Subchapters A, C, and D are further amended as follows:

PART 1011—[AMENDED]

(269) In § 1011.5, the words "Rule 95 of the General Rules of Practice" and the parentheses that surround "49 CFR 1133.2" in paragraph (a)(1) are removed.

(270) In § 1011.7, the words "Rule 98(e) of the general rules of practice," in paragraph (c)(1) are removed.

(271) In § 1011.7, the words "Rule 66a(a) of the general rules of practice," in paragraph (a) are removed.

(272) In § 1011.7, the words "Rule 95 of the general rules of practice" and the parentheses that surround "49 CFR 1113.3(a)," in paragraph (c) are removed.

PART 1012—[AMENDED]

(273) In § 1012.4, the words "Commission's General Rules of Practice," in paragraph (b) are removed.

PART 1301—[AMENDED]

(274) In § 1301.81 paragraph (a)(8) and § 1301.85 the words "Rule 22 of the General Rules of Practice" and the parentheses that surround "§ 1130.1 of ths chapter" are removed.

PART 1304—[AMENDED]

(275) In § 1304.9 the words "Rule 20 of the General Rules of Practice" and the parentheses that surround § 1130.1 of this chapter", in the cross reference to paragraph (k) are removed.

PART 1310—[AMENDED]

(276) In § 1310.8, the words "Commission's Rules of Practice" and the parentheses that surround "49 CFR 1132.1" in paragraph (b) are removed.

PART 1331—[AMENDED]

(277) In § 1331.1, the words "Rule 15 of the general rules of practice" and the parentheses that surround "§ 1104.4 of this chapter" in the introductory text are removed.

SUBCHAPTER B—[AMENDED]

(278) In Subchapter B of Title 49 former Part 1100 is further amended by removing center headings and subpart headings, that read as follows:

(a) Subpart A—Rules of General Applicability

(b) Practitioners

(c) Special Rules Respecting Joint Boards

(d) Pleadings Specifications Generally

(e) Commencement of Proceedings

(f) Petitions Seeking Institution of Rulemaking Proceedings

(g) Hearings

(h) Briefs, Reports, Oral Arguments

(i) Order Compliance, Damage Statements

(j) Special Rail Requirements

(k) Subpart B—Special Rules of Practice

(279) Subchapter B of Title 49 former Part 1100 is further amended by removing the section numbers and section headings of the following sections:

§§ 1100.4, 1100.44, 1100.47, 1100.53, 1100.82, 1100.97, 1100.225, 1100.245, 1100.250.

(280) Subchapter B of Title 49 is further amended by removing the Introductory Note which follows the center heading for former Parts 1140–1149.

(281) Subchapter B of Title 49 is further amended by removing center headings that read as follows:

(a) Parts 1110–1119–Rail Carriers Consolidation, Finance, and Reorganization

(b) Parts 1120–1129—Special Procedures—Rail Carriers Certificate of Public Convenience and Necessity

(c) Parts 1130–1139—Special Procedures—Motor Carriers and Brokers Certificates, Permits, Licenses

(d) Parts 1140–1149—Special Procedures—Water Carriers

(e) Parts 1150–1159—Special Procedures—Freight Forwarders

[FR Doc. 82-29811 Filed 10-29-82; 8:45 am]

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Monday
November 1, 1982

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Fishermen's Contingency Fund

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 296

Fishermen's Contingency Fund

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: These rules revise the Fishermen's Contingency Fund regulations to implement the Outer Continental Shelf Lands Act amendments. These changes simplify the submission of claims and reduce the time required to process claims and compensate eligible applicants.

DATE: These regulations are effective on October 28, 1982.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Page Building 2, Room 309, Washington, D.C. 20235, telephone number: (202) 634–7496.

SUPPLEMENTARY INFORMATION: Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 established the Fishermen's Contingency Fund (the "Fund") to compensate commercial fishermen for property or economic loss caused by oil and gas obstructions on the United States Outer Continental Shelf (OCS). The Fund is comprised of fees collected from offshore energy interests. This amendment of program rules simplifies the submission of claims against the Fund and reduces the time required for processing claims and compensating eligible applicants. Claims will now be reviewed administratively by the National Marine Fisheries Service (NMFS), rather than adjudicated by an Administrative Law Judge. The time period for fishermen to report damages to the National Marine Fisheries Service in order to gain a presumption of causation by OCS-related activities is increased from 5 days after the date of discovery of the damage to 15 days after the day on which the involved fishing vessel returns to port. Compensation for economic loss will be based on 25 percent of gross income lost, rather than on loss of profits. Area accounts within the Fund and obstruction surveys on the OCS are no longer required.

The Agency has determined that these rules are not "major" under Executive Order 12291 or associated Departmental guidelines because they do not significantly affect the economy, costs, or prices and have no impact on competition, employment, investment, or productivity. Accordingly, no regulatory impact analysis is required.

Since these rules provide a benefit, they are exempt from the notice and comment provisions of the Administrative Procedure Act. In addition, Pub. L. 97–212 requires publication of final regulations no later than 120 days after the date of its enactment. This would be October 28, 1982. A regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

These rules do not require the collection of any additional information. All information collected will comply with the Department of Commerce's FY82 Information Collection Budget. These rules do not increase the Federal paperwork burden for individuals, small business, or other persons under the Paperwork Reduction Act of 1980. OMB Docket Number: 21–008–208.

The Assistant Administrator for Fisheries, National Marine Fisheries Service, has determined that these rules do not require an environmental impact statement under the National Environmental Policy Act.

List of Subjects in 50 CFR Part 296

Claims, Continental shelf, Fisheries, Fishing vessels, Oil and gas exploration.

Dated: October 26, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

Accordingly, 50 CFR Part 296 is revised as follows:

PART 296—FISHERMEN'S CONTINGENCY FUND

Sec.

Authority: Pub. L. 97–212 (43 U.S.C. 1841 et seq.).

§ 296.1 Purpose.

These regulations implement Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended (Title IV). Title IV establishes a Fishermen's Contingency Fund to compensate commercial fishermen for damage or loss caused by obstructions associated with oil and gas activities on the Outer Continental Shelf.

§ 296.2 Definitions.

"Area affected by Outer Continental Shelf activities" means the area within a 3-mile radius of any casualty site which:

(a) Includes any portion of a leased block, pipeline, easement, right of way, or other OCS oil and gas exploration, development, or production activity; or

(b) Is otherwise associated (as determined by the Chief, Financial Services Division) with OCS oil and gas activities, such as, for example, expired lease areas, relinquished rights-of-way or easements, and areas used extensively by surface vessels supporting OCS oil and gas activities (areas landward of the OCS are included when such areas meet this criterion).

"Chief, FSD" means the Chief of the Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

"Citizen of the United States" means any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

"Commercial Fisherman" means any citizen of the United States who owns, operates, or is employed on a commercial fishing vessel.

"Commercial Fishing Vessel" means any marine craft which is documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and used for commercial fishing or activities directly related to commercial fishing.

"Easement" means a right of use or easement granted under 30 CFR section 250.18.

"Fish" means all forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

"Fishing Gear" means any commercial fishing vessel, and any equipment of such vessel.

"Fund" means the Fishermen's Contingency Fund established by Title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

"Holder" means the owner of record of each lease, prelease exploratory drilling permit, easement, or right-of-

way or any agent or assignee of an owner.

"Lease" means any authority under section 8 or section 6 of the OCS Lands Act to develop and produce or explore for oil or gas.

"Negligence or Fault" includes, but is not limited to, failure to:

(a) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;

(b) Avoid obstructions recorded on nautical charts or in the Notice to Mariners or marked by a buoy or other surface marker (casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant);

(c) Abide by established rules of the road;

(d) Use proper care; or

(e) Use due care and diligence to mitigate the damage or loss.

"Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. section 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control. Generally, but not in all cases, this includes all submerged lands lying seaward of the territorial sea (3 miles from a State's coastline, or 9 miles from the coast of Texas or Florida).

"Person" means an individual, partnership, corporation, association, public or private organization, government, or other entity.

"Resulting Economic Loss" means the gross income, as estimated by the Chief, FSD, that a claimant will lose because of not being able to fish, or having to reduce fishing effort, during the period before the damaged or lost fishing gear concerned is repaired or replaced and available for use. This period must be reasonable. This period begins on the date of the casualty and stops on the date the damage could reasonably have been remedied by repair or replacement.

"Right-of-way" means any right-of-way granted under section 5(e) of the OCS Lands Act or under 43 CFR 3340.0–5.

"Secretary" means the Secretary of Commerce or his designee.

§ 296.3 Fishermen's contingency fund.

(a) *General.* There is established in the Treasury of the United States the Fishermen's Contingency Fund. The Fund is available without fiscal year limitation as a revolving fund to carry out the purposes of Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended.

