments

FAC 84–58, Items II, III, IV, VI, VIII, IX, XIII, XV, and XX. The comments that were received were considered by the Councils in the development of the following final rules:

Item II. On July 3, 1985, an interim rule (FAC 84–10, Item III) was published in the **Federal Register** (50 FR 27560) and on November 18, 1988, a proposed rule was published in the **Federal Register** (53 FR 46792).

Item III. On January 4, 1988, a proposed rule was published in the **Federal Register** (53 FR 100).

Item IV. On July 9, 1987, an interim rule (FAC 84–28), Item I) was published in the **Federal Register** (52 FR 21884).

Item VI. On July 13, 1989, a proposed rule was published in the **Federal Register** (54 FR 25214).

Item VIII. On January 27, 1989, a proposed rule was published in the **Federal Register** (54 FR 4230).

Item IX. On May 4, 1989, a proposed rule was published in the **Federal Register** (54 FR 19339).

Item XIII. On May 1, 1989, proposed rule was published in the **Federal Register** (54 FR 18634).

Item XV. On March 23, a proposed rule was published in the **Federal Register** (54 FR 12126).

Item XX. On November 30, 1988, a proposed rule was published in the **Federal Register** (53 FR 48495).

List of Subjects in 48 CFR Parts 1, 3, 5, 6, 7, 8, 9, 13, 14, 15, 19, 25, 28, 31, 32, 36, 45, 52, and 53

Government procurement.

Dated: June 15, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

[Number 84–58]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–58is effective July 23, 1990, except for (the interim rule, Item I) 53.219(b) and the related Standard Form (SF) 295 in 53.301–295 that are effective June 21, 1990.

Eleanor Spector,

Deputy Assistant Secretary of Defense for Procurement.

Richard H. Hopf,

Associate Administrator for Acquisition Policy, GSA.

S. J. Evans,

Assistant Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84–58 amends the Federal Acquisition Regulation as specified below:

Item I—Women-Owned Business Subcontract Reporting (SF 295)

Section 503, Public Law 100–656, the Business Opportunity Development Act of 1988, requires agencies to report subcontracts awarded to women-owned small businesses, effective October 1989. In order to collect this information, the Standard Form (SF) 295 is revised to add a block for reporting of subcontract dollars awarded to women-owned small business concerns.

Item II—Certification of Commercial Pricing

FAR 1.105, 15.813, 15.813–1, 15.813–2, 15.813–3, 15.813–4, 15.813–5, 15.813–6, 15.813–7, and the clause at 52.215–32 are revised, and 14.214 and the clause at 52.215–37 are added to implement the requirements of Public Laws 98–525, 98–577, and 99–591 pertaining to commercial pricing certificates.

Item III—Independent Price Determination Certificate Outside the United States

FAR 3.103–1(b) is removed and 3.103–2(b)(1) is revised to make the Independent Price Determination Certificate applicable to solicitations for work to be performed outside the United States. FAR 3.303(e) is added to permit contracting officers to refer suspected collusive offers from foreign contractors to authorities of the foreign government.

Item IV—Small Business Act Notice Thresholds and Small Business—Small Purchase Set-Aside

FAR 5.205(d)(2) is revised to require posting of notices of all architect-engineer solicitations which are not synopsized; this rule makes final Item I of FAC 84–28 published in the **Federal Register** on June 9, 1987 (52 FR 21884).

Pub. L. 99–500 amended the Small Business Act and the Office of Federal Procurement Policy Act to raise the threshold for publicizing proposed acquisitions in the Commerce Business Daily from $10,000 to $25,000 but retained the $10,000 synopsis threshold for acquisitions if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors.

Item V—Timely Completion of Justifications

FAR 6.303–1(e) is revised to require that justifications for other than full and open competition based on the urgency exception that are prepared after contract award be prepared and approved within a reasonable time after award.

Item VI—Technical Corrections to FAR Subpart 7.3

FAR 7.300(b), 7.302, 7.303(b)(1), 7.304(b)(1), 7.306(a)(2), 7.306(a)(3), 7.306(b)(3), 7.307(a), and the clauses at 52.207–1 and 52.207–2 are revised to include technical corrections needed to comply with recent changes made to OMB Circular A–76.

Item VII—Vehicle Leasing Certification

FAR 8.1102 is revised to delete the requirement for the contracting officer to obtain certifications of fuel efficiency and availability from the requiring activity before leasing motor vehicles for less than 60 days. This change conforms the FAR with the Motor Vehicle Information and Cost Savings Act and the regulations implementing that law.

Item VIII—First Article Test Pricing

FAR 9.306(j), 14.404–2(f), 14.404–2(g), 14.407–2(b) and 15.814 are added, and the clauses at 52.214–10, 52.215–16, and 52.217–5 are revised to provide notice to offerors and guidance to contracting personnel concerning unbalanced bids and proposals.

Item IX—Price Reasonableness Threshold

FAR 13.106 is revised to increase from $1,000 to "ten percent of the small purchase limitation" the threshold above which price reasonableness must be based on competitive quotations and under which purchases may be made without securing competitive quotations, if the contracting officer considers the prices to be reasonable.

Item X—Thresholds—Part 14

FAR 1.105, 14.201–6(c), 14.201–6(1), 14.201–6(m), 52.214–6 are revised, 14.201–6(d) is removed, and the provision at 52.214–8 is removed and reserved to eliminate separate thresholds for provisions prescribed by Part 14 when the invitations for bids are for construction and to eliminate the provision "Parent Company and Identifying Data," the requirements of which are satisfied by the provision at 52.204–3, Taxpayer Identification.

Item XI—Small Business Size Standards

FAR 19.102(f)(5) is revised to add a list of Product and Service Codes for which a nonmanufacturer is not required to provide the product of a small business concern in order to qualify for small business set-asides. The Small Business Administration has determined that there are no small business manufacturers for these product and service codes.

Item XII—Microprocessor chips

FAR 25.108(d)(1) is revised to add an item, microprocessor chips (brought onto the Government construction site for incorporation into building systems during construction or repair and alteration of real property), to the Buy American List of Exempt Items which is published in the FAR for information only.

Item XIII—Revaluation of Assets

FAR 31.205–10, 31.205–11, 31.205–16 are revised, and 31.205–52 is added to assure that the Government does not recognize depreciation, amortization, or the cost of money expense flowing from asset write-ups that result from the "purchase method" of accounting for business combinations.

Item XIV—Independent Research and Development and Bid and Proposal Cost (IR&D/B&P)

FAR 31.205–18(c)(1) is being revised to adjust thresholds to $5,400,000 for companies and $675,000 for profit centers. Pursuant to section 208 of Pub. L. 96–342, the Department of Defense adjusted the IR&D/B&P threshold amounts, effective October 1, 1989.

Item XV—Advance Payments—Alternate Provision

FAR 32.412(f) is revised, and Alternate V is added to the clause at 52.232–12 to provide an alternate contract clause for use when advance payments are authorized, but a special bank account is not required.

Item XVI—Special Tooling/Special Test Equipment (ST/STE), Eliminate Marking

FAR 45.506(c) is revised to require contractors to mark Government-owned special tooling and special test equipment in their possession with a serial number and an indication of Government ownership, as opposed to agency ownership.

Item XVII—Return of Inventory to Suppliers

FAR 45.605–2 and 45.606–3(b) are revised to require contractors' property control systems to include procedures to ensure property is returned to the supplier for appropriate credit whenever feasible. Additionally, the reference to verification that contractors have endeavored to return excess property to suppliers has been deleted from FAR 45.606–3(b).

Item XVIII—Interpretation of Overtime Policy

FAR 52.222–2 is revised to clarify current policy concerning payment of overtime premiums.

Item XIX—Revision of Preaward Survey Forms

FAR 53.209–1 and 53.301–1403 through 1408 (Standard Forms 1403 through 1408) are revised to illustrate new editions of the preaward survey forms prescribed by the FAR.

Item XX—Standard Forms 294 and 295

The requirement for agencies to collect subcontracting data from prime contractors originated in October 1978 with the enactment of Public Law 95–507. This public law requires that all contractors, with the exception of small businesses, who receive a Federal prime contract or subcontract over $500,000 ($1 million for construction) that has subcontracting opportunities, include a plan for subcontracting with small and small disadvantaged businesses. Following the enactment of Public Law 95–507, Standard Form 294, Subcontracting Report for Individual Contracts, and Standard Form 295, Summary Subcontract Report, were developed to serve as the standard Government-wide data collection forms to monitor a contractor's subcontracting program.

Several changes to the forms were issued as a proposed rule on November 30, 1988 (53 FR 48495). Based on the comments received in response to the proposed rule and on new statutory requirements, an additional change to the SF 295 has been made.

Item XXI—Editorial Corrections

FAR 14.201–8(c) to conform with revisions made at 52.214–22 and 52.215–34 in FAC 84–56, Item XIII.

FAR 15.402(i) to correct FAC 84–53 and revise the reference to read "15.407(j)."

FAR 19.508 (b), (c), and (d) to correct FAC 84–48 and add a prescription to each Alternate I of the clauses at 52.219–5, 52.219–6, and 52.219–7.

FAR 19.811–3(d)(3) to correct FAC 84–52 and add a prescription to Alternate III of the clause at 52.219–18.

FAR 19.812(d) to correct FAC 84–56 and revise in the first sentence the referenced Pub. L. to read "100–656".

FAR 28.201(a)(2) to correct FAC 84–53 and revise the reference to read "28.204."

FAR 32.902 to correct FAC 84–45 in the definition "Receiving report," and revise the reference to read "32.905(f)."

FAR 36.520 is reserved to correct FAC 84–53 and to be consistent with the clause reserved at 52.236–20. FAR 36.521 is added to correct FAC 84–53 and to be consistent with the clause at 52.236–21.

FAR 52.209–3 to correct FAC 84–51 and revise in the introductory text the reference to read "9.308–1."

FAR 52.215–18 to correct FAC 84–53 and revise in the introductory text the reference to read "15.407(j)."

FAR 52.219–18 to correct FAC 84–52 and revise reference in Alternate III to read "19.502–2(b)."

FAR 52.227–15(b) to correct, in the first sentence, "this clause" to read "this provision." Date of clause is not changed; revision is editorial only.

FAR 52.227–17 to correct FAC 84–51, in the introductory text, the reference to read "27.409(i)."

FAR 52.227–20 to correct the reference "paragraph (g)" to read "paragraph (f)."

FAR 52.243–7 to correct the reference to the prescription to read "43.107."

FAR 53.228 is revised, and 53.301–24, 53.301–25, 53.301–25–A, 53.301–28, 53.301–34, 53.301–35, 53.301–1416, 53.302–90, and 53.302–91 illustrate the final version of the forms pertaining to Individual Sureties.

Item XXIII—FAR Index Revision Through FAC 84–58

The FAR Index has been—

Updated to reflect the current FAR contents, and reformatted to facilitate its use and its subsequent maintenance.

The revised Index provides an alphabetical listing of selected key words, showing each key word in its context. The key words are sufficient to permit a reader to locate almost any subject area that is in the FAR.

The key words used in the revised Index have been chosen from the following documents:

Structure of the FAR to the Subpart Level.

Table of Contents to part 31, Contract Cost Principles.

Table of Contents to part 52, Solicitation Provisions and Contract Clauses.

Selected elements of the Tables of Contents not listed above. Since the FAR Index is not a regulatory document, the revised Index is being published in looseleaf form, but not in the Federal Register.

Therefore, 48 CFR parts 1, 3, 5, 6, 7, 8, 9, 13, 14, 15, 19, 25, 27, 28, 31, 32, 36, 45, 52, and 53 are amended as set fdorth below:

The interim rules in FAC 84–48, published in the **Federal Register** on July 12, 1989 (54 FR 25060), amending sections 19.102, 19.502–2, and the clauses at 52.219–5, 52.219–6, and 52.219–7 pertaining to FAC 84–48, Item II, Nonmanufacturers rule, and amending section 1.105, subpart 27.3, and the clauses at 52.227–11, 52.227–12, and 52.227–13 pertaining to FAC 84–48, Item V, Commerce Patent Regulation, are hereby adopted as final rules without change.

1. The authority citation for 48 CFR parts 1, 3, 5, 6, 7, 8, 9, 13, 14, 15, 19, 25, 28, 31, 32, 36, 45 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c)

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by removing FAR segment "52.214–8" and corresponding OMB Control Number "9000–0018"; by adding in numerical order, a FAR segment and corresponding OMB Control Number; and by removing FAR Segment "SF 25–B" and corresponding OMB Control Number "9000–0045", to read as follows:

1.105 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB Control Number
* * * * *	
52.215-32	9000-0105
* * * * *	

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.103-1 [Amended]

3. Section 3.103-1 is amended by removing and reserving paragraph (b).

4. Section 3.103-2 is amended by revising paragraph (b)(1) to read as follows:

3.103-2 Evaluating the certification.

* * * * *

(b) * * *

(1) *Rejection of offers suspected of being collusive.* If the offeror deleted or modified subparagraph (a)(1) or (a)(3) or paragraph (b) of the certificate, the contracting officer shall reject the offeror's bid or proposal.

* * * * *

5. Section 3.303 is amended by redesignating the existing paragraphs (e) and (f) as (f) and (g), and by adding new paragraph (e) to read as follows:

3.303 Reporting suspected antitrust violations.

* * * * *

(e) For offers from foreign contractors for contracts to be performed outside the United States, contracting officers may refer suspected collusive offers to the authorities of the foreign government concerned for appropriate action.

* * * * *

PART 5—PUBLICIZING CONTRACT ACTIONS

6. Section 5.205 is amended by revising paragraph (d)(2) to read as follows:

5.205 Special situations.

* * * * *

(d) * * *

(2) When the total fee is expected to exceed $10,000 ($5,000 for Defense activities), but not exceed $25,000, the contracting officer shall comply with 5.101(a)(2). When the contract action is not required to be synopsized under subparagraph (d)(1) of this section, the contracting officer shall display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with 5.101(b).

* * * * *

PART 6—COMPETITION REQUIREMENTS

7. Section 6.303-1 is amended by revising paragraph (e) to read as follows:

6.303-1 Requirements.

* * * * *

(e) The justifications for contracts awarded under the authority cited in 6.302-2 may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.

PART 7—ACQUISITION PLANNING

8. Section 7.300 is amended by revising paragraph (b) to read as follows:

7.300 Scope of subpart.

* * * * *

(b) The Supplement to OMB Circular No. A-76

7.302 [Amended]

9. Section 7.302 is amended by removing in the introductory text and in paragraph (c) the word "Handbook" and inserting in both places the word "Supplement".

10. Section 7.303 is amended by revising paragraph (b) to read as follows:

7.303 Determining availability of private commercial sources.

* * * * *

(b) In making all reasonable efforts to identify such sources, the contracting officer shall assist in—

(1) Synopsizing the requirement in the Commercial Business Daily until a reasonable number of potential sources are identified. If necessary, synopsis shall be submitted at least three times in a 90-day period with a minimum of 30 days between notices, (but, when necessary to meet an urgent requirement, this notification may be limited to a total of two notices in a 30-day period with a minimum of 15 days between them). If sufficient sources are not identified through synopses or from subparagraph (b)(2) of this section, a finding that no commercial source is available may be made and the cost comparison canceled; and

(2) Requesting assistance from the Small Business Administration, the Department of Commerce, and the General Services Administration.

11. Section 7.304 is amended by removing in the first sentence of paragraph (a) the words "performance-oriented" and inserting in their place the word "performance"; and by revising paragraph (b)(1) to read as follows:

7.304 Procedures.

* * * * *

(b) * * *

(1) Enter on a cost-comparison form (see Part IV of the Supplement) the cost estimate and the other elements required to accomplish a cost comparison;

* * * * *

12. Section 7.306 is amended by removing in paragraph (a)(1)(iii) within the parentheses the words "(see Cost Comparison Handbook, Exhibit 1)" and inserting in their place the words "(see Supplement, Part IV, Illustration 1)"; by removing in paragraph (a)(1)(iv) within the parentheses the figures "5" and "15 working days" and inserting in their place "15" and "30 working days" respectively; and by revising paragraphs (a)(2), (a)(3), and the third sentence in (b)(3) to read as follows:

7.306 Evaluation.

* * * * *

(a) * * *

(2) After evaluation of bids (see subpart 14.4) and determinations of responsibility, the contracting officer shall provide the price of the low responsive, responsible bidder to the preparer of the cost estimate for Government performance, for final Government review of the cost-comparison form.

(3) Upon completion of the review process, including resolution of any request under 7.307, the responsible agency official shall make the final determination for performance by the Government or under contract and provide written notification to the contracting officer, who shall either award a contract or cancel the solicitation as required.

(b) * * *

(3) * * * Upon completion of the public review period and resolution of any questions raised under 7.307, the responsible agency official shall provide the contracting officer written notification of the final cost comparison decision. * * *

* * * * *

13. Section 7.307 is amended by revising the third sentence in paragraph (a) to read as follows:

7.307 Appeals.

(a) * * * This review must be completed within 30 days after the deciding official receives a request under paragraph (b) of this section.

* * *

* * * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

14. Section 8.1102 is amended by revising in paragraph (a) the introductory text; by redesignating existing paragraph (b) as (c); and by adding new paragraph (b) to read as follows:

8.1102 Presolicitation requirements.

(a) Except as specified in 8.1102(b), before preparing solicitations for leasing of motor vehicles, contracting officers shall obtain from the requiring activity a written certification that—

* * * * *

(b) With respect to requirements for leasing motor vehicles for a period of less than 60 days, the contracting officer need not obtain the certification specified in 8.1102(a)—

(1) If the requirement is for type 1A, 1B, or II vehicles, which are by definition fuel efficient; or

(2) If the requirement is for passenger vehicles larger than 1A, 1B, or II, and the agency has established procedures for advance approval, on a case-by-case basis, of such requirements.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

15. Section 9.306 is amended by adding paragraph (j) to read as follows:

9.306 Solicitation requirements.

* * * * *

(j) Inform offerors that the prices for first articles and first article tests in relation to production quantities shall not be materially unbalanced (see 15.814) if first article test items or tests are to be separately priced.

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13.106 [Amended]

16. Section 13.106 is amended by removing in paragraph (a) heading, in (a)(4), and in paragraphs (b) and (c) headings, the figure "$1,000" and inserting in each place "10 percent of the small purchase limitation".

PART 14—SEALED BIDDING

17. Section 14.201–6 is amended by revising the introductory text of paragraph (c); by removing and reserving paragraph (d); by revising paragraph (l); and in paragraph (m) by removing the words "that is estimated to exceed $10,000" to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(c) The contracting officer shall insert the following provisions in invitations for bids:

* * * * *

(l) The contracting officer shall insert the provision at 52.214–18, Preparation of Bids—Construction, in invitations for bids for construction work.

* * * * *

14.201–8 [Amended]

18. Section 14.201–8 is amended in the second sentence of paragraph (c) by removing the figure "$250" and inserting in its place "$500".

19. Section 14.214 is added to read as follows:

14.214 Commercial pricing certificates.

Sealed bid acquisitions of parts or components as defined in 15.813–2 are subject to the requirements of 15.813, Commercial pricing certificates, including the solicitation provision and contract clause prescription in 15.813–7, when conditions specified therein are applicable.

20. Section 14.404–2 is amended by revising paragraph (f); by redesignating existing paragraphs (g) through (k) as (h) through (l); and by adding a new paragraph (g) to read as follows:

14.404–2 Rejection of individual bids.

* * * * *

(f) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

(g) Any bid may be rejected if the prices for any line items or subline items are materially unbalanced (see 15.814).

* * * * *

14.405 [Amended]

21. Section 14.405 is amended in paragraph (e) by removing the words "52.214–8, Parent Company and Identifying Data, and".

22. Section 14.407–2 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

14.407–2 Responsible bidder—reasonableness of price.

* * * * *

(b) The price analysis shall consider whether bids are materially unbalanced (see 15.814).

PART 15—CONTRACTING BY NEGOTIATION

15.402 [Amended]

23. Section 15.402 is amended in the first sentence of paragraph (i) by removing the reference "15.407(i)" and inserting in its place "15.407(j)".

24. Sections 15.813 through 15.813–7 are revised to read as follows:

Sec.

15.813 Commercial pricing certificates.
15.813–1 Scope and applicability.
15.813–2 Definitions.
15.813–3 Policy.
15.813–4 Requirements for submission of commercial pricing certificates.
15.813–5 Exemption from the requirement to submit commercial pricing certificates.
15.813–6 Procedures.
15.813–7 Solicitation provision and contract clause.

15.813 Commercial pricing certificates.

15.813–1 Scope and applicability.

This section prescribes policies and procedures for obtaining certificates from contractors relating to prices offered for parts or components as defined in 15.813–2. It implements the statutory provisions in 41 U.S.C. 253e for civilian agencies and in 10 U.S.C. 2323 for the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard.

15.813–2 Definitions.

Lowest commercial price, as used in this section, means the lowest price at which a sale was made to the general public of a particular part or component. The term does not include the price at which a sale was made to—

(a) Any agency of the United States;

(b) Customers located outside the United States;

(c) A subsidiary, affiliate, or parent business organization of the contractor or any other branch of the same business entity; and

(d) For contracts awarded by the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, such term also does not include the sale to any customer—

(1) For resale after such customer performs a service or function in connection with such part or component that increases the cost of the part or component unless the agency procuring the part or component can demonstrate that the agency is procuring the part or component before such service or

function has been performed by any such customer (see 15.813–6(c)); or

(2) At a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part or component.

Part or component, as used in this section, means—

(a) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself; or

(b) For acquisitions of civilian agencies other than the National Aeronautics and Space Administration and the Coast Guard, any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of a part or component.

15.813–3 Policy.

Contracts entered into using other than full and open competition may not result in prices for parts or components (as defined in 15.813–2) offered for sale to the general public that exceed the contractor's lowest commercial prices for such parts or components unless the price difference is clearly justified by the seller or the contracting officer has determined to exempt the contractor from the requirement under 15.813–5(d). To this end, 41 U.S.C. 253e and 10 U.S.C. 2323 require offerors to certify that prices offered for parts or components are not more than their lowest commercial prices, or to submit a written statement specifying the amount of the difference between their lowest commercial prices for the parts or components and the prices offered, and providing justification for those differences. Because the forces of the competitive marketplace usually ensure that the Government does not pay an unreasonable price for commercial parts or components, commercial pricing certificates are necessary only when these forces are not present in a particular contract action.

15.813–4 Requirements for submission of commercial pricing certificates.

Unless a contract is exempt from the requirement pursuant to 15.813–5, commercial pricing certificates are required to be submitted with any offer/proposal that—

(a) Includes any parts or components that are offered for sale to the general public; and

(b) Is submitted in connection with any of the following:

(1) Offers/proposals in connection with contracts to be awarded with other than full and open competition.

(2) Contract modifications, including contract modifications for additional parts or components, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause (but see subparagraph (b)(5) of this subsection), or funding and other administrative modifications.

(3) Orders under the provisioning line item of a contract, a basic ordering agreement, or similar arrangement if the order is being placed with other than full and open competition.

(4) Definitization of price on a letter contract, unpriced order, or other contract, modification, or order awarded without a definitive price. (The commercial pricing certificate is not required before the initial award, but rather shall be submitted with the proposal to definitize.)

(5) Any modification issued pursuant to the Changes clause that results in the providing of new or different parts or components.

15.813–5 Exemption from the requirement to submit commercial pricing certificates.

A contract is exempt from the requirement that a commercial pricing certificate be submitted if—

(a) The simplified small purchase procedures of part 13 are used;

(b) An acquisition is being made under the procedures established by the General Services Administration for its multiple award schedule program; or

(c) An order is placed under an indefinite delivery type contract. (However, a certificate is required in connection with the award with other than full and open competition of an indefinite delivery type contract.); or

(d) The contracting officer determines that obtaining the commercial pricing certificate is not appropriate because of—

(1) National security considerations; or

(2) Significant differences between the terms of the commercial sales of the parts or components to be acquired under the contract and the terms of the contract, including differences in quantity, quality, delivery requirements, or other terms and conditions.

§ 15.813–6 Procedures.

(a) If a commercial pricing certificate is required in accordance with 15.813–4, the contracting officer shall ensure that the certificate set forth in paragraph (b) of the clause at 52.215–32, Certification of Commercial Pricing for Parts or Components, is submitted with each offer/proposal. Notice of the requirement and requests for submission of a certificate in the solicitation are accomplished through use of the solicitation provision of 52.215–37. Contracting officers are encouraged to enter into advance agreements with contractors to consolidate submission requirements when detailed repetitive certifications and justifications would otherwise be required.

(b) When requested pursuant to paragraph (a) of this subsection, offerors/contractors are required to submit the commercial pricing certificate with their proposals unless the contracting officer determines to grant an exemption pursuant to 15.813–5(d). Exemptions from the requirement to submit a commercial pricing certificate should not be granted pursuant to 15.813–5(d)(2) unless the contracting officer has sufficient information to verify that the contractor's lowest commercial price for parts or components offered for sale to the general public are subject to such substantial differences (in quantity, quality, delivery, or other terms and conditions) from Government contract terms so as to warrant the exemption. If the contracting officer determines that use of the lowest commercial price for a part or component is not appropriate for a contract under 15.813–5(d), this determination should be communicated to the offeror/contractor in writing. Contracting officers may accept information supporting possible exemptions from offerors/contractors at any time prior to agreement on price. Exemptions relieve the offerors/contractors from the statutory and contractual submission requirement.

(c) For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, a contracting officer may make a determination that the definition of "Lowest Commercial Price" in the clause of 52.215–32 shall include the price at which a sale was made to any person or corporation for resale by the person or corporation. In making this determination, the contracting officer must be able to demonstrate that the parts or components are being procured by the contracting officer under the same terms and conditions at which a

sale was made to the person or corporation for resale.

(d) The contracting officer shall request submission of a new certificate when the validity of the certificate originally submitted with an offer/proposal becomes doubtful before award because of submission of a new or revised proposal or as a result of discussions.

(e) If, after award, the contracting officer learns or suspects that a certificate was inaccurate, incomplete, or misleading, the contracting officer shall request an audit under the authority of paragraph (c) of the clause of 52.215-32. If the contracting officer determines that a certificate is inaccurate, incomplete, or misleading, the Government is entitled to a price adjustment for any overcharge (see paragraph (d) of the clause at 52.215-32).

(f) Individual or class determinations made under 15.813-5(d) (1) or (2), and advance agreements made under paragraph (a) of this subsection, shall be documented in the contract file.

(g) Possession of a commercial pricing certificate is not a substitute for examining a contractor's proposal and determining that the prices offered are fair and reasonable. The certificate represents a tool to assist the contracting officer in the determination. The contracting officer shall obtain sufficient information with regard to commercial parts or components to permit an understanding of the contractor's commercial pricing structure and where within that structure the acquisition fits. (See 15.804-3(h) and data obtained on the Standard Form 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data.)

15.813-7 Solicitation provision and contract clause.

(a)(1) The contracting officer shall insert the clause at 52.215-32, Certification of Commercial Pricing for Parts or Components, in solicitations and contracts if a commercial pricing certificate is required by 15.813-4.

(2) The contracting officer shall insert the clause with its Alternate I in solicitations and contracts for sealed bids or negotiated acquisitions involving the furnishing of parts or components using full and open competition.

(b) The contracting officer shall insert the provision at 52.215-37, Commercial Pricing Certificate—Notice, in solicitations if a commercial pricing certificate is required by 15.813-4.

25. Section 15.814 is added to read as follows:

15.814 Unbalanced offers.

(a) Offers shall also be analyzed to determine whether they are unbalanced with respect to prices or separately priced line items. This is particularly important when evaluating the relationship of the price for first article tests or test items to the price for the production units, and in evaluating the prices for options in relationship to the prices for the basic requirement.

(b) An offer is mathematically unbalanced if it is based on prices which are significantly less than cost for some contract line items and significantly overstated in relation to cost for others. An offer is materially unbalanced if it is mathematically unbalanced, and if—

(1) There is a reasonable doubt that the offer would result in the lowest overall cost to the Government, even though it is the lowest evaluated offer; or

(2) The offer is so grossly unbalanced that its acceptance would be tantamount to allowing an advance payment.

(c) Offers that are materially unbalanced may be rejected.

(d) Depending on the nature of the acquisition, contracting officers shall use either price analysis or cost analysis techniques, or a combination of the two techniques, to determine if offers are materially unbalanced. The following are examples of techniques that can be used to determine if an offer is unbalanced. Although these examples specifically relate to first article testing, they may also be used for other procurements where unbalanced offers may be of concern.

(1) Compare all offers to determine if the offerors have significantly higher prices for the first articles than for the production units. The comparison should consider whether the Government or the contractor will perform the first article test.

(2) For an individual offer, compare the relationship of first article prices to prices for production items. The cost to the offeror for first articles may be estimated (i) By comparing the total price offered, including the first article to an alternate proposal by the same offeror which does not include first article testing (see 9.306(d)); or (ii) if cost data has been submitted, by reviewing certain elements of cost to determine, for instance, whether manufacturing and special tooling, and test equipment costs, are prorated among the first articles and the production units, or are only applied to the first articles. If cost data are not available, it may be necessary for contracting officers to estimate contractor cost.

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

26. Section 19.102 is amended in paragraph (f)(5) at the end of the second sentence by removing the word "None" and inserting in its place the list of Product and Service Codes (PSC) to read as follows:

19.102 Size standards.

* * * * *

(f) * * *

(5) * * *

Backhoes (PSC 3805)
Graders, Road (Construction Machinery) (PSC 3805)
Scrapers, Construction (PCS 3805)
Cranes, Construction (PSC 3810)

* * * * *

27. Section 19.508 is amended in paragraphs (b), (c), and (d) by adding a sentence to read as follows:

19.508 Solicitation provisions and contract clauses.

* * * * *

(b) * * * The clause at 52.219-5 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration hs determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).

(c) * * * The clause at 52.219-6 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).

(d) * * * The clause at 52.219-7 with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business manufacturers in the Federal market in accordance with 19.502-2(b).

* * * * *

28. Section 19.811-3 is amended by adding paragraph (d)(3) to read as follows:

19.811-3 Contract clauses.

* * * * *

(d) * * *

(3) The clause at 52.219-18 with its Alternate III will be used when the acquisition is for a product in a class for which the Small Business Administration has determined that there are not small business

manufacturers in the Federal market in accordance with 19.502–2(b).

* * * * *

19.812 [Amended]

29. Section 19.812 is amended in the first sentence of paragraph (d) by removing the reference "Pub. L. 100–646" and inserting in its place "Pub. L. 100–656".

PART 25—FOREIGN ACQUISITION

25.108 [Amended]

30. Section 25.108 is amended in paragraph (d)(1) by alphabetically adding an item, "Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property)."

PART 28—BONDS AND INSURANCE

31. Section 28.201 is amended in paragraph (a)(2) by removing the reference "28.203" and inserting in its place "28.204".