(b) *Payments into the Fund.* Each Holder of an exploration permit, lease, easement, or rights-of-way for the construction of a pipeline, or a prelease exploration drilling permit issued or maintained under the Outer Continental Shelf Lands Act, in effect on or after June 30, 1982, shall pay assessments to the Fund. All pipeline right-of-way and easements are to be included for assessment except those constructed and operated lines within the confines of a single lease or group of contiguous leases under unitized operation or single operator. Payments will not be required for geological or geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).

(1) *Assessments to maintain the Fund.* When the total amount in the Fund is less than the Chief, FSD, determines is needed to pay Fund claims and expenses, the Chief, FSD, will notify the Secretary of the Interior that additional assessments are needed.

(2) *Billing and collections.* The Secretary of the Interior will calculate the amounts to be paid by each Holder and shall notify each Holder of the dollar amount and the time and place for all payments. Each assessment shall be paid to the Secretary of the Interior no later than 45 days after the Secretary of the Interior sends notice of the assessment.

(3) *Annual assessment limits.* No Holder shall be required to pay in excess of $5,000 for any lease, permit, easement or right-of-way in any calendar year.

(c) *Moneys recovered through subrogation.* Any moneys recovered by the Secretary through the subrogation of a claimant's rights shall be deposited into the Fund.

(d) *Investments of the fund.* Excess sums in the Fund will be invested in obligations of, or guaranteed by, the United States. Revenue from such investments shall be deposited in the Fund.

(e) *Litigation.* The Fund may sue and be sued in its own name.

§ 296.4 Claims eligible for compensation.

(a) *Claimants.* Damage or loss eligible for Fund compensation must be suffered by a commercial fisherman.

(d) *Damage or loss of fishing gear.* Damage or loss is eligible for Fund compensation if it was caused by materials, equipment, tools, containers, or other items associated with OCS oil and gas exploration, development, or production activities. Damage or loss may be eligible for compensation even though it did not occur in OCS waters if the item causing the damage or loss was associated with oil and gas exploration, development, or production activities in OCS waters.

(c) *Effective date.* These regulations will apply to claims filed on or after June 30, 1982, and to those claims refiled under (d) of this section.

(d) *Refiled claims.* Any claim filed before June 30, 1982, will be subject to these regulations if:

(1) No final decision had been made on the claim by June 30, 1982; and

(2) The claimant has notified the Secretary in writing by August 11, 1982, of his intent to refile the claim.

(e) *Exceptions.* Damage or loss is not eligible for Fund compensation: (1) If the damage or loss was caused by the negligence or fault of the claimant;

(2) If the damage or loss occurred prior to September 18, 1978;

(3) To the extent that damage or loss exceeds the replacement value of the fishing gear involved;

(4) For any portion of the damage or loss which can be compensated by insurance;

(5) If the claim is not filed within 60 days after the date the claimant discovers the damage or loss; or

(6) If the damage or loss was caused by an obstruction unrelated to OCS oil and gas exploration, development, or production activities.

§ 296.5 Instructions for filing claims.

(a) *Fifteen-day report required to gain presumption of causation.* (1) *General.* Damages or losses are presumed to be qualified for compensation if certain requirements are satisfied. One requirement is that a report must be made to NMFS within fifteen (15) days after the date on which the vessel first returns to a port after discovering the damage or loss. Filing of a fifteen-day report must be followed up by filing a detailed claim.

(2) *When and how to file a fifteen-day report.* To qualify for the presumption of causation, a fifteen-day report must be made to NMFS within fifteen days after the date on which the vessel first returns to a port after discovering the damage or loss. Satisfaction of the fifteen-day requirement is determined by the postmark, if the report is mailed; by the date of a call, if the report is telephoned or radiotelephoned; or, by the date of appearance, if the report is made in person. The fifteen-day report must be made to one of the following NMFS Offices:

Chief, Financial Services Branch, Northeast Region, National Marine Fisheries Service, Post Office Building, Box 1109, Gloucester, Massachusetts 01930, (617) 281–3224

Chief, Fisheries Development Analysis Branch, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702, (813) 893–3272

Chief, Fisheries Development Division, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, (213) 548–2478

Chief, Financial Services Branch, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., Bin C15700, Seattle, WA 98115, (206) 527–6127

Chief, Fisheries Development, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, (907) 586–7224

Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634–4688

(3) *Written confirmation of oral fifteen-day report.* The Chief, FSD, strongly recommends that claimants confirm, in writing, as soon as possible, the substance and accuracy of each fifteen-day report that is made by telephone, radiotelephone, or other oral communication. Address the written confirmation to:

Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235

(4) *Contents of fifteen-day report.* Each fifteen-day report must include the following information:

(i) The claimant's name and address;

(ii) The name of the commercial fishing vessel involved;

(iii) The location of the obstruction which caused the damage or loss;

(iv) A description of the nature of the damage or loss;

(v) The date such damage or loss was discovered;

(vi) If the fifteen-day report is made after the vessel returns to port, the date on which the vessel first returned to port after discovering the damage.

(b) *Form of claim.* Claims must be in writing. Claims may be submitted on NOAA form 88–164. This form may be obtained from any NMFS regional office or from the Chief, FSD. Although claimants are not required to use this claim form, it will probably be to their benefit to do so.

(c) *Who must file, and when and where to file, claims.* All claimants (including those who filed 15-day reports to gain the presumption of causation) must file a claim no later than 60 days after the date the damage or loss is discovered. The term "filed" means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235. The Chief, FSD, suggests that mailed claims be sent by registered or certified mail, return receipt requested, so the claimant will have a record that the claim was received by the Chief, FSD.

(d) *Aggregating claims.* If more than one commercial fisherman suffers loss or damage from the same incident (for example, when several members of the crew lost income due to loss of fishing time), all claims should be submitted on their behalf by the owner or operator of the commercial fishing vessel involved.

(e) *Contents of claim.* Each claim must be signed by the claimant and must accurately and completely provide the following information:

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel owner, operator, or crew member) of each claimant;

(2) The name and Coast Guard documentation number or State registration number of the commercial fishing vessel involved in the damage or loss;

(3) The home port, type, and size of the vessel involved in the casualty;

(4) A full statement of the circumstances of the damage or loss including:

(i) The date when the casualty was first discovered by the claimant,

(ii) The water depth (if known) and visibility at the time and location where the casualty occurred,

(iii) The direction, speed, and activities of the claimant's vessel immediately before, during, and after the casualty (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at retrieval of the gear),

(iv) The names and addresses of all witnesses to the casualty,

(v) The location where the casualty occurred in Loran C coordinates or the next most accurate method of position fixing available to the claimant,

(vi) A description of the item or obstruction (if sighted or recovered) which caused the casualty, and whether or not any surface markers were attached to or near the obstruction. Submit any available photographs of the item or obstruction. State reasons for believing the obstruction is associated with OCS oil and gas activities.

(5) The amount claimed for property damage or loss and a full statement of the type and extent of damage or loss including:

(i) An inventory of all components of fishing gear damaged or lost,

(ii) The date, place, and cost of acquisition of all fishing gear damaged or lost and proof of its purchase (sales receipts, affidavits, or other evidence),

(iii) One estimate from a commercial fishing gear repair or supply company of the present replacement or repair (whichever applies) cost of the damaged or lost fishing gear. If the gear will be repaired by the claimant himself, a detailed estimate by the claimant identifying the repair cost.

(6) The amount claimed for economic loss and the basis for that amount with supporting documentation, as follows:

(i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.

(ii) A statement of the amount of time involved on each of the vessel trips above (or if the casualty involves fixed gear, a statement of the number of gear units hauled on each of these trips).

(iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.

(iv) Documentation of the date replacement gear was ordered and received or the date gear repair began and ended. This documentation may consist of purchase orders, bills of lading, or statements from sellers or repairers.

(7) The amount claimed for other consequential loss or costs (including fees for claim preparation, etc.) with suitable documentation of the amounts claimed (such as invoices, receipts, etc.).

§ 296.6 NMFS processing of claims.

(a) *Action by NMFS.* Upon receipt of a claim, the Chief, FSD, will:

(1) Send an abstract of the claim to the Secretary of the Interior;

(2) Send the reported location of any obstruction which was not recovered and retained to the National Ocean Survey, which will inform the Defense Mapping Agency Hydrographic/Topographic Center.

(b) *Actions by the Interior Department.* Upon receipt of an abstract of a claim, the Interior Department will immediately: (1) Convert the casualty coordinates into latitude and longitude, plot the casualty site, and advise NMFS whether the site is in an area affected by OCS activities; (2) make reasonable efforts to notify all persons known to have engaged in activities associated with OCS energy activity in the vicinity where the damage or loss occurred.

(c) *Responses to notice of claim.* (1) Each person notified by the Interior Department will, within thirty days after receipt of the notice, advise the Chief,

FSD, and the Interior Department whether he admits or denies responsibility for the damages claimed.