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

32. Section 31.205–10 is amended by removing "and" at the end of paragraph (a)(2)(ii); by adding "; and" at the end of (a)(2)(iii); by adding (a)(2)(iv); by revising (a)(5); by removing "and" at the end of (b)(2)(i)(B); by adding "; and" at the end of (b)(2)(i)(C); and by adding paragraph (b)(2)(i)(D) to read as follows:

31.205–10 Cost of money.

* * * * *

(a) * * *

(2) * * *

(iv) The requirements of 31.205–52, which limit the allowability of facilities capital cost of money, are observed.

* * * * *

(5) The cost of money resulting from including asset valuations resulting from business combinations in the facilities capital employed base is unallowable (see 31.205–52).

(b) * * *

(2) * * *

(i) * * *

(D) The requirements of 31.205–52, which limit the allowability of cost of money for capital assets under construction, fabrication, or development, are observed.

33. Section 31.205–11 is amended by adding paragraph (n) to read as follows:

31.205–11 Depreciation.

* * * * *

(n) Whether or not the contract is otherwise subject to CAS, the requirements of 31.205–52, which limit the allowability of depreciation, shall be observed.

34. Section 31.205–16 is amended by revising paragraphs (a) and (e) to read as follows:

31.205–16 Gains and losses on disposition of depreciable property or other capital assets.

(a) Gains and losses from the sale, retirement, or other disposition (but see 31.205–19) of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (d) of this subsection). However, no gain or loss shall be recognized as a result of the transfer of assets in a business combination (see 31.205–52).

* * * * *

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations shall be considered on a case-by-case basis.

* * * * *

31.205–18 [Amended]

35. Section 31.205–18 is amended by removing in paragraphs (c)(1)(i) and (c)(1)(v) the figures "$4,400,000" and "$4 million" and inserting in each place the figure "$5,400,000"; and by removing in paragraph (c)(1)(ii) the figures "$550,000" and "$500,000" and inserting in each place the figure "$675,000".

36. Section 31.205–52 is added to read as follows:

31.205–52 Asset valuations resulting from business combinations.

When the purchase method of accounting for a business combination is used, allowable amortization, cost of money, and depreciation shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

PART 32—CONTRACT FINANCING

37. Section 32.412 is amended by revising paragraph (f) to read as follows:

32.412 Contract clause.

* * * * *

(f) If the requirement for a special bank account is eliminated in accordance with 32.409–3 (e) or (g), the contracting officer shall insert in the solicitation or contract the clause set forth in Alternate V of 52.232–12, Advance Payments, instead of the basic clause.

32.902 [Amended]

38. Section 32.902 is amended in the definition "Receiving report" by removing the reference "32.905(e)" and inserting in its place "32.905(f)".

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.521 [Redesignated from 36.520]

39. Section 36.520 is redesignated as 36.521.

36.520 [Added and Reserved]

40. New section 36.520 is added and reserved.

PART 45—GOVERNMENT PROPERTY

41. Section 45.506 is amended in paragraph (c) by revising the first sentence to read as follows:

45.506 Identification.

* * * * *

(c) In accordance with procedures approved by the property administrator, the contractor shall mark Government owned special tooling and special test equipment with a serial number and an indication of Government ownership. * * *

* * * * *

42. Section 45.605–2 is amended by adding a fourth sentence to read as follows:

45.605–2 Return to suppliers.

* * * A contractor's property control system shall include procedures to ensure property is returned to the supplier for appropriate credit whenever feasible.

45.606–3 [Amended]

43. Section 45.606–3 is amended by inserting in the first sentence of paragraph (b)(4), a period following the word "work" and removing the remainder of the sentence.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.207–1 [Amended]

44. Section 52.207–1 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its placed "(JUL 1990)"; and by removing in the italicized text within the brackets in paragraph (c), the words "5 to 15" and inserting in their place "15 to 30".

45. Section 52.207–2 is amended by revising the introductory text of the provision; by removing in the title of the provision the date "(APR 1984)" and inserting in its place "(JUL 1990)"; by removing in the italicized text within the

bracket in paragraphs (c)(1) and (c)(2), the words "5 to 15" and inserting in both places "15 to 30"; and by removing the derivation line following "(End of provision)" to read as follows:

52.207-2 Notice of Cost Comparison (Negotiated).

As prescribed in 7.305(b), insert the following provision:

* * * * *

52.209-3 [Amended]

46. Section 52.209-3 is amended in the introductory text by removing the reference "9.308-2" and inserting in its place the reference "9.308-1".

52.214-6 [Amended]

47. Section 52.214-6 is amended in the introductory text by inserting a colon following the word "provision" in the first sentence and removing the remainder of the paragraph.

52.214-8 [Removed and Reserved]

48. Section 52.214-8 is removed and reserved.

49. Section 52.214-10 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place the date "(JUL 1990)"; and by adding paragraph (e) to read as follows:

52.214-10 Contract Award—Sealed Bidding.

* * * * *

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

* * * * *

52.214-18 [Amended]

50. Section 52.214-18 is amended in the introductory text by inserting a colon following the word "provision" in the first sentence and removing the remainder of the paragraph.

51. Section 52.215-16 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place the date "(JUL 1990)"; and by adding paragraph (g) to read as follows:

52.215-16 Contract Award.

* * * * *

(g) The Government may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Government, even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

* * * * *

52.215-18 [Amended]

52. Section 52.215-18 is amended in the introductory text by removing the reference "15.407(i)" and inserting in its place "15.407(j)".

53. Section 52.215-32 is revised to read as follows:

52.215-32 Certification of Commercial Pricing for Parts or Components.

As prescribed in 15.813-7(a), insert the following clause:

Certification of Commercial Pricing for Parts or Components (JUL 1990)

(a) *Definitions.*

Lowest commercial price, as used in this section, means the lowest price at which a sale was made to the general public of a particular part or component. The term does not include the price at which a sale was made to—

(1) Any agency of the United States;

(2) Customers located outside the United States;

(3) A subsidiary, affiliate, or parent business organization of the contractor, or any other branch of the same business entity; and

(4) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, such term also does not include the sale to any customer—

(i) For resale after such customer performs a service or function in connection with such part or component that increases the cost of the part or component unless the agency procuring the part or component can demonstrate that the agency is procuring the part or component before such service or function has been performed by any such customer (see 15.813-6(c)); or

(ii) At a price that, for the purpose of making a donation, has been substantially discounted below the fair market value or regular price of such part or component.

Part or component, as used in this section, means—

(1) For acquisitions of the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, any individual piece, part, subassembly, or component which is furnished for the logistic support or repair of an end item and not as an end item itself; or

(2) For acquisitions of civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, any individual part, component, subassembly, assembly or subsystem integral to a major system, and other property which may be replaced during the service life of the system, and includes spare parts and replenishment spare parts, but does not include packaging or labeling associated with shipment or identification of a part or component.

(b) *Submission requirements.* The Offeror/Contractor shall execute and submit to the Contracting Officer the following certificate with any offer/proposal as required by FAR 15.813-4 when requested by the Contracting Officer:

Certificate of Commercial Pricing for Parts or Components

(1) Unless justified in subparagraph (b)(2) of this clause, by submission of this offer/proposal, the Offeror/Contractor certifies that, to the best of its knowledge and belief, the prices offered for those parts or components (whether or not separately identified) that the Contractor offers for sale are no higher than the lowest commercial price at which such items were sold to the public during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available, *provided* that in no event shall this period be less than 1-month in duration.

(2) All parts or components for which prices offered are higher than the lowest commercial price referred to in subparagraph (b)(1) of this certificate are identified below (including the amounts by which such offered prices are higher) and a written justification for the differences is attached (list as necessary):

Part or Component	Price Difference
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Offer/Proposal No. _____
Time period for sales data _____
Firm _____
Typed name and signature _____
Title _____
Date _____

(End of certificate)

(c) *Audit.* The Contracting Officer or representatives of the Contracting Officer who are employees of the Government shall have the right to examine and audit all directly pertinent records of sales and related documents, including contract terms and conditions, necessary to verify the validity of any certificate executed in accordance with paragraph (b) of this clause. The Contractor shall make those records, books, data, and documents available for examination, audit, or reproduction until 3 years after the date the certificate set forth in paragraph (b) of this clause is executed. Nothing contained in this clause shall require the submission of cost or pricing data not otherwise required by law or regulation.

(d) *Price reduction.* If any price, including profit or fee negotiated in connection with this contract, or any cost reimbursable under this contract, has increased because the certification in subparagraph (b)(1) of the certificate or the information provided as justification in subparagraph (b)(2) of the certificate was inaccurate, incomplete, or misleading, the price or cost shall be reduced

accordingly and the contract shall be modified to reflect the reduction.

(End of clause)

Alternate I (JUL 1990). As prescribed in 15.813–7(a)(2), insert the following paragraph in the clause without a paragraph identifier, before paragraph (a) of this clause:

The requirements of this clause shall become operative only for any modifications to this contract involving the furnishing of parts or components, as defined in paragraph (a) of this clause, if awarded as a result of other than full and open competition.

54. Section 52.215–37 is added to read as follows:

52.215–37 Commercial Pricing Certificate—Notice.

As prescribed in 15.813–7(b), insert the following provision:

Commercial Pricing Certificate—Notice (JUL 1990)

Line items _____ of this solicitation are parts or components to be acquired under conditions that require the submission of a commercial pricing certificate. The Offeror shall comply with the clause at FAR 52.215–32, Certification of Commercial Pricing for Parts or Components, and execute and submit a certificate with its offer.

(End of provision)

52.217–5 [Amended]

55. Section 52.217–5 is amended by removing in the title of the provision the date "(JUL 1988)" and inserting in its place the date "(JUL 1990)"; by removing the designation "(a)" from paragraph (a); and by removing paragraph (b).

52.219–18 [Amended]

56. Section 52.219–18 is amended by removing in Alternate III the reference "19.502(b)" and inserting in its place "19.502–2(b)".

57. Section 52.222–2 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place "(JUL 1990)"; by revising paragraph (a) and its asterisked footnote preceding "(End of clause)"; and by removing the derivation line following "(End of clause)" to read as follows:

52.222–2 Payment for Overtime Premiums.

* * * * *

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed *_____ or the overtime premium is paid for work—

* * * * *

*Insert either "zero" or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in subparagraph (a)(1) through (a)(4) of the clause.

§ 52.227–15 [Amended]

58. Section 52.227–15 is amended in the first sentence of paragraph (b) of the clause by removing the words "of this clause" and inserting in their place "of this provision".

52.227–17 [Amended]

59. Section 52.227–17 is amended in the introductory text by removing the reference "27.409(a)(1)(iv)" and inserting in its place "27.409(i)".

52.227–20 [Amended]

60. Section 52.227–20 is amended in paragraph (b)(1)(iv) of the clause by revising the reference "paragraph (g)" to read "paragraph (f)".

61. Section 52.232–12 is amended by adding Alternate V to the clause to read as follows:

52.232–12 Advance Payments.

* * * * *

Alternate V (JUL 1990). If the requirement for a special bank account is eliminated in accordance with 32.409–3 (e) or (g), insert the clause set forth below instead of the basic clause.

If this Alternate is used in combination with *Alternate II*, disregard the instructions concerning paragraph (c), *Use of funds*, in *Alternate II*; substitute paragraph (e), *Maximum payment*, in *Alternate II* for paragraph (d) below; and substitute paragraph (f), *Interest*, in *Alternate II* for paragraph (e) below and change the reference to paragraph (f)(3) in the first sentence of paragraph (f) of *Alternate II* to (e)(3).

If this Alternate is used in combination with *Alternate III*, insert the additional sentence set forth in *Alternate III* as the first sentence of paragraph (d) of this Alternate.

If this Alternate is used in combination with *Alternate IV*, insert the additional sentences set forth in *Alternate IV* as the beginning sentences of paragraph (e) of this Alternate.

Advance Payments Without Special Bank Account (JUL 1990)

(a) *Requirements for payment.* Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the contractor, and approval by the administering office, _____ [*insert the name of the office designated under agency procedures*], or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed $_____. If a letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) *Use of funds.* The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of part 31 of the Federal Acquisition Regulation.

(c) *Repayment to the Government.* At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) of this clause.

(d) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed _____ percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract price of $_____, less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed $_____ [*insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph*]. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(e) *Interest.* (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate in subparagraph (e)(3) of this clause. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge—

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer; and

(iii) Liquidations by deductions from Government payments to the Contractor shall be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation shall be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments. Interest carried

forward shall not be compounded. Interest on advance payments shall cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors, for experimental, developmental, or research work.

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the rate established by the Secretary of the Treasury under Pub. L. 92–41 (50 U.S.C. App., 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rate.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor shall pay the remaining interest to the Government on demand.

(f) *Lien on property under contract.* (1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.

(2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

(4) If, under the termination clause, the Contracting Officer authorizes the contractor to sell or retain termination inventory, the approval shall constitute a release of the Government's lien to the extent that—

(i) The termination inventory is sold or retained; and

(ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(g) *Insurance.* The Contractor represents and warrants that it maintains with responsible insurance carriers (1) insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable worker's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made under the contract have been liquidated, it will maintain this insurance; maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (f) of this clause; and furnish any certificates with respect to its insurance that the administering office may require.

(h) *Default.* (1) If any of the following events occur, the Government may, by written notice to the Contractor, withhold further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to—

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The commission of an act of bankruptcy.

(2) If any of the events described in subparagraph (h)(1) of this clause continue for 30 days after the written notice to the Contractor, the Government may take any of the following additional actions:

(i) Charge interest, in the manner prescribed in paragraph (e) of this clause, on outstanding advance payments during the period of any event described in subparagraph (h)(1) of this clause.

(ii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iii) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.

(3) The Government may take any of the actions described in subparagraphs (h)(1) and (h)(2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(i) *Prohibition against assignment.* Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(j) *Information and access to records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements, and, (2) if requested, other information concerning the operation of the contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(k) *Other security.* The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.

(l) *Representations and warranties.* The Contractor represents and warrants the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has takken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations and warranties shall be continuing and shall be considered to

have been repeated by the submission of each invoice for advance payments.

(m) *Covenants.* To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or Governmental authority, except direct obligations of the United States;

(6) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; accure excess remuneration without first obtaining an agreement subordinating it to all claims of the Government; or employ any person at a rate of compensation over _____ a year.

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor's business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insure by the Federal Deposit Insurance Corporation.

(12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(13) Make or covenant for capital expenditures exceeding $____ in total;

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than ____; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

[List the pertinent obligations]

52.243-7 [Amended]

62. Section 52.243-7 is amended in the first sentence of the introductory text by removing the reference "43.106" and inserting in its place "43.107".

PART 53—FORMS

63. Section 53.209-1 is revised to read as follows:

53.209-1 Responsible prospective contractors.

(a) *SF 1403 (REV. 9/88), Preaward Survey of Prospective Contractor (General).* SF 1403 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(b) *SF 1404 (REV. 9/88), Preaward Survey of Prospective Contractor—Technical.* SF 1404 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(c) *SF 1405 (REV. 9/88), Preaward Survey of Prospective Contractor—Production.* SF 1405 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(d) *SF 1406 (REV. 9/88), Preaward Survey of Prospective Contractor—Quality Assurance.* SF 1406 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(e) *SF 1407 (REV. 9/88), Preaward Survey of Prospective Contractor—Financial Capability.* SF 1407 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(f) *SF 1408 (REV. 9/88), Preaward Survey of Prospective Contractor—Accounting System.* SF 1408 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

64. Section 53.219 is amended by revising the section title; in paragraphs (a) and (b) by removing each date "(REV. 10/83)" and inserting in each place the date "(REV. 1/90)"; and by inserting in paragraph (b) a second sentence to read as follows:

53.219 Small business and small disadvantaged business concerns.

* * * * *

(b) * * * Standard Form 295 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

65. Section 53.228 is amended by revising the section title; in paragraphs (a), (b), (c), and (e) by removing each date "(REV. X/XX)" and inserting in each place the date "(REV. 1/90)"; and by revising paragraphs (f), (g), (m), (n), and (o) to read as follows:

53.228 Bonds and insurance.

* * * * *

(f) *SF 34 (REV. 1/90), Annual Bid Bond.* (See 28.106-1(f).) SF 34 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(g) *SF 35 (REV. 1/90), Annual Performance Bond.* (See 28.106-1.) SF 35 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

* * * * *

(m) *SF 1416 (REV. 1/90), Payment Bond for Other than Construction Contracts.* (See 28.106-1(m).) SF 1416 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(n) *OF 90 (REV. 1/90), Release of Lien on Real Property.* (See 28.106-1(n) and 28.203-5(a).) OF 90 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

(o) *OF 91 (REV. 1/90), Release of Personal Property from Escrow.* (See 28.106-1(o) and 28.203-5(a).) OF 91 is authorized for local reproduction and a copy is furnished for this purpose in part 53 of the looseleaf edition of the FAR.

BILLING CODE 6820-34-M

66. Section 53.301–24 is revised to read as follows:

53.301–24 Bid Bond.

BID BOND (See instructions on reverse)	DATE BOND EXECUTED (Must not be later than bid opening date)	FORM APPROVED OMB NO. 9000–0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION

SURETY(IES) (Name and business address)

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NO.
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	FOR (Construction, Supplies or Services)	

OBLIGATION:

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The Principal has submitted the bid identified above.

THEREFORE:

The above obligation is void if the Principal - (a) upon acceptance by the Government of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the principal; or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Government for any cost of procuring the work which exceeds the amount of the bid.

Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government. Notice to the surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)		
SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

CORPORATE SURETY(IES)					
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

NSN 7540-01-152-8059 EXPIRATION DATE: 12-31-92 24-106 STANDARD FORM 24 (REV. 1-90)
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CORPORATE SURETY(IES) (Continued)					
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when a bid guaranty is required. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____ dollars).

4. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

6. Type the name and title of each person signing this bond in the space provided.

7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

67. Section 53.301–25 is revised to read as follows:

53.301–25 Performance Bonds.

PERFORMANCE BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000–0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS CONTRACT DATE | CONTRACT NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

The above obligation is void if the Principal –

(a)(1) Performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.

(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to the Miller Act, (40 U.S.C. 270a–270e), which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)		
SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	

NSN 7540-01-152-8060 Previous edition not usable EXPIRATION DATE 12-31-92 25-107 STANDARD FORM 25 (REV. 1-90) Prescribed by GSA – FAR (48 CFR) 53.228(b)

CORPORATE SURETY(IES) (Continued)					
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

BOND PREMIUM ▶	RATE PER THOUSAND $	TOTAL $

INSTRUCTIONS

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of the approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

68. Section 53.301–25–A is revised to read as follows:

53.301–25–A Payment Bond.

PAYMENT BOND (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000–0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) (Name(s) and business address(es))	PENAL SUM OF BOND MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS CONTRACT DATE | CONTRACT NO.

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

WITNESS:

The principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)		
SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) (Typed)	1.	2.

CORPORATE SURETY(IES)				
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $
	SIGNATURE(S)	1.	2.	Corporate Seal
	NAME(S) & TITLE(S) (Typed)	1.	2.	

NSN 7540-01-152-8061 EXPIRATION DATE: 12-31-92 25-205 **STANDARD FORM 25–A** (REV. 1-90)
Previous edition not usable Prescribed by GSA – FAR (48 CFR) 53.228(a)

CORPORATE SURETY(IES) (Continued)					
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY C	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY D	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY E	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY F	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY G	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

69. Section 53.301–28 is revised to read as follows:

53.301–28 Affidavit of individual surety.

AFFIDAVIT OF INDIVIDUAL SURETY

(See instructions on reverse)

FORM APPROVED OMB NO. 9000–0001

Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0001), Washington, D.C. 20503.

STATE OF

COUNTY OF SS.

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME (First, Middle, Last) (Type or Print)

2. HOME ADDRESS (Number, Street, City, State, ZIP Code)

3. TYPE AND DURATION OF OCCUPATION

4. NAME AND ADDRESS OF EMPLOYER (If Self-employed, so State)

5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED (If any) (Number, Street, City, State, ZIP Code)

6. TELEPHONE NUMBER
HOME –
BUSINESS –

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:

(a) Real estate (include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment on the property. For market value approach, also provide a current appraisal.)

(b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.

10. SIGNATURE

11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES (Where appropriate)

12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

a. DATE OATH ADMINISTERED (MONTH, DAY, YEAR)

b. CITY AND STATE (Or other jurisdiction)

Official Seal

c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH (Type or print)

d. SIGNATURE

e. MY COMMISSION EXPIRES

NSN 7540–01–152–8063 EXPIRATION DATE 12–31–92 28–108 STANDARD FORM 28 (REV. 1–90)
Previous edition is not usable Prescribed by GSA – FAR (48 CFR) 53.228(e)

INSTRUCTIONS

1. Individual sureties on bonds executed in connection with Government contracts, shall comp ete and submit this form with the bond. (See 48 CFR 28.203, 53.228(e).) The surety shall have the completed form notarized.

2. No corporation, partnership, or other unincorporated associations or firms, as such, are acceptable as individual sureties. Likewise members of a partnership are not acceptable as sureties on bonds which partnership or associations, or any co-partner or member thereof is the principal obligor. However, stockholders of corporate principals are acceptable provided (a) their qualifications are independent of their stockholdings or financial interest therein, and (b) that the fact is expressed in the affidavit of justification. An individual surety will not include any financial interest in assets connected with the principal on the bond which this affidavit supports.

3. United States citizenship is a requirement for individual sureties. However, only a permanent resident of the place of execution of the contract and bond is required for individual sureties in the following locations - any foreign country; the Commonwealth of Puerto Rico; the Virgin Islands; the Canal Zone; Guam; or any other territory or possession of the United States.

4. All signatures on the affidavit submitted must be originals. Affidavits bearing reproduced signatures are not acceptable. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of firm, partnership, or joint venture, or an officer of the corporation involved.

70. Section 53.301–34 is revised to read as follows:

53.301–34 Annual Bid Bond.

ANNUAL BID BOND (See instructions on reverse)	DATE BOND EXECUTED	FORM APPROVED OMB NO. 9000–0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION

SURETY(IES) (Name, business address, and State of incorporation)

AGENCY TO WHICH BIDS ARE TO BE SUBMITTED	BIDS TO BE SUBMITTED DURING FISCAL YEAR ENDING September 30, 19____

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the penal sum or sums that is sufficient to indemnify the Government in case of the default of the Principal as provided herein. For payment of the penal sum or sums, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

The Principal contemplates submitting bids from time to time during the fiscal year shown above to the department or agency named above for furnishing supplies or services to the Government. The Principal desires that all of those bids submitted for opening during the fiscal year be covered by a single bond instead of by a separate bid bond for each bid.

THEREFORE:

The above obligation is void and of no effect if the Principal – (a) upon acceptance by the Government of any such bid within the period specified therein for acceptance (sixty (60) days if no period is specified), executes the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of forms by him; or (b) in the event of failure to execute the further contractual documents and give the bond(s), pays the Government for any cost of acquiring the work which exceeds the amount of the bid.

WITNESS:

The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.

SIGNATURES	NAMES AND TITLES (Typed)	
PRINCIPAL		
1. (Seal)	1.	Corporate Seal
2. (Seal)	2.	
3. (Seal)	3.	
INDIVIDUAL SURETIES		
1. (Seal)	1.	
2. (Seal)	2.	
CORPORATE SURETY		
1.	1.	Corporate Seal
2.	2.	

AUTHORIZED FOR LOCAL REPRODUCTION Previous edition not usable EXPIRATION DATE 12–31–92 34–105 STANDARD FORM 34 (REV. 1–90) Prescribed by GSA – FAR (48 CFR) 53.228(f)

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 24 (Bid Bond). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4 Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

71. Section 53.301–35 is revised to read as follows:

53.301–35 Annual Performance Bond.

ANNUAL PERFORMANCE BOND (See instructions on reverse)	DATE BOND EXECUTED	FORM APPROVED OMB NO. 9000–0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address)	TYPE OF ORGANIZATION ("X" one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) (Name, business address, and State of Incorporation)	PENAL SUM OF BOND MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS FISCAL YEAR ENDING September 30, 19——
AGENCY REPRESENTING THE GOVERNMENT	

OBLIGATION:

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

CONDITIONS:

The Principal contemplates entering into contracts, from time to time during the fiscal year shown above, with the Government department or agency shown above, for furnishing supplies or services to the government. The Principal desires that all of those contracts be covered by one bond instead of by a separate performance bond for each contract.

THEREFORE:

The above obligation is void if the Principal – (a) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all of those contracts entered into during the original term and any extensions granted by the Government with or without notice to the surety(ies) and during the life of any guaranty required under the contracts; and (b) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of those contracts, that subsequently are made. Notice of those modifications to the surety(ies) is waived.

WITNESS:

The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.

SIGNATURES	NAMES AND TITLES (Typed)	
PRINCIPAL		
1. (Seal)	1.	Corporate Seal
2. (Seal)	2.	
3. (Seal)	3.	
INDIVIDUAL SURETIES		
1. (Seal)	1.	
2. (Seal)	2.	
CORPORATE SURETY		
1.	1.	Corporate Seal
2.	2.	

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition not usable

EXPIRATION DATE 12-31-92

35–105

STANDARD FORM 35 (REV. 1–90)
Prescribed by GSA – FAR (48 CFR) 53.228(g)

INSTRUCTIONS

1. This form is authorized for use in the acquisition of supplies and services, excluding construction, in lieu of Standard Form 25 (Performance Bond). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

6. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

72. Section 53.301–119 is revised to read as follows:

53.301–119 Statement of Contingent or Other Fees.

STATEMENT OF CONTINGENT OR OTHER FEES (FOR SOLICITING OR OBTAINING, OR RESULTING FROM AWARD OF A CONTRACT)	FORM APPROVED OMB NUMBER 9000–0003

Public reporting burden for this collection of information is estimated to average .0041 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0003), Washington, D.C. 20503.

1. SOLICITATION NO. (If any)	2. CONTRACT NO. (or other identification)	3. GOVERNMENT CONTRACTING OFFICE

The following information is furnished by the undersigned offeror concerning any company or person employed or retained to solicit or obtain the above identified contract, or concerning any company or person to whom the offeror has paid or agreed to pay any commission, percentage, brokerage, or other fee, contingent upon or resulting from the award of that contract.

4. FULL NAME AND BUSINESS ADDRESS OF SUCH COMPANY OR PERSON (If more than one, identify all) AND INDICATE WHETHER CORPORATION, PARTNERSHIP, INDIVIDUAL, ETC.: (Include ZIP Code(s))

5A. DESCRIBE RELATIONSHIP TO OFFEROR OF THE COMPANY OR PERSON LISTED IN ITEM 4. (For example, is the company or person a sales agent or representative? A purchasing agent or representative? A broker? An employee? A corporate officer or principal?

5B. IF THERE IS A WRITTEN CONTRACT OR AGREEMENT COVERING SUCH RELATIONSHIP, ATTACH A COPY. IF NOT, STATE IN DETAIL THE TERMS OF SUCH ARRANGEMENT. (Include the amount and method of computation of compensation and expenses.)

(IF ADDITIONAL SPACE IS NECESSARY, USE ITEM 11 OR ATTACH A SEPARATE SHEET WHICH ALSO MUST BE SIGNED)

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable

EXPIRATION DATE: 8–31–92

119–106

STANDARD FORM 119 (REV. 1–90)
Prescribed by GSA – FAR (48 CFR) 53.203(a)
FPMR (41 CFR) 101–45.313–5

NOTE: Complete items 6A through 6D only if person listed in item 4 is an employee.

6A. DURATION OF EMPLOYMENT (Dates) FROM	TO	6B. IS THE PERSON ON THE OFFEROR'S PAYROLL FOR PURPOSES OF SOCIAL SECURITY AND FEDERAL INCOME TAX WITHHOLDING? ☐ YES ☐ NO
6C. IS THE PERSON EMPLOYED BY ANY OTHER CONCERN? ☐ YES ☐ NO (If "YES" complete)	CAPACITY	NAME AND ADDRESS OF OTHER CONCERN
6D. DOES THE PERSON REPRESENT ANY OTHER CONCERN? ☐ YES ☐ NO (If "YES" complete)	CAPACITY	NAME AND ADDRESS OF OTHER CONCERN

7. DOES THE COMPANY OR PERSON, LISTED IN ITEM 4 REPRESENT THE OFFEROR ON:	YES (✓)	NO (✓)	E. IF ITEM 7D CHECKED "YES," SPECIFY OFFICES
A. BOTH COMMERCIAL AND GOVERNMENT BUSINESS?			
B. ONLY GOVERNMENT BUSINESS?			
C. ONLY THIS CONTRACT?			
D. CONTRACTS OF PARTICULAR GOVERNMENT ACQUISITION OR SALES OFFICES?			

8. REGARDING THE CONTRACT, ARE THE DUTIES OF THE COMPANY OR PERSON LISTED IN ITEM 4 CONFINED TO SOLICITING, OBTAINING OR ASSISTING IN OBTAINING THE CONTRACT?
☐ YES ☐ NO (If "NO," describe other services included in the company or person's duties)

9. IS THE OFFEROR'S REGULAR PRACTICE TO HAVE AN ARRANGEMENT OF THE TYPE SPECIFIED IN ITEM 8? ☐ YES ☐ NO	10. HOW LONG HAS THE COMPANY OR PERSON SPECIFIED IN ITEM 4: A. BEEN ENGAGED IN THIS TYPE OF WORK (i.e., Sales or Purchasing representative, etc.)?	B. PERFORMED THIS TYPE OF WORK FOR THE OFFEROR?

11. ADDITIONAL COMMENTS (Key comments to item numbers)

IMPORTANT

U.S. Code, Title 18 **(Crimes and Criminal Procedure)** Section 1001 makes it a criminal offense to make willfully false statements or representations on this form or any attachment to it.

12A. OFFEROR (To be signed only by authorized principal, such as corporate officer of offeror, i.e., may not be signed by sales or purchasing agent, etc.)

BY ▶

12B. TITLE	12C. DATE

12D. ADDRESS OF OFFEROR (Include ZIP Code)

STANDARD FORM 119 (REV. 1-90) BACK

73. Section 53.301–294 is revised to read as follows:

53.301–294 Subcontracting Report for Individual Contracts.

SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS
(Whole dollar amounts should be indicated. See instructions on reverse)

FORM APPROVED OMB NUMBER 9000–0006

Public reporting burden for this collection of information is estimated to average 5.73 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0006), Washington, D.C. 20503.