(2) Each person notified by the Interior Department who fails to give timely and proper advice of admission or denial of responsibility shall be presumed to deny responsibility for the damages claimed.

(3) If any person admits responsibility, the Chief, FSD, will initiate action to recover from that party any sums paid or to be paid for the claimed damages.

(4) Any person referred to in this section, including lessees or permittees or their contractors or subcontractors, may submit evidence about any claim to the Chief, FSD.

(d) *Failure to meet filing requirements.* The Chief, FSD, may reject any claim that does not meet the filing requirements. The Chief, FSD, will give a claimant whose claim is rejected written notice of the reasons for rejection within 30 days after the date on which the claim was filed. If the claimant does not refile an acceptable claim within 30 days after the date of this written notice, the claimant is not eligible for Fund compensation unless there are extenuating circumstances.

(e) *Proceedings*—(1) *Location.* Any required proceeding will be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Assistant Administrator, NMFS, or his designee, or if no agreement can be reached, within the United States judicial district in which the claimant's home port is located.

(2) *Powers.* For purposes of any proceeding, the Assistant Administrator, NMFS, or his designee, shall have the power to administer oaths and subpoena witnesses and the production of books, records, and other evidence relative to the issues involved.

(3) *Amendments to claims.* A claimant may amend the claim at any time before the Chief, FSD, issues an initial determination.

(4) *Criminal penalty for fraudulent claims.* Any person who files a fraudulent claim is subject to prosecution under 18 U.S.C. sections 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a $10,000 fine and 5 years' imprisonment, or both.

§ 296.7 Burden of proof and presumption of causation.

(a) *Burden of proof.* The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to qualify his claim, including:

(1) The identity or nature of the item which caused the damage or loss; and

(2) That the item is associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

(b) *Presumption of causation.* Notwithstanding the above, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant's commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities;

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was made within fifteen days after the date on which the vessel first returned to a port after discovering such damage;

(3) There was no record on the most recent nautical charts issued by the National Ocean Survey, NOAA, or in any weekly Notice to Mariners issued by the Defense Mapping Agency Hydrographic/Topographic Center, in effect at least 15 days before the date the damage or loss occurred, then an obstruction existed in the immediate vicinity where the damage or loss occurred. In the case of damages caused by a pipeline, the presumption will be available regardless of whether the pipeline was recorded on charts or in the Notice to Mariners; and

(4) There was no proper surface marker or lighted buoy attached, or closely anchored, to such obstruction.

(c) *Geographic exclusion from presumption of causation.* Damage or loss occurring within a one-quarter mile radius of obstructions recorded on charts or in a Notice to Mariners, or properly marked, is presumed to involve the recorded or marked obstruction.

§ 296.8 Amount of award.

(a) *Actual damages.* The award for damaged fishing gear will be the lesser of the gear's repair cost or replacement cost. The award for lost fishing gear will be the gear's replacement cost.

(b) *Consequential damages.* An award may also include compensation for any damage or loss (except personal injury) that is incurred as a consequence of the fishing gear damage or loss.

(c) *Resulting economic loss.* An award may also include twenty five per cent of the resulting economic loss from a fishing gear damage or loss.

(d) *Attorney, CPA, consultant fees.* An award may also include compensation for reasonable fees paid by the claimant to an attorney, CPA, or other consultant for the preparation or prosecution of a claim.

(e) *Negligence of claimant.* (1) An award will be reduced to the extent that the loss or damage was caused by the negligence or fault of the claimant. (For example, a claimant who sustained $10,000 in damages and whose negligence or fault was found to be responsible for 40% of the damage would receive $6,000 in compensation. If the same claimant were responsible for 99% of the negligence or fault that caused the damage, the claimant would receive $100 in compensation).

(2) Negligence of the owner or operator of the fishing vessel or gear will reduce crewmember awards to the same extent that it reduces an award to the vessel's owner or operator.

(f) *Insurance proceeds.* An award will be reduced by the amount the claimant has, or reasonably would have, received under a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred.

§ 296.9 Initial determination.

The Chief, FSD will make an initial determination on a claim within 60 days after the day on which the claim is accepted for filing. The initial determination will state:

(a) If the claim is disapproved, the reason for disapproval, or

(b) If the claim is approved, the amount of compensation and the basis on which the amount was determined.

§ 296.10 Agency review.

(a) Within 30 days after the Chief, FDS, issues an initial determination, the claimant, or any other interested person who submitted evidence relating to the initial determination, may ask the Assistant Administrator, NMFS, or his designee, for a review of the initial determination.

(b) The petitioner may submit written or oral evidence within 30 days of filing the petition for review.

§ 296.11 Final determination.

(a) If a petition for review of an initial determination is filed within 30 days after the date the Chief, FSD, issues an initial determination, the Assistant Administrator, NMFS, or his designee will conduct a review of the initial determination, and will issue a final determination no later than 60 days after receipt of the request for review of the initial determination.

(b) If a petition for review of an initial determination is not filed within 30 days after the day on which the Chief, FSD,

issues an initial determination, the initial determination will become a final determination.

§ 296.12 Payment of costs.

(a) *By person denying responsibility for damage.* Any person who is notified by the Interior Department and fails to respond or denies responsibility for the damages claimed will pay the costs of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(b) *By the claimant.* Any claimant who files a claim will pay the cost of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(c) *By person denying responsibility for damage and the claimant.* If more than one party is found to have responsibility for the damage claimed, then the cost of the proceedings will be apportioned between them.

§ 296.13 Payment of award for claim.

(a) Upon an initial determination, the Chief, FSD, shall immediately disburse the claim awarded if the claimant:

(1) States in writing that he will not request review of the initial determination; and

(2) Signs an agreement to repay all or any part of the award if the award should for any reason be subsequently reduced.

(b) If the claimant does not submit the statement and agreement specified above, the Chief, FSD, will not disburse the award until 30 days after issuance of the initial determination.

§ 296.14 Subrogation.

(a) Upon payment of a claim, the Chief, FSD, Will obtain a subrogation agreement signed by the claimant which:

(1) Assigns to the Fund the claimant's rights against third parties; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue those rights.

(b) Collection of subrogated rights. If a reasonable chance of successful collection exists, NMFS will refer any subrogated rights to the Justice Department for collection.

(c) Any moneys recovered through subrogation shall be deposited into the Fund.

§ 296.15 Judicial review.

Any claimant or other person who is aggrieved by a final determination may, no later than 30 days after the determination, seek judicial review of the determination in the United States District Court for such judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States District Court for the judicial district in which the claimant's home port is located.

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November 1, 1982

Part IV

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Metal Coil Surface Coating Operations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2070-7]

Standards of Performance for New Stationary Sources; Metal Coil Surface Coating Operations

April 26, 1982.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for metal coil surface coating operations were proposed in the **Federal Register** on January 5, 1981 (45 FR 1102). This action promulgates standards of performance for metal coil surface coating operations. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that metal coil surface coating operations cause or contribute significantly to all pollution that may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed metal coil surface coating operations to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: November 1, 1982.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard (NSPS) is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Metal Coil Surface Coating Industry: Background Information for Promulgated Standards," EPA–450/3–80–035b. The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final environmental impact statement (EIS), which summarizes the impacts of the standards.

Docket. A docket, number A–80–5, containing information considered by EPA in development of the promulgated standards is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (A–130), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Section Chief, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578.

SUPPLEMENTARY INFORMATION: OMB Control Number: 2000–0660.

The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * Application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact, and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

The standards apply to all new, modified, and reconstructed metal coil surface coating (coil coating) operations. Existing facilities are not subject to the standards unless they undergo a modification or a reconstruction as defined in 40 CFR 60.14 and 60.15. Compliance with the standards can be achieved by any of four approaches for each affected facility. The owner or operator can use coatings whose average volatile organic compound (VOC) content on a monthly basis is 0.28 kilograms per liter (kg/*l*) of coating solids applied or less; the owner or operator can apply higher VOC-content coatings if he reduces VOC emissions to 0.14 kg/*l* of coating solids applied or less; the owner or operator can comply by demonstrating an overall VOC emission reduction of 90 percent or greater prior to discharge to the atmosphere; or the owner or operator can comply by the combined use of low VOC-content coatings and higher VOC-content coatings with a control device to achieve a calculated monthly emission limit. The owner or operator using an incinerator to control VOC emissions is required to construct an enclosure of the coating application station during the test of incinerator efficiency to evaluate the capture efficiency of the control system.

The standards require each owner or operator to conduct monthly performance tests to demonstrate compliance with the proposed emission limits. Where coatings are used without a VOC capture system and emission control device to meet the numerical limit of 0.28 kg/*l* of coating solids applied, the owner or operator is required to calculate and record a weighted average of the VOC content of coatings applied (including dilution solvents) for each affected facility for each calendar month. Manufacturers' formulation data will normally be used for that purpose; Reference Method 24 will be used to resolve any disputes that may occur.

Where higher VOC-content coatings are used with a VOC capture system and emission control device to meet the numerical limit of 0.14 kg/*l* of coating solids applied, the owner or operator is required to calculate and record the weighted average of the VOC content (including dilution solvents) of coatings applied for each affected facility for each calendar month. During the initial performance tests, the owner or operator must measure the overall VOC emission reduction achieved by the VOC capture system and emission control device. Reference Method 25 and the equations provided in the standards are used for these determinations. Compliance is demonstrated where the overall VOC emission reduction is equal to or less than 0.14 kg/*l*.

Where compliance is achieved through the demonstration of a 90-percent overall reduction in VOC emissions, the owner or operator will conduct an initial performance test by using Reference Method 25 and the equations provided in the standards. Compliance is demonstrated where the overall percent reduction is equal to or greater than 90 percent. After the first monthly test, the owner or operator is required to monitor the operating parameters of the control device.

Where compliance is achieved by the combined use of low VOC-content coatings and higher VOC-content coatings with a control device, the owner or operator is required to calculate and record a weighted average VOC content of coatings applied (including dilution solvents) for each affected facility for each calendar month. Separate calculations must be made for coatings used without the control device in operation and for coatings used with the control device in operation. During the initial performance test, the owner or operator must measure the overall VOC emission reduction achieved by the capture

system and control device. The owner or operator is then required to calculate a monthly emission limit and the VOC emissions to the atmosphere to determine compliance.

If thermal incineration is used, the owner or operator is required to install and operate a device to monitor and record continuously the combustion temperature of the control device. The standards require the owner or operator to record all coating periods of more than 3 hours duration where the average combustion temperature falls 28° C (50° F) or more below the temperature at which compliance was demonstrated during the most recent measurement of incinerator efficiency. If catalytic incineration is used, the owner or operator is required to install a device to monitor and record continuously the gas temperature both upstream and downstream of the incinerator catalyst bed. The owner or operator is required to record all coating periods in excess of 3 hours where the average difference between the temperatures upstream and downstream of the catalyst bed falls below 80 percent of the temperature difference at which compliance was demonstrated during the most recent measurement of incinerator efficiency or where the average inlet (or upstream) temperature falls 28° C (50° F) or more below the inlet temperature at which compliance was demonstrated during the most recent measurement of incinerator efficiency.

Environmental, Energy, And Economic Impacts

The environmental, energy, and economic impacts of standards of performance are normally expressed as incremental differences between the impacts of complying with the proposed standards and those of complying with a typical State implementation plan (SIP). Many existing metal coil surface coating operations are located in areas that are considered nonattainment areas for purposes of achieving the national ambient air quality standard (NAAQS) for ozone. New facilities are expected to have the same geographic distribution as existing plants. States are in the process of revising their SIP's for these areas. In revising SIP's, States generally consider the recommendations contained in control techniques guidelines (CTG) documents. The CTG document applicable to this source category is "Control of Volatile Organic Emissions From Existing Stationary Sources, Volume II, Surface Coating of Cans, Coil, Paper, Fabrics, Automobiles, and Light-Duty Trucks," EPA–450/2–77–088 (CTG). Although the CTG documents are published for guidance only and are not legally binding on the States, impacts were estimated by assuming that most States will revise their existing SIP's in accordance with the CTG recommendations or retain their existing limits on VOC emission.

Approximately 70 percent of the existing coil coating plants are located in States that currently require VOC emissions to be reduced by at least 85 percent prior to discharge, except for plants that use waterborne or other low VOC-content coatings. This emission limit is more stringent than the CTG recommendations, and it appears that these States plan to maintain this level of control for VOC emissions. The ramaining plants are located in States that use a permit system for controlling VOC emissions. These States are expected to revise their SIP's to require VOC emission reductions to the CTG-recommended level, which is equivalent to a 64-percent reduction in the emissions from the average industry solvent-borne coating formulation of 60 percent VOC's and 40 percent solids by volume.

The standards would reduce VOC emissions from a typical plant by approximately 33 percent in States that currently control VOC emissions by a numerical limit (85-percent reduction) and reduce emissions from a typical plant by approximately 72 percent in States that adopt the CTG-recommended level of control (64-percent reduction). With no NSPS, nationwide VOC emissions from new plant capacity are projected to be 8,600 megagrams (Mg) per year after 5 years. Implementation of the NSPS would reduce these emissions by 6,000 Mg per year. In addition, after 5 years, the NSPS would also result in an emission reduction of 2,000 Mg per year from the control of existing plant capacity brought under the standards by modifications and reconstruction. Thus, the total fifth-year emission reduction resulting from implementation of the NSPS would be 8,000 Mg. An estimated 85 percent of new plants will use higher VOC-content coatings and incineration systems to comply with the standards, and the remaining 15 percent will use low VOC-content coating.

EPA recognizes that the estimated 8,000-Mg emission reduction is substantially greater than the 3,200 Mg estimate contained in the proposal preamble. The previous estimate was based on gross industry coating usage data that implied an average applied dry coating thickness of 0.025 millimeter (mm) or 0.001 in. (1 mil). A more reasonable approach is to estimate the emission reduction by using model plant data, which were the basis of cost and economic analyses and which used an average applied dry coating thickness of 1.8 mils. The 1.8-mil value was offered as typical by several industry sources and was subsequently approved by numerous industry reviewers of model plant data. The change in film thickness, plus rounding of model plant data to achieve consistency between costs and emission reduction estimates, results in the estimated fifth-year emission reduction of 8,000 Mg.

Little or no water pollution or solid waste impact from new, modified, or reconstructed coil coating plants is expected to result from application of the standards. None of the control techniques used by the coil coating industry generates either liquid or solid waste; therefore, the standards would have no impact in these areas.

Nationwide energy usage by the coil coating industry totaled about 6,600 terajoules (TJ) in 1978. The standards will result in an energy usage increase of about 1 percent per year, which is equivalent to 200,000 barrels of crude oil in the fifth year. Plants located in States requiring an 85-percent reduction and that achieve compliance through the use of higher VOC-content coatings in combination with an incinerator are expected to decrease their energy consumption by about 5 percent. However, for plants regulated to the CTG-recommended level of control, compliance with the standards through the use of incineration could result in as much as a 50-percent increase in energy consumption in some individual plants if one of the more energy-efficient systems identified as being capable of achieving the CTG-recommended limits is used as the baseline. Little or no impact in energy consumption is expected to result from the standards for plants meeting the emission limits with the use of waterborne or other low VOC-content coatings without the use of incineration.

The standards increase both the capital and annualized costs of new coil coating plants. Based on a predicted industry growth rate of 12 percent per year through 1985, the increased capital costs of new plants that locate in States requiring an 85-percent reduction in VOC emissions could range from $110,000 for a small plant to $140,000 for a large plant. This capital outlay represents an increase in the total capital costs of a new plant of approximately 1.4 percent for a small plant and 0.9 percent for a large plant. The increase in total annualized costs could range from $11,000 for a small plant to $23,000 for a large plant. For plants that locate in States that adopt

the CTG-recommended limits, capital costs for a new plant could increase by $180,000 for a small plant and by $920,000 for a large plant—2.3- and 6.6-percent increases, respectively, in the total capital costs of a new plant. Total annualized costs could increase by $55,000 for a small plant and by $395,000 for a large plant. Compliance with the standards could result in increases in the price of coil coated metal ranging from 0.2 percent for a large plant in 85-percent reduction areas to 4.1 percent for a large plant in States that adopt the CTG-recommended limits. The effects for other plant sizes fall between these two values.

During the first 5 years, the incremental capital costs of the NSPS are estimated to be approximately $18.8 million, and the incremental annualized costs in the fifth year are estimated at $5.4 million. These values are lower than those in the proposal preamble—$20.0 million and $7 million for the capital and annualized cost increments, respectively. The previous values were computed to show the maximum cost to the industry by assuming that all new plant capacity will use solvent-borne coatings and incineration as a means of complying with the standard. The lower estimates given above are based on the more realistic assumption that 15 percent of new plant capacity will comply with the standards by using waterborne coatings and thus incur no costs. This latter assumption is consistent with the estimates of emission reduction given above.

Cost estimates for plants in CTG areas are probably overstated by a substantial amount. These cost estimates were based on the least expensive devices that appear to be potentially capable of meeting CTG limits. In practice, however, these units are not now used. Rather, the predominant trend is toward use of modern heat recovery incineration systems. These systems, in addition to effectively reducing emissions, help to ensure a stable energy supply for coaters by using the coating solvents as fuel. The use of coating solvents as fuel is a benefit for which no credit is given in the economic analysis but that is important enough to cause many coil coaters to install the systems without a regulatory requirement.

The environmental, energy, and economic impacts are discussed in greater detail in the BID for the promulgated standards, "Metal Coil Surface Coating Industry—Background Information for Promulgated Standards of Performance," EPA–450/3–80–035b.