IMPORTANT: DOD contractors—complete all items. Civilian contractors—do not complete shaded items unless required by the agency.	1. REPORTING PERIOD: ☐ OCT 1 – MAR 31 ☐ APR 1 – SEP 30 FY _____	2. TYPE OF REPORT ☐ REGULAR ☐ FINAL ☐ REVISED	3. DATE SUBMITTED 4. REPORT NO.
5. REPORT SUBMITTED AS: ☐ PRIME CONTRACTOR ☐ SUBCONTRACTOR	6. AGENCY OR CONTRACTOR AWARDING CONTRACT (Name, address and ZIP Code)	7. REPORTING CONTRACTOR (Name, address, and ZIP Code)	

8. DATES OF CONTRACT PERIOD OF PERFORMANCE (MM/DD/YY) FROM: TO:	12A. EST. AMT. OF SUBCONTRACT AWDS. UNDER ORIG. CONTRACT $	12B. REV. AMT. OF SUBCONTRACT AWDS. UNDER MOD. CONTRACT (If applicable) $
9. PRIME CONTRACT AND SUBCONTRACT NO. (If applicable)		
10. ADMINISTERING AGENCY (If other than Awarding Agency)		
11A. ORIGINAL CONTRACT AMOUNT $	11B. REVISED CONTRACT AMOUNT (If applicable) $	

13A. ORIGINAL GOALS	DOLLARS	PERCENT
1. SMALL BUSINESS CONCERNS		
2. SMALL DISADV. BUSINESS CONCERNS		
13B. REVISED GOALS (If applicable)		
1. SMALL BUSINESS CONCERNS		
2. SMALL DISADV. BUSINESS CONCERNS		

14. GOAL AMOUNTS IN 13A. AND 13B. ☐ DO INCLUDE INDIRECT COSTS ☐ DO NOT INCLUDE INDIRECT COSTS

SUBCONTRACT AWARDS

DIRECT SUBCONTRACT AWARDS	THIS REPORTING PERIOD		CUMULATIVE (From beginning of Subcontract Plan)	
	DOLLARS	PERCENT	DOLLARS	PERCENT
15A. SMALL BUSINESS CONCERNS (Include Disadv.) ($ amt. and % of 15C.)				
15B. LARGE BUSINESS CONCERNS ($ amt. and % of 15C.)				
15C. TOTAL (Sum of 15A. and 15B.)		100		100
16. SMALL DISADVANTAGED BUSINESS CONCERNS ($ amt. and % of 15C)				

INDIRECT SUBCONTRACT AWARDS	DOLLARS	
	THIS REPORTING PERIOD	CUMULATIVE (From beginning of Subcontract Plan)
17A. SMALL BUSINESS CONCERNS (Not Disadvantaged)		
17B. LARGE BUSINESS CONCERNS		
17C. SMALL DISADVANTAGED BUSINESS CONCERNS		

18. REMARKS (Enter a short narrative explanation if: (a) Small Business or Small Disadvantaged Business accomplishments fall below that which would be expected using a straight line projection of goals through the period of contract performances or (b) either goal is not met if this is the final report.)

19. TYPED NAME AND TITLE OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN	SIGNATURE	TELEPHONE NO. ( )
20. TYPED NAME AND TITLE OF APPROVING OFFICER	SIGNATURE	DATE

NSN 7540–01–152–8078
Previous edition is not usable

EXPIRATION DATE: 8–31–92

294–103

STANDARD FORM 294 (REV. 1–90)
Prescribed by GSA – FAR (48 CFR) 53.219(a)

GENERAL INSTRUCTIONS

1. This form collects subcontract data from Federal contractors and subcontractors that: (a) hold one or more contracts over $500,000 ($1 million for construction); and (b) are required to report subcontract awards to small business (SB) and small disadvantaged business (SDB) concerns under a subcontracting plan pursuant to the Small Business Act of 1958.

2. Reports shall be submitted to the contracting officer semi-annually during the period of contract performance. A separate report is required for each contract at contract completion. This report is due by the 30th day of the month following the close of the reporting periods, in accordance with instructions contained in the contract or subcontract, or as directed by the contracting officer. Reports are required when due, including negative reports (i.e., when there has been no subcontracting activity or there has been no change from the last reporting period).

3. This report should not be submitted by small business concerns.

4. This report is not required for commercial products for which a company-wide annual plan has been approved. The Summary Subcontract Report (SF 295) is required for commercial products in accordance with instructions on that form.

5. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

6. All dollar amounts shall be rounded to the the nearest whole dollar. All percentages shall be rounded to the nearest tenth of one percent.

SPECIFIC INSTRUCTIONS (for items which are not self explanatory)

ITEM 1: Check the appropriate block for the reporting period though which the report is being submitted and enter the Federal fiscal year (October 1 through September 30). Leave blank if this is a final report.

ITEM 2: Check whether report is a regular report or final report and/or is a revision.

ITEM 4: Specify the sequential report covering this contract. The initial report shall be identified as Report Number 1.

ITEM 5: Check whether the reporting contractor is reporting as a Federal Prime contractor or a subcontractor.

ITEM 6: Enter the name and address of the Federal Department or Agency awarding the contract, or the prime contractor awarding the subcontract.

ITEM 7: Enter the name and address of the contractor submitting the report.

ITEM 8: Enter the beginning and projected ending dates of the period of performance of the contract, including priced option periods.

ITEM 10: Identify the Federal agency administering the contract if other than the awarding agency. If DOD is the administering agency, identify the appropriate military department, i.e., Army, Navy, Air Force, or Defense Logistics Agency. This item is not required if reporting as a subcontractor.

ITEM 11A: Enter the total dollar value of the original contract. (State the estimated cost if cost-type contract, price if fixed-price contract, and maximum contract amount if indefinite quantity contract. Include all priced options.)

ITEM 11B: If the dollar value of the original contract has been modified, enter the revised contract amount.

ITEM 12A: Enter the estimated dollar value of subcontracts as set forth in the Subcontracting Plan in the original contract.

ITEM 12B: If the dollar value of the Subcontracting Plan has been modified, enter the revised amount under the modified contract.

ITEM 13A: Enter in the appropriate blocks the dollar amount and percent of the reporting contractor's total planned subcontract awards contractually agreed upon as goals for subcontracting with SB and SDB concerns. NOTE: In 13A(1) the amounts entered should include planned subcontracting with both SB and SDB concerns. In 13A(2) the amounts entered should reflect only planned subcontracting with SDB concerns. (For DOD contracts, include planned subcontract awards to Historically Black Colleges and Universities or Minority Institutions (HBCUs/MIs) in 13A(1) and 13A(2).)

ITEM 13B: If the original goals agreed upon at contract award have been revised as a result of contract modifications, the amounts entered should reflect those revised goals. NOTE: In 13B(1), the amounts should include planned subcontracting with both SB and SDB concerns, if applicable. In 13B(2) the amounts entered should reflect only planned subcontracting with SDB concerns. (For DOD contracts, include planned subcontract awards to HBCUs/MIs in 13B(1) and 13B(2).)

ITEM 14: Check the appropriate block to indicate whether indirect awards are included in the goal amounts entered in items 13A and 13B as specified in the Subcontracting Plan.

ITEM 15A: Enter the dollar amount and percent of subcontracting with SDB concerns, including subcontracting with SDB concerns for this period and cumulatively. This item reflects progress toward Small Business goal accomplishment indicated in items 13A(1) or 13B(1) (if applicable), and includes indirect awards if such costs are included in goal amounts. For DOD contracts include subcontract awards to HBCUs/MIs.

ITEM 15B: Enter the amounts for subcontracting with large business concerns (excluding subcontracts with non-profit, educational institutions, and state/local governments) for this period and cumulatively. Include indirect awards if such costs are included in goal amounts.

ITEM 15C: Total the dollar amounts of items 15A and 15B.

ITEM 16: Enter the dollar amount of subcontracting with SDB concerns only (for DOD include subcontracts with HBCUs and MIs) and the percent that this amount represents of total subcontracting for this period and cumulatively. This item reflects progress toward Small Disadvantaged Business goal accomplishment as indicated in item 13A(2) or 13B(2) (if applicable), and includes indirect awards if such costs are included in goal amounts.

ITEM 17: For DOD activities, if indirect awards are included in goal amounts (as indicated in item 14), enter the dollar amount of indirect subcontracting with SB (including SDB and HBCUs/MIs), Large Business, and SDB concerns (including HBCUs/MIs). These amounts are subsets of items 15A, 15B, and 16, respectively, and represent the portion of goal achievement being accomplished by indirect subcontracting.

ITEM 19: Enter the name, title, signature and telephone number of the reporting contractor's administrator responsible for monitoring the Subcontracting Plan.

ITEM 20: The approving officer shall be the senior official of the company, division, or subdivision (plant or profit center) responsible for contract performance.

DEFINITIONS

1. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the reporting organization calling for supplies or services required for the performance of the original contract or subcontract. Purchases from a corporation, company, or subdivision which is an affiliate of the reporting organization are not considered "subcontracts" and are not to be included in this report.

3. Direct Subcontract Awards are those which are identified with the performance of a specific government contract, including the allocable parts of awards for materials which are to be incorporated into products under more than one Government contract.

4. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

74. Section 53.301-295 is revised to read as follows:

53.301-295 Summary Subcontract Report.

SUMMARY SUBCONTRACT REPORT
(See instructions on reverse)

FORM APPROVED OMB NUMBER 9000-0007

Public reporting burden for this collection of information is estimated to average 16.21 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0007), Washington, D.C. 20503.

IMPORTANT: DOD contractors—complete all items. Civilian contractors—do not complete shaded items unless required by the agency.

1. REPORTING PERIOD (check one):
- A. DOD FEDERAL FY 19___ QUARTER ENDING: ☐ DEC 31 ☐ JUN 30 ☐ MAR 31 ☐ SEP 30
- B. CIVILIAN FEDERAL FY 19___ ☐ ANNUAL (OCT 1 - SEP 30) (except commercial product)
- C. DOD & CIVILIAN FEDERAL FY 19___ ☐ ANNUAL (OCT 1 - SEP 30) (commercial product)

2. TYPE OF REPORT: ☐ REGULAR ☐ FINAL ☐ REVISED

3. CONTRACTING AGENCY

4. ADMINISTERING AGENCY (If different from Item 3)

5. DATE OF LAST GOV. REVIEW

6. REVIEWING AGENCY

7. CONTRACTOR ESTABLISHMENT CODE (If available)

8. REPORT SUBMITTED AS: ☐ PRIME CONTRACTOR ☐ SUBCONTRACTOR ☐ BOTH

9. CORPORATION, COMPANY OR SUBDIVISION COVERED (Name, address, ZIP Code)

10. MAJOR PRODUCTS OR SERVICE LINES

CUMULATIVE FISCAL YEAR SUBCONTRACT AWARDS
(Report in whole dollars)

SUBCONTRACT AWARDS	CURRENT FY (Through Reporting Qtr.)		SAME PERIOD LAST YEAR	
	DOLLARS	PERCENT	DOLLARS	PERCENT
11A. SMALL BUSINESS CONCERNS (Include Disadv.) ($ amt. and % of 11C.)				
11B. LARGE BUSINESS CONCERNS ($ amt. and % of 11C.)				
11C. TOTAL (Sum of 11A. and 11B.)		100		100
12. SMALL DISADVANTAGED BUSINESS CONCERNS ($ amt. and % of 11C.)				
13. WOMEN-OWNED SMALL BUSINESS CONCERNS				
14. LABOR SURPLUS AREA CONCERNS ($ amt. and % of 11C.)				
15. HIST. BLACK COLLEGES & UNIV/MINORITY INST.				

16. REMARKS (Enter a short narrative explanation if: (a) zero is entered in Blocks 11A or 12 for the current fiscal year, (b) the percent entry in Block 11A for current fiscal year is more than 5 percentage points below the percent reported for the same period last year, or (c) the percent entry in Block 12 for the current fiscal year is lower than the percent reported for the same period last year.)

SUBCONTRACT GOAL ACHIEVEMENT
(Report in whole dollars)

CONTRACTS			NO. OF CONTRACTS WITH GOALS	TOTAL $ VALUE OF SUBCONTRACTS AWARDED	$ VALUE OF SUBCONTRACT GOALS	ACTUAL GOAL ACHIEVEMENT	
						DOLLARS	PERCENT
17. CONTRACTS WITH SMALL BUSINESS SUBCONTRACT GOALS	A. ACTIVE CONTRACTS						
	B. CONTRACTS COMPLETED THIS QTR.	(1) WHICH MET GOALS					
		(2) NOT MEETING GOALS					
18. CONTRACTS WITH SMALL DISADV. BUSINESS SUB-CONTRACT GOALS	A. ACTIVE CONTRACTS						
	B. CONTRACTS COMPLETED THIS QTR.	(1) WHICH MET GOALS					
		(2) NOT MEETING GOALS					

19. NAME AND TITLE OF LIAISON OFFICER | SIGNATURE | DATE | TELEPHONE NO. ( )

20. NAME AND TITLE OF THE APPROVING OFFICER | SIGNATURE | DATE

AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is not usable EXPIRATION DATE: 9-30-92 295-102 STANDARD FORM 295 (REV. 1-90) Prescribed by GSA - FAR (48 CFR) 53.219(b)

GENERAL INSTRUCTIONS

1. This form collects subcontract data from Federal contractors and subcontractors that: (a) hold one or more contracts over $500,000 ($1 million for construction); and (b) are required to report subcontract awards to Small Business (SB) and Small Disadvantaged Business Concerns (SDB) under a subcontracting plan and to report subcontract awards to Women-Owned Small Business Concerns (WOSB) pursuant to the Small Business Act of 1958.

2. This report may be submitted on a corporate, company, or subdivision (e.g., plant or division operating as a separate profit center) basis, unless otherwise directed by the agency awarding the contract. However, after submission of the first report on this form, the reporting organization shall submit succeeding reports on the same basis.

3. If a reporting organization is performing work for more than one Federal agency, a separate report shall be submitted to each agency covering only that agency's contracts, provided at least one of that agency's contracts is over $500,000 ($1 million for construction) and contains a subcontracting plan. (See special instructions for commercial products plans.)

4. For DOD activities, reports shall be submitted quarterly, except that, for contracts covered by an approved company-wide subcontracting plan for commercial products, reports shall be submitted annually. Reports are due 30 days after the close of each reporting period. For civilian agencies, reports shall be submitted annually. For civilian agencies, reports are due 30 days after the close of the fiscal year (September 30). See special instructions for commercial products plans below.

5. All dollar amounts shall be rounded to the nearest whole dollar. All percentages shall be rounded to the nearest tenth of one percent.

6. Only subcontracts involving performance within the U.S., its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands should be included in this report.

7. Subcontract award data reported on this form shall be limited to awards made by the reporting organization to its immediate subcontractors. Reporting organizations may not take credit for awards made by lower tier subcontractors.

SPECIFIC INSTRUCTIONS

ITEM 2: Check whether report is a regular report or final report and/or revision. Final report should be checked only if contractor has completed all Government contracts containing subcontracting plans.

ITEM 3: If reporting as a "Prime Contractor" or "Both" in Item 8, identify the agency (e.g., DOD, HUD, GSA, etc.) which awarded the prime contract(s) to the reporting organization. If reporting as a "Subcontractor" in Item 8, identify the department or agency responsible for the prime contract award(s) which resulted in the largest dollar value subcontract of those subcontracts reflected in this report.

ITEM 4: Identify the department or agency performing contract administration over the reporting organization (if different from Item 3). For DOD contracts enter the military department or agency which has responsibility for the subcontracting program of the reporting entity (i.e., Army, Navy, Air Force, or Defense Logistics Agency), not the "Office of the Deputy Secretary of Defense."

ITEMS 5 & 6: Enter the date of the last formal surveillance review conducted by the cognizant department or agency Small and Disadvantaged Business Specialist or other review personnel. For DOD also identify the military department or Defense Contract Administration Service that conducted the review. In those cases where the Small Business Administration conducted its own review, enter "SBA" and the date.

ITEM 7: Enter the nine position number assigned by Dun & Bradstreet that identifies the contractor establishment, if available.

ITEM 8: Check whether the reporting organization is reporting as a Federal prime contractor or a subcontractor or both.

ITEM 9: Enter the name and address of the reporting organization, corporation, company, or subdivision thereof which is covered by the data submitted.

ITEM 10: Identify the major product or service lines of the reporting organization.

ITEMS 11 & 12: These entries include all subcontract awards, both those made under contracts with plans and goals and those made under contracts which do not have plans and goals. Amounts reported include both direct awards and an appropriate prorated portion of indirect awards. Base the indirect portion on the percentage of work being performed for the organization to which the report is being submitted (shown in Item 3) in relation to other work being performed by the reporting organization. Do not include awards made in support of commercial business being performed by the reporting entity. For DOD activities, report on a quarterly cumulative basis until the end of the fiscal year (September 30) and begin a new quarterly reporting cycle each October 1.

ITEM 11A: Report all subcontract awards to SBs (including subcontracts with SDBs and WOSBs) regardless of dollar value, made by the reporting orgainzation under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. (For DOD contracts, include subcontracting awards to Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs)).

ITEM 11B: Report all subcontract awards to large business, regardless of dollar value, made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. For DOD contracts exclude subcontracting awards to HBCUs and MIs.

ITEM 12: Report all subcontract awards to SDBs (including Women-Owned SDBs) regardless of dollar value, made by the reporting organization under all Federal prime contracts awarded by the contracting agency shown in Item 3, and/or under all subcontracts under prime contracts, if reporting as a subcontractor. For DOD contracts include subcontract awards to HBCUs and MIs.

ITEM 13: Report all subcontract awards to WOSBs. This amount is a subset of Item 11A.

ITEM 14: Show dollar amount of subcontracts valued over $25,000 placed with labor surplus area (LSA) concerns (i.e., those that will perform substantially in labor surplus areas). Prime contractors are also encouraged to include awards valued less than $25,000 if such additional reporting does not impose a burden on the contractor. LSAs are identified in the Department of Labor publication "Area Trends in Employment and Unemployment" which can be obtained from the Federal agency contracting officer or by writing to Employment and Training Administration, (Attn: TPPL), Department of Labor, 601 "D" Street, Washington, D.C. 20213.

ITEM 15: For DOD, enter the dollar value of all subcontracts with HBCUs/MIs. This is a subset of awards to SDBs (Item 12).

ITEMS 17 & 18: For each item (as applicable), enter the number of prime and subcontracts valued over $500,000 ($1 million for construction) which have goals, the dollar value of all subcontracts awarded to date under these contracts, the dollar value of subcontract goals as set forth in subcontracting plan, and, for completed contracts, your actual goal achievement expressed in dollars and percent of goal. The percentage of actual goal achievement is determined by dividing the amount of dollars shown in the column entitled "Actual Goal Achievement" by the dollars shown in the column entitled "$ Value of Subcontract Goals." Information presented in this section represents subcontract awards from the inception of the contract(s) and is not restricted to this fiscal year. The percentages reported in Item 16B(1) and 17B(1) will always be 100 or more and the percentages reported in Items 16B(2) and 17B(2) will always be less than 100.

ITEM 19: The liason officer shall be the reporting contractor's official responsible for administering the subcontracting program.

ITEM 20: The approving officer shall be the chief executive officer or in the case of a separate division or plant, the senior individual responsible for overall division plant operations.

SPECIAL INSTRUCTIONS FOR COMMERCIAL PRODUCTS PLANS

1. Reporting organizations that have an approved company-wide annual subcontracting plan for commercial products shall submit this report annually as of September 30 each year.

2. The annual report shall include all subcontracting activity under commercial products plans in effect during the Government fiscal year and shall be submitted in addition to required reports for other than commercial products, if any.

3. Enter in Items 11 and 12 the total of all subcontract awards under the reporting organization's commercial products plans. Show in Item 16 or in an attachment, the percentage of this total attributable to each agency from which contracts for such commercial products were received. Send a copy of this report to each agency on that listing.

4. Do not complete Items 17 and 18.

DEFINITIONS

1. Commercial Products means products sold in substantial quantities to the general public and/or industry at established catalog or market prices.

2. Subcontract means a contract, purchase order, amendment, or other legal obligation executed by the reporting organization calling for supplies or services required for the performance of the original contract or subcontract. Purchases from a corporation, company, or subdivision which is an affiliate of the reporting organization are not considered "subcontracts" and are not to be included in this report.

3. Direct Subcontract Awards are those which are identified with the performance of a specific government contract, including allocable parts of awards for materials which are to be incorporated into products under more than one Government contract.

4. Indirect Subcontract Awards are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts, these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

SUBMITTAL ADDRESSES

FOR DOD CONTRACTORS:
Prepare a consolidated report for all contracts awarded by military department/agencies for the Department of Defense (DOD) and/or subcontracts awarded by DOD prime contractors (i.e., do not segregate subcontract data by DOD component). DOD contractors involved in construction and related maintenance and repair, however, shall prepare separate reports for each DOD component, segregating subcontract data accordingly. All contractors shall distribute the original and copies as follows:
(1) The original of each report directly to the office listed below whose military activity is responsible for the administration of the majority of the organization's DOD contracts/subcontracts. Contractors involved in construction and related maintenance shall submit separate, unique reports to each DOD component which administers their DOD contracts:
ARMY - Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Washington, D.C. 20310-0106
NAVY - Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, D.C. 20360-5000
AIR FORCE - Director of Small and Disadvantaged Business Utilization, Office of the Secretary of the Air Force, Washington, D.C. 20330-1000
DLA - Staff Director of Small and Disadvantaged Business Utilization, HQ Defense Logistics Agency (DLA-U) Cameron Station, Alexandria, VA 22304-6100
(2) A copy of each report directly to the Office of the Deputy Secretary of Defense, Attention: Director of Small and Disadvantaged Business Utilization, the Pentagon, Washington, D.C. 20301-3061
(3) A copy to the cognizant contract administration office.

FOR CIVILIAN AGENCY CONTRACTORS:
NASA - Forward reports to NASA - Office of Procurement (HM), Washington, D.C. 20546
DOE - Forward reports to DOE - Office of Small and Disadvantaged Business Utilization, Washington, D.C. 20585

OTHER FEDERAL DEPARTMENTS OR AGENCIES - Forward reports to the Department or Agency Director of Small and Disadvantaged Business Utilization or as otherwise provided for in instructions issued by the Department or Agency.

75. Section 53.301–1403 is revised to read as follows:

53.301–1403 Preaward Survey of Prospective Contractor (General).

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR (GENERAL)

1. SERIAL NO. (For surveying activity use)

FORM APPROVED OMB NO. 9000–0011

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0011), Washington, D.C. 20503.

SECTION I – REQUEST (For Completion by Contracting Office)

2. NAME AND ADDRESS OF SURVEYING ACTIVITY

3. SOLICITATION NO.

4. TOTAL OFFERED PRICE $

5. TYPE OF CONTRACT

6A. NAME AND ADDRESS OF SECONDARY SURVEY ACTIVITY (For surveying activity use)

7A. NAME AND ADDRESS PROSPECTIVE CONTRACTOR

6B. TELEPHONE NO. (Include AUTOVON, WATS or FTS, if available)

7B. FIRM'S CONTACT

7C. TELEPHONE NO. (with area code)

8. WILL CONTRACTING OFFICE PARTICIPATE IN SURVEY?
☐ YES ☐ NO

13. NAME AND ADDRESS OF PARENT COMPANY (If applicable)

9. DATE OF THIS REQUEST

10. DATE REPORT REQUIRED

11. PROSPECTIVE CONTRACTOR REPRESENTS THAT IT ☐ IS, ☐ IS NOT A SMALL BUSINESS CONCERN.

12. WALSH–HEALEY CONTRACTS ACT (Check applicable boxes))
☐ A. IS NOT APPLICABLE
☐ B. IS APPLICABLE AND PROSPECTIVE CONTRACTOR REPRESENTS HIS CLASSIFICATON AS:
☐ MANUFACTURER ☐ REGULAR DEALER
☐ OTHER (Specify)

14A. PLANT AND LOCATION (If different from Item 7, above)

15A. NAME OF REQUESTING ACTIVITY CONTRACTING OFFICER

14B. POINT OF CONTACT

14C. TELEPHONE NO. (with area code)

15B. SIGNATURE

16A. NAME OF CONTACT POINT AT REQUESTING ACTIVITY (If different from Item 15A)

15C. TELEPHONE NO. (Include AUTOVON, WATS or FTS, if available)

17. RETURN PREAWARD SURVEY TO THIS ADDRESS:

ATTN:

16B. TELEPHONE NO. (Include AUTOVON, WATS or FTS, if available)

SECTION II – DATA (For Completion by Contracting Office)

18A. ITEM NO.	18B. NATIONAL STOCK NUMBER (NSN) AND NOMENCLATURE		18C. TOTAL QUANTITY	18D. UNIT PRICE	18E. DELIVERY SCHEDULE (a)	(b)	(c)	(d)	(e)
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					
		SOLICITED							
		OFFERED		$					

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is usable.

EXPIRATION DATE: 9–30–91

1403–103

STANDARD FORM 1403 (REV. 9–88)
Prescribed by GSA – FAR (48 CFR) 53.209–1(a)

SECTION III – FACTORS TO BE INVESTIGATED

19. MAJOR FACTORS	CHK. (a)	SAT. (b)	UN-SAT. (c)	20. OTHER FACTORS (Provide specific requirements in Remarks)	CHK. (a)	SAT. (b)	UN-SAT. (c)
A. TECHNICAL CAPABILITY				A. GOVERNMENT PROPERTY CONTROL			
B. PRODUCTION CAPABILITY				B. TRANSPORTATION			
C. QUALITY ASSURANCE CAPABILITY				C. PACKAGING			
D. FINANCIAL CAPABILITY				D. SECURITY			
E. ACCOUNTING SYSTEM				E. SAFETY			
21. IS THIS A SHORT FORM PREAWARD REPORT? (For completion by surveying activity)				F. ENVIRONMENTAL/ENERGY CONSIDERATIONS			
				G. FLIGHT OPERATIONS/FLIGHT SAFETY			
☐ YES ☐ NO				H. OTHER (Specify)			
22. IS A FINANCIAL ASSISTANCE PAYMENT PROVISION IN THE SOLICITATION? (For completion by contracting activity)							
☐ YES ☐ NO							

23. REMARKS (For Contracting Activity Use)

SECTION IV – SURVEYING ACTIVITY RECOMMENDATIONS

24. RECOMMEND	25A. NAME AND TITLE OF SURVEY APPROVING OFFICIAL	25B. TELEPHONE NO.
☐ A. COMPLETE AWARD ☐ B. PARTIAL AWARD (Quantity_____) ☐ C. NO AWARD	25C. SIGNATURE	25D. DATE

STANDARD FORM 1403 (REV. 9-88) BACK

76. Section 53.301–1404 is revised to read as follows:

53.301–1404 Preaward Survey of Prospective Contractor-Technical.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR TECHNICAL	SERIAL NO. (For surveying activity use)	FORM APPROVED OMB NO. 9000–0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0011), Washington, D.C. 20503.

1. RECOMMENDED

☐ a. COMPLETE AWARD ☐ b. PARTIAL AWARD (Quantity: _____) ☐ c. NO AWARD

2. NARRATIVE (Include the following information concerning key personnel who will be involved with the prospective contract: (1) Names, qualifications/experience and length of affiliation with prospective contractor; (2) Evaluate technical capabilities with respect to the requirements of the proposed contract or item classification; (3) Description of any technical capabilities which the prospective contractor lacks. Comment on the prospective contractor's efforts to obtain the needed technical capabilities.)

IF CONTINUATION SHEETS ATTACHED – MARK HERE ☐

3. FIRM HAS AND/OR UNDERSTANDS (Give explanation for any items marked "NO" in 2. narrative)

a. SPECIFICATIONS	☐ YES ☐ NO	b. EXHIBITS	☐ YES ☐ NO
c. DRAWINGS	☐ YES ☐ NO	d. TECHNICAL DATA REQUIREMENTS	☐ YES ☐ NO

4. SURVEY MADE BY	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
5. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is usable. EXPIRATION DATE: 9–30–91 1404–103 STANDARD FORM 1404 (REV. 9–88) Prescribed by GSA – FAR (48 CFR) 53.209–1(b)

77. Section 53.301–1405 is revised to read as follows:

53.301–1405 Preaward Survey of Prospective Contractor-Production.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR PRODUCTION	SERIAL NO. (For surveying activity use)	FORM APPROVED OMB NO. 9000–0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0011), Washington, D.C. 20503.

SECTION I – RECOMMENDATION

1. RECOMMENDED

☐ a. COMPLETE AWARD ☐ b. PARTIAL AWARD (Quantity: _____) ☐ c. NO AWARD

2. NARRATIVE (Cite those sections of this report which substantiate the recommendations. List any other backup information in this space or on attached sheet if necessary. Identify any formal systems reviews and state results.)

IF CONTINUATION SHEETS ATTACHED – MARK HERE ☐

	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
3. SURVEY MADE BY			
4. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is usable. EXPIRATION DATE: 9–30–91 1405–103 STANDARD FORM 1405 (REV. 9–88) Prescribed by GSA – FAR (48 CFR) 53.209–1(d)

SECTION II – PLANT FACILITIES

1. SIZE OF TRACT		4. DESCRIPTION AND TYPE OF BUILDING(S) ☐ OWNED ☐ LEASED (Give expiration date)
2. SQUARE FEET UNDER ROOF	3. NO. OF BUILDINGS	

5. SPACE					6. MISCELLANEOUS PLANT OBSERVATIONS		
	TYPE	SQUARE FEET	ADEQUATE	INADEQUATE	(Explain any items marked "NO" on an attached sheet.)	YES	NO
MANUFACTURING	a. TOTAL MANUFACTURING SPACE				a. GOOD HOUSEKEEPING MAINTAINED		
	b. SPACE AVAILABLE FOR OFFERED ITEM				b. POWER AND FUEL SUPPLY ADEQUATE TO MEET PRODUCTION REQUIREMENTS		
					c. ALTERNATE POWER AND FUEL SOURCE AVAILABLE		
STORAGE	c. TOTAL STORAGE SPACE				d. ADEQUATE MATERIAL HANDLING EQUIPMENT AVAILABLE		
	d. FOR INSPECTION LOTS				e. TRANSPORTATION FACILITIES AVAILABLE FOR SHIPPING PRODUCT		
	e. FOR SHIPPING QUANTITIES						
	f. SPACE AVAILABLE FOR OFFERED ITEM				OTHER (Specify) f.		
					g.		
	g. AMOUNT OF STORAGE THAT CAN BE CONVERTED FOR MANUFACTURING, IF REQUIRED				h.		

SECTION III – PRODUCTION EQUIPMENT

	LIST MAJOR EQUIPMENT REQUIRED (Include GFP and annotate it as such) (a)	QUANTITY REQUIRED FOR PROPOSED CONTRACT (b)	TOTAL QTY. REQD. DURING LIFE OF PROPOSED CONTRACT (c)	QUANTITY ON HAND (d)	CONDITION (e) G	F	P	QUANTITY SHORT* (Col. (c) minus (d)) (f)	SOURCE, IF NOT ON HAND (g)	VERIFIED DELIVERY DATE (h)
1. MANUFACTURING										
2. SPECIAL TOOLING										
3. SPECIAL TEST										

* Coordinate shortage information for financial implications.

SECTION IV – MATERIALS, PURCHASED PARTS AND SUBCONTRACTS

1. PARTS/MATERIALS/SUBCONTRACTS WITH LONGEST LEAD TIME OR CRUCIAL ITEMS

DESCRIPTION (a)	SOURCE (b)	VERIFIED DELIVERY DATE TO MEET PROD. (c)

2. DESCRIBE THE MATERIAL CONTROL SYSTEM, INDICATING WHETHER IT IS CURRENTLY OPERATIONAL, AND EVALUATE ITS ABILITY TO MEET THE NEEDS OF THE PROPOSED ACQUISITION.