In addition to achieving emission reductions beyond those required by a typical SIP, standards of performance have other benefits. They establish a degree of national uniformity, which precludes situations in which some States may attract new industries because they have less stringent air pollution standards than other States. Further, standards of performance provide documentation, which reduces uncertainty in case-by-case determinations of best available control technology (BACT) for facilities located in attainment areas and lowest achievable emission rates (LAER) for facilities located in nonattainment areas. This documentation includes identification and comprehensive analysis of alternative emission control technologies, development of associated costs, evaluation and verification of applicable emission test methods, and identification of specific emission limits achievable with alternate technologies. The costs are provided for an economic analysis that reveals the affordability of controls in an unbiased study of the economic impact of controls on an industry.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (45 FR 30686, May 9, 1980) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the metal coil surface coating operations standards recommended for proposal. This meeting was held on June 4 and 5, 1980. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed and published in the **Federal Register** on January 5, 1981, (45 FR 1102). The preamble to the proposed standards discussed the availability of the proposal BID, "Metal Coil Surface Coating Industry—Background Information for Proposed Standards," EPA–450/3–80–035a, which describes in detail the regulatory alternatives considered and their impacts. Public comments were solicited at the time of proposal, and, when requested, copies of the BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on February 4, 1981, at Research Triangle Park, North Carolina. The hearing was open to the public, and each attendee was given an opportunity to comment on the proposed standards. The public comment period was from February 4, 1981, to April 6, 1981.

Six comment letters were received and two interested parties testified at the public hearing concerning issues relative to the proposed standards of performance for metal coil surface coating operations. The comments have been carefully considered, and, where determined appropriate by the Administrator, changes have been made in the proposed standards.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from coil coaters, coating manufacturers, and Federal and State environmental agencies. A detailed discussion of these comments and responses can be found in the promulgation BID, "Metal Coil Surface Coating Industry: Background Information for Promulgated Standards of Performance," EPA–450/3–80–035b. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: General, Emission Control Technology, Environmental Impact, Legal Considerations, and Test Methods and Monitoring.

Significant changes in the standards since proposal involve compliance and reporting procedures. A procedure was added to the compliance provisions by which coil coaters can compute a monthly emission limit for affected facilities that control emissions by the combined use of low-solvent technology and higher solvent coatings with a control device. Reporting of monthly performance test data has been dropped from the standards, but owners and operators are required to record and maintain these data.

General

Two commenters questioned the need for an NSPS for coil coating, stating that, for economic reasons, new coil coating lines already employ the best technology for capturing VOC emissions to burn as fuel for their ovens and, therefore, do not contribute significantly to VOC emissions nationwide. They also questioned EPA's determination that coil coating contributes significantly to air pollution.

Section 111 of the Clean Air Act requires EPA to promulgate NSPS's for all source categories that contribute significantly to harmful air pollution (Section 111(b)(1), (f)(1)). Metal coil

coating is such a category (40 CFR 60.16 (Source Category No. 22); 44 FR 49222 (August 21, 1979)).

EPA recognizes that the recent trend in the coil coating industry has been toward the use of incineration with heat recovery as an energy conserving and economically attractive operating setup. EPA appreciates the emission reduction that has been achieved by this trend; however, promulgation of an NSPS is necessary to ensure that emission reductions reflecting best demonstrated technology (BDT) are achieved.

One commenter stated that EPA regulations covering VOC emissions from metal surface coating operations are inequitable in that the emission limits proposed for coil coating are more stringent than the limits proposed for other metal coating operations.

Section 111 requires that each NSPS reflect BDT for that source category. EPA uses the same approach in evaluating BDT for different source categories. The fact that the resulting emission limits are different for different source categories is irrelevant ("*Portland Cement Association* v. *Ruckelshaus*," 486 F.2d 375, 389 (D.C. Cir. 1973); "*National Lime Association* v. *EPA*," 627 F.2d 416, 447 n. 108 (D.C. Cir. 1980).

One respondent commented that the projected growth rate for coil coating used in the background study (12 percent per year) is too high and that a rate of 8 to 10 percent is more realistic.

The 12-percent per year growth rate mentioned in the background study is a misstatement of the growth rate used in the analyses. Total coating capacity was estimated to increase by a constant amount each year over a 5-year period. The increase used was equal to 12 percent of the total industry capacity in the baseline year. This is not equal to a 12-percent annual growth rate. Stated on a percentage basis, the annual growth rates assumed were 12 percent the first year, 10.7 percent the second year, 9.8 percent the third year, 9.0 percent the fourth year, and 8.5 percent the fifth year. Over the 5-year period, the average annual growth rate was approximately 10 percent per year. This growth rate is within the range of the growth rate values suggested by the commenter, and, therefore, EPA concludes that the projections in the background study are reasonable.

One commenter stated that he was unsure whether or not the standards permit a coater to use low VOC-content coatings that have a VOC content greater than 0.28 kg// of coating solids in conjunction with other lower VOC-content coatings and to comply by computing the weighted average of the VOC contents.

The standards state that an affected facility is in compliance if each coating used has a VOC content less than or equal to 0.28 kg// of coating solids or if the volume weighted average VOC content of all coatings used in a calendar month is less than or equal to 0.28 kg// of coating solids. A procedure for computing the volume weighted average VOC content is provided in the standards. EPA considers that the concerns of the commenter are clearly covered in the standards as written and, therefore, made no changes to the wording of the standards in response to this comment.

One public hearing participant stated that the definition of "affected facility" should be changed from each coating operation to an entire coating line to permit averaging of the two coating operations on a tandem coil coating line. The public hearing participant later submitted this in a letter.

The choice of the affected facility for these standards is based on the Agency's interpretation of Section 111 of the Act and judicial construction of its meaning. Under Section 111, the NSPS must apply to "new sources"; "source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" (Section 111(a)(3)). Most industrial plants, however, consist of numerous pieces or groups of equipment that emit air pollutants and that might be viewed as "sources." EPA therefore uses the term "affected facility" to designate the equipment, within a particular kind of plant, chosen as the "source" covered by given standards.

In choosing the affected facility, EPA must decide which pieces or groups of equipment are the appropriate units for separate emission standards. The Agency must do this in light of the terms and purpose of Section 111. One major consideration is that the use of a narrower definition results in bringing replacement equipment under the NSPS sooner. For example, if an entire plant were designated as the affected facility, no part of an existing plant would be subject to the standards unless the plant as a whole were "modified." If, on the other hand, each piece of equipment were designated as an affected facility, then, as each piece was replaced, it would be a new source subject to the standards. Because the purpose of Section 111 is to minimize emissions by the application of BDT (considering cost, other health and environmental effects, and energy requirements) at all new and modified sources, there is a presumption that a narrower designation of the affected facility is proper. This ensures that new emission sources would be subject to the standards as they are installed. This presumption can be overcome, however, if the Agency concludes that relevant statutory factors (technical feasibility, cost, energy, and other environmental impacts) point to a broader definition.

Designation of an entire coil coating line or an entire plant as an affected facility was considered in the development of the standards. These options were rejected in favor of designating each coating operation as an affected facility. In addition to the advantages cited above, this designation also simplifies recordkeeping and enforcement activities and, in many cases, gives added flexibility to owners or operators by allowing them to use different control technologies on each coating operation without the need for complicated averaging calculations.

One commenter stated that the definition of "coil coating" is too broad and would result in the regulation of many operations not considered in the development of the standards. The commenter suggested that the definition of "coil coating" be modified to exclude operations that process only metal with thicknesses less than 0.178 mm (0.007 in.), commonly considered to be metal foil, and to exclude operations covered by the proposed NSPS for can coating.

Metal foil is defined by the Aluminum Association as metal strip with a thickness less than 0.152 mm (0.006 in.). While metal foil fits the definition of metal coil contained in the proposed standards (i.e., a continuous metal strip packaged in a roll or coil), coating formulations, application rates, emissions, and process operations for foil are quite different from those for coil. In the background study for the coil coating standards, EPA did not evaluate foil processing operations nor identify BDT. Foil processing is therefore excluded from coverage under the coil coating standards. EPA has, therefore, modified the definition of "coil coating" to exclude operations that process only metal with a thickness less than 0.152 mm (0.006 in.). This cutoff point is based on the formal definition of "foil products" that is used by the aluminum industry and that was communicated to EPA by the Aluminum Association and verified by a major producer of foil products. EPA could find no basis for selecting 0.178 mm (0.007 in.) as a point of differentiation as suggested by the commenter. The comment regarding operations covered by the coil coating standards that are also covered by the can coating standards reflects a

misinterpretation of the coverage of the standards. Coil coating of can stock is covered by the coil coating standards but is excluded from coverage by the can surface coating standards.