SECTION V – PERSONNEL

1. NUMBER AND SOURCE OF EMPLOYEES

TYPE OF EMPLOYEES	NO. ON BOARD	ADD. NO. REQUIRED	AVAIL. YES	AVAIL. NO	SOURCE
a. Skilled Production					
b. Unskilled Production					
c. Engineering					
d. Administrative					
e. TOT. (Lines a thru d)					

2. SHIFTS ON WHICH WORK IS TO BE PERFORMED

☐ FIRST ☐ SECOND ☐ THIRD

3. UNION AFFILIATION

AGREEMENT EXPIRATION DATE ▶

4. RELATIONSHIP WITH LABOR INDICATES PROBLEMS AFFECTING TIMELY PERFORMANCE OF PROPOSED CONTRACT (If "Yes," explain on attached sheet)

☐ YES ☐ NO

SECTION VI – DELIVERY PERFORMANCE RECORD

SECTION VII – RELATED PREVIOUS PRODUCTION (Government)

PAST YEAR PRODUCTION		GOVERNMENT CONTRACT NUMBER 1/	PERFORMANCE		QUANTITY	DOLLAR VALUE ($000)
ITEM NOMENCLATURE (a)	NATIONAL STOCK NO. (NSN) (b)	(c)	ON SCHED. (d)	DELIN-QUENT (e)	(f)	(g)

1/ Identify identical items by an asterisk (*) after the Government contract number.

SECTION VIII – CURRENT PRODUCTION

(Government and civilian concurrent production schedule using same equipment and/or personnel as offered item.)

	ITEM(S) (Include Government Contract No., if applicable. Identify unsatisfactory performance with asterisk (*))	MONTHLY SCHEDULE OF CONCURRENT DELIVERIES (Quantity)										
		1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	BAL.
BEING PRODUCED	1.											
PENDING AWARD	2.											

SECTION IX – ORGANIZATION AND MANAGEMENT DATA

Provide the following information in SECTION I NARRATIVE:

1. Describe the relationship between management, production, and inspection. Attach an organizational chart, if available.

2. Describe the prospective contractor's production control system. State whether or not it is operational.

3. Evaluate the prospective contractor's production control system in terms of (a) historical effectiveness, (b) the proposed contract, and (c) total production during performance of the proposed contract.

4. Comment on or evaluate other areas unique to this survey (include all special requests by the contracting office and any other information pertinent to the proposed contract or item classification).

78. Section 53.301–1406 is revised to read as follows:

53.301–1406 Preaward Survey of Prospective Contractor-Quality Assurance.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR QUALITY ASSURANCE	SERIAL NO. (For surveying activity use)	FORM APPROVED OMB NO. 9000–0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0011), Washington, D.C. 20503.

SECTION I – RECOMMENDATION

1. RECOMMEND: ☐ AWARD ☐ NO AWARD (Provide full substantiation for recommendation in 4. NARRATIVE)

2. IF PROSPECTIVE CONTRACTOR RECEIVES AWARD, A POST AWARD CONFERENCE, IS RECOMMENDED. ☐ YES ☐ NO

3. AN ON-SITE SURVEY WAS PERFORMED. ☐ YES ☐ NO

4. NARRATIVE

IF CONTINUATION SHEETS – MARK HERE ☐

	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
5. SURVEY MADE BY			
6. SURVEY REVIEWING OFFICIAL	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE REVIEWED

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SECTION II – COMPANY AND SOLICITATION DATA

1. QUALITY ASSURANCE ORGANIZATION (Describe briefly and attach organization chart.)

2. QUALITY ASSURANCE OFFICIALS CONTACTED (Names, titles, and years of quality assurance experience)

3. QUALITY, RELIABILITY, MAINTAINABILITY REQUIREMENTS WHICH APPLY					
	☐ MIL-I-45208	☐ MIL-STD-45662	☐ OTHER (Specify)		
	☐ MIL-I-45607	☐ MIL-STD-785			
	☐ MIL-Q-9858	☐ MIL-STD-470	☐ MIL-S-52779		

4. ☐ IDENTICAL OR ☐ SIMILAR ITEMS HAVE BEEN ☐ PRODUCED ☐ SERVICED BY PROSPECTIVE CONTRACTOR

(If similar items, identify:)

SECTION III – EVALUATION CHECKLIST

STATEMENTS		YES	NO
1. AS PERTAINS TO THE CONTRACT, THESE ITEMS ARE UNDERSTOOD BY THE CONTRACTOR	a. Exhibits, technical data, drawings, specifications, and approval requirements.		
	b. Preservation, packaging, packing, and marking requirements.		
	c. OTHER (Specify)		
2. Records available indicate that the prospective contractor has a satisfactory quality performance record during the past twelve (12) months for similar items.			
3. Used or reconditioned material and former Government surplus material will be furnished by the prospective contractor. (If Yes, explain in Section I NARRATIVE)			
4. Prospective contractor will require unusual assistance from the Government.			
5. Did prospective contractor fulfill commitments to correct deficiencies, as proposed on previous surveys, when awarded that contract?			
6. Quality control, inspection, and test personnel.	NUMBER SKILLED / NUMBER SEMI-SKILLED		
7. Inspection to production personnel ratio.	RATIO		
The following are available and adequate. (If not applicable, show "N/A" in "Yes" column.)			
8. Inspection and test equipment, gauges, and instruments for first article and production (including solicitation specified equipment).			
9. Calibration/metrology program.			
10. Written procedures and instructions for inspections, tests, process controls, and other requirements; conformance thereto; in conjunction with other planning control functions.			
11. Control of specifications, drawings, changes and modifications, work/process instructions.			
12. Quality assurance/control organizational structure.			
13. System for determining inspection, test, and measurement requirements.			
14. Controls for selecting qualified suppliers and assuring the quality of purchased materials.			
15. Material control: identification, segregation, maintenance, preservation, and correction of defects.			
16. Government furnished property controls.			
17. In-process inspection controls.			
18. System for timely identification and correction of deficiencies to prevent recurrence.			
19. Preservation, packaging, packing, marking controls.			
20. Quality control records (such as: inspection, test, corrective actions, calibration, etc.)			
21. Controls for investigation of customer complaints and correction of deficiencies.			
22. Reliability and/or maintainability program.			
23. Computer software (deliverable and/or non-deliverable) quality assurance program.			

STANDARD FORM 1406 (REV. 9-88) BACK

79. Section 53.301–1407 is revised to read as follows:

53.301–1407 Preaward Survey of Prospective Contractor-Financial Capability.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR FINANCIAL CAPABILITY	SERIAL NO. (For surveying activity use)	FORM APPROVED OMB NO. 9000–0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0011), Washington, D.C. 20503.

SECTION I – RECOMMENDATION

1. RECOMMENDED

☐ a. COMPLETE AWARD ☐ b. PARTIAL AWARD (Quantity: _____) ☐ c. NO AWARD

2. TOTAL OFFERED PRICE

3. NARRATIVE (Cite those sections of the report which substantiate the recommendation. Give any other backup information in this space or on an additional sheet, if necessary.)

IF CONTINUATION SHEETS ATTACHED – MARK HERE ☐

	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
4. SURVEY MADE BY			
5. SURVEY REVIEWING OFFICIAL			

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SECTION II – GENERAL

1. TYPE OF COMPANY

☐ CORPORATION ☐ PARTNERSHIP

☐ SUBSIDIARY ☐ DIVISION

☐ PROPRIETORSHIP ☐ OTHER (Specify)

2. YEAR ESTABLISHED:

3. NAME AND ADDRESS OF:

a. PARENT CO.

b. SUBSIDIARIES

SECTION III – BALANCE SHEET/PROFIT AND LOSS STATEMENT

PART A – LATEST BALANCE SHEET

1. DATE	2. FILED WITH

3. FINANCIAL POSITION

	$
a. Cash	
b. Accounts Receivable	
c. Inventory	
d. Other Current Assets	
e. Total Current Assets	
f. Fixed Assets	
g. Current Liabilities	
h. Long Term Liabilities	
i. Total Liabilities	
j. Net Worth	

4. WORKING CAPITAL (Current Assets less Current Liabilities)

5. RATIOS

a. CURRENT ASSETS TO CURRENT LIABILITIES	b. ACID TEST (Cash, temporary investments held in lieu of cash and current receivables to current liabilities)	c. TOTAL LIABILITIES TO NET WORTH

PART B – LATEST PROFIT AND LOSS STATEMENT

1. CURRENT PERIOD a. FROM	1. CURRENT PERIOD b. TO	2. FILED WITH

		$
3. NET SALES	a. CURRENT PERIOD	
	b. First prior fiscal year	
	c. Second prior fiscal year	
4. NET PROFITS BEFORE TAXES	a. CURRENT PERIOD	
	b. First prior fiscal year	
	c. Second prior fiscal year	

PART C – OTHER

1. FISCAL YEAR ENDS (Date):

2. BALANCE SHEETS AND PROFIT AND LOSS STATEMENTS HAVE BEEN CERTIFIED ▶ a. THROUGH (Date) b. BY (Signature)

3. OTHER PERTINENT DATA

SECTION IV – PROSPECTIVE CONTRACTOR'S FINANCIAL ARRANGEMENTS

Mark "X" in appropriate column.	YES	NO
1. USE OF OWN RESOURCES		
2. USE OF BANK CREDITS		
3. OTHER (Specify)		

4. INDEPENDENT ANALYSIS OF FINANCIAL POSITION SUPPORTS THE STATEMENTS SHOWN IN ITEMS 1, 2, AND 3 ☐ YES ☐ NO (If "NO", explain)

SECTION V – GOVERNMENT FINANCIAL AID

1. TO BE REQUESTED IN CONNECTION WITH PERFORMANCE OF PROPOSED CONTRACT

Mark "X" in appropriate column.	YES	NO
a. PROGRESS PAYMENT(S)		
b. GUARANTEED LOAN		
c. ADVANCE PAYMENTS		

2. EXPLAIN ANY "YES" ANSWERS TO ITEMS 1a, b, AND c

3. FINANCIAL AID CURRENTLY OBTAINED FROM THE GOVERNMENT

a. PROSPECTIVE CONTRACTOR RECEIVES GOVERNMENT FINANCING AT PRESENT	b. IS LIQUIDATION CURRENT?	c. AMOUNT OF UNLIQUIDATED PROGRESS PAYMENTS OUTSTANDING
☐ YES ☐ NO	☐ YES ☐ NO	$

Complete items below only if item a., is marked "YES."

DOLLAR AMOUNTS	(a) AUTHORIZED	(b) IN USE
a. Guaranteed loans	$	$
b. Advance payments	$	$

4. LIST THE GOVERNMENT AGENCIES INVOLVED	5. SHOW THE APPLICABLE CONTRACT NOS.

SECTION VI – BUSINESS AND FINANCIAL REPUTATION

1. COMMENTS OF PROSPECTIVE CONTRACTOR'S BANK

2. COMMENTS OF TRADE CREDITORS

3. COMMENTS AND REPORTS OF COMMERCIAL FINANCIAL SERVICES AND CREDIT ORGANIZATIONS (Such as, Dun & Bradstreet, Standard and Poor, etc.)

4. MOST RECENT CREDIT RATING ▶	a. DATE	b. BY

5. DOES PRICE APPEAR UNREALISTICALLY LOW? ☐ YES ☐ NO (If YES, explain in Section I NARRATIVE)

6. DESCRIBE ANY OUTSTANDING LIENS OR JUDGEMENTS

SECTION VII – SALES (000'S) FOR NEXT SIX QUARTERS

CATEGORY	1	2	3	4	5	6	TOTAL
1. CURRENT CONTRACT SALES (Backlog)	$	$	$	$	$	$	$
A. GOVERNMENT (Prime & Subcontractor)							
B. COMMERCIAL							
2. ANTICIPATED ADDITIONAL SALES							
A. GOVERNMENT (Prime and Subcontractor)							
B. COMMERCIAL							
3. TOTALS							

80. Section 53.301–1408 is revised to read as follows:

53.301–1408 Preaward Survey of Prospective Contractor-Production.

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR ACCOUNTING SYSTEM	SERIAL NO. (For surveying activity use)	FORM APPROVED OMB NO. 9000–0011
	PROSPECTIVE CONTRACTOR	

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition and Regulatory Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000–0011), Washington, D.C. 20503.

SECTION I – RECOMMENDATION

1. PROSPECTIVE CONTRACTOR'S ACCOUNTING SYSTEM IS ACCEPTABLE FOR AWARD OF PROSPECTIVE CONTRACT

☐ YES ☐ NO (Explain in 2. NARRATIVE)

☐ YES, WITH A RECOMMENDATION THAT A FOLLOW ON ACCOUNTING SYSTEM REVIEW BE PERFORMED AFTER CONTRACT AWARD (Explain in 2. NARRATIVE)

2. NARRATIVE (Clarification of deficiencies, and other pertinent comments. If additional space is required, continue on plain sheets of paper.)

IF CONTINUATION SHEETS ATTACHED – MARK HERE ☐

	a. SIGNATURE AND OFFICE (Include typed or printed name)	b. TELEPHONE NO. (Include area code)	c. DATE SIGNED
3. SURVEY MADE BY			
4. SURVEY REVIEWING OFFICIAL			

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SECTION II – EVALUATION CHECKLIST			
MARK "X" IN THE APPROPRIATE COLUMN (Explain any deficiencies in SECTION I NARRATIVE)	YES	NO	NOT APPLI-CABLE
1. EXCEPT AS STATED IN SECTION I NARRATIVE, IS THE ACCOUNTING SYSTEM IN ACCORD WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES APPLICABLE IN THE CIRCUMSTANCES?			
2. ACCOUNTING SYSTEM PROVIDES FOR:			
a. Proper segregation of direct costs from indirect costs.			
b. Identification and accumulation of direct costs by contract.			
c. A logical and consistent method for the allocation of indirect costs to intermediate and final cost objectives. (A contract is a final cost objective.)			
d. Accumulation of costs under general ledger control.			
e. A timekeeping system that identifies employees' labor by intermediate or final cost objectives.			
f. A labor distribution system that charges direct and indirect labor to the appropriate cost objectives.			
g. Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account.			
h. Exclusion from costs charged to government contracts of amounts which are not allowable in terms of FAR 31, Contract Cost Principles and Procedures, or other contract provisions.			
i. Identification of costs by contract line item and by units (as if each unit or line item were a separate contract) if required by the proposed contract.			
j. Segregation of preproduction costs from production costs.			
3. ACCOUNTING SYSTEM PROVIDES FINANCIAL INFORMATION:			
a. Required by contract clauses concerning limitation of cost (FAR 52.232-20 and 21) or limitation on payments (FAR 52.216-16).			
b. Required to support requests for progress payments.			
4. IS THE ACCOUNTING SYSTEM DESIGNED, AND ARE THE RECORDS MAINTAINED IN SUCH A MANNER THAT ADEQUATE, RELIABLE DATA ARE DEVELOPED FOR USE IN PRICING FOLLOW-ON ACQUISITIONS?			
5. IS THE ACCOUNTING SYSTEM CURRENTLY IN FULL OPERATION? (If not, describe in Section I Narrative which portions are (1) in operation, (2) set up, but not yet in operation, (3) anticipated, or (4) nonexistent.)			

81. Section 53.301-1416 is revised to read as follows:

53.301-1416 Payment Bond for Other than Construction Contracts.

PAYMENT BOND FOR OTHER THAN CONSTRUCTION CONTRACTS (See instructions on reverse)	DATE BOND EXECUTED (Must be same or later than date of contract)	FORM APPROVED OMB NO. 9000-0045

Public reporting burden for this collection of information is estimated to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (VRS), Office of Federal Acquisition Policy, GSA, Washington, D.C. 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0045), Washington, D.C. 20503.

PRINCIPAL (Legal name and business address) (Include ZIP Code)	TYPE OF ORGANIZATION (Check one) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ JOINT VENTURE ☐ CORPORATION STATE OF INCORPORATION
SURETY(IES) (Name(s) and business address(es)) (Include ZIP Code)	PENAL SUM OF BOND MILLION(S) | THOUSAND(S) | HUNDRED(S) | CENTS CONTRACT DATE | CONTRACT NO.

We, the Principal and Surety(ies) are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.

CONDITIONS:

The principal has entered into the contract identified above.

THEREFORE:

(a) The above obligation is void if the Principal promptly makes payment to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above and any duly authorized modifications thereof. Notice of those modifications to the Surety(ies) are waived.

(b) The above obligation shall remain in full force if the Principal does not promptly make payments to all persons (claimants) having a contract relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the contract identified above. In these cases, persons not paid in full before the expiration of ninety (90) days after the date of which the last labor was performed or material furnishing, have a direct right of action against the Principal and Surety(ies) on this bond for the sum or sums justly due. The claimant, however, may not bring a suit or any action -

(1) Unless claimant, other than one having a direct contract with the Principal, had given written notice to the Principal within ninety (90) days after the claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the claim is made. The notice is to state with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished or supplied, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process is served in the state in which the contract is being performed, save that such service need not be made by a public officer.

(2) After the expiration of one (1) year following the date on which claimant did or performed the last of the work or labor, or furnished or supplied the last of the materials for which the suit is brought.

(3) Other than in the United States District Court for the district in which the contract, or any part thereof, was performed and executed, and not elsewhere.

WITNESS:

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

PRINCIPAL				
SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	Corporate Seal
NAME(S) & TITLE(S) (Typed)	1.	2.	3.	

INDIVIDUAL SURETY(IES)		
SIGNATURE(S)	1. (Seal)	2. (Seal)
NAME(S) & TITLE(S) (Typed)	1.	2.

CORPORATE SURETY(IES)					
SURETY A	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
SURETY B	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT $	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

INSTRUCTIONS

1. This form is authorized for use when payment bonds are required under FAR (48 CFR) 28.103-3, i.e., payment bonds for other than construction contracts. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual Sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning its financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal"; and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

82. Section 53.302–90 is revised to read as follows:

53.302–90 Release of Lien on Real Property.

RELEASE OF LIEN ON REAL PROPERTY

Whereas _____, of _____, by a bond
(Name) (Place of Residence)
for the performance of U.S. Government Contract Number _____,
became a surety for the complete and successful performance of said contract, which bond includes a lien upon certain real property further described hereafter, and

Whereas said surety established the said lien upon the following property

and recorded this pledge on _____
(Name of Land Records)
in the _____ of _____
(Locality) (State)
and

Whereas, I, _____, being a duly authorized representative of the United States Government as a warranted contracting officer, have determined that the lien is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom,
and

Whereas the surety remains liable to the United States Government for continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases the aforementioned lien.

[Date] [Signature]

Seal

AUTHORIZED FOR LOCAL REPRODUCTION

OPTIONAL FORM 90 (REV. 1-90)
Prescribed by GSA
FAR (48 CFR) 53.228(n)

83. Section 53.302–91 is revised to read as follows:

53.302–91 Release of Personal Property from Escrow.

RELEASE OF PERSONAL PROPERTY FROM ESCROW

Whereas _____, of _____, by a bond
(Name) (Place of Residence)
for the performance of U.S. Government Contract Number _____,
became a surety for the complete and successful performance of said contract, and

Whereas said surety has placed certain personal property in escrow

in Account Number _____ on deposit

at _____
(Name of Financial Institution)

located at _____, and
(Address of Financial Institution)

Whereas I, _____, being a duly authorized representative of the United States Government as a warranted contracting officer, have determined that retention in escrow of the following property is no longer required to ensure further performance of the said Government contract or satisfaction of claims arising therefrom:

and

Whereas the surety remains liable to the United States Government for the continued performance of the said Government contract and satisfaction of claims pertaining thereto.

Now, therefore, this agreement witnesseth that the Government hereby releases from escrow the property listed above, and directs the custodian of the aforementioned escrow account to deliver the listed property to the surety. If the listed property comprises the whole of the property placed in escrow in the aforementioned escrow account, the Government further directs the custodian to close the account and to return all property therein to the surety, along with any interest accruing which remains after the deduction of any fees lawfully owed to _____.
(Name of Financial Institution)

[Date] [Signature]

Seal

OPTIONAL FORM 91 (1–90)
Prescribed by GSA
FAR (48 CFR) 53.228(o)

AUTHORIZED FOR LOCAL REPRODUCTION

[FR Doc. 90–14329 Filed 6–20–90; 8:45 am]
BILLING CODE 6820–34–C

federal register

Thursday
June 21, 1990

Part V

Department of Transportation

Research and Special Programs Administration

State of Louisiana; Statutes and Regulations on Hazardous Materials Transportation; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Inconsistency Ruling No. IR-31; Docket IRA-49]

State of Louisiana; Statutes and Regulations on Hazardous Materials Transportation

APPLICANT: State of Louisiana.

REGULATIONS AFFECTED: Louisiana Revised Statutes 32:1501–1520 and Louisiana Regulations, title 33, part V, 10501–10505 and 10901–10905.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA) (Pub. L. 93–633, 49 U.S.C. App. sec. 1801 *et seq.*) and the Hazardous Materials Regulations (HMR) (49 CFR parts 171–180) issued thereunder.

MODES AFFECTED: Rail and Highway.

ISSUE DATE: June 15, 1990 .

SUMMARY: This inconsistency ruling is the opinion of the Office of Hazardous Materials Transportation (OHMT) of the Department of Transportation (DOT) concerning whether Louisiana Revised Statutes 32:1501–1520 and Louisiana Administrative Code, title 33, part V, sections 10501–10505 and 10901–10905 are inconsistent with the HMTA and the HMR and thus preempted by section 112(a) of the HMTA. This ruling was applied for and is issued under the procedures set forth at 49 CFR 107.201–107.209.

RULING: Louisiana Revised Statutes 32:1501–1520 and Louisiana Regulations, title 33, part V, sections 10501–10505 and 10901–10905 are consistent with the HMTA and the HMR except that the following provisions thereof are inconsistent with the HMTA or the HMR to the extent indicated and thus preempted to that extent under section 112(a) of the HMTA (49 U.S.C. 1811(a)):

(1) La. Rev. Stat. 32:1502(5)(a) and (8) insofar as they authorize the designation as hazardous materials of any materials other than those so designated in the HMR;

(2) La. Rev. Stat. 32:1502(5)(b) to the extent it defines as "explosives" any material not so defined in the HMR;

(3) La. Admin. Code, Tit. 33, §§ 10501(c) and 10901(c) definitions of "train";

(4) La. Rev. Stat. 32:1503, imposing hazardous materials transportation insurance requirements;

(5) La. Rev. Stat. 32:1510, requiring written incident/accident reports;

(6) La. Rev. Stat. 32:1512–1514 insofar as those penalty provisions relate to the enforcement of inconsistent substantive requirements;

(7) La. Rev. Stat. 32:1512 insofar as it imposes civil penalties for other than "knowing" violations; and

(8) La. Rev. Stat. 32:1504B, 32:1505, 32:1508, and 32:1509A(3) insofar as those inspection and enforcement provisions relate to inconsistent substantive requirements.

This ruling does not address the issues of whether those Louisiana provisions are preempted under the Federal Railroad Safety Act (FRSA), 45 U.S.C. 421 *et seq.*, the Motor Carrier Safety Act, 49 U.S.C. 2501 *et seq.*, or any statute other than the HMTA.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590–0001 [Tel. (202) 366–4400].

I. Background

On September 18, 1989, the State of Louisiana filed an inconsistency ruling application. That application requested a ruling concerning the consistency of the above-cited State statutes and regulations with the HMTA and the HMR.

The State contends that those statutes and regulations, as they apply to rail carriers and shippers of hazardous materials in Louisiana, are consistent with the HMTA and the HMR.

On September 27, 1989, OHMT published a Public Notice and Invitation to Comment (54 FR 39622) soliciting public comments on Louisiana's application. It expanded the proceeding to include the consistency of those statutes and regulations as they pertain to carriers and shippers in all modes of transportation.

Comments in support of findings of inconsistency were filed by the Air Transport Association of America, the Association of American Railroads, Norfolk Southern Corporation, and Union Pacific System. Comments partially in support of, and partially opposing, findings of inconsistency were filed by National Tank Truck Carriers, Inc. and Olin Chemicals.

II. General Authority and Preemption Under the HMTA

The HMTA at section 112(a) (49 U.S.C. App. 1811(a)) preempts "* * * any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in the [the HMTA], or in a regulation issued under [the HMTA]." This express preemption provision makes it evident that Congress did not intend the HMTA and its regulations to completely occupy the field of transportation so as to preclude any state and local requirements that are not "inconsistent."

In the HMTA's Declaration of Policy (section 102) and in the Senate Commerce Committee language reporting out what became section 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation. Congress inserted the preemption language in section 112(a) "in order to preclude a multiplicity of state and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous material transportation" (S. Rep. No. 1192, 93rd Cong., 2d Sess. 37 (1974)). Through its enactment of the HMTA, Congress gave the Department the authority to promulgate uniform national standards. While the HMTA did not totally preclude state or local action in this area, Congress intended, to the extent possible, to make such state or local action unnecessary. The comprehensiveness of the HMR, issued to implement the HMTA, severely restricts the scope of historically permissible state or local activity.

Although advisory in nature, inconsistency rulings issued by OHMT under 49 CFR part 107 provide an alternative to litigation for a determination of the relationship between Federal requirements and those of a state or political subdivision. If a state or political subdivision requirement is found to be inconsistent, the state or local government may apply to OHMT for a waiver of preemption. 49 U.S.C. 1811(b); 49 CFR 107.215–107.225.

In issuing its advisory inconsistency rulings concerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the Federal statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

Since these proceedings are conducted pursuant to the HMTA and the HMR, only the question of statutory preemption under the HMTA will be considered. A court might find a non-

Federal requirement preempted for other reasons, such as statutory preemption under another Federal statute, preemption under state law, or preemption by the Commerce Clause of the U.S. Constitution because of an undue burden on interstate commerce. However, OHMT does not make such determinations in an inconsistency ruling proceeding.

OHMT has incorporated into its procedures (49 CFR 107.209(c)) the following criteria for determining whether a state of local requirement is consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the non-Federal requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the non-Federal requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act. These criteria are based upon, and supported by, U.S. Supreme Court decisions on preemption. These include *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); and *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978).

The first criterion, the "dual compliance" test, concerns those non-Federal requirements which are irreconcilable with Federal requirements; that is, compliance with the non-Federal requirement causes the Federal requirement to be violated, or *vice versa*. The second criterion, the "obstacle" test, involves determining whether a state or local requirement is an obstacle to executing and accomplishing the purposes of the HMTA and the HMR; a requirement constituting such an obstacle is inconsistent. Application of this second criterion requires an analysis of the non-Federal requirement in light of the requirements of the HMTA and the HMR, as well as the purposes and objectives of Congress in enacting the HMTA and the manner and extent to which those purposes and objectives have been carried out through OHMT's regulatory program.

III. The Application for Inconsistency Ruling

On September 18, 1989, the State of Louisiana, Department of Public Safety and Corrections, through its Chief Counsel, applied for an inconsistency ruling concerning certain of its statutes and regulations as they pertain to rail carrier and shipper transportation of hazardous materials.

According to the State, in Louisiana Revised Statutes 32:1501–1520 and Louisiana Regulations, title 33, part V, §§ 10501–10505 and 10901–10905, Louisiana adopted without modification the provisions of 49 CFR parts 171 through 179 as they pertain to carriers and shippers of hazardous materials.

Louisiana said that in enforcing these provisions, its Office of State Police, Transportation and Environmental Safety Section cited the Illinois Central Railroad Company for violations and assessed a civil penalty after an administrative hearing. The application stated that the Illinois Central Railroad had appealed the imposition of the civil penalty to the Nineteenth Judicial District Court, Parish of East Baton Rouge, Louisiana, based on a claim that Louisiana's Office of State Police and/or Department of Public Safety "are without authority to assess civil penalties in that these matters have been preempted by Federal Statutes and Regulations."

In its application, Louisiana maintained that its statutes and regulations, as they apply to rail carriers and shippers of hazardous materials in Louisiana, are consistent with the HMTA and parts 171–179 of the HMR because they were adopted in toto, without modification. The application further stated that the statutes and regulations "afford an equal level of protection to the public" as that afforded by the HMTA and the HMR and "do not unreasonably burden commerce." [The criteria in the preceding sentence are those for deciding nonpreemption determination applications under section 112(b) of the HMTA, 49 U.S.C. 1811(a), not for determining consistency or inconsistency under section 112(a) of the HMTA, 49 U.S.C. 1811(b).]

Louisiana stated that in enforcing these provisions it "has conformed to the civil penalties limitations" of the HMTA. Louisiana also contended that the regulatory scheme of the HMTA "obviously envisions state participation in the enforcement of regulations and penalties for violations." The application further stated that the number of Federal Railroad Administration inspectors in the Louisiana area makes it "physically impossible for the rail transportation of hazardous materials to be adequately policed by the Federal government alone."

Therefore, Louisiana requested a ruling that its statutes and regulations insofar as they pertain to rail carriers and shippers of hazardous maerials and the State's authority to administer these regulations are consistent with the HMR and, thus, are not preempted by section 112(a) of the HMTA.

Because, however, the above-cited Louisiana statutes and regulations apply to all modes of transportation, RSPA expanded this proceeding to include consideration of the issue of whether those Louisiana statutes and regulations as they pertain to carriers and shippers in all modes of transportation are consistent with the HMTA and the HMR.

IV. Public Comment Opposing Consistency

Comments favoring a finding of inconsistency were filed by the Association of American Railroads (AAR), Norfolk Southern Corporation (NSC), the Union Pacific Railroad Company (UPR), and Olin Chemicals (Olin)

AAR Comments

The AAR contends that the Louisiana statutes and regulations are preempted by both the HMTA and the FRSA, that both statutes preclude state regulation and enforcement in the area of hazardous materials transportation by rail, and that Louisiana's requirements differ from, and conflict with, the HMR.

Concerning its allegation of inconsistencies, AAR summarizes its position as follows:

> Louisiana states that its statutes and regulations merely replicate the federal regulations, specifically 49 C.F.R. Parts 171–179. 54 Fed. Reg. 39623. That is not the case. Louisiana's statutes contain a broader definition of hazardous materials than that contained in the *Code of Federal Regulations*, require carriers to have liability insurance, impose requirements for the marking of rail cars in addition to what RSPA requires, contains additional shipping paper requirements, impose unique accident reporting requirements, require locomotive engineers to be licensed, and grant state inspectors unique rights to stop trains. La. Rev. Stat. Ann. §§ 32:1502, 1503, 1507, 1509, 1510, and 1516. The regulations implementing the statutory requirements fail to include the exemptions granted by RSPA pursuant to 49 U.S.C. § 1806 and 49 C.F.R. Subpart b, §§ 107.101–123, incorporate by reference superseded federal regulations, and conflict with RSPA's regulations by using an overly broad definition of "train." *See* La. Admin. Code Tit. 33, chapters 105 and 109. Thus, Louisiana's statutory and regulatory system for the transportation of hazardous materials contains requirements far beyond what is found in the federal regulations and conflicts with those regulations.

The AAR urges RSPA to depart from its usual practice of restricting inconsistency rulings to preemption issues under the HMTA. It argues that Louisiana's requirements should be found to be preempted under the FRSA because courts have held and will hold that such is the case. It cites *CSX*

Transportation, Inc. v. *Public Utilities Comm'n of Ohio*, 701 F. Supp. 608 (S.D. Ohio 1988), *aff'd* Case 88–4185 (6th Cir. Apr. 13, 1990).

The balance of AAR's comments address preemption under the HMTA and consistency with the HMTA and the HMR. It cites and quotes from a RSPA notice entitled "Preemption Under the Hazarous Materials Transportation Act," 54 FR 26710 (June 23, 1989). It cites the discussion therein of the "dual compliance" and "obstacle" tests used to determine consistency and Congress' objective to achieve uniform national standards in the field of hazardous materials transportation.

AAR then proceeds to argue that section 205 of the FRSA, 45 U.S.C. 434, is helpful in determining Congress' intent in enacting the HMTA. Citing the *CSX* case and 45 U.S.C. 421, it states that the FRSA preemption language encompasses hazardous materials transportation and that Congress could not have intended a course of action in the HMTA contradicting its intent in enacting the FRSA. It quotes 45 U.S.C. 434:

> The Congress declares that laws, rules, regulations, orders, and standards relating to railroad safety shall be nationally uniform to the extent practicable. A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such State requirement. A State my adopt or continue in force an additional or more stringent law, rule, regulation, order, or standard relating to railroad safety when necessary to eliminate or reduce an essentially local safety hazard, and when not incompatible with any Federal law, rule, regulation, order, or standard, and when not creating an undue burden on interstate commerce.

AAR concludes from this langauge and its legislative history that Congress intended that there should be a single, national system of regulation for the transportation of hazardous materials by rail.

It further contends that the District Court in the *CSX* case determined that this Congressional intent has continued. It cites *Atchison, Topeka & Santa Fe Railway* v. *Illinois Commerce Comm'n*, 453 F. Supp. 920 (N.D. Ill. 1977), as holding that State action was preempted when DOT issued hazardous materials regulations. AAR states that the RSPA Administrator testified before Congress in 1979 that states could not issue railroad hazardous materials regulations in areas regulated by DOT unless the state regulations addressed a local safety hazard. It then quotes the *CSX* District Court decision: "Congress' failure to amend the FRSA or the HMTA preemption provisions in response to either the *Atchison* decision or RSPA's (testimony) * * * can be read as acceptance of these interpretations." 701 F.Supp. at 615–6.

In addition, AAR cites a 1986 report issued by Congress' Office of Technology assessment, which stated, "Even where State inspectors have been trained in rail safety procedures, they cannot conduct hazardous materials inspections, because authority to do so has not been granted to States."

From the foregoing, AAR concludes that the language of the RFSA, its legislative history, case law, and Congressional testimony and reports show that Congress intended "uniform" hazardous materials regulation under the HMTA to mean that there was to be a single, national regulatory and enforcement system for the railroad industry. It further concludes that state adoption and enforcement of DOT regulations in the rail mode present an obstacle to the accomplishment of the Congressional objective of uniformity and thus are inconsistent. It notes that these principles do not apply to highway transportation and that, therefore, prior inconsistency rulings concerning highway transportation requirements are inapplicable.

Next AAR argues that Louisiana's requirements would be inconsistent even if they were identical to the Federal requirements because of allegedly unsafe, incorrect and improper enforcement thereof by State enforcement personnel. It cites case law for the proposition that in making preemption determinations Federal and state requirements must be evaluated as interpreted and applied and not solely as written. It also cites Inconsistency Ruling IR–8 (IR–8) (Decision on Appeal), 52 Fed. Reg. 13000, 13003 (Apr. 20, 1987), for the principle that the actual and potential effect of state or local rules, not their intent, determines their consistency.

After concluding that Louisiana's requirements are inconsistent even if identical because of the manner in which the State enforces them, AAR separately argues that, in fact, the Louisiana regulatory requirements are not identical to the HMR. It advances several arguments in support of that proposition.

First, AAR argues that Louisiana's failure to explicitly recognize exemptions which OHMT has issued under 49 U.S.C. App. 1806 and 49 CFR 107.101–123 results in Louisiana's regulations being inconsistent. AAR asserts that La. Rev. Stat. section 32:1507A apparently and vaguely directs the Secretary of the Department of Public Safety and Corrections to take OHMT's exemptions into account but that the Secretary has failed to do so in regulations (La. Admin. Code, Tit. 33, chapters 105 and 109).

AAR argues that states cannot be permitted to choose whether to accept or reject the 1,000 outstanding OHMT exemptions. It cites several examples of types of rail transportation exemptions which it claims Louisiana might not recognize: (1) Those authorizing transportation of hazardous materials in tank cars not authorized for such transportation by the MHR, (2) exemptions from HMR shipping paper requirements, and (3) exemptions authorizing transportation of railway track torpedoes and fusees in flagging kits without placards. It concludes that Louisiana's failure to recognize DOT's exemptions results in the State's regulations being inconsistent.

Second, AAR contends that Louisiana's statutory adoption of the October 1, 1987 version of the HMR is inconsistent because that version differs from the current HMR due to changes in the HMR which have occurred since that time. It cites IR–19, 52 FR 29404, 29410–1 (June 30, 1987), *affirmed* IR–19 (Decision on Appeal), 53 FR 11600, (Apr. 7, 1988) in support of its position.

Third, AAR alleges that the State has adopted a regulatory definition of "train" which differs from the HMR definition. It says that the State defines a train as "an engine or an engine coupled with one or more rail freight cars." La Admin. Code, tit. 33, secs. 10501(c) and 10901(c). It cites the following definition of a train in 49 CFR 171.8: "one or more engines coupled with one or more rail cars, *except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains.*" (Emphasis added.) AAR contends that as a result of the unrestricted Louisiana definition of "train," the State is requiring that during switching and assembling operations a buffer car always be used between engines and tank cars and that shipping papers be carried by a train crew member—practices which AAR alleges are unsafe and impracticable.

In addition to alleging the foregoing regulatory inconsistencies, AAR argues that several Louisiana statutory provisions are not identical and, therefore, are inconsistent.

First, it discusses different definitions of hazardous materials. It cites Louisiana's definition:

> "Hazardous materials" means any gaseous, liquid, or solid material which because of its

quantity, concentration, or physical, chemical, or biological composition poses a substantial present or potential hazard to human health, the environment, or property when transported in commerce, or which material is identified or designated as being hazardous by rules and regulations adopted and promulgated by the secretary of the Department of Public Safety and Corrections pursuant to the Louisiana Administrative Procedure Act. The secretary, in finding that a material is hazardous, shall consider the following factors with respect to each material.

* * * * *

The rules and regulations adopted by the secretary of the Department of Public Safety and Corrections shall be consistent with the Code of Federal Regulations, Title 49. "Explosives" as defined and regulated by R.S. 40:1471.1 through 1471.22 shall be considered to be hazardous material subject to regulation by this Chapter.

La. Rev. Stat. sec. 32:1502(5).

AAR states that the foregoing definition, although mandating consistency with the HMR, itself differs from the HMR definition [49 CFR 171.8] of a hazardous material as:

* * * a substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated.

AAR cites a series of inconsistency rulings and *Missouri Pacific Railroad* v. *Railroad Comm'n of Texas*, 671 F. Supp. 466, 481 (W.D. Tex. 1987), *aff'd on other grounds*, 850 F.2d 267 (5th Cir. 1988), for the principle that definitions of hazardous materials differing from that in the HMR are inconsistent.

In addition, AAR specifically discusses Louisiana's allegedly inconsistent definition of "explosive" as:

any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; * * * The term "explosives" shall further include * * *

(a) "blasting agent" which shall mean any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive; * * *

La. Rev. Stat. sec. 40:1471.2(1). The AAR asserts that because this definition encompasses blasting agents "not otherwise defined as an explosive," it classifies as hazardous materials blasting agents which do not have the primary or common purpose of functioning by explosion and thus is inconsistent with 49 CFR 173.50, which only includes as explosives those blasting agents which do not have as their primary or common purpose the functioning by explosion.

Second, AAR contends that the State's requirement that carriers have evidence of liability insurance, self-insurance and other evidence of financial responsibility acceptable to the Secretary of the Department of Public Safety and Corrections is inconsistent. It cites IR-25, 54 FR 16308, 16310-1 (Apr. 21, 1989), for the proposition that the subject of bonding, insurance and indemnity requirements for hazardous materials transportation is exclusively Federal.

Third, AAR claims that the State's requirement to mark the number of each exemption on the vehicle to which it is applied (La. Rev. Stat. sec. 32:1507B) is inconsistent because it seemingly requires that a tank car containing a hazardous material that is authorized in any way by an exemption have an exemption number stenciled thereon. It contends that this State requirement goes beyond the HMR (40 CFR part 106, Subpart B, Appendix B) by requiring the marking of tank cars when, for example, the only exemption involved is a shipping paper exemption.

Fourth, AAR contends that the following Louisiana incident reporting requirements are inconsistent:

A written report shall be submitted to the department on an approved form. Each report submitted shall contain the time and date of the incident or accident, a description of any injuries to persons or property, any continuing danger to life at the place of the accident or incident, the identity and classification of the material, and any other pertinent details.

[and]

In the case of an incident or accident involving hazardous materials which is not subject to this Chapter but which is subject to Title 49 and Title 46 of the Code of Federal Regulations, the carrier shall send a copy of the report filed with the United States Department of Transportation to the department.

La. Rev. Stat. secs. 32:1510 B and C. The HMR include a requirement for written reports concerning hazardous materials incidents. 49 CFR 171.16. AAR states that inconsistency rulings and court decisions have held that state and local requirements for written hazardous materials incident reports, including requirements for copies of such reports, are inconsistent. It cites IR-3 (Decision on Appeal), 47 FR 18457, 18462 (Apr. 29, 1982); IR-2, 44 FR 75566, 75572 (Dec. 20, 1979); IR-3, 46 FR 18918, 18924 (Mar. 26, 1981); and *Nat'l Tank Truck Carriers v. Burke*, 535 F. Supp. 509, 519 (D.R.I. 1982); *aff'd* 698 F.2d 559 (1st Cir. 1983).

Fifth, AAR asserts that Louisiana's requirement that locomotive engineers be licensed (La. Rev. Stat. sec. 32:1516A) is inconsistent. It argues that in IR-26, 54 FR 16314, (Apr. 21, 1989), correction 54 FR 21526 (May 10, 1989), OHMT ruled that a state could not require drivers of motor vehicles containing hazardous materials to have certificates indicating that a driver has met state training requirements. It says that multi-state licensing requirements could lead to chaos and adversely affect safety. In addition, it points to the licensing/certification requirements of the Rail Safety Improvement Act of 1988 as reflecting a Congressional intent that licensing requirements be nationally uniform.

Sixth, AAR contends that two Louisiana statutory enforcement provisions are inconsistent. It asserts that La. Rev. Stat. 32:1505A(2), authorizing state inspectors to stop and inspect any transport vehicle or part thereof for any violation, is inconsistent with the 49 CFR 174.14 requirement that a rail carrier must forward promptly each shipment of hazardous materials. It cites IR-26, *supra*, at 16323, quoting IR-2, *supra*, at 75576.

AAR also argues that La. Rev. Stat. sec. 32:1508 is inconsistent because it is too discretionary and likely to result in delays of hazardous materials transportation. That section authorizes state inspectors to take a rail car out of service if it would be hazardous to life or property during the transportation of a hazardous material and provides that the car cannot be returned to service until inspected and approved by a State inspector. AAR says that prior erroneous enforcement action by the State makes it possible that cars would be taken out of service for non-existent hazards.

ATA Comments

The Air Transport Association of America (ATA) filed comments opposing the issuance of any decision authorizing the State to issue or enforce hazardous materials regulations with respect to air transportation. ATA says that the State has not requested such a ruling and that OHMT, although it has broadened the scope of the proceeding, should not issue one—particularly since, ATA says, the State has not indicated an intention to enforce its hazardous materials law or regulations against air carriers. ATA argues that OHMT lacks statutory authority under 49 U.S.C. 1811(b) to issue such a ruling.

Alternatively, ATA contends that if OHMT issues a ruling addressing air transportation it should find that application of the Louisiana requirements to air transportation is inconsistent with HMTA. It contends that such a finding results from

application of the two tests set forth in 49 U.S.C. App. 1811(b) and 49 CFR 107.209(c). (Although the latter regulatory citation is correct, the former statutory citation is incorrect, and many of ATA's comments focus on the irrelevant "equivalent safety" and "burden on commerce" criteria, which apply to nonpreemption determinations under 49 U.S.C App. sec. 1811(b) and 49 CFR 107.215–221 rather than to inconsistency rulings under 49 U.S.C. App. sec. 1811(a) and 49 CFR 107.203–209. Those irrelevant comments are not considered in this ruling.)

The following ATA comments are relevant to the applicable standards, the "dual compliance" and "obstacle" tests:

> Uniformity of regulatory activities is essential to air carrier operations. Without it, air transportation is substantially impeded. Our members perform over 18,000 flights daily. The vast majority of those flights involve origin and destination points in different states. Our industry cannot function in an environment where different regulators apply hazardous material transportation requirements.
>
> Avoidance of a regulatory patchwork is precisely what Congress intended when it enacted section 112 of the HMTA. Further, an important purpose of the legislation "was to retain intact the authority over Hazardous Materials Transportation that presently exists under statutes such as the Federal Aviation Act * * *." 1974 U.S. Code Cong. & Ad. News 7669, 7680 (H.R. Report No. 93–1083).

ATA concludes that the Louisiana requirements should be found inconsistent as applied to air transportation.

Norfolk Southern Comments

Norfolk Southern Corporation (NSC) also filed extensive comments supporting a finding of inconsistency. Its initial contention is that OHMT should discard its policy of limiting inconsistency rulings to HMTA issues. NSC contends that OHMT cannot ignore "the primary vehicle for federal regulation of railroad safety," the FRSA, or its relationship with the HMTA and the HMR. It says that a ruling ignoring section 434 of the FRSA, which preempts state and local governments from all Federally regulated rail safety subject matters, would encourage a flood of both state and local governmental efforts to issue and enforce hazardous materials regulations for rail transportation.

NSC points out that the FRSA was enacted as the "Federal Railroad Safety and Hazardous Materials Transportation Control Act of 1970" and that it specifically states a Congressional intention "to reduce damage to property caused by accidents involving any carrier of hazardous materials." 45 U.S.C. 421. It also cites extensive FRSA legislative history reflecting an intent to establish a national rail transportation regulatory system with a minimal role for states.

Addressing the HMTA, NSC states that it was enacted to broaden Federal regulatory control, to provide uniform regulation, and to "preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation. It cites supporting legislative history and case law.

NSC then cites and discusses a series of Federal Court decisions applying the preemption provision (section 434) of the FRSA. Several of those cases are cited for the proposition that FRSA preemption results from the Secretary of Transportation issuing a regulation covering a particular rail transportation-related subject regardless of the statutory authority (including the HMTA) under which such a regulation is issued. *Missouri Pacific R. Co.* v *Railroad Comm. of Texas*, 653 F. Supp. 617, 623 (W.D. Tex. 1987), *modified*, 833 F. 2d 570 (5th Cir. 1988); *Atchison, Topeka & Santa Fe Ry. Co.* v. *Ill. Commerce Comm.*, 453 F. Supp. 920, 924 (N.D. Ill. 1977); *CSX Transportation, Inc.* v. *City of Tullahoma*, Case No. 4–87–47, slip op. at 11 (E.D. Tenn. Feb. 17, 1988).

Finally on this point, NSC cites *CSX Transportation, Inc.* v. *Public Utilities Commission of Ohio*, 701 F. Supp. 608 (S.D. Ohio 1988), *aff'd* Case 88–4185 (6th Cir. Apr. 13, 1990). NSC says that this case demonstrates that the FRSA preemption provision extends to state regulation of hazardous materials transportation by rail and preempts such state requirements, even those identical to the HMR. Thus, NSC concludes that Louisiana's requirements would be preempted to the extent they are applicable to rail transportation even if they were identical to the HMR.

Next, NSC argues that the State's requirements would be inconsistent even if they were identical to the Federal requirements because state enforcement is an obstacle to a single, Federal enforcement scheme. It contends that different enforcement and interpretations of the same regulatory language result in inconsistency. It cites instances where it allegedly was cited for using faded placards, for violations while cars still were being classified in the yard, and for violations which were shipper, not carrier, responsibilities. NSC says that none of the five state enforcement cases against NSC was brought to fruition, that the States asserted its right to interpret the regulations as it saw fit, and that the State's inspectors were not adequately trained to enforce the HMR requirements the State has adopted.

NSC further submits that the manner in which the State has adopted the HMR appears to make parts of the HMR which are applicable only to shippers and other types of carriers apply within Louisiana to the railroads. It asserts that this can lead to confusion and to decreased safety through failure to take enforcement action against the proper responsible parties.

NSC concludes, therefore, that "there cannot be uniform enforcement without uniform interpretation and application. Thus any enforcement of the HMR by the State is inconsistent with the HMTA as well as the FRSA."

Then NSC proceeds to list seven areas in which the Louisiana regulations allegedly are not identical to the HMR and thus are inconsistent. Therefore, it denies the State's assertion that it has adopted the HMR *in toto*.

First, NSC says that section 10501B and 10901B are inconsistent insofar as they provide that any term in the State rules is to be used in its commonly accepted meaning "except where the term has been specifically defined [in the State rules], R.S. 32:1502 or the 49 CFR" NSC claims that the inconsistency arises because the State's regulations and statute define certain terms differently than the HMR.

Second, NSC points to the State's different definition of "train," which allegedly results in broader applicability of substantive reqirements.

Third, NSC alleges that the States has altered the civil penalty structure of the HMTA and the HMR. It asserts that the State has omitted the "knowingly" requirement for civil penalty liability and the "willfully" requirement for criminal liability. Instead, says NSC, the State imposes strict liability for civil penalties and imposes criminal liability for what would be a civil penalty matter under the HMTA. It says that the result of the State's approach is to hold carriers strictly liable for shipper violations.

Fourth, NSC alleges that the State uses or could use the civil penalty process in an inconsistent manner (e.g., alleging 49 CFR 172.33 violations for a single missing identification number and conceivably bringing penalty actions based upon the State's different definition of "train").

Fifth, NSC alleges that inconsistency results from the fact that the HMR is constantly changing and that this results in a gap betwen the HMR and the State's requirements because of the

State's adoption of the October 1, 1987 version of the HMR.

Sixth, NSC cites the State's substitution of State officials' titles for those of Federal officials in the HMR. It says that this results in rail carriers and shippers having to apply to the State Police for a certificate to operate within the State under a DOT-issued exemption or special approval.

Seventh, NSC contends that section 10905B(2) is inconsistent because it requires use of separate State incident reporting forms.

In addition, NSC argues that there are 12 inconsistencies between the State's statute and the HMTA and the HMR. These allegations are described in the following paragraphs.

First, NSC asserts that the State statute, specifically La. Rev. Stat. 32:1502 (5), (8) and (9), contains inconsistent definitions of "hazardous materials," hazardous wastes" and "transport vehicles." It says that the facts that the statute requires consistency with the HMR and that the State Police have adopted the HMR list of hazardous materials does not ameliorate the differing definitions because the State Police could designate any material it chooses as a hazardous material. NSC adds that the State's consistency requirement for hazardous materials does not apply to hazardous wastes.

Second, NSC alleges that La. Rev. Stat. 32:1503 is inconsistent in two respects. It says that it is inconsistent because, contrary to IR–25, *supra*, the State requires each carrier transporting hazardous materials or wastes to acquire and maintain liability insurance. It also states that it is inconsistent because it requires carriers to place placards on all four sides of each vehicle being used to transport hazardous materials while the HMR places the initial burden on shippers to provide proper placards.

Third, NSC contends that La. Rev. Stat. 32:1504 is inconsistent because it contains broad enforcement authority which violates the FRSA.

Fourth, NSC argues that La. Rev. Stat. 32:1505 is inconsistent with the HMTA and the HMR because it contains unfettered authority for State Police to stop and inspect transport vehicles for any violation of State statute or regulation.

Fifth, NSC asserts that La. Rev. Stat. 32:1506 and La. Rev. Stat. 32:1507 are inconsistent. It states that the former allows alternative compliance with State rules through discretionary State Police written authorization, exempts special permits from the written authorization requirement, and requires carriers to carry a copy of the State authorization on each vehicle to which it applies. It says that the latter section recognizes DOT exemptions and special permits but requires carriers to secure redundant State exemptions and to mark the State exemption number on the transport vehicle.

NSC argues that these provisions are inconsistent because they fail to recognize and honor OHMT special approvals ("special permits" being a Canada Transport term) and OHMT exemptions, they require redundant State approval (or possibly rejection) of OHMT exemptions, and they conflict with OHMT exemption requirements by themselves requiring the carrying of State authorizations and the marking of State numbers on vehicles.

Sixth, NSC avers that La. Rev. Stat. 32:1508 is inconsistent because it allows the State Police to put vehicles out of service and forbids their operation until required corrections have been made. It says that this section directly conflicts with an FRA rule (49 CFR § 215.9) prescribing how vehicles are to be returned to service and furthermore conflicts with FRA regulations authorizing the alerting of railroads as to defective cars and the recommending that they be taken out of service—*not* the tagging of cars as out of service.

Seventh, NSC maintains that La. Rev. Stat. 32:1509 is inconsistent in specifying how hazardous materials lading is to be described on shipping papers and prohibiting railroad acceptance of hazardous materials shipments unless shipping papers have been provided to the vehicle "operator" prior to departure. NSC cites IR–21, 52 FR 37072 (Oct. 2, 1987), IR–21 (Decision on Appeal), 53 FR 46735, (Nov. 18, 1988); IR–26, *supra;* and IR–27, 54 FR 16326 (Apr. 21, 1989), correction, 54 FR 20001 (May 9, 1989), for the principle that the Federal Government has exclusive jurisdiction over shipping papers. NSC asserts that

> the prohibition against acceptance of lading directly conflicts with the HMR, which only requires the shipping paper to be in the *possession of a member of the train crew* before a haz mat shipment can be accepted. Documentation is usually given to the conductor who is in charge of a train.

Eighth, NSC contends that the La. Rev. Stat. 32:1510 requirement for written reports of hazardous materials incidents/accidents is inconsistent with the FRSA, HMTA, and HMR. It cites the same legal authorities as the AAR.

Ninth, NSC argues that the penalty and enforcement provisions of La. Rev. Stat. 32:1512, 32:1513 and 32:1514 are inconsistent because they undermine the Congressional scheme of uniform national enforcement for railroads, they authorize civil penalties for other than "knowing" violations, they authorize seizure of rail equipment if penalties are not paid, and they authorize penalties of $25,000 per day in contrast to the HMTA maximum of $10,000.

Tenth, NSC contends that the injunctive provisions of La. Rev. Stat. 32:1515 are inconsistent for the same reasons as the enforcement provisions and also because they go beyond Section 436 of the FRSA in authorizing injunctive relief for alleged violations under the HMTA instead of just the FRSA.

Eleventh, NSC maintains that La. Rev. Stat. 32:1516, concerning driver qualifications, is inconsistent. It cites IR–26, *supra*, as stating that states cannot require drivers of motor vehicles containing hazardous materials to have certificates indicating the driver meets state training requirements. It also says that section 32:1516 is expressly preempted by FRA's regulation on alcohol and drug use, 49 CFR Part 219, insofar as it imposes drug and alcohol prohibitions and testing requirements.

Twelfth, NSC posits that La. Rev. Stat. 32:1517, authorizing State employment of enforcement personnel, is inconsistent because the State has no authority under the FRSA to conduct surveillance and investigative programs.

Subsequent to filing its initial comments, NSC submitted to the docket a copy of the April 13, 1990 decision of the U.S. Court of Appeals for the Sixth Circuit in *CSX Transportation, Inc.* v. *Public Utilities Commission of the State of Ohio*, which affirmed the decision of the U.S. District Court for the Southern District of Ohio.

Union Pacific Comments

Comments opposing the consistency of the Louisiana requirements as applied to rail transportation also were filed by the Union Pacific Railroad Company (UPR). It concludes that the HMTA and the FRSA do not authorize state enforcement of hazardous materials regulations against railroads, that Louisiana's concerns about allegedly insufficient FRA enforcement can be resolved by an increase in FRA inspectors or a change in law, and that certain specific provisions of Louisiana law are inconsistent with the HMTA and the HMR.

UPR first argues that state enforcement of railroad transportation hazardous materials requirements is an obstacle to obtaining the objectives of the HMTA. It says that OHMT must consider and give effect to the FRSA just as its HMR specifically recognizes and

refers to other Federal statutes. It contends that Congress clearly intended uniform national regulation of rail safety.

In support of its position, UPR cites *CSX Transportation, Inc.* v. *Public Utilities Comm. of Ohio, supra,* and summarizes the FRSA/HMTA legislative history discussed therein. It cites the strong preemptive approach taken by Congress in enacting the FRSA in 1970; Congressional failure to change the FRSA preemption or state participation provisions when enacting the HMTA and amending the FRSA in 1974, and Congressional failure to include the HMTA when it expanded the state participation provisions of the FRSA in 1980. It also cites previously-discussed legislative history and case law.

UPR points to pending proposed legislation, H.R. 3520, which includes a provision which would amend the HMTA to allow state participation in the enforcement of rail safety regulations pertaining to hazardous materials transportation, as evidence that Congress has not given such authority to the states.

In sharp contrast, UPR asserts, Congress has authorized state enforcement of the HMTA as it pertains to motor carriers. It points to the grants program under the Surface Transportation Assistance Act, 49 U.S.C. 2301 *et seq.*, and the specific authorization of HMR-related highway enforcement activities under the implementing grant regulations in 49 CFR part 350.

UPR finds further evidence of Congressional intent to involve states in hazardous materials highway transportation enforcement in the Motor Carrier Safety Act of 1984, 49 U.S.C. 2501 *et seq.*, and the Commercial Motor Vehicle Safety Act, 49 U.S.C. 2701 *et seq.* It points out that both statutes refer specifically to motor vehicles transporting hazardous materials. 49 U.S.C. 2503(1)(C) and 2716(6). It concludes:

> These statutes in conjunction with the Motor Carrier Safety Assistance Program (MCSAP) and the Cooperative Hazardous Materials Enforcement Development Program (COHMED) indicate that Congress and the federal agencies encourage state involvement in enforcement of hazardous materials regulations governing motor carrier movements. Congress has not bestowed that same enforcement authority on the states with respect to rail transportation of hazardous materials.

UPR contends that state verbatim adoption of the HMR and the HMTA penalty structure does not ensure uniformity in enforcement. It states that compliance with both Federal and State requirements may be impossible because Louisiana officials admit to being motivated by a desire to generate revenue and because that State's enforcement approach may be inconsistent with that of the FRA. It cites three instances when it allegedly was cited for non-violations and concludes that the State's pecuniary motives leads to a different and necessarily inconsistent approach to enforcement.

In addition, UPR cites several Louisiana statutory and regulatory provisions which allegedly are inconsistent with the HMTA and the HMR. Like other railroad commenters, it points to the State's definitions of "explosives" and "train", carrier liability insurance requirements, "stop and inspect" enforcement provisions, requirement for shipping paper exemption numbers to be marked on vehicles, shipping paper lading description requirements, written accident/incident reporting requirements, and operator licensing provisions.

Olin Chemicals Comments

In its initial comment, Olin Chemicals (Olin) supported a finding of inconsistency with respect to rail transportation. Olin states:

> Our position is based on our conviction that because railroad operations are so unique, enforcement personnel must have a thorough knowledge of railroad equipment and day to day operations. In this regard, we are aware of at least one or more federal inspectors who came from the ranks of the Association of American Railroads personnel. We do not believe that the Louisiana State Police personnel have the requisite experience and training to enforce the federal regulations (adopted by Louisiana), in the manner contemplated by the federal promulgators of said regulations.
>
> On the other hand, we do believe that the state of Louisiana has both a duty and an obligation to protect its citizenry and their property. We also sympathize with the frustration of state officials because of, what they believe, is inadequate staffing by the federal government.
>
> It is our understanding that the solution for the state of Louisiana's dilemma is already on the books in the form of the Federal Railroad Safety Act and court decisions. If in fact state enforcement personnel detect a possible violation of railroad regulations, they can inform the federal inspectors who can then take the appropriate action. In our view this is a marriage made in heaven i.e., the manpower of the Louisiana State Police and the expertise of the Federal Railroad Administration.

V. Public Comments Supporting Consistency

Olin Chemicals Comments

In a subsequent comment, Olin states:

> We wish to clarify our position by stating that Olin supports the Chemical Manufacturers Association position i.e., that state and local government should be allowed to enforce federal DOT Hazardous Materials Regulations (HMR), assuming the enforcement officials have been fully and properly trained. Further, should there be a disagreement as to interpretation of the HMR, the final arbiter should be the federal DOT.

NTTC Comments

The National Tank Truck Carriers, Inc. (NTTC) filed a comment generally supporting findings of consistency. It contends that the Louisiana statutes and regulations are consistent insofar as they: (1) Apply to highway transportation, (2) serve to reduce an essentially local safety hazard in rail transportation, (3) are compatible with regulations issued under the FRSA, impose no burden on rail commerce, and (4) regulate the actions of rail shippers and shippers' rail equipment which is not in the care, custody and control of a railroad company.

With respect to motor carriers, NTTC asserts that Louisiana's adoption of the HMR and the HMTA civil penalty limitations is consistent under the "dual compliance" and "obstacle" tests. Thus, it says, the State can use its agencies and personnel to carry out enforcement and compliance programs with respect to the highway mode.

With regard to railroads, NTTC recommends that OHMT defer to the District Court decision in *CSX Transportation, Inc.* v. *Public Utilities Commission of Ohio, supra,* with respect to hazardous materials transportation by rail generally but recognize that under the FRSA a state may regulate with respect to unique local safety hazards. NTTC asserts that the State's expressed concern about the alleged lack of sufficient FRA inspectors is sufficient to provide a basis for a finding of consistency.

Finally, NTTC argues that the *CSX* decision does not apply to shippers because the FRSA does not apply to them. From that hypothesis, it concludes that the State may consistently regulate most rail shippers:

> For instance, we note that most hazardous materials tank cars are owned or leased by shippers. More often than not, these cars are loaded and unloaded at private sidings and other points not on a railroad right-of-way; and, certain regulated operational functions may be performed prior to inspection and acceptance by a railroad company (and

following release of the car to the consignee). Shippers are responsible for the maintenance of their equipment, compliance with HMR specifications, preparation of shipping documents, etc.

Therefore, we conclude that Louisiana's compliance and enforcement program as it is applied to shipper-owned (or leased) equipment and when such equipment is not in the care, custody and control of a railroad company, is consistent with the HMR. Furthermore, we hold that the Administrator is under no compulsion to go beyond the HMTA when evaluating the lawfulness of Louisiana's program as applied to shippers.