One public hearing participant commented that affected facilities where waterborne coatings are used for a significant portion of the time, but where solvent-borne coatings are also used, should be allowed to meet the waterborne emission limit when waterborne coatings are used and the emission limit for solvent-borne coatings and a control device for the remainder of their coating operations. This method of compliance was not allowed by the proposed standards.

The few coil coating lines that are the basis for the comment use waterborne coatings for 80 to 90 percent of their coating operations and solvent-borne coatings for the remainder of the time. Incinerators for these lines are designed for the operation only when solvent-borne coatings are used and do not have heat recovery facilities. Where such incinerators are used to reduce emissions from waterborne coatings, previous EPA analyses indicate that energy costs are very high because of the required use of a large quantity of supplemental fuel and that emission reductions are small because of the low VOC concentration in the exhaust stream. The costs per unit of emission reduction achieved become exorbitant under these circumstances. Consequently, a procedure was added to the promulgated standards by which coil coaters can calculate an emission limit each month based on the relative amounts of coatings used with and without the emission control device in operation. Operators can then comply with the calculated VOC emission limit, which will have a value between 0.14 (or a 90-percent emission reduction) and 0.28 kg/l of coating solids applied, by the combination of waterborne coatings and solvent-borne coatings with a capture system and control device.

Two approaches were considered for this provision. Under the first approach (the one incorporated), owners or operators compute an affected facility's monthly emission limit, weighted according to the coating solids applied with each control technology, and then compute actual monthly emissions to determine compliance. Under the second approach, each affected facility would be required to achieve compliance with the emission limit for low VOC-content coatings (0.28 kg/l of coating solids applied) during the portion of the month when these coatings are used, and would be required to achieve compliance with the emission limit for higher VOC-content coatings and a control device (0.14 kg/l of coating solids applied, or a 90-percent emission reduction) for the portion of the month when this system is used.

The second approach has a disadvantage relative to the first one in that the averaging time over which compliance must be demonstrated may range from 1 day (or less) to a calendar month (~30 days). The established emission limits are based on a calendar month averaging time to allow owners or operators the flexibility of using coatings with a wide range of VOC content, which is very common in the industry, and still achieve compliance on a monthly basis. If the averaging time is reduced to less than a calendar month, the data may not support the emission limits now specified. In view of this disadvantage, the first approach was incorporated into the standards. The number of installations to which this provision applies is quite small, but the provision was determined necessary to allow particular installations to continue their normal operating patterns.

Emission Control Technology

One public hearing participant and one commenter stated that the emission limit for low VOC-content coatings contained in the proposed standards, 0.28 kg/l of coating solids applied, is too stringent and would stifle research and development activities in low-solvent technology. It was further stated that the emission limit in the proposed standards was based mainly on coatings applied to architectural and building products and that the technology was not demonstrated for all applications. Particular reference was made to the coating of can-end stock as requiring a separate emission limit for low-solvent technology.

EPA believes that the data obtained during the background study adequately demonstrate the availability of waterborne coatings that will meet the proposed emission limits for most applications. EPA did not identify any low VOC-content coatings applicable for coil coating can-end stock and does not know of any now in use. The coil coating lines identified during the background study that coat can-end stock all use solvent-borne coatings. In recent discussions, several coating manufacturers stated that they are now working on the development of waterborne coatings for can-end stock and that the operating requirements for this application pose difficult problems in reducing the VOC content of the coatings. Reasons cited for these problems include the limitations established by the U.S. Food and Drug Administration on the ingredients that can be used in such coatings and the severe stress that the coatings must withstand during the can-end forming process.

Some coating manufacturers have indicated that coatings for can-end stock with a VOC content in the range of 0.4 to 0.5 kg/l of coating solids may become available within the next few years, but they do not expect the levels of VOC content to be much below this range. Emissions from such coatings would be substantially greater than emissions from other coil coating operations that use either low VOC-content coatings or higher VOC-content coatings and incineration.

Because the use of higher VOC-content coatings with a control device has been determined to be technically and economically feasible and not exorbitantly costly, EPA has not established a separate emission limit for coil coating of can-end stock.

One commenter suggested that, instead of placing stringent emission limits on coil coaters, EPA should require other metal surface coating operations to change to the use of precoated coil as a more environmentally favorable process.

EPA has identified BDT (considering cost, other health and environmental effects, and energy requirements) for each metal surface coating operation and has based the standards for each operation on that technology. The Agency believes that this procedure is consistent with the provisions of Section 111 of the Clean Air Act. This comment addresses other surface coating NSPS's and does not question or cast any doubt on the appropriateness of the coil coating NSPS; therefore, no changes have been made as a result of this comment.

One commenter suggested that the proposed standards incorrectly emphasize the installation of incinerators over the use of low-solvent technology and stated that EPA did not consider low-solvent technology in the development of the standards. The commenter further stated that the energy analysis was flawed by incorrect assumptions related to coater room exhausts.

These comments were originally submitted at the NAPCTAC meeting in June 1980 and were resubmitted along with additional comments relating to the proposed standards. Subsequent to the NAPCTAC meeting and prior to proposal, EPA made changes to the standards in response to these

comments. Several additional regulatory alternatives were evaluated, and separate provisions were added to the standards relating to the use of low-solvent technology. As proposed, the standards allow compliance by either low-solvent technology or incineration. The comment regarding consideration of low-solvent technology is therefore not applicable. Changes were also made to the provisions relating to coater rooms. As a result, the coater room exhaust is no longer required to enter the oven or control device. The energy-related comment referring to the coater room exhaust requirement also no longer applies. EPA therefore believes that an adequate response has been made to these comments and that they do not pertain to the proposed standards.

Environmental Impact

One commenter stated that the draft EIS in the proposal BID may understate final emission levels by a factor of 2 because incinerators are only capable of achieving a 90-percent reduction in VOC emissions rather than the 95-percent reduction assumed in the development of the draft EIS.

EPA believes that the emission test data presented in the proposal BID adequately demonstrate the ability of incinerators to reduce emissions by 95 percent when operated at a temperature of 760° C (1,400° F) or more. This conclusion is based on emission tests at four plants where the incinerators were operated at 760° C (1,400° F) or greater and that achieved an emission reduction of 95 percent or greater and on tests at a fifth plant where an emission reduction of 95 percent or more was achieved at temperatures below 760° C (1,400° F). These data are itemized in Chapter 4 of the proposal BID.

Legal Considerations

One commenter stated that EPA's raw data base for the proposed standards is inadequate and was not based on Reference Method 25 testing.

The standards are based on the Reference Method 25 test conducted by EPA during the background study. This test showed a 95-percent reduction across the incinerator at a temperature of 760° C (1,400° F). During that test, a continuous flame ionization detector (FID) was also used to measure VOC concentration in the incinerator outlet. The FID measurements consistently showed an emission reduction of approximately 99 percent at 760° C (1,400° F). There are other test data available that were obtained with an FID. In all these tests where the incinerator was operated at 760° C (1,400° F) or greater, the FID data consistently show an emission reduction of approximately 99 percent. These other data reinforce the validity of selecting 95 percent as the standard based on Reference Method 25 measurements.

Test Methods and Monitoring

One commenter believes that Reference Method 25 is inappropriate as the only method for compliance testing because it is virtually unavailable to any source outside the Los Angeles area, where the air pollution control district owns the equipment and performs the tests, or outside the service area of a single commercial laboratory in the Midwest capable of carrying out the technique.

There are at least five commercial laboratories in the Midwest and Northeast that are capable of performing compliance tests using Reference Method 25. Most of these laboratories are capable of supplying testing services to any region of the country.

One commenter stated that Reference Method 25 is highly laboratory oriented and requires extensive capital investment if individual sources must prepare to carry out the testing procedure. This commenter further stated that Reference Method 25 is subject to criticism for potential bias; that no suppliers exist for an instrument to handle analyses of Reference Method 25 test samples; and that, while one U.S. company has offered an instrument for sale, it has not performed reliably.

At least one company has already built a prototype instrument, which has functioned reliably as the nonmethane organic analyzer described in Reference Method 25. In addition, there are now a number of commercial laboratories capable of supplying this service.

One commenter was particularly concerned with the inability of Reference Method 25 to account for the bias that can be introduced by particulate matter, such as a flake of paint or a droplet of condensed hydrocarbon.

Although organic particulate matter could be a potential problem if it were collected in the Reference Method 25 sampling train, this can be easily prevented by including a filter in the sample train upstream of the cold traps. Using a filter is an option that is permitted in Method 25.

One commenter believes that alternative test procedures are available by which direct measurement can be made of total gaseous organic compounds with an FID. This method has adequately demonstrated the ability to monitor emissions on a real-time basis—an ability particularly important for cyclic processes or those that do not emit a uniform level of pollutants. The commenter, therefore, urged that the Agency consider substituting a more suitable method or, at least, providing for one or more alternative methods. The commenter offered to provide documentation and detail of the method considered superior and practical.