VIII. Public Rebuttal Comments Opposing Consistency

Rebuttal comments were filed by AAR and UPR.

AAR Rebuttal Comments

AAR challenges NTTC's comments to the extent those comments contend that Louisiana's provisions are consistent insofar as they pertain to railroads. AAR says that NTTC does not address AAR's earlier comments that Louisiana's laws are not identical to the HMR and thus are inconsistent and that they would be preempted by the HMTA even if they were identical.

AAR agrees with NTTC that section 205 of the FRSA is relevant to a determination of consistency under section 112 of the HMTA. However, it contends that NTTC's assertion that identical state requirements can fall within the essentially local hazard provision of section 205 is directly contradicted by the legislative history thereof and court decisions thereon. AAR also says that there is no evidentiary basis for a finding that a hazardous materials rail transportation hazard exists in Louisiana that is not addressed by the U.S. DOT.

AAR argues that there is no such thing as a statewide local hazard. It points to the following legislative history concerning section 205:

> The purpose of [the local hazard provision of section 205] is to enable the States to respond to local situations not capable of being adequately encompassed within uniform national standards. The States will retain authority to regulate individual local problems or reduce essentially local railroad safety hazards. Since these local hazards would not be Statewide in character, there is no intent to permit a State to establish Statewide standards superimposed on national standards covering the same subject matter.

H.R. Rep. No. 1194, 91st Cong., 2d Sess., *reprinted in* 1970 U.S. Code Cong. & Ad. News 4104, 4117. AAR adds that courts unanimously have held that statewide standards are not permitted under the local hazard language of section 205—citing *Missouri Pacific Railroad* v. *Railroad Commission of Texas,* 671 F.Supp. 466, 471 (W.D. Tex. 1987) and cases cited therein.

It also states that Louisiana has not identified any areas DOT is incapable of addressing. Furthermore, it cites FRA accident statistics to show that no hazard exists in Louisiana to justify State action even if, contrary to AAR's assertion, section 205 permitted such statewide action.

UPR Rebuttal Comments

UPR filed similar comments rebutting the NTTC comments concerning local hazards. It cites the same legislative history and several court cases for the proposition that statewide standards cannot be justified under section 205 of the FRSA.

IX. Ruling

Scope of Ruling

The State of Louisiana's application for an inconsistency ruling pertained solely to rail transportation. To facilitate consideration of other relevant issues, OHMT broadened the scope of this proceeding to include all modes of transportation.

The record in this Docket, however, does not provide an adequate basis to address air or water transportation. This ruling, therefore, addresses only the consistency of Louisiana's specified statutes and regulations insofar as they apply to highway and rail transportation.

FRSA Issues

Several railroad industry commenters contended that OHMT should find all the Louisiana statutory and regulatory requirements at issue in this proceeding inconsistent because of the preemption provision of the FRSA and the application of that provision to hazardous materials rail transportation requirements of the State of Ohio in *CSX Transportation, Inc.* v. *Public Utilities Commission of Ohio, supra.* That case involved the issue of whether the Ohio Hazardous Materials Transportation Act (OHMTA) is preempted by the FRSA. Both the U.S. District Court for the Southern District of Ohio and the U.S. Court of Appeals for the Sixth Circuit (the latter in an April 13, 1990 decision) held that the OHMTA is preempted by the FRSA. Specifically, they held that it is preempted by the following FRSA preemption language:

> A State may adopt or continue in force any law, rule, regulation, order, or standard relating to railroad safety until such time as the Secretary has adopted a rule, regulation, order, or standard covering the subject matter of such State requirement.

45 U.S.C. 434. The Court of Appeals held that this language was broad enough to include regulations issued under the HMTA. Furthermore, the Court of Appeals held that the enactment of the HMTA, with its different preemption language, subsequent to the FRSA has not resulted in repeal of the preemption language of the FRSA. In support of this conclusion, the Court cited a 1980 amendment to the FRSA broadening state participation in railroad safety investigative and surveillance activities, which amendment intentionally did not include HMTA enforcement activities.

Of particular relevance to this proceeding is the Court of Appeals' following disclaimer:

> Finding that the regulations issued pursuant to the OHMTA are preempted by the preemption provision found in the FRSA, we find it unnecessary to address the question of whether the Ohio regulations are also preempted by the preemption provision found in the HMTA.

Under the rationale of the Court of Appeals' decision, Louisiana's statutory and regulatory provisions under consideration in this proceeding would be deemed preempted by the FRSA. However, as indicated above, OHMT inconsistency rulings address only preemption issues under the HMTA. Because the Court of Appeals explicitly declined to address HMTA preemption issues, the *CSX* case is irrelevant to the consideration herein of whether Louisiana's requirements are consistent with the HMTA and the HMR. Therefore, comments based upon that case and the FRSA similarly are irrelevant and are not considered or addressed in this ruling.

State Adoption of the HMTA and the HMR

RSPA and OHMT have encouraged state governments to adopt the HMTA and the HMR as state law and to enforce such legal requirements. IR–17, 51 FR 20925 at 20929 (June 9, 1986); IR–19, *supra,* at 24410. In the early 1980's this effort was carried out through the State Hazardous Materials Enforcement Development (SHMED) Program; since 1986 it has been carried out through the Cooperative Hazardous Materials Enforcement Development (COHMED) Program. In its Report accompanying the Department of Transportation and Related Agencies Appropriation Bill, 1990, the Senate Appropriations Committee specifically directed RSPA to continue its financial support of, and involvement with, COHMED. Senate Report 101–121, Sept. 7, 1989.

State adoption and enforcement of the HMTA and the HMR as state law

multiplies the number of hazardous materials transportation enforcement personnel and fosters a uniform nationwide system of hazardous materials transportation regulation. Forty-nine states have followed this course of action with respect to highway transportation, and about 12 states have done so with respect to rail transportation.

State adoption of requirements identical to the Federal requirements is certainly a most effective means of fostering compliance with the "consistency" requirement of Section 112(a) of the HMTA. As this proceeding indicates, however, state adoption or incorporation by reference of the HMTA and the HMR is not necessarily an uncomplicated matter. Difficulties may arise in converting enforcement and other provisions from Federal to state legal verbiage and in determining the appropriate division of responsibility between state and Federal officials. Keeping state provisions reasonably up-to-date with Federal ones is a recurring issue. This ruling discusses those and other issues which may occur when states adopt the HMTA and the HMR.

In any event, the State of Louisiana's incorporation by reference and enforcement of the HMR through State statute and regulation is consistent with the HMTA and the HMR with respect to highway and rail transportation except as indicated below in this ruling.

Current Nature of Incorporated Regulations

Commenters alleged that the Louisiana incorporation of the HMR was inconsistent because it incorporated the October 1, 1987 Code of Federal Regulations (CFR) version of the HMR, which has been superseded by numerous amendments.

This issue was addressed in IR–19, *supra:*

> Some commenters contended that this regulation is inconsistent with the HMR because it adopts November 1, 1985 versions of the HMR, which have been superseded by the October 1, 1986 edition of the HMR and subsequent HMR amendments published in the **Federal Register**. This contention is without merit at this time. The HMR consist of an extensive body of regulations which are amended on a regular basis by changes published in the **Federal Register** and incorporated into the annual editions of the Code of Federal Regulations (CFR). RSPA encourages states to adopt and enforce the HMR as state requirements. IR–17, 51 Fed. Reg. 20925 at 20929 (June 9, 1986).
>
> It is impossible, however, for states to adopt new HMR requirements simultaneously with RSPA's issuance of them. This inconsistency ruling application was filed in November 1986, less than two months after the October 1, 1986 revision date of the current CFR version of the HMR. CFR volumes generally are not published and available for a few months after the dates as of which they are current. Therefore, the incorporation by reference in § 705.380 is reasonably current and thus consistent with the HMR.
>
> If a change to the HMR results in a direct conflict with a state requirement, the HMR would control as soon as the HMR change becomes effective. However, there is no basis for a wholesale preemption of state regulations which contain slightly outdated state incorporations by reference or adoptions of the HMR as state requirements.

52 FR at 24410–1. The situation here is similar. Like many states, Louisiana has incorporated by reference a specific version of the HMR. Because the version adopted was less than two years old at the time of the application for this ruling, the State's incorporation by reference is not deemed inconsistent *per se*. Instead, each specific alleged inconsistency will be judged on its own merits.

Definition of "Hazardous Materials"

Louisiana's statutory definition of "hazardous materials" provides:

> (5)(a) "Hazardous materials" means any gaseous, liquid, or solid material which because of its quanity, concentration, or physical, chemical, or biological composition poses a substantial present or potential hazard to human health, the environment, or property when transported in commerce, or which material is identified or designated as being hazardous by rules and regulations adopted and promulgated by the secretary of the Department of Public Safety and Corrections pursuant to the Louisiana Administrative Procedure Act. The secretary, in finding that a material is hazardous, shall consider the following factors with respect to each material:
>
> (i) Actual or relative potential for harm to human health, the environment, or property when transported in commerce.
>
> (ii) Scientific evidence of its potential for harm based upon quantity, concentration, or chemical or biological composition.
>
> (iii) State of current scientific knowledge regarding the material.
>
> (iv) Its history and current pattern of harm.
>
> (v) Actual or potential volatility when combined with other common substances likely to be encountered during transportation in commerce.
>
> (vi) Actual or relative potential for harm to human health if allowed to escape its containment.
>
> (b) The rules and regulations adopted by the secretary of the Department of Public Safety and Corrections shall be consistent with the Code of Federal Regulations Title 49. "Explosives" as defined and regulated by R.S. 40:1471.1 through 1471.22 shall be considered to be hazardous material subject to regulation by this Chapter.

La. Rev. Stat. Sec. 1502. In addition, under the cited statutory provisions on "explosives," the State law defines an explosive as

> any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion; * * * The term "explosives" shall further include * * *
>
> (a) "blasting agent' which shall mean any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive; * * *

La. Rev. Stat. Sec. 40:1471.2(1).

Finally, the State statutes states that " 'hazardous waste' shall be as provided in R.S. 30:1133." La. Rev. Stat. sec. 32:1502(9). Furthermore, that section is not affected by the requirement for consistency with the HMR contained in the above-quoted definition of "hazardous materials."

At the Federal level, both the HMTA and the HMR address the definition/designation of hazardous materials. Section 103(2) of the HMTA, 49 U.S.C. App. sec. 1802(2) states that " 'hazardous material' means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce * * *" Section 104 of the HMTA, 49 U.S.C. App. sec. 1803, is entitled "Designation of Hazardous Materials" and provides:

> Upon a finding by the Secretary [of Transportation], in his discretion, that the transportation of a particular quantity and form of material in commerce may pose an unreasonable risk to health and safety or property, he shall designate such quantity and form of material or group or class of such materials as a hazardous material. The materials so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxodizing or corrosive materials, and compressed gases.

The HMR, at 49 CFR 171.8, further defines "hazardous material" as "a substance or material, including a hazardous substance, which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated."

The materials which have been designated as hazardous materials subject to the HMTA and the HMR are lised in the Hazardous Materials Table, 49 CFR 172.101; the Appendix to that section (containing all hazardous substances); and the Optional Hazardous Materials Table, 49 CFR 172.102. Those regulations occupy over 260 pages of the CFR, list thousands of hazardous materials, and also establish over 40 "n.o.s." (not otherwise specified)

categories of hazardous materials (e.g., flammable liquids, n.o.s.) which result in thousands of other materials being designated as hazardous materials. Specific definitions of these n.o.s. hazardous materials are located throughout part 173 of the HMR.

The complexity of the above-described HMR system of defining hazardous materials demonstrates the desirability, even the necessity, of a single, national system. Therefore, local hazardous materials definitions which result in regulation or more or different materials as hazardous materials than the HMR are obstacles to uniformity in transportation regulation and thus are inconsistent with the HMTA and the HMR. IR–5, 47 FR 51991 (Nov. 18, 1982); IR–6, 48 FR 760 (Jan. 6, 1983); IR–28, 55 FR 9304 (Mar. 8, 1990); IR–29, 55 FR 9304 (Mar. 12, 1990). The specific problems with different hazardous materials definitions were discussed in, among others, two earlier inconsistency rulings:

> The key to hazardous materials transportation safety is precise communication of risk. The proliferation of differing State and local systems of hazard classification is antithetical to a uniform, comprehensive system of hazardous materials transportation safety regulations.
>
> IR–6, 48 FR at 764.

> If every jurisdiction were to assign additional requirements on the basis of independently created and variously named subgroups of radioactive materials, the resulting confusion of regulatory requirements would lead directly to the increased likelihood of reduced compliance with the HMR and subsequent decrease in public safety.
>
> IR–12, 49 FR 46650 at 46651 (Nov. 27, 1984).

For those reasons, the Federal role in defining hazard classes and hazardous materials is exclusive, and thus such state and local definitions differing from the HMR are inconsistent with the HMR. IR–18, 52 FR 200 (Jan. 2, 1987); IR–18 (Decision on Appeal), 53 FR 28850 (July 29, 1988): IR–19, *supra;* IR–19 (Decision on Appeal), *supra;* IR–20, 52 FR 24396 (June 30, 1987), correction, 52 FR 29468 (Aug. 7, 1987); IR–21, *supra;* IR–21 (Decision on Appeal), *supra;* IR–26, *supra; Missouri Pacific RR Co.* v. *Railroad Comm'n of Texas,* 671 F. Supp. 466 (W.D. Tex. 1987), *aff'd on other grounds* 850 F.2d 264 (5th Cir. 1988), *cert. denied,* 109 S. Ct. 794 (1989); *Union Pacific RR Co.* v. *City of Las Vegas,* CV–LV 85–932 HDM (D. Nev. 1986).

Therefore, La. Rev. Stat. 32:1502(5)(a) and (8) are inconsistent with the HMTA and the HMR insofar as they authorize the State's Secretary of the Department of Public Safety and Corrections to designate as "hazardous materials" any materials, including hazardous wastes, other than those designated as such in the HMR. It follows that the State's section 32:1502(5)(b) definition of "explosives" is inconsistent with the HMR to the extent that it defines as "explosives" any materials other than those defined as such in the HMR.

Definition of "Train"

Louisiana's definition of "train" differs from the definition of "train" in the HMR. The State defines "train" as "an engine or an engine coupled with one or more rail freight cars." La. Admin. Code, tit. 33, secs. 10501(c) and 10901(c). The HMR definition, however, provides that a train is "one or more engines coupled with one or more rail cars, *except during switching operations or where the operation is that of classifying and assembling rail cars within a railroad yard for the purpose of making or breaking up trains."* 49 CFR 171.8 (emphasis added).

The effect of the State's different definition of "train" is that the State regulates aspects of switching and railroad yard operations which are not regulated under the HMR. According to unrebutted comments, this, in turn, leads to the State imposing additional impractical and unsafe requirements for those operations.

Where a specific decision has been made in the HMR that certain transportation in commerce of hazardous materials should not be subject to the general requirements of the HMR, state or local regulation of that transportation is inconsistent with the HMR under the "obstacle" test because it impedes the accomplishment of the purposes of the HMR. Therefore, the State's definition of "train" is inconsistent with the HMR because its definition lacks the "except" clause contained in the HMR definition.

Exemption and Approval Provision

La. Rev. State. 32:1507 contains the following provisions with respect to exemptions issued by OHMT under the HMTA and the HMR:

Sec. 1507. Special permits and exemptions

A. The secretary shall exempt any carrier from compliance with this Chapter or any regulation issued pursuant thereto if the exemption is identical to an exemption or special permit issued by the United States Department of Transportation. However, the secretary shall enforce the exemption or special permit if it pertains to transportation subject to this Chapter.

B. The number of each exemption granted shall be conspicuously marked on the vehicle to which it applied [sic].

Some commenters alleged that these provisions are inconsistent because they are ambiguous about whether OHMT exemptions and approvals are recognized as legally binding upon State enforcement personnel—particularly in light of the absence of regulatory provisions to that effect. In addition, they argued that paragraph B is inconsistent because it might require the marking of exemption numbers on rail cars for shipping paper exemptions and other types of exemptions not applicable to the cars themselves.

Exemptions from the requirements of the HMTA and the HMR may be issued by the Director of OHMT pursuant to section 107 of the HMTA, 49 U.S.C. App. 1806, and 49 CFR 107.101–123. To avoid regulatory chaos, the authority to issue, revoke, suspend or take other actions concerning exemptions from HMTA and HMR requirements must be exclusively Federal. This approach implements the Congressional mandate that, except for DOT-determined emergencies, "exemptions or renewals granted pursuant to [§ 107 of the HMTA] shall be the only means by which a person subject to the requirements of [the HMTA] may be exempted from or relieved of the obligation to meet any requirements imposed under [the HMTA]. "49 U.S.C. App. 1806(d).

The State's above-quoted statutory provisions appear to represent a good faith effort by the State to "dovetail" its legal requirements with the approximately 1,000 outstanding hazardous materials transportation exemptions issued by OHMT. To be consistent with the HMTA and the HMR, a state must implicitly or explicitly recognize the validity of OHMT's exemptions and approvals; a state may not establish its own exemptions and approvals program. Here the silence of the State's regulations concerning exemptions and approvals confirms rather than undermines the interpretation that § 32:1507 recognizes and gives effect to OHMT's exemptions and approvals. Furthermore, a fair reading of § 32:1505B is that it requires marking of the exemption number on a tank car or other vehicle only when the exemption pertains to the tank car or vehicle itself. As so construed, the State's exemption provisions are consistent with the HMTA and the HMR.

Insurance Requirements

La. Rev. Stat. 32:1503 requires each carrier that transports "hazardous material freight" or "hazardous waste" to carry at least $300,000 public liability and $200,000 property damage insurance for each vehicle. This required "financial responsibility" may be

established by one or more of: (1) Evidence of liability insurance, (2) self-insurance ("the level of self-insurance may not be less [sic] than twenty percent of equity"), and (3) other evidence of financial responsibility acceptable to the Secretary.

With respect to radioactive materials transportation, several prior inconsistency rulings have clearly stated that state and local governments may not impose indemnification, bonding or insurance requirements as prerequisites to such transportion. IR–10, 49 FR 46645 (Nov. 27, 1984); correction, 50 FR 9939 (Mar. 12, 1985); IR–11, 49 FR 46647 (Nov. 27, 1984); IR–15, 49 FR 46660 (Nov. 27, 1984); IR–15 (Decision on Appeal), 52 FR 13062 (Apr. 20, 1987); IR–18, *supra*; IR–18 (Decision on Appeal), *supra*; IR–25, *supra*. In IR–15 (Decision on Appeal), the RSPA Administrator stated with respect to radioactive materials transportation "insurance" requirements that the Federal requirements "have totally occupied that field, and any state or local bond, insurance or indemnification requirement not identical to the HMR requirement is an obstacle to the accomplishment of the objectives of the HMTA and the HMR." 52 FR 13062.

With respect to non-radioactive hazardous materials transportation, it was determined in IR–25, *supra*, that the absence of a bonding, insurance or indemnification requirement in the HMR represented an affirmative decision by OHMT "that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR." 54 FR 16311. Although that decision dealt with local bonding requirement, its rationale and language were applicable to similar state requirements.

As stated in IR–25, "[t]he subject of bonding, insurance and indemnity requirements for hazardous materials transportation is exclusively Federal." 54 FR 16311. Therefore, any such state requirement, such as Louisiana's § 32:1503, not identical to Federal requirements fails the "obstacle" test and, therefore, is inconsistent with the HMTA.

Incident Reporting Requirements

La. Rev. Stat. Sec. 32:1510 contains requirements for the telephonic and written reporting of certain incidents, accidents and cleanups involving the transportation of hazardous materials. Its requirements for such reports are as follows:

A. Each person involved in an incident, accident, or the cleanup of an incident or accident during the transportation, loading, unloading, or related storage in any place of a hazardous material subject to this Chapter shall report immediately by telephone to the department if that incident, accident, or cleanup of an incident or accident involves:

(1) A fatality due to fire, explosion, or exposure to any hazardous material.

(2) The hospitalization of any person due to fire, explosion, or exposure to any hazardous material.

(3) A continuing danger to life, health, or property at the place of the incident or accident.

(4) An estimated property damage of more than ten thousand dollars.

B. A written report shall be submitted to the department on an approved form. Each report submitted shall contain the time and date of the incident or accident, a description of any injuries to persons or property, any continuing danger to life at the place of the accident or incident, the identity and classification of the material, and any other pertinent details.

C. In the case of an incident or accident involving hazardous materials which is not subject to this Chapter but which is subject to Title 49 and Title 46 of the Code of Federal Regulations, the carrier shall send a copy of the report filed with the United States Department of Transportation to the department.

La. Rev. Stat. 32:1510.

Requirements for immediate telephonic hazardous materials transportation accident/incident reports for emergency response purposes generally are consistent with the HMTA and the HMR. IR–2, IR–3, IR–28, all *supra*; *National Tank Truck Carriers, Inc.* v *Burke*, 535 F. Supp. 509 (D.R.I. 1982), *aff'd*, 698 F.2d 559 (1st Cir. 1983).

However, with respect to the State's telephonic reporting requirement applying to spent nuclear fuel, which also is called irradiated reactor fuel, it previously was determined that similar requirements were inconsistent with the HMR because of redundancy and possible conflict with the HMR. IR–8, IR–8 (Decision on Appeal), and IR–28, all *supra*. In IR–28, 55 FR 8884, 8893–94 (Mar. 6, 1990), the Director of OHMT stated:

Two HMR provisions are relevant to this issue. First, 49 CFR 177.861 requires the "earliest practicable" notification to the shipper of radioactive materials incidents. Second, 49 CFR 173.22(c) requires shippers of irradiated reactor fuel to provide physical protection in compliance with a plan established under Nuclear Regulatory Commission (NRC) requirements; those requirements include a 10 CFR 73.37[(b)(4)] provision for notification to appropriate agencies in the event of a "safeguards emergency."

However, 10 CFR 73.37(b)(6) also requires such shippers to arrange with local law enforcement agencies along its routes for their response to an emergency or call for assistance. Because they are clear and not in conflict with the HMR, the State's telephonic notification requirements are consistent with the HMR provision incorporating these requirements (49 CFR 173.22(c)).

Therefore, the State's requirements for telephonic notification concerning hazardous materials incidents/accidents are consistent with the HMTA and the HMR.

Furthermore, the provisions of State law which require the submission of *written* accident/incident reports, are redundant with Federal requirements (particularly 49 CFR 171.16), tend to undercut compliance with the HMR requirements, and thus are inconsistent. IR–2, IR–3, (Decision on Appeal), all *supra*; IR–30, 55 FR 9676 (Mar. 14, 1990), correction 55 Fed. Reg. 12111 (Mar. 30, 1990). This rationale also applies to requirements to provide copies of the incident reports filed with OHMT; as indicated in IR–3, *supra*, such a requirement is inconsistent but OHMT is prepared to routinely send copies of those reports to a designated state agency on request.

Licensing Requirements

La. Rev. Stat. 32:1516A and B provide for the licensing of persons in charge of vehicles transporting, *inter alia*, hazardous materials. Some commenters asserted that OHMT had indicated in IR–26, *supra*, that drivers of motor vehicles transporting hazardous materials could not be required to obtain State licenses. That Ruling was not so broad; it said that a State *could* impose hazardous materials transportation licensing requirements on its own domiciliaries as part of its motor vehicle licensing program but *could not* impose such requirements on non-domiciliaries (except after March 31, 1992, with respect to those not having current hazardous materials endorsements on their commercial drivers' licenses).

Applying those same principles to Louisiana, there is nothing in the HMTA or the HMR to preclude it from imposing hazardous materials transportation licensing requirements on its own domiciliaries. Therefore, the cited State licensing provisions are consistent insofar as they apply to Louisiana domicilaries but inconsistent insofar as they apply to other persons.

Placarding Requirement

Louisiana's statute addresses hazardous materials placarding:

Each carrier transporting hazardous materials shall indicate the proper hazard class by placing a placard stating such class

on all four sides of each vehicle as required by the rules and regulations promulgated by the secretary.

La. Rev. Stat. 1503D.

One commenter contended that this statutory provision is inconsistent with the HMTA and the HMR because the HMR places the initial burden on shippers to apply proper placards on transport vehicles. In fact, the HMR places responsibility for proper placarding on *both* shippers/offerors and transporters of hazardous materials. 49 CFR §§ 171.2 (a) and (b), 172.500, 172.504, 172.506, 172.508, 174.1, 174.7 and 177.800. (For example, § 172.508(b) states: "No rail carrier may accept a rail car containing a hazardous material for transportation unless the placards for the hazardous material are affixed thereto as required by this subpart.") Given the State's incorporation by reference of the HMR and the requirement in § 32:1504A for compatibility of the State's regulations with the HMR, there is no indication that the above-quoted language has the effect of placing placarding responsibility solely on carriers; therefore, it is consistent with the HMTA and the HMR.

The language of § 32:1503D, however, does raise an additional issue: whether it requires placards on *all* vehicles carrying *any* quantity of *any* hazardous material—in contrast to the HMR requirements for placarding of only certain vehicles, rail cars, freight containers, cargo tanks, etc. containing certain specified quantities of certain classes of hazardous materials.

Because of the critical hazard communication function of hazardous materials placards, requirements concerning them (as well as other hazard warning devices) are inconsistent if they are in addition to or different from Federal placarding requirements. IR–2, *supra;* IR–3, *supra;* IR–24, 53 FR 19848 (May 31, 1988); *Kappelmann* v. *Delta Air Lines, Inc.*, 539 F.2d 165 (D.C. Cir. 1976), *cert. denied,* 429 U.S. 1061 (1977); *National Tank Truck Carriers, Inc.* v. *City of New York,* 677 F.2d 270 (2d Cir. 1982).

This issue was addressed in an early Inconsistency Ruling:

> Hazard warning systems are another area where [DOT] perceives the Federal role to be exclusive * * *. Additional, different requirements imposed by States or localities detract from the DOT systems and may confuse those to whom the DOT systems are meant to impart information.

IR–2, 44 FR at 75568.

Shortly thereafter both DOT and a Federal Court found a City of Boston requirement for different placards and product identification inconsistent with the HMTA and the HMR. IR–3, *supra; American Trucking Ass'ns* v. *City of Boston,* 12 Envtl. L. Rep. (Envtl. L. Inst.) 20,789 (D. Mass. 1981).

Finally, in IR–24, *supra,* a definitive statement was made on the exclusive Federal nature of placarding requirements:

> It is OHMT's view that the HMR placarding provisions do completely occupy the field and, therefore, preempt all state and local placarding and warning sign requirements for hazardous materials transportation which are not identical to the Federal requirements. This is true with respect to requirements applying solely to pickups and deliveries, as well as to requirements applying to through-traffic, because all such non-identical requirements create confusion and undermine the uniform system of hazard communication necessary for the safe transportation of hazardous materials. Transportation viewed as being a mere pickup or delivery by one jurisdiction actually may be just the beginning or end of multi-state transportation through numerous local jurisdictions.

52 FR 19848 at 19850.

It is critical, therefore, that Louisiana's placarding requirements not differ from those of the HMR. Although the applicability of § 32:1502 appears to be broader than the HMR placarding requirements, the State's provision does not contain any substantive standards requiring placarding and furthermore is qualified by the words "as required by the rules and regulations promulgated by the secretary [of the Department of Public Safety and Corrections]." Under § 32:1504, those rules and regulations must be compatible with the HMR. The only rules and regulations of the Louisiana Secretary of the Department of Public Safety and Corrections on this subject are those adopting the HMR. Therefore, the State's placarding requirements do not differ from those of the HMR, and § 32:1502D thus is not inconsistent with the HMR because of its *apparent* broader applicability.

Finally, the language of section 32:1503D raises one additional issue. On its face, it requires and authorizes only placards indicating the proper hazard classes of hazardous materials; it lacks a counterpart to the 49 CFR 172.504(b) provision authorizing the use of DANGEROUS placards—which do *not* indicate any specific hazard class—on a transport vehicle or freight container containing two or more classes of hazardous materials otherwise requiring different placards. However, section 32:1503D does not prohibit the use of DANGEROUS placards, and the State's adoption of the HMR results in DANGEROUS placards being authorized.

In summary, therefore, section 32:1503(D), considered in the overall context of the State's statutory and regulatory provisions, is consistent with the HMTA and the HMR.

Shipping Paper Requirements

La. Rev. Stat. 32:1509 imposes the following requirements concerning shipping papers for hazardous materials transportation:

> A. (1) No carrier shall transport any hazardous material unless shipping documents describing the lading are provided to the operator of the vehicle prior to departure and shall be carried in the vehicle or combination of vehicles.
>
> (2) The description of lading shall include at least the shipping name, classification, and weight or volume of the material.

State and local shipping paper requirements which differ from those of the HMR (49 CFR 172.200–204) are inconsistent because of the need for national uniformity of shipping papers. IR–4, 47 FR 1731 (Jan. 11, 1982); IR–4 (Decision on Appeal), 47 FR 33357 (Aug. 2, 1982), correction, 47 FR 34074 (Aug. 5, 1982). The issue here, therefore, is whether the State requirements differ from the HMR requirements. The information requirements themselves do not differ because they require no more information than the HMR; also, the State's adoption of the HMR incorporates the other detailed information requirements thereof.

One commenter argued that the State's requirement that the shipping papers be provided "to the operator of the vehicle" is inconsistent with an alleged HMR requirement that the shipping paper need only be in the possession of a member of the train crew (which, says the commenter, usually is the conductor). The relevant HMR provision is 49 CFR 174.24(a), which states that "* * * no person may accept for transportation by rail any hazardous material * * * unless he has received a shipping paper * * * *." It also provides that "* * * no member of the train crew of a train transporting the hazardous material is required to have a shipper's certificate on the shipping paper in his possess if the original shipping paper containing the certificate is in the originating carrier's possession."

Both the Federal and State provisions are sufficiently ambiguous concerning exactly who is to receive the shipping papers and whether another person may serve as that person's agent that there is no basis in this record for finding the State requirement inconsistent—particularly in light of the State's adoption of the quoted (and all other)

HMR provisions. Therefore, section 32:1509 is consistent.

Penalty Provisions

A commenter contended that the State's penalty provisions (La. Rev. Stat. 32:1512–1514) are inconsistent because they authorize the imposition of a civil penalty for other than "knowing" violations, they authorize the seizure of rail equipment if penalties are not paid, and they authorize imposition of a $25,000 civil penalty per violation—in contrast to the HMR's $10,000 civil penalty per violation.

Insofar as they relate to the enforcement of consistent requirements (see "Inspection and Enforcement Provisions" discussion below), neither the $25,000 civil penalty provision nor the seizure provision facilitating penalty collections is inconsistent with the HMTA or the HMR. State penalty amounts and collection procedures need not be identical to those of the HMTA and the HMR. IR–3, IR–27, IR–28, all *supra*. Only penalties imposed for violations of inconsistent substantive requirements are themselves inconsistent. IR–18, IR–18 (Decision on Appeal), IR–27, IR–28, all *supra;* IR–30, 55 FR 9676 (Mar. 14, 1990), correction 55 FR 12111 (Mar. 30, 1990); *Jersey Central Power & Light Co. v. Township of Lacey*, 772 F. 2d 1103 (3rd Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986):

However, the absence of a "knowingly" requirement with respect to the imposition of civil penalty liability (the State having deleted "knowingly" from section 32:1512 in 1982) is inconsistent with the HMTA. In section 110(a) of the HMTA (49 USC 1809(a)), Congress established civil penalties for persons "knowingly" violating the HMTA, the HMR, or other regulations issued under the HMTA; it used the word "knowingly" in each of the first three sentences of that section. The second sentence demonstrates Congress' approach:

> Whoever knowingly commits an act which is a violation of any regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than $10,000 for each violation.

Thus, Congress has clearly demonstrated its intention that persons not be subject to civil penalties for violations of hazardous materials transportation regulations as the basis of strict or absolute liability. The legislative history of that section has led RSPA to adopt the following regulation setting forth the standard for determining civil penalty liability under the "knowingly" test:

> "Knowledge" or "knowingly" means that a person who commits an act which is a violation of the Act or of the requirements of this subchapter or Subchapter C of this Chapter commits that act with knowledge or knowingly when that person (1) has actual knowledge of the facts that give rise to the violation, or (2) should have known of the facts that give rise to the violation. A person knowingly commits an act if the act is done voluntarily and intentionally. Knowledge or knowingly means that a person is presumed to be aware of the requirements of the Act and this subchapter and Subchapter C of this chapter. Knowledge or knowingly does not require that a person have an intent to violate the requirements of the Act or the requirements of this subchapter or Subchapter C of this Chapter.

49 CFR 107.299. In other words, Congress imposed a negligence standard for civil penalty liability for violations of the HMTA and regulations thereunder. *Contract Courier System, Inc.* v. *The Research and Special Programs Administration of the U.S. Department of Transportation*, No. 88 C 9320 (N.D. Ill. Sept. 22, 1989), *appeal pending*, Nos. 90–1349 and 90–1384 (7th Cir.). *See also Southern Railway Co.* v. *John H. Riley, Administrator, Federal Railroad Administration*, C84–1990A (N.D. Ga. Oct. 10, 1986), *appeal dismissed*, No. 87–8060 (11th Cir. Dec. 7, 1987) (adopting a "willful negligence" standard), and *Southern Railway Co.* v. *Carmichael, No. 1:84–CV–1990–RCF (N.D. Ga. Feb. 12, 1990) (entering summary judgment for FRA in enforcement case decided on remand on basis of "willful negligence" standard). Louisiana's imposition of strict or absolute civil penalty liability for such violations is inconsistent with the HMTA.*

Inspection and Enforcement Provisions

Inspection authority, including the authority to stop and inspect any transport vehicle, is addressed in La. Rev. Stat. section 32:1505 and 32:1509A(3). In addition, section 32:1508 provides authority to:

> * * * declare and mark any transport vehicle or container as out-of-service if its condition, filling, equipment, or protective devices would be hazardous to life or property during the transportation of hazardous material, freight or passengers.

Enforcement authority is addressed in § 32:1504B, which provides:

> The secretary may conduct investigations; make reports on; issue subpoenas, conduct hearings; require the production of relevant documents, records, and property; take depositions; * * *.

Some commenters have contended that these inspection and enforcement provisions are inconsistent because they can cause delays in transportation and thereby impede compliance with HMR provisions requiring prompt transportation of hazardous materials (49 CFR 174.14 and 177.853). They have argued that improper enforcement by State personnel demonstrates the likelihood of such delays resulting from implementation of these inspection and enforcement provisions.

State and local hazardous materials transportation inspection requirements relating to consistent substantive requirements are encouraged by RSPA and are themselves consistent. IR–2, IR–8, IR–15, IR–17, IR–20, IR–27, all *supra*; *Colorado Pub. Utilities Comm'n* v. *Harmon*, No. CV 88–Z–1524 (D. Colo. 1989), *appeal docketed*, No. 89–1288 (10th Cir. Aug. 25, 1989). On the other hand, such inspection requirements relating to inconsistent substantive provisions are themselves inconsistent. IR–20, IR–21, IR–21 (Appeal), IR–27, all *supra*.

Similarly, state and local hazardous materials transportation enforcement provisions are consistent insofar as they apply to violations of consistent substantive requirements. IR–3, IR–27, both *supra*. However, they are inconsistent insofar as they apply to violations of inconsistent substantive requirements, IR–18, IR–18 (Appeal), IR–27, all *supra; Jersey Central Powers Light Co.* v. *Township of Lacey*, 772 F. 2d 1103 (3d Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986).

Because all state and local inspection and enforcement provisions have a tendency to cause some delay in transportation, that delay does not *per se* cause those provisions to be inconsistent. Also, isolated instances of improper enforcement (e.g., misinterpretation of regulations) do not render such provisions inconsistent.

Therefore, the consistency of the cited Louisiana inspection and enforcement provisions depends upon the consistency of the requirements being enforced through use of them. They are consistent insofar as they relate to consistent substantive requirements and inconsistent insofar as they relate to inconsistent substantive requirements. For example, they would be inconsistent insofar as they would be used to enforce requirements applicable to (1) hazardous materials other than those included within the HMTA and HMR definitions of hazardous materials or (2) train switching and yard operations not subject to regulation under the HMR.

Injuction Provisions

La. Rev. Stat. 32:1515 authorizes the Secretary to seek a court injuction against imminent hazards with respect to hazardous materials transportation.

That section provides that an "imminent hazard" exists "when the transportation may present an imminent and substantial endangerment to health or the environment."

Similarly, section 111 of the HMTA, 49 U.S.C. App. 1810, authorizes court actions to redress violations, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages. It also authorizes the Secretary to petition a court for an order suspending or restricting the transportation of hazardous material responsible for an imminent hazard, which is defined as existing "if there is a substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm."

Given the differences between Federal and State courts and their proceedings and procedures, there is no necessity for identical injunction provisions. Like other enforcement provisions, therefore, those concerning injunctions generally are consistent insofar as they relate to the enforcement of consistent substantive requirements. Therefore, section 32:1515 is consistent with the HMTA.

Summary

For the foregoing reasons and on the basis of this record, I make the following findings.

Louisiana Revised Statutes 32:1501–1520 and Louisiana Regulations, title 33, part V, sections 10501 through 10505 and 10901 through 10905 are consistent with the HMTA and the HMR except that the following provisions therefore are inconsistent with the HMTA or the HMR to the extent indicated and thus preempted to that extent under section 112(a) of the HMTA (49 U.S.C. 1811(a)):

(1) La. Rev. Stat. 32:1502 (5)(a) and (8) insofar as they authorize the designation as hazardous materials of any materials other than those so designated in the MHR;

(2) La. Rev. Stat. 32:1502(5)(b) to the extent it defines as "explosives" any material not so defined in the HMR;

(3) La. Admin. Code, Tit. 33 Secs. 10501(c) and 10901(c) definition of "train";

(4) La. Rev. Stat. 32:1503, imposing hazardous materials transportation insurance requirements;

(5) La. Rev. Stat. 32:1510, requiring written incident/accident reports;

(6) La. Rev. Stat. 32:1512–1514 insofar as those penalty provisions relate to the enforcement of inconsistent substantive requirements;

(7) La. Rev. Stat. 32:1512 insofar as it imposes civil penalties for other than "knowing" violations;

(8) La. Rev. Stat. 32:1504B, 32:1505, 32:1508, and 32:1509A(3) insofar as those inspection and enforcement provisions relate to inconsistent substantive requirements.

This ruling does not address the issues of whether those Louisiana provisions are preempted under the Federal Railroad Safety Act (FRSA), 45 U.S.C. App. Section 421 *et seq.*, the Motor Carrier Safety Act, 49 U.S.C. Section 2501 *et seq.*, or any statute other than the HMTA.

Any appeal of this ruling must be filed within 30 days of service in accordance with 49 CFR 107.211.

Issued in Washington, DC, on June 15, 1990.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 90–14347 Filed 6–20–90; 8:45 am]

BILLING CODE 4910–60–M

federal register

Thursday
June 21, 1990

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation and Determinations of Endangered Status; Final Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB31

Endangered and Threatened Wildlife and Plants; Endangered Status for the Lower Keys Rabbit and Threatened Status for the Squirrel Chimney Cave Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rules.

SUMMARY: The Service determines the Lower Keys rabbit (*Sylvilagus palustris hefneri*) to be an endangered species and the Squirrel Chimney cave shrimp (*Palaemonetes cummingi*) to be a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). These species are found only in Florida. The Lower Keys rabbit is restricted to a few keys in Monroe County and is endangered by loss of wetlands to residential development. The Squirrel Chimney cave shrimp is restricted to one site in Alachua County, Florida. It is threatened by potential development. This action will implement the protection and recovery provisions afforded by the Act for these species.

EFFECTIVE DATE: July 23, 1990.

ADDRESSES: The complete files for these rules are available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard, South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Field Supervisor, at the above address (telephone 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The Lower Keys rabbit (*Sylvilagus palustris hefneri*) is an island subspecies of the widespread marsh rabbit. The subspecies was described by Lazell in 1984, based on a specimen from Sugarloaf Key, Monroe County, Florida (Lazell 1984). The Lower Keys rabbit measures about 40 centimeters (16 inches) in total length and has brownish fur dorsally and gray fur ventrally. It differs from the marsh rabbit of peninsular Florida (*Sylvilagus palustris paludicola*) principally in skull characters.

In recent times, the Lower Keys rabbit was found on at least ten of the Lower Keys, but may now be extirpated from five of these. The rabbit does not occur east of the Seven Mile Bridge; it is replaced in the Upper Keys by the subspecies *Sylvilagus palustris paludicola*. The Lower Keys rabbit occurs primarily in marshes, ranging from saline to fresh water. It also feeds and disperses through adjacent upland pinelands and hammocks. Salt marshes in the area are typically vegetated with fringerush (*Fimbrystylis* sp.), buttonwood (*Conocarpus erectus*), cordgrass (*Spartina alterniflora*), saltwort (*Batis maritima*), glasswort (*Salicornia virginica*), sawgrass (*Cladium jamaicense*), and sea oxeye (*Borrichia frutescens*). Fresh water marshes support cattail (*Typha latifolia*), sedges (*Cyperus* sp.), and sawgrass. Marshes are very limited in the Lower Keys, since mangroves occupy many coastal areas and interior fresh water habitat is scarce. Known localities for the Lower Keys rabbit are on Federal (National Key Deer Refuge, KeyWest Naval Air Station), State (Florida Department of Transportation), and private lands. The primary cause of the decline of the Lower Keys rabbit is the filling of wetlands for residential, commercial, and military purposes.

The subspecies was considered a category 2 species (a species for which listing is possibly appropriate, but for which conclusive data is lacking) in the Service's vertebrate notice of review published September 18, 1985 (50 FR 37958), and as a category 1 species in the animal notice of review published January 6, 1989 (54 FR 554), indicating that listing was appropriate.

The Service was petitioned to list the Lower Keys rabbit as an endangered species by Ms. Joel Beardsley in a letter received April 17, 1985. Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended in 1982, requires that for any such listing petition containing substantial information, a finding be made within 12 months of receipt of the petition. The Service made a finding that the petition presented substantial information and that the requested action may be warranted on August 30, 1985 (50 FR 35272). Subsequent 1-year findings for 1986 (51 FR 29673; August 20, 1986), 1987 (53 FR 25512; July 7, 1988), and 1988 (53 FR 31723; August 19, 1988) were that the petition was warranted but precluded by other listing activities. The August 30, 1989 (54 FR 35905) proposal to classify the Lower Keys rabbit as endangered constituted the final finding required for this species.

The Squirrel Chimney cave shrimp (*Palaemonetes cummingi*), a decapod crustacean of the family Palaemonidae, was described by Chace in 1954. It measures about 30 millimeters (1.2 inches) in total length and is transparent. The body and eyes are unpigmented, and the eyes are reduced in size in comparison to surface-dwelling species of *Palaemonetes*. The Squirrel Chimney cave shrimp (also known as the Florida cave shrimp) is restricted to Squirrel Chimney, a sinkhole near Gainesville, Alachua County, Florida. The site is privately owned. Squirrel Chimney is a small sinkhole which leads to a flooded cave system over 30 meters (100 feet) deep. Several other cave-dwelling invertebrates are found in Squirrel Chimney: McLane's cave crayfish (*Troglocambarus maclanei*), the light-fleeing crayfish (*Procambarus lucifugus*), the pallid cave crayfish (*Procambarus pallidus*) (a category 2 candidate for Federal listing), and Hobb's cave amphipod (*Crangonyx hobbsi*). The site supports one of the richest cave invertebrate faunas in the United States. In 1983, the site was proposed for recognition as a National Natural Landmark, but the National Park Service has not yet taken final action on the proposal.

The Squirrel Chimney cave shrimp is considered threatened by the Florida Committee on Rare and Endangered Plants and Animals, while the other four species are considered species of special concern. The Squirrel Chimney cave shrimp was classified a category 2 species in the Service's May 22, 1984, invertebrate review notice (49 FR 21664), and also in the animal notice of review published January 6, 1989 (54 FR 554). It is threeatened by potential residential development and changes in land use. The Service proposed this species as a threatened species on August 30, 1989 (54 FR 35905).

Summary of Comments and Recommendations

In the August 30, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, required by section 4(b)(5)(D) of the Act, were inadvertently not published during the comment period (August 30 to October 30, 1989) announced in the proposal; the comment period on the proposal was therefore reopened from December 4, 1989, to January 3, 1990, in a notice published on December 4, 1989 (54 FR 50006). Newspaper notices were published in

the *Key West Citizen* (Key West, Florida) for the Lower Keys rabbit on December 10, 1989; and in the *Gainesville Sun* (Gainesville, Florida) for the Squirrel Chimney cave shrimp on December 14, 1989.

Twenty comments were received regarding the proposal to list the Lower Keys rabbit. The proposal was supported by the Florida Game and Fresh Water Fish Commission, the Florida Natural Areas Inventory, six conservation organizations, and seven individuals. Three individuals opposed the proposal; one such letter included a petition signed by 26 local residents who opposed the listing of the Lower Keys rabbit. One individual opposed further land acquisition and regulation in the Florida Keys, stating that the tax burden would increase. Service response: Listing decisions pursuant to the Act are required to be based solely on the factors enumerated under section 4(a) of the Act; see the "Summary of Factors Affecting the Species" below. Only biological and threat criteria can be used to determine whether species are endangered or threatened; potential economic effects are not allowed to influence the decision on whether or not a species is endangered or threatened. In any case, it is likely that little, if any, public land acquisition will take place for the Lower Keys rabbit. Some of the habitat of the subspecies is already in government ownership (National Key Deer Refuge and Key West Naval Air Station); much of the reminder is in small isolated parcels that, even if acquired, would have limited effects on the Florida Keys economy.

One comment indicated that the Lower Keys rabbit had been seen on Saddlehill Key in recent years, a site previously not recorded. In another comment the biologist who had carried out the status survey for the Lower Keys rabbit reported his belief that the rabbit had continued to decline since the 1987 survey work. The U.S. Navy, Key West Naval Air Station, indicated its willingness to cooperate in conservation of this species on Navy lands in the Lower Keys. Several other points were raised in the comments. The biologist who scientifically described the Lower Keys rabbit pointed out that the species uses pinelands and hammocks in addition to wetland hammocks; that fact has been incorporated into the final rule. Another individual stated that the Lower Keys rabbit no longer existed and that the only rabbits in the area were escaped domestic rabbits. Service response: While feral domestic rabbits (the European rabbit, *Oryctalagus cuniculus*) may be found in the Lower Keys, the Lower Keys rabbit (*Sylvilagus palustris hefneri*) represents a different genus, not closely related to the escaped domestic rabbits. Lower Keys rabbits continue to exist, as evidenced by recent sightings and road-killed animals.

Two conservation groups disagreed with the Service's proposal to not designate critical habitat for the Lower Keys rabbit. They felt that critical habitat designation would provide additional protection to the rabbit and its habitat, particularly in areas that appear to be suitable habitat but are currently unoccupied by the species. The Service continues to believe that the disadvantages of critical habitat designation for the Lower Keys rabbit outweigh the benefits. Critical habitat, by definition, applies only to Federal agency actions. Section 7(a)(2) of the Act requires Federal agencies to insure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of critical habitat of such species. The standards for establishing jeopardy to the species and for destruction and adverse modification of habitat are substantially identical. Since no apparent benefits would result from the designation of critical habitat for this species, the Service has not proposed such a regulation.

Four comments were received in response to the proposal to list the Squirrel Chimney cave shrimp as a threatened species. The proposal was supported by the Florida Game and Fresh Water Fish Commission, the Florida Natural Areas Inventory, and the Florida Speleological Society. The landowner of the site where the shrimp occurs opposed the listing of the shrimp, questioning the currentness of the data used to justify the proposal and fearing that the regulation might restrict development of the property. Service response: Although collections of the Squirrel Chimney cave shrimp have not been attempted for several years, there is no reason to believe that the species does not still occur at the site. Neither the landowner nor the Service has been able to identify any current or planned development activities that would be prevented by the listing of this species. No Federal agency activities are currently known or anticipated for the property.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Lower Keys rabbit should be classified as an endangered species and that the Squirrel Chimney cave shrimp should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Lower Keys rabbit (*Sylvilagus palustris hefneri*) and the Squirrel Chimney cave shrimp (*Palaemonetes cummingi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* (1) Lower Keys rabbit—This species probably originally occurred in suitable habitat throughout the larger Lower Florida Keys. Lazell (1984) reported the rabbit from Lower Sugarloaf, Geiger, Saddlebunch, Boca Chica, and Big Pine Keys. He documented 13 sites from these keys (records in Florida Natural Areas Inventory, Tallahassee, Florida). Based on interviews with local residents, he believes that the species also occurred on Cudjoe, Ramrod, Middle Torch, Big Torch, and Key West Keys, but has been extirpated at these sites (J.D. Lazell, The Conservation Agency, *in litt.*, 1985). Lazell (*in litt.* 1985) also provided a rough population estimate, based on pellet counts, of 259 remaining Lower Keys rabbits. Based on interviews with local residents, he believed that the Lower keys rabbit had been locally common as recently as the 1950's.

The Refuge Manager of the Service's National Wildlife Refuge Complex in the Florida Keys (Key Deer, Key West, and Great White Heron) reviewed the annual reports of that station for information on the Lower keys rabbit (*in litt.* 1986). The rabbit was known to be present on Refuge lands on Boca Chica, Saddlebunch, and Big Pine Keys, but not on the smaller, outer keys of these refuges. The species was not considered abundant, and was believed to be restricted to keys with available fresh water. Only a few rabbits have been seen since 1984. Howe (1988) surveyed Lazell's 13 sites, as well as additional areas, in a status survey funded by the Service and carried out by the Florida Game and Fresh Water Fish Commission. He found rabbits at 12 locations (one additional site was found following the conclusion of his survey), while they appear to have been extirpated from 4 or possibly 5 previously known sites. Filling for development or road construction has

resulted in the destruction of the rabbit's habitat at these sites. Only 6 of the 13 remaining known sites are secure from development. The species may also be extirpated from Saddlebunch Key, where most of the habitat has been destroyed. Howe estimates that 200-400 Lower Keys rabbits remain on Sugarloaf, Welles, Annette, Boca Chica, Big Pine, and Hopkins Keys in small, scattered populations. A few rabbits may also still occur on Saddlehill Key.

(2) Squirrel Chimney cave shrimp—This species is known from only one sinkhole. Any detrimental change to the sinkhole or the underlying aquifer has the potential to adversely affect or even cause the extinction of the species. The property surrounding the sinkhole is currently oak hammock and pine plantation, but it may be developed for residential use (single-family houses) in the foreseeable future. The property is in an actively developing area on the outskirts of Gainesville. Septic tanks and the use of pesticides and herbicides associated with residential development have the potential to degrade water quality in the aquifer, and human activities in the vicinity of the sinkhole could damage the vegetation in and around the sink. Forestry practices have the potential to damage the sinkhole through erosion or pesticides. The current property owners intend to give The Nature Conservancy the first option to purchase the land around the sinkhole, but even if this site is acquired, the sinkhole will remain vulnerable to development in the near vicinity.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The Lower Keys rabbit was actively hunted in the past (Lazell 1985), but it is not known whether such activity continues. The current small population size and limited distribution of this animal would make any hunting a serious threat. The Squirrel Chimney cave shrimp is restricted to one small site that could be seriously damaged by a single act of vandalism.

C. *Disease or predation.* The Lower keys rabbit is vulnerable to predation by feral house cats, which are common on the Lower keys. Mammalian predators such as cats are not native to the Lower Keys, and wildlife there, as on many islands, may not be well adapted to withstanding such predation. Disease or predation are not known to be affecting the Squirrel Chimney cave shrimp.

D. *The inadequacy of existing regulatory mechanisms.* No existing regulatory mechanisms apply to the Lower keys rabbit or the Squirrel Chimney cave shrimp.

E. *Other natural or manmade factors affecting its continued existence.* The Lower keys rabbit occurs in small, disjunct populations which may persist only due to migration among colonies. The continuing urbanization of the Lower Keys makes such movements increasingly difficult. Other natural or manmade factors are not known to be affecting the Squirrel Chimney cave shrimp.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Lower Keys rabbit as an endangered species and the Squirrel Chimney cave shrimp as a threatened species. The Lower Keys rabbit is in danger of extinction throughout a significant portion, if not all, of its range. While not in immediate danger of extinction, the Squirrel Chimney cave shrimp is likely to become an endangered species in the foreseeable future. Critical habitat is not being designated for either species for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Lower Keys rabbit or the Squirrel Chimney cave shrimp. Publication of critical habitat maps for the Lower Keys rabbit could result in hunting or poaching of this species in its few remaining sites. Federal agencies with Lower Keys rabbits on their properties have been notified. Their activities will be subject to section 7 of the Act, as discussed under "Available Conservation Measures."

The Squirrel Chimney cave shrimp is restricted to a single known locality that could easily be damaged by vandalism (see factor "B." above). The private landowners do not desire visitors at the site. No Federal activities are known or anticipated at the site.

Publication of critical habitat description would make both species more vulnerable to take or vandalism. For the above reasons, the Service has concluded that designation of critical habitat is not prudent for the Lower Keys rabbit or the Squirrel Chimney cave shrimp. All involved parties and major land owners have been notified of the location and the importance of protecting the habitat of these species. Protection will be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

For the Lower Keys rabbit, affected Federal agencies are the U.S. Navy and the U.S. Army Corps of Engineers (Corps). The rabbit occurs on Key West Naval Air Station, and the Corps has jurisdiction over some of the wetlands used by the rabbit through its permitting authority pursuant to section 404 of the Clean Water Act. The Navy currently anticipates no conflicts with its mission on Key West Naval Air Station, and will assist in conserving the Lower Keys rabbit. The Corps must now evaluate wetland permit applications for potential effects on the Lower Keys rabbit. If appropriate, the Corps must consult with the Service concerning the Lower Keys rabbit. Wetland permitting in some areas may become more restrictive.

No Federal agency involvement is known or anticipated for the Squirrel Chimney cave shrimp.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general trade prohibitions and exceptions that apply to endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import and export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or for special purposes consistent with the purposes of the Act.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Chace, F.A., Jr. 1954. Two new subterranean shrimp (Decapoda:Caridea) from Florida and the West Indies, with a revised key to the American species. J. Wash. Acad. Sci. 44:318–324.

Howe, S.E. 1988. Lower Keys rabbit status survey. Final report of Florida Game and Fresh Water Fish Commission to Jacksonville Field Office of U.S. Fish and Wildlife Service under Cooperative Agreement 14–16–004–87–939. 10 pp.

Lazell, J.D., Jr. 1984. A new marsh rabbit (*Sylvilagus palustris*) from Florida's Lower Keys. J. Mamm. 65(1):26–33.

Author

The primary author of this rule is Dr. Michael M. Bentzien (see **ADDRESSES** section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulations promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under the groups indicated, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
* * * * *							
Rabbit, Lower Keys	*Sylvilagus palustris*	U.S.A. (FL)	Entire	E	390	NA	NA
* * * * *							
Crustaceans							
* * * * *							
Shrimp, Squirrel Chimney (=Florida) Cave.	*Palaemonetes cummingi*	U.S.A. (FL)	NA	T	390	NA	NA
* * * * *							

Dated: May 15, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–14410 Filed 6–20–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB31

Endangered and Threatened Wildlife and Plants; Designation of the Freshwater Mussel, the Fanshell as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service designates a freshwater mussel, the fanshell (*Cyprogenia stegaria* (=*C. Irrorata*)), as an endangered species under the Endangered Species Act of 1973, as amended (Act). This freshwater mussel historically occurred in the Ohio River and many of its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Tennessee, Alabama, and Virginia. Presently, the fanshell is believed to be reproducing in only three rivers—the Green and Licking Rivers in Kentucky, and the Clinch River in Tennessee and Virginia. Additionally, small, apparently nonreproducing populations (based on the collection of a few old specimens in the 1980s) may still persist in the Muskingum River, Ohio; the Kanawha River, West Virginia; the Wabash River system in Illinois and Indiana; Tygarts Creek, Kentucky; and the Tennessee and Cumberland Rivers in Tennessee. The distribution and reproductive capacity of this species has been seriously impacted by the construction of impoundments and navigation facilities, dredging for channel maintenance, sand and gravel mining, and water pollution.

EFFECTIVE DATE: July 23, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by

appointment, during normal business hours at the U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The fanshell (*Cyprogenia stegaria* (=*C. Irrorata*)) was described by Rafinesque (1820). This freshwater mussel is characterized as a medium to large river species (Bates and Dennis 1985). The mussel has a medium-size shell (seldom exceeding 3.2 inches [80 millimeters] in length) that is subcircular in outline (Johnson 1980). The shell exterior has green rays on a light green or yellow surface ornamented with green mottling. The inside surface of the shell (nacre) is usually silvery white. Like other freshwater mussels, this animal feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel's larvae likely parasitize fish. The mussel's life span, parasitic host, and most aspects of its life history are unknown.

Since the turn of the century, the fanshell has undergone a substantial reduction in its range. It was historically widely distributed in the Ohio, Wabash, Cumberland, and Tennessee Rivers and their larger tributaries in Pennsylvania, Ohio, West Virginia, Illinois, Indiana, Kentucky, Tennessee, Alabama, and Virginia (Johnson 1980, Kentucky State Nature Preserves Commission 1980, Ahlstedt 1986, Bates and Dennis 1985, Lauritsen 1987, Cummings *et al.* 1987 and 1988, Starnes and Bogan 1988). The loss of many historic populations was likely due to the impacts of impoundments, navigation projects, pollution, and habitat alterations (such as gravel and sand dredging) that directly affected the species and reduced or eliminated its fish host.

Based on a review of current literature on the species (see above) and on the following personal communications and letters involving knowledgeable individuals and State and Federal agency personnel, it is believed that reproducing populations are now present in only three rivers—the Clinch River, Hancock County, Tennessee, and Scott County, Virginia; the Green River, Hart and Edmonson Counties, Kentucky; and the Licking River, Kenton, Campbell, and Pendleton Counties, Kentucky (S. Ahlstedt and J. Jenkinson, Tennessee Valley Authority, personal communication, 1988; R. Anderson and M. Gordon, Tennessee Cooperative Fishery Research Unit, personal communication, 1988; C. Becker, Illinois Department of Conservation, *in litt.*, 1988; C. Bier, Western Pennsylvania Conservancy, *in litt.*, 1989; R. Connor and W. Sinozich, U.S. Army Corps of Engineers, *in litt.*, 1989; K. Cummings, Illinois Natural History Survey, *in litt.*, 1989; R. Cicerello and R. Hannan, Kentucky State Nature Preserves Commission, *in litt.*, 1988; W. Haag, Ohio State University Museum of Zoology, *in litt.*, 1988; E. Hansen, Indiana Division of Fish and Wildlife, *in litt.*, 1989; P. Jones, Ohio Department of Natural Resources, *in litt.*, 1988; R. Neves, Virginia Cooperative Fish and Wildlife Research Unit, *in litt.*, 1988; B. McDonald and M. Zeto, West Virginia Department of Natural Resources, *in litt.*, 1988 and 1989; J. Sickle, Murray State University, personal communication, 1989; C. Shiffer, Pennsylvania Fish and Game Commission, personal communication, 1989; W. Tolin, U.S. Fish and Wildlife Service, personal communication, 1988; and P. Yokley, University of North Alabama, personal communication, 1988).

Additionally, small remnant, apparently nonreproducing populations (based on collections of a few old individuals in the 1980s) may still persist in the Muskingum River in Morgan and Washington Counties, Ohio; the Wabash River in White and Wabash Counties, Illinois, and Posey County, Indiana; the East Fork White River, Martin County, Indiana; the Tippecanoe River, Tippecanoe County, Indiana; the Kanawha River, Fayette County, West Virginia; Tygarts Creek, Greenup and Carter Counties, Kentucky; the Cumberland River, Smith County, Tennessee; and the Tennessee River, Rhea, Meigs, and Hardin County, Tennessee.

The population in the Green River is likely the best of the three remaining reproducing populations. Fresh-dead fanshells of various age classes from juvenile to adults have been recently (1987 and 1988) found in muskrat middens (piles of mussel shells left by feeding muskrats) along the Green River (R. Cicerello, personal communication, 1988). However, the Green River, which lies partially within the Mammoth Cave National Park, is not free from threats. The river's mussel fauna have been seriously depleted. Cicerello (personal communication, 1988), based on his 1987 and 1988 surveys of the Green River within and above the Mammoth Cave National Park, believes that about 40 mussel species still survive in the area. Ortmann (1926) reported finding 66 species of mussels in the Green River. The Green River has been degraded by runoff from oil and gas exploration and production sites and by alteration of stream by an upstream reservoir.

The Clinch River fanshell population extends over about 86 river miles (Ahlstedt 1986). However, a Tennessee Valley Authority (1988) survey reported that the fanshell comprised less than 1 percent of the mussels collected at 11 Clinch River quantitative sampling sites in 1979 and 1988. The Tennessee Valley Authority (1988) also reported that overall mussel abundance in the Clinch River has decreased from an average of 11.64 mussels per square meter in 1979 to 6.00 per square meter in 1988. The Clinch River also has environmental problems. Sledd (Virginia Commission of Game and Inland Fisheries, personal communication, 1988) stated that land use practices along the Clinch River have contributed to a decline in water quality and mussel populations. The Clinch River has experienced some adverse impacts from coal mining, and the river has been subjected to two mussel kills caused by toxic substance spills from a riverside coal-fired power plant.

The Licking River also supports a reproducing fanshell population (R. Cicerello, personal communication, 1989). Live and fresh-dead individuals of several year classes have been collected. However, despite collections made throughout the drainage by Kentucky State Nature Preserves Commission biologists, the species is only known from the lower portion of the Licking River. This population could potentially be threatned by some of the water supply development alternatives presently under preliminary review for the Licking River watershed.