EPA is presently developing a procedure using a flame ionization analyzer that may be used as an alternative method in certain cases. It will be permitted as an alternative procedure for determining the efficiency of control devices on coating operations if the analyzer is calibrated with the solvent material used in the coating process. This procedure will be available for use as an alternative procedure as soon as it is published in the **Federal Register** in its final form and the necessary changes have been made in the appropriate regulations.

In the meantime, one can apply under § 60.8(b) for alternative method status. All that is required is that one submit a detailed written procedure for the candidate method and data comparing the candidate method and the reference method.

A comment received during the development of another surface coating standard questioned the relationship of the proposed standards and the use of Reference Method 24 for determining compliance. The commenter stated that the proposed standards should include a "cushion" that would allow for differences in test results caused by variations in the three experimentally determined parameters used to calculate VOC content of coatings.

Upon evaluation, EPA determined that this comment is equally applicable to the coil coating regulation.

EPA recognizes the potential variability in the results when Reference Method 24 is used to analyze water-based coatings. The method itself contains a procedure to account for this variability. The promulgated standards require that, when Reference Method 24 results are used to determine compliance, they be adjusted as described in Section 4.4 of Reference Method 24. This adjustment applies only to waterborne coatings.

If the actual VOC level of a waterborne coating is at or below the standard, there is less than 1 chance in 10,000 that the Reference Method 24 adjusted results will show the VOC levels to be above the standard.

One commenter challenged the use of the terms "total enclosure" and "total capture of VOC emissions" in the proposed test procedure for incinerators.

stating that there is no such thing as total enclosure and total capture.

EPA agrees that, taken literally, the terms "total enclosure" and "total capture of VOC emissions" describe conditions that are extremely difficult to achieve. Although these terms were used in a practical engineering sense, a literal interpretation could lead to both compliance and enforcement difficulties. In view of this possibility, EPA has changed the wording of the test procedure to eliminate the two terms and has replaced them with a requirement that coating station enclosures be maintained at a negative pressure to achieve good capture of VOC emissions.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA's responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is November 1, 1982. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (January 5, 1981).

As prescribed by Section 111, establishment of standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

The rulemaking process that implements performance standards ensures adequate technical review and promotes participation of representatives of the industry being considered for regulation, government, and the public affected by that industry's emissions. The resultant regulation represents a balance in which Government resources are applied in a well-publicized national forum to reach a decision on a pollution emission level that allows for a dynamic economy and a healthful environment.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

In addition to conducting an economic impact analysis, EPA examined the emission reduction and annualized costs—expressed in dollars per ton of pollutant removed per year—for three levels of control in typical plants. The three levels of control are an overall emission reduction of 64 percent, as recommended by the CTG; an overall emission reduction of 85 percent, as specified in many existing SIP's; and an overall emission reduction of 90 percent, as contained in the NSPS. This examination showed that an 85-percent level of control reduces emissions by 174 Mg (192 tons) per year relative to the CTG recommendation and increases annualized costs by $982/Mg ($890/ton). It also showed that the incremental emission reduction achieved by increasing the control level from 85 to 90 percent is 41 Mg (45 tons) per year at an annualized cost of $668/Mg ($609 ton). These annualized costs per ton of pollutant removed are comparable to costs and associated emission reductions in other industries that control VOC emissions.

The Paperwork Reduction Act of 1980 (Pub. L. 95–511) requires EPA to submit to the Office of Management and Budget (OMB) certain public reporting/recordkeeping requirements before proposal. The reporting/recordkeeping requirements associated with this standard have been submitted to OMB for approval, and have been assigned Control No. 2000–0660.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be major. The industry wide annualized costs in the fifth year after the standards would go into effect would be $5.4 million, much less than the $100 million established as the first criterion for a major regulation in the Order. The estimated price increase of less than 3 percent associated with the proposed standards would not be considered a "major increase in costs or prices" specified as the second criterion in the Order. The economic analysis of the proposed standards' effects on the industry did not indicate 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 the Order).

This regulation was submitted to OMB for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket referenced in the address section of this preamble.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

Dated: October 20, 1982.

Anne M. Gorsuch,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended by adding a new Subpart TT as follows:

Subpart TT—Standards of Performance for Metal Coil Surface Coating

Sec.

Authority: Sections 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart TT—Standards of Performance for Metal Coil Surface Coating

§ 60.460 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to the following affected facilities in a metal coil surface coating operation: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously.

(b) This subpart applies to any facility identified in paragraph (a) of this section that commences construction, modification, or reconstruction after January 5, 1981.

§ 60.461 Definitions.

(a) All terms used in this subpart not defined below are given the same meaning as in the Act or in Subpart A of this part.

"Coating" means any organic material that is applied to the surface of metal coil.

"Coating application station" means that portion of the metal coil surface coating operation where the coating is applied to the surface of the metal coil. Included as part of the coating application station is the flashoff area between the coating application station and the curing oven.

"Curing oven" means the device that uses heat or radiation to dry or cure the coating applied to the metal coil.

"Finish coat operation" means the coating application station, curing oven, and quench station used to apply and dry or cure the final coating(s) on the surface of the metal coil. Where only a single coating is applied to the metal coil, that coating is considered a finish coat.

"Metal coil surface coating operation" means the application system used to apply an organic coating to the surface of any continuous metal strip with thickness of 0.15 millimeter (mm) (0.006 in.) or more that is packaged in a roll or coil.

"Prime coat operation" means the coating application station, curing oven, and quench station used to apply and dry or cure the initial coating(s) on the surface of the metal coil.

"Quench station" means that portion of the metal coil surface coating operation where the coated metal coil is cooled, usually by a water spray, after baking or curing.

"VOC content" means the quantity, in kilograms per liter of coating solids, of volatile organic compounds (VOC's) in a coating.

(b) All symbols used in this subpart not defined below are given the same meaning as in the Act and in Subpart A of this part.

C_a = the VOC concentration in each gas stream leaving the control device and entering the atmosphere (parts per million by volume, as carbon).
C_b = the VOC concentration on each gas stream entering the control device (parts per million by volume, as carbon).
C_f = the VOC concentration in each gas steam emitted directly to the atmosphere (parts per million by volume, as carbon).
D_c = density of each coating, as received (kilograms per liter).
D_d = density of each VOC-solvent added to coatings (kilograms per liter).
D_r = density of VOC-solvent recovered by an emission control device (kilograms per liter).
E = VOC destruction efficiency of the control device (fraction).
F = the proportion of total VOC's emitted by an affected facility that enters the control device (fraction).
G = volume-weighted average mass of VOC's in coatings consumed in a calendar month per unit volume of coating solids applied (kilograms per liter).
L_c = the volume of each coating consumed, as received (liters).
L_d = the volume of each VOC-solvent added to coatings (liters).
L_r = the volume of VOC-solvent recovered by an emission control device (liters).
L_s = the volume of coating solids consumed (liters).
M_d = the mass of VOC-solvent added to coatings (kilograms).
M_o = the mass of VOC's in coatings consumed, as received (kilograms).
M_r = the mass of VOC's recovered by an emission control device (kilograms).
N = the volume-weighted average mass of VOC emissions to the atmosphere per unit volume of coating solids applied (kilograms per liter).
Q_a = the volumetric flow rate of each gas stream leaving the control device and entering the atmosphere (dry standard cubic meters per hour).
Q_b = the volumetric flow rate of each gas stream entering the control device (dry standard cubic meters per hour).
Q_f = the volumetric flow rate of each gas steam emitted directly to the atmosphere (dry standard cubic meters per hour).
R = the overall VOC emission reduction achieved for an affected facility (fraction).
S = the calculated monthly allowable emission limit (kilograms of VOC per liter of coating solids applied).
V_s = the proportion of solids in each coating, as received (fraction by volume).
W_o = the proportion of VOC's in each coating, as received (fraction by weight).

§ 60.462 Standards for volatile organic compounds.

(a) On and after the date on which § 60.8 requires a performance test to be completed, each owner or operator subject to this subpart shall not cause to be discharged into the atmosphere more than:

(1) 0.28 kilogram VOC per liter (kg VOC/*l*) of coating solids applied for each calendar month for each affected facility that does not use an emission control device(s); or

(2) 0.14 kg VOC/*l* of coating solids applied for each calendar month for each affected facility that continuously uses an emission control device(s) operated at the most recently demonstrated overall efficiency; or

(3) 10 percent of the VOC's applied for each calendar month (90 percent emission reduction) for each affected facility that continuously uses an emission control device(s) operated at the most recently demonstrated overall efficiency; or

(4) a value between 0.14 (or a 90-percent emission reduction) and 0.28 kg VOC/*l* of coating solids applied for each calendar month for each affected facility that intermittently uses an emission control device operated at the most recently demonstrated overall efficiency.

§ 60.463 Performance test and compliance provisions.

(a) Sections 60.8 (d) and (f) do not apply to the performance test.