The fanshell was recognized by the Service in the May 22, 1984, **Federal Register** (49 FR 21664) and the January 6, 1989, **Federal Register** (54 FR 554) as a category 2 species. (A category 2 species is one that is being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants.) On December 6, 1988, the Service notified by mail (150 letters) Federal and State agencies within the species' historic range, local governments within the species' present range, and interested individuals that a status review was being conducted

specifically to determine if the fanshell should be protected under the Act. A total of 22 written responses was received as a result of the December 6, 1988, notification. No objections to the potential listing of the fanshell were received, and much information on the species' status and its former and present distribution was provided.

On October 2, 1989, the Service published in the **Federal Register** (54 FR 40450) a proposal to list the fanshell as an endangered species. That proposal provided information on the species' biology, status, and threats to its continued existence.

Summary of Comments and Recommendations

In the October 2, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to development of the final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted by letter dated October 6, 1989, and requested to comment. A legal notice was published in the following newspapers: *Lebanon Democrat*, Lebanon, Tennessee, October 18, 1989; *Savannah Courier*, Savannah, Tennessee, October 19, 1989; *Bedford Times-Mail*, Bedford, Indiana, October 20, 1989; *Daily News of Kingsport Inc.*, Kingsport, Tennessee, October 20, 1989; *Daily Republican-Register*, Mt. Carmal, Illinois, October 20, 1989; *Ashland Independent*, Ashland, Kentucky, October 21, 1989; *Carmi Times*, Carmi, Illinois, October 21, 1989; *Charleston Gazette*, Charleston, West Virginia, October 21, 1989; *Marietta Times*, Marietta, Ohio, October 21, 1989; *The Kentucky Post*, Covington, Kentucky, October 21, 1989; *Daily News*, Bowling Green, Kentucky, October 22, 1989; and *Oak Ridge*, Oak Ridge, Tennessee, October 22, 1989.

A total of 11 written comments was received. All 11 respondents (National Park Service, Mammoth Cave National Park; Tennessee Valley Authority; U.S. Army Crops of Engineers, Nashville District; U.S. Forest Service; Illinois Natural History Survey Division; Kentucky Department for Environmental Protection; Kentucky State Nature Preserves Commission; Ohio Biological Survey; West Virginia Department of Natural Resources; Virginia Department of Conservation and Recreation; and Virginia Cooperative Fish and Wildlife Research Unit) expressed support for designating the fanshell as an endangered species.

Summary of Factors Affecting the Species

After the thorough review and consideration of all information available, the Service has determined that the fanshell should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531, *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the fanshell (*Cyprogenia stegaria* (=*C. irrorata*)) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The fanshell was apparently once widespread in the Ohio River and its larger tributaries in Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Tennessee, Alabama, and Virginia (Johnson 1980). Johnson (1980) reported that the species was formerly known from at least 26 rivers. Many of these historically known populations were evidently lost when riverine habitat in the Ohio River system was converted to a species of large reserviors. These reserviors and other habitat-altering factors (e.g., navigation projects and gravel and sand dredging) have diminished the species' preferred riverine gravel/sand habitat and eliminated or reduced the availability of the mussel's fish host. As a result, this species' distribution has been substantially reduced.

The following is a review by State of the species' status (see "Background" section for additional information on the species' status).

Pennsylvania: No definitive study of Pennsylvania's mussel fauna has been conducted in more than 50 years. However, based on the mussel survey data that are available and the documented history of habitat degradation that has occurred in the Pennsylvania rivers where the species was found early in this century, it is presumed that the species has been extirpated from the State (C. Shiffer, personal communication, 1989; and C. Bier *in litt.*, 1989).

West Virginia: In 1982 one old fresh-dead fanshell was collected below Kanawha Falls on the Kanawha River (W. Tolin, personal communication, 1988). This is the only recent record of the species in West Virginia, and the species is believed to be very rare in the State (B. McDonald and M. Zeto, *in litt.*, 1988 and 1989).

Ohio: Based on letters from Wendal Haag (1988) and Patricia Jones (1989), the only recent (1980s) records for Ohio are from the Muskingum River, and these were all large old individuals. C. Lakes (Ohio Department of Natural Resources, *in litt.*, 1988) stated: "We believe *Cyprogenia stegaria* should be protected under the 1973 Federal Endangered Species Act."

Indiana: The species was found at a few sites in the Wabash River system during 1987 and 1988 (K. Cummings, *in litt.*, 1989; J. Engel, U.S. Fish and Wildlife Service, *in litt.*, 1989). However, these collections were presented by only a few live or fresh-dead old individuals. Hansen (*in litt.*, 1989) stated that the fanshell was historically common in the Wabash River system but that recent surveys (1987 and 1988) document a dramatic decline in the species. The State of Indiana has classified the species as endangered, and the Indiana Division of Fish and Wildlife supports protection of the species under the Endangered Species Act.

Illinois: The fanshell (based on the collection of a few old specimens) is presently known in Illinois only from the Wabash River (K. Cummings, *in litt.*, 1989). The species was added to the Illinois list of endangered species in March 1989 (C. Becker, personal communication, 1989). Becker further stated: "The Wabash River experienced heavy commercial musseling pressure from the mid-1950s to the mid-1960s. Since that time, none of the river's mussel population seem to have recovered very well."

Kentucky: The Kentucky State Nature Preserves Commission, which classifies the species as threatened (Warren *et al.* 1986), reported that the fanshell was historically taken from 10 reaches of Kentucky rivers (R. Hannan, *in litt.*, 1988). Presently, the species is known to survive in only three Kentucky rivers and to reproduce in only two.

Tennessee: In Tennessee, a few old specimens apparently still survive in the Cumberland and Tennessee Rivers (B. Anderson, S. Ahlstedt, M. Gordon, and P. Yokley, personal communication, 1989); however, there is no indication that the species is reproducing in either of these rivers. The only known Tennessee population that is believed to still be reproducing is in the Clinch River above Norris Reservoir (S. Ahlstedt, personal communication, 1989). The Tennessee Wildlife Resources Agency (R. Hatcher, *in litt.*, 1989) stated, "* * * we support any appropriate means of protecting this species and its habitats."

Alabama: Johnson (1980) reported that the species historically was taken in Alabama from the Tennessee River and one of its tributaries, the Flint River. Based on literature records and personal communications with species experts (see "Background" section of this rule), the species is believed to be extripated from the State of Alabama.

Virginia: The only historic record of the fanshell for Virginia is from the Clinch River (Johnson 1980). although rare, the species still survives as a reproducing population in the Clinch River (Tennessee Valley Authority 1988). The Virginia Commission of Game and Inland Fisheries supports consideration of the species for protection under the Act (C. Sledd, *in litt.*, 1988).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the species is not commercially valuable, it does exist in small numbers within some harvested mussel beds, and the species can therefore sometimes be taken by mussel fishermen. Also, the species is rare and prized by private and institutional collectors. Thus, take does pose some threat to the species. Federal protection could help to minimize the take of individuals.

C. *Disease or predation.* Although the fanshell is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin, including the Tennessee River and its tributaries (R. Neves, personal communication, 1986). The cause of the die-offs has not been determined, but significant losses have occurred to some populations.

D. *The inadequacy of existing regulatory mechanisms.* States within the species' range prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, the species is generally not protected from other threats. Federal listing will provide additional protection for the species under the Endangered Species Act from mussel collectors by requiring Federal permits to take the species, and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

E. *Other natural or manmade factors affecting its continued existence.* Only 3 of the 12 remaining populations are believed to be reproducing. Therefore, unless methods can be developed to maintain the nonreproducing populations, about 75 percent of the known populations will be lost in the foreseeable future due to their inability to reproduce.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the fanshell (*Cyprogenia stegaria (=C. irrorata)*) as an endangered species. Historical records reveal that the species was once much more widely distributed in many of the large rivers of the Ohio River system. Presently only three isolated, reproducing populations are known to survive. Due to the species' history of population losses and the vulnerability of the three remaining reproducing populations, endangered status appears to be the most appropriate classification for this species. (See "Critical Habitat" section for a discussion of why critical habitat is not being designated for the fanshell.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the fanshell at this time, owing to the lack of benefits from such designation. The National Park Service, Mammoth Cave National Park; U.S. Army Corps of Engineers; and the Tennessee Valley Authority are the three Federal agencies most involved, and they, along with the State natural resources agencies within the species' range, are already aware of the location of the remaining populations within their respective jurisdictions that would be affected by any activities in these river reaches. These Federal agencies have conducted numerous studies in these river basins and are knowledgeable of the fauna and of their projects' potential impacts. No additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species. In addition, this species is so rare that taking for scientific purposes and private collection could be a threat. The publication of specific critical habitat maps and other publicity accompanying critical habitat designation could increase that threat. The locations of populations of this species have consequently been described only in general terms in this rule. Any existing precise locality data would be available to appropriate Federal, State, and local governmental agencies through the Service office described in the "Addresses" section.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service requested information from Federal agencies to determine if they have active or proposed projects that might affect the species. No specific proposed Federal actions were identified. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, river channel maintenance, stream alterations, wastewater facility development, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are met. In fact, many of the areas inhabited by the fanshell are also inhabited by other mussels that have been federally listed since 1976, and the Service has a history in many of these areas of successful section 7 conflict resolutions that protect federally listed

mussels and provide for project objectives to be met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate of foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this final rule is Richard G. Biggins (see Addresses above) (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, exports, imports, reporting and record-keeping requirements, and transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under Clams, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
Fanshell	*Cyprogenia stegaria* (=*irrorata*).	U.S.A. (AL, IL, IN, KY, OH, PA, TN, VA, WV).	NA	E	391	NA	NA

Dated: May 23, 1990.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 90-14411 Filed 6-20-90; 8:45 am]

BILLING CODE 4310-55-M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Mimulus glabratus var. michiganensis (Michigan monkey-flower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Mimulus glabratus* var. *michiganensis* (Michigan monkey-flower) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This semi-aquatic perennial plant is known from only twelve sites in Michigan, eight of which contain fewer than 10 individual plants. The plant is endangered by habitat loss due to recreational and residential development. This action will implement Federal protection provided by the Act to *Mimulus glabratus* var. *michiganensis*. Critical habitat is not being designated.

EFFECTIVE DATE: July 23, 1990.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Ronald L. Refsnider, Acting Endangered Species Coordinator (see ADDRESSES section) at 612/725-3276 or FTS 725-3276.

SUPPLEMENTARY INFORMATION:

Background

Mimulus glabratus var. *michiganensis* (Michigan monkey-flower) was first recognized as a separate taxon by Pennell (1935) in his monograph of the Scrophulariaceae. He identified it as a subspecies, while Fassett (1939) assigned it varietal status. Some researchers have noted considerable morphological overlap with other taxa. However, recent studies (Bliss 1983, Minc 1989) of floral characters of closely related taxa showed distinct morphometric differences between *M. glabratus* var. *michiganensis*, *M. glabratus* var. *fremontii* and *M. guttatus*. Statistical analyses of measurements of corolla length, corolla width, pistil length, style length, and ovary length demonstrated that *M. glabratus* var. *michiganensis* is consistently and distinctively intermediate between the other two taxa: smaller than *M. guttatus*, but larger than *M. glabratus* var. *fremontii*. As Minc (1989) reports, the two *M. glabratus* varieties are readily distinguished by differences in flower size, while some size overlap occurs between *M. glabratus* var. *michiganensis* and *M. guttatus*. However, the latter two taxa differ in the shape of the floral characters. These studies confirmed the validity of recognizing this taxon at least as a distinct variety and perhaps as a separate species.

Mimulus glabratus var. *michiganensis* is an aquatic or semi-aquatic glabrous, perennial herb with lax stems averaging 36 centimeters (14 inches) in length. It roots at the lower stem nodes to produce clones of up to several hundred stems. The rotund, coarsely-toothed leaves are opposite and evenly distributed along the stem. The plant blooms from about mid-June to mid-July and occasionally to mid-August. However, pollen viability is low, suggesting that var. *michiganensis* is primarily dependent on vegetative reproduction. The yellow tubular flowers range from 16 to 27 millimeters (.63 to 1.1 inches) long (Bliss 1983, Minc 1989) and emerge from upper leaf axils on slender stalks. The flowers have two-lobed upper lips and three-lobed lower lips, with the lower lip and tube irregularly red spotted. The ranges of var. *michiganensis* and var. *fremontii* overlap, though these plants have not been found to co-occur at any site. *Mimulus glabratus* var. *michiganensis* can be distinguished from var. *fremontii* by flower size. The smaller var. *fremontii* flowers are 8 to 18 millimeters (.32 to .71 inches) long. Pistil length is 11 to 21 millimeters (.43 to .83 inches) for var. *michiganensis*, and 5 to 10 millimeters (.2 to .39 inches) for var. *fremontii*. Although their ranges are not presently known to overlap, *Mimulus glabratus* var. *michiganensis* is generally smaller than *M. guttatus* and can be distinguished from this taxon by the larger opening in the corolla throat and the shape of the calyx lobes.

Crispin and Penskar (1989) report that var. *michiganensis* is narrowly restricted to cold, saturated soils of seepages on forest edges and in small openings located along streams and lakeshores. Nearly all known populations are associated with the current, or what were the ancient shorelines of the Great Lakes. Northern white cedar (*Thuja occidentalis*) is usually dominant in the overstory. The Michigan monkey-flower grows in muck or mucky sand that is saturated or inundated by cold, flowing spring water. Typical associates include *Impatiens biflora* (touch-me-not), *Myosotis scorpioides* (forget-me-not), *Nasturtium officinale* (watercress), *Mentha arvensis* (spearmint), and *Conocephalum conicum* (liverwort). Other species frequently present are *Caltha palustris* (buttercup), *Mitella nuda* (miterwort), *Cystopteris bulbifera* (bulblet fern), *Eupatorium maculatum* (joe-pye-weed), *Equisetum arvensis* (scouring-rush), and *Thuidium delicatulum* (feather moss).

Many of the earliest herbarium specimens of *Mimulus glabratus* var. *michiganensis* were not initially identified beyond the species level. They were subsequently identified as var. *jamesii*, var. *fremontii*, and finally var. *michiganensis*. The first reported collection of var. *michiganensis* was by Charles F. Wheeler in Harbor Springs, Emmet County, Michigan in July 1890. However, the specimen was not identified as var. *michiganensis* until 1980. The type specimen was collected in July 1925 by J. H. Ehlers along the banks of Niger Creek near Topinabee, Cheboygan County, Michigan. Whereas the *Mimulus glabratus* complex ranges from Canada to southern Chile, historical records and recent surveys have shown that var. *michiganensis* has a very narrow range, restricted to the Mackinac Straits and Grand Traverse regions of Michigan, specifically in Benzie, Cheboygan, Emmet, Leelanau and Mackinac Counties. The plant is no longer extant at four of the 16 known historical locations (including the type locality and the site of first collection). Two existing sites contain only one or two plants. Almost two-thirds of the extant occurrences are on privately-owned lands. The var. *michiganensis* also occurs at Sleeping Bear Dunes National Lakeshore, the University of Michigan Biological Station, a county park, a township park, and on land owned by the Michigan Nature Association, a private state-wide conservation organization.

Federal Government action on this plant began as a result of section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report (Ayensu and DeFillipps 1978), designated as House Document No. 94-51, was presented to Congress on January 9, 1975. *Mimulus glabratus* var. *michiganensis* was listed as

"threatened" in that document. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) of the Act (now section 4(b)(3)) and of its intention to review the status of plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

Mimulus glabratus var. *michiganensis* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909). On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1976 proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments to the Act. On December 15, 1980 (45 FR 82479), November 28, 1983 (48 FR 53640), and September 27, 1985 (50 FR 39525), the Service published revised notices of review for native plants in the **Federal Register**.

Mimulus glabratus var. *michiganensis* was included as a category 1 species in the 1980 notice. Category 1 species are those for which biological information in the Service's possession warrants their listing as endangered or threatened. In the 1983 and 1985 notices, var. *michiganensis* was dropped to category 2 when it became evident that further biological research and surveys were needed to determine its status and taxonomic validity. Since that time, additional research (Minc 1989) and an updated status survey (Crispin and Penskar 1989) were completed, which clarified the taxonomic distinctness of the plant and demonstrated more clearly the biological threat and the need for protection under the Act.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *Mimulus glabratus* var. *michiganensis*, was October 13, 1983. On October 13, 1983, and again in 1984, 1985, 1986, 1987 and 1988, the petition finding was that listing of *Mimulus glabratus* var. *michiganensis* was warranted pending finding of further information but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires that the petition be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. A final finding to the effect that the petitioned action was warranted was incorporated in a proposed rule to determine endangered status for *Mimulus glabratus* var. *michiganensis* issued in the **Federal Register** of October 2, 1989 (54 FR 40454).

Summary of Comments and Recommendations

In the October 2, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, landowners, and other interested parties were contacted and requested to comment. Notices inviting public comment were published in the following Michigan newspapers between October 23 and 27, 1989: *The Cheboygan Daily Tribune, Traverse City Record Eagle, St. Ignace News*, and *Petoskey News-Record*. Five comments supporting the listing were received and are discussed below.

Two of the comments were from the National Park Service, who advised that a population of *Mimulus glabratus* var. *michiganensis* is found within the boundaries of Sleeping Bear Dunes National lakeshore, and is well protected. The Michigan Technical Plant Committee recommended additional surveys be conducted in Mackinac County around the Epoufette and Cut River areas where *M. glabratus* var. *michiganensis* is found, and expressed concern about the sand mining operation in the area that might affect the temperature and availability of ground water, which is necessary for the plants survival. Another commenter, concerned about the increasing pressures on the Michigan monkey-flower as a result of development along the Great Lakes shorelines, believes other plant species requiring cold water habitat will also benefit once the Michigan monkey-flower is protected under the Endangered Species Act. Another person, who has published her findings on the distinctness of var. *michiganensis* from var. *fremontii*, reaffirms that position, and notes that she found all but one of the known populations of var. *michiganensis* to be sterile. None of the commenters were able to provide additional occurrence information.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Mimulus glabratus* var. *michiganensis* (Pennell) Fassett should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Mimulus glabratus* var. *michiganensis* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Mimulus glabratus* var. *michiganensis* is restricted to the current and what was the historical Great Lakes shorelines in the Mackinac Straits and Grand Traverse regions in Michigan. These areas are rapidly being developed for recreational and residential purposes. The major threat to var. *michiganensis* is the destruction and adverse modification of its habitat. Since most populations lie along lakeshores and streams, the plant is particularly vulnerable to increasing vacation home development in its range (Crispin and Penskar 1989). Of the 16 extant and historical populations, three have been extirpated and at least two additional sites have been severely impacted by residential and other developments. The plant has been extirpated at an additional site (the type locality) due to unknown causes.

Mimulus glabratus var. *michiganensis* appears to be highly dependent on continuous supplies of cold spring water. Two of the smaller populations have survived artificial disturbances, such as overstory thinning, and cutting and pulling in spring-fed rivulets that have been maintained adjacent to lakeside residences. Therefore, the plant may be impacted by both direct destruction of its habitat as well as by disturbance to its water supply. Upstream water supply may be impacted by roads and other activities which divert water from the small drainages which support the plant. Excessive pumping of groundwater upgradient of the sites may reduce stream base flows. The plant may therefore be inadvertently impacted by offsite activities. One recent extirpation

of a population appears to have been due to such a disturbance to its water supply.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Commercial trade of this plant is not known to exist, but collection could reduce populations in more accessible sites. Some incidental commercial use has occurred. One population was discovered after a botanist was served a sprig of *Mimulus glabratus* var. *michiganensis* as a garnish on his restaurant dinner plate.

C. *Disease or predation.* None known that affects this taxon.

D. *The inadequacy of existing regulatory mechanisms. Mimulus glabratus* var. *michiganensis* is listed as threatened by the State of Michigan. It is illegal to take, possess, transport, import, export, process, sell, buy, collect, pick, cut, dig up, or destroy in any manner any listed plants or plant parts, without a permit. Although the State Endangered Species Act does not provide protection for habitat, State and Federal wetland laws regulate many activities within the streamside/wetland habitat of *Mimulus glabratus* var. *michiganensis*. However, there is no guarantee for preservation of this habitat nor the plant's water supply without the protection of the Act and subsequent recovery actions including development of specific management plans. The Endangered Species Act offers possibility for additional protection of this taxon through section 6 cooperation between the States and the Service, and through section 7 (interagency cooperation) requirements.

E. *Other natural or manmade factors affecting its continued existence.* Periodic high water levels of the Great Lakes impact the shoreline habitat of *Mimulus glabratus* var. *michiganensis*. Recent record high water levels and strong winter storms reshaped many shoreline areas, redirecting seepage streams which supported the plants and opening the overstory by felling cedars. At least one site occurrence listed as extant has not been resurveyed since these storms. Therefore, its present status is unknown. Other shoreline colonies appear to have survived the recent high water levels.

Mimulus glabratus var. *michiganensis* is particularly vulnerable because of the low numbers of individuals occurring at most sites and its limited capability for sexual reproduction. Since the plant roots at the lower stem nodes to produce new stems, it is impossible to distinguish the number of genetic individuals in each colony. However, if one assumes that each "clump" of stems is one individual plant, only four of 12 extant sites contain more than 10 plants. In addition, if, at Crispin and Penskar (1989) surmise, the largely clonal colonies have low genetic diversity, *Mimulus glabratus* var. *michiganensis* may have limited ability to survive or adapt to environmental change. Margaret Bliss (Groundwater Technology, Inc., personal communications, December 1989) advises that in her research she found *M. glabratus* var. *michiganensis*, to be sterile in all but one population. With the limited number of colonies and individuals in existence, and the limited gene pool, the loss of any individuals would appreciably reduce the chances of survival and recovery.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining to make this rule final. Based on this evaluation, the preferred action is to list *Mimulus glabratus* var. *michiganensis* as an endangered species, because of its restricted range, the limited number of populations and individuals, its limited capability for sexual reproduction and hence its limited gene pool, and the severe threats to its habitat. Critical habitat is not being designated for reasons listed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service believes that designation of critical habitat would not be prudent because no net benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description. The limited number of populations and individuals of *Mimulus glabratus* var. *michiganensis* make this plant particularly vulnerable to taking, an activity difficult to enforce against and only regulated by the Act with respect to plants in cases of (1) Removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make *Mimulus glabratus* var. *michiganensis* more vulnerable and increase enforcement problems. The principal landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for *Mimulus glabratus* var. *michiganensis*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The National Park Service (NPS) has jurisdiction over one *Mimulus glabratus* var. *michiganensis* site in Leelanau County, Michigan. Currently, no activities to be permitted, funded, or carried out by any Federal agency, are known to exist which would affect this

taxon. The NPS intends to conduct additional surveys for the species within Sleeping Bear Dunes National Lakeshore in the summer of 1990 (M. Holden, NPS, personal communications, 1990).

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damaging or destruction on Federal lands, and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because *Mimulus glabratus* var. *michiganensis* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22203 (703/358–2093).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Fassett, N.C. 1939. Notes from the herbarium of the University of Wisconsin. Rhodora 14:524–525.

Minc, L.D. 1989. A morphometric comparison of *Mimulus glabratus* var. *michiganensis*, *M. glabratus* var. *fremontii*, and *M. guttatus* based on floral characters. Unpublished report prepared for the Michigan Natural Features Inventory. 20 pp.

Pennell, F.W. 1935. The Scrophulariaceae of eastern temperate North America. Monograph I, Academy of Natural Sciences, Philadelphia. 650 pp.

Author

The primary author of this rule is William F. Harrison (see **ADDRESSES** section) (612/725–3276 or FTS 725–3276).

List of Subjects in 50 CFR Part 17

Endangered or threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500 unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Scrophulariaceae—Snapdragon family:						
* * * * *			*	*		
Mimulus glabratus var. *michiganensis*	Michigan monkey-flower	U.S.A. (MI)	E	392	NA	NA
* * * * *			*	*		

Dated: May 16, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–14412 Filed 6–20–90; 8:45 am]

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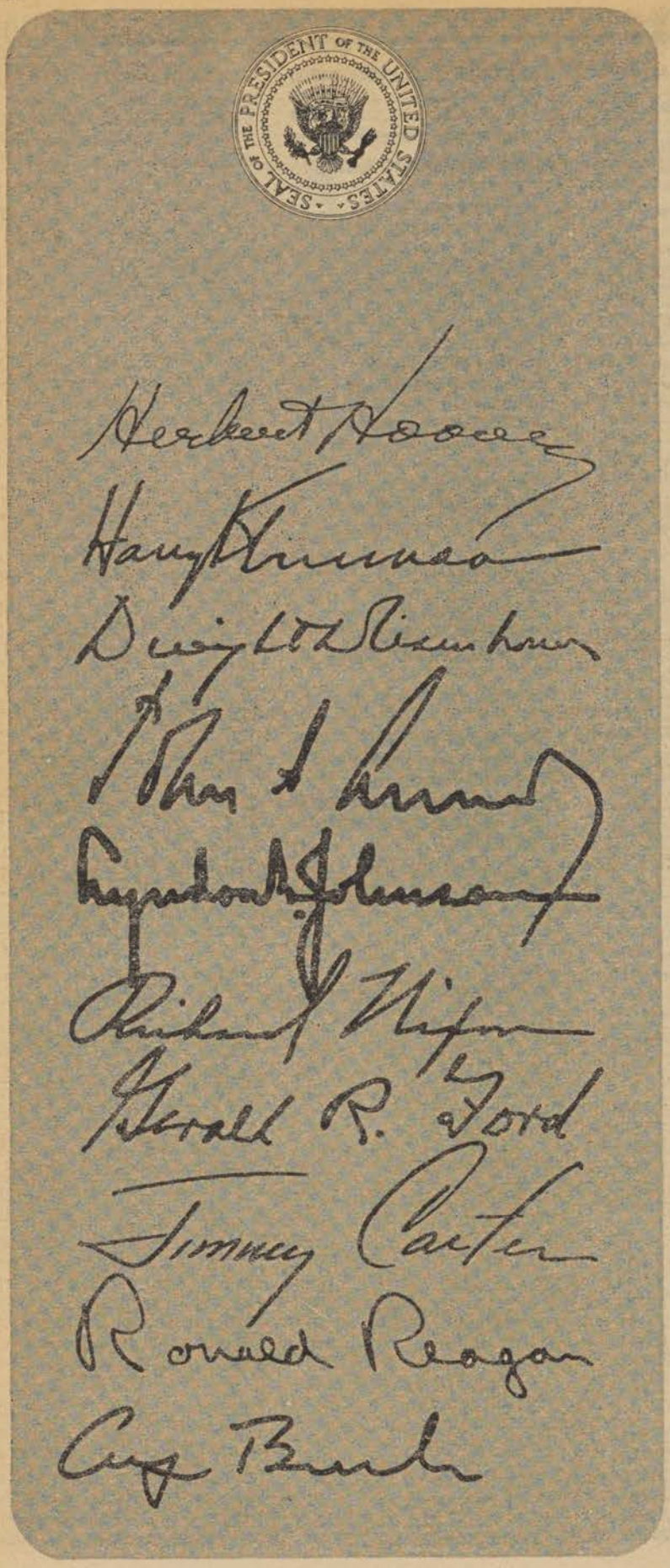
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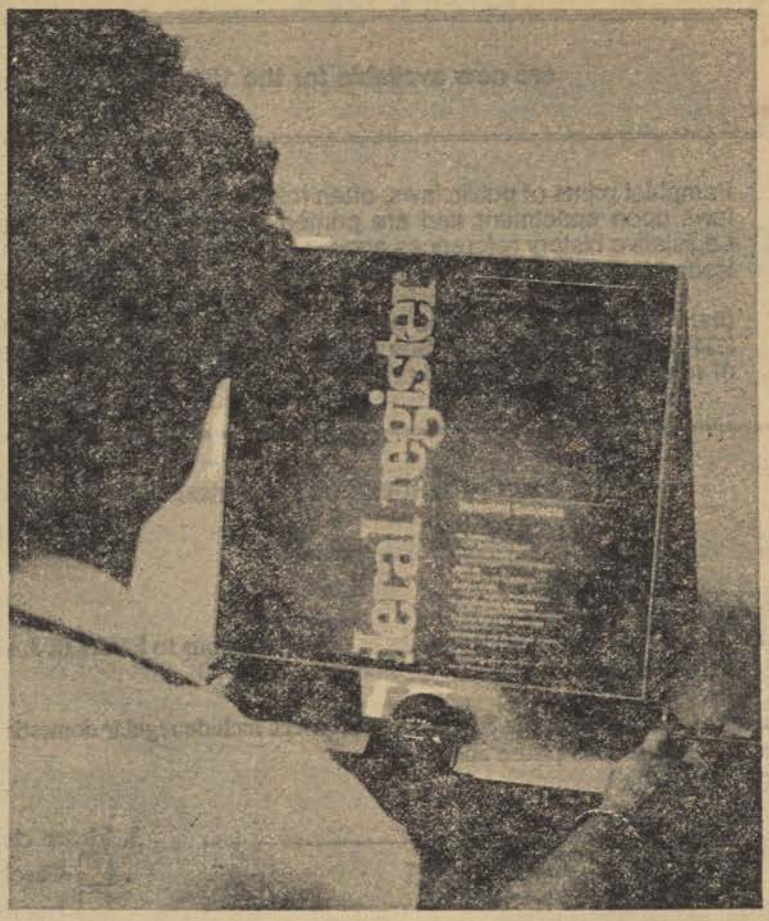
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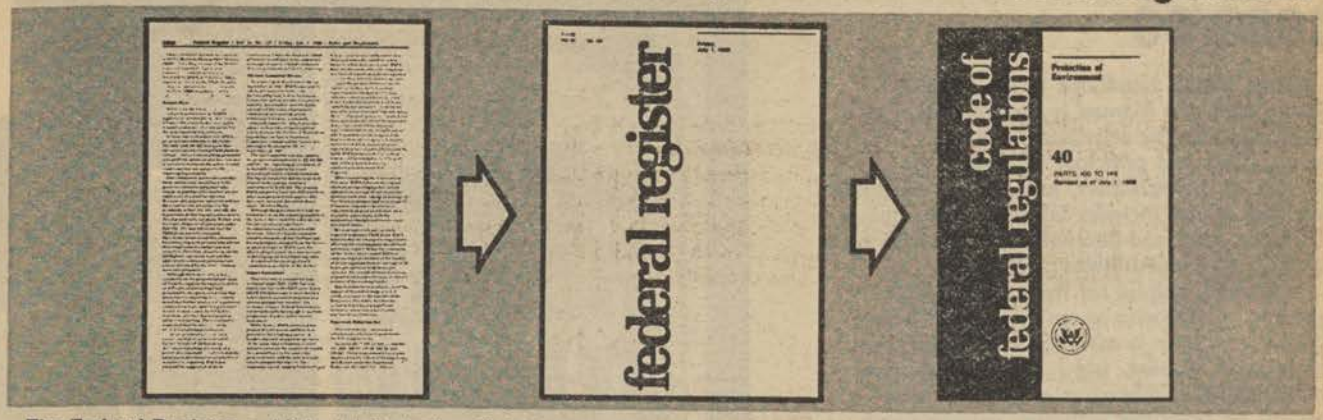
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