(b) The owner or operator of an affected facility shall conduct an initial performance test as required under § 60.8(a) and thereafter a performance test for each calendar month for each affected facility according to the procedures in this section.

(c) The owner or operator shall use the following procedures for determining monthly volume-weighted average emissions of VOC's in kg/*l* of coating solids applied.

(1) An owner or operator shall use the following procedures for each affected facility that does not use a capture system and control device to comply with the emission limit specified under § 60.462(a)(1). The owner or operator shall determine the composition of the coatings by formulation data supplied by the manufacturer of the coating or by an analysis of each coating, as received,

using Reference Method 24. The Administrator may require the owner or operator who uses formulation data supplied by the manufacturer of the coatings to determine the VOC content of coatings using Reference Method 24 or an equivalent or alternative method. The owner or operator shall determine the volume of coating and the mass of VOC-solvent added to coatings from company records on a monthly basis. If a common coating distribution system serves more than one affected facility or serves both affected and existing facilities, the owner or operator shall estimate the volume of coating used at each affected facility by using the average dry weight of coating and the surface area coated by each affected and existing facility or by other procedures acceptable to the Administrator.

(i) Calculate the volume-weighted average of the total mass of VOC's consumed per unit volume of coating solids applied during each calendar month for each affected facility, except as provided under § 60.463(c)(1)(iv). The weighted average of the total mass of VOC's used per unit volume of coating solids applied each calendar month is determined by the following procedures.

(A) Calculate the mass of VOC's used (Mo+Md) during each calendar month for each affected facility by the following equation:

$$M_o+M_d=\sum_{i=1}^{n} L_{ci}D_{ci}W_{oi}+\sum_{j=1}^{m} L_{dj}D_{dj}$$

($\Sigma L_{dj}D_{dj}$ will be 0 if no VOC solvent is added to the coatings, as received)

where

n is the number of different coatings used during the calendar month, and

m is the number of different VOC solvents added to coatings used during the calendar month.

(B) Calculate the total volume of coating solids used (L_s) in each calendar month for each affected facility by the following equation:

$$L_s=\sum_{i=1}^{n} V_{si}L_{ci}$$

where

n is the number of different coatings used during the calendar month.

(C) Calculate the volume-weighted average mass of VOC's used per unit volume of coating solids applied (G) during the calendar month for each affected facility by the following equation:

$$G=\frac{M_o+M_d}{L_s}$$

(ii) Calculate the volume-weighted average of VOC emissions to the atmosphere (N) during the calendar month for each affected facility by the following equation:

N=G

(iii) Where the volume-weighted average mass of VOC's discharged to the atmosphere per unit volume of coating solids applied (N) is equal to or less than 0.28 kg/*l*, the affected facility is in compliance.

(iv) If each individual coating used by an affected facility has a VOC content, as received, that is equal to or less than 0.28 kg/*l* of coating solids, the affected facility is in compliance provided no VOC's are added to the coatings during distribution or application.

(2) An owner or operator shall use the following procedures for each affected facility that continuously uses a capture system and a control device that destroys VOC's (e.g., incinerator) to comply with the emission limit specified under § 60.462(a) (2) or (3).

(i) Determine the overall reduction efficiency (R) for the capture system and control device.

For the initial performance test, the overall reduction efficiency (R) shall be determined as prescribed in paragraphs (c)(2)(i) (A), (B), and (C) of this section. In subsequent months, the owner or operator may use the most recently determined overall reduction efficiency (R) for the performance test, providing control device and capture system operating conditions have not changed. The procedure in paragraphs (c)(2)(i) (A), (B), and (C) of this section, shall be repeated when directed by the Administrator or when the owner or operator elects to operate the control device or capture system at conditions different from the initial performance test.

(A) Determine the fraction (F) of total VOC's emitted by an affected facility that enters the control device using the following equation:

$$F=\frac{\sum_{i=1}^{l} C_{bi}Q_{bi}}{\sum_{i=1}^{l} C_{bi}Q_{bi}+\sum_{i=1}^{p} C_{fi}Q_{fi}}$$

where

l is the number of gas streams entering the control device, and

p is the number of gas streams emitted directly to the atmosphere.

(B) Determine the destruction efficiency of the control device (E) using values of the volumetric flow rate of each of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the device by the following equation:

$$E=\frac{\sum_{i=1}^{n} Q_{bi}C_{bi}-\sum_{j=1}^{m} Q_{aj}C_{aj}}{\sum_{i=1}^{n} Q_{bi}C_{bi}}$$

where,

n is the number of gas streams entering the control device, and

m is the number of gas streams leaving the control device and entering the atmosphere.

The owner or operator of the affected facility shall construct the VOC emission reduction system so that all volumetric flow rates and total VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 60.466. The owner or operator of the affected facility shall construct a temporary enclosure around the coating applicator and flashoff area during the performance test for the purpose of evaluating the capture efficiency of the system. The enclosure must be maintained at a negative pressure to ensure that all VOC emissions are measurable. If a permanent enclosure exists in the affected facility prior to the performance test and the Administrator is satisfied that the enclosure is adequately containing VOC emissions, no additional enclosure is required for the performance test.

(C) Determine overall reduction efficiency (R) using the following equation:

R=EF

If the overall reduction efficiency (R) is equal to or greater than 0.90, the affected facility is in compliance and no further computations are necessary. If the overall reduction efficiency (R) is less than 0.90, the average total VOC emissions to the atmosphere per unit volume of coating solids applied (N) shall be computed as follows.

(ii) Calculate the volume-weighted average of the total mass of VOC's per unit volume of coating solids applied (G) during each calendar month for each

affected facility using equations in paragraphs (c)(1)(i) (A), (B), and (C) of this section.

(iii) Calculate the volume-weighted average of VOC emissions to the atmosphere (N) during each calendar month by the following equation:

$$N = G(1-R)$$

(iv) If the volume-weighted average mass of VOC's emitted to the atmosphere for each calendar month (N) is less than or equal to 0.14 kg// of coating solids applied, the affected facility is in compliance. Each monthly calculation is a performance test.

(3) An owner or operator shall use the following procedure for each affected facility that uses a control device that recovers the VOC's (e.g., carbon adsorber) to comply with the applicable emission limit specified under § 60.462(a) (2) or (3).

(i) Calculate the total mass of VOC's consumed ($M_o + M_d$) during each calendar month for each affected facility using equation (1).

(ii) Calculate the total mass of VOC's recovered (M_r) during each calendar month using the following equation:

$$M_r = L_r D_r$$

(iii) Calculate the overall reduction efficiency of the control device (R) for each calendar month for each affected facility using the following equation:

$$R = \frac{M_r}{M_o + M_d}$$

If the overall reduction efficiency (R) is equal to or greater than 0.90, the affected facility is in compliance and no further computation are necessary. If the overall reduction efficiency (R) is less than 0.90, the average total VOC emissions to the atmosphere per unit volume of coating solids applied (N) must be computed as follows.

(iv) Calculate the total volume of coating solids consumed (L_s) and the volume-weighted average of the total mass of VOC's per unit volume of coating solids applied (G) during each calendar month for each affected facility using equations in paragraphs (c)(1)(i) (B) and (C) of this section.

(v) Calculate the volume-weighted average mass of VOC's emitted to the atmosphere (N) for each calendar month for each affected facility using equation (8).

(vi) If the weighted average mass of VOC's emitted to the atmosphere for each calendar month (N) is less than or equal to 0.14 kg// of coating solids applied, the affected facility is in compliance. Each monthly calculation is a performance test.

(4) An owner or operator shall use the following procedures for each affected facility that intermittently uses a capture system and a control device to comply with the emission limit specified in § 60.462(a)(4).

(i) Calculate the total volume of coating solids applied without the control device in operation (L_{sn}) during each calendar month for each affected facility using the following equation:

$$L_{sn} = \sum_{i=1}^{n} V_{si} L_{ci}$$

where

n is the number of coatings used during the calendar month without the control device in operation.

(ii) Calculate the total volume of coating solids applied with the control device in operation (L_{sc}) during each calendar month for each affected facility using the following equation:

$$L_{sc} = \sum_{i=1}^{m} V_{si} L_{ci}$$

where

m is the number of coatings used during the calendar month with the control device in operation.

(iii) Calculate the mass of VOC's used without the control device in operation ($M_{on} + M_{dn}$) during each calendar month for each affected facility using the following equation:

$$M_{on} + M_{dn} = \sum_{i=1}^{n} L_{ci} D_{ci} W_{oi} + \sum_{j=1}^{m} L_{dj} D_{dj}$$

where

n is the number of different coatings used without the control device in operation during the calendar month, and

m is the number of different VOC-solvents added to coatings used without the control device in operation during the calendar month.

(iv) Calculate the volume-weighted average of the total mass of VOC's consumed per unit volume of coating solids applied without the control device in operation (G_n) during each calendar month for each affected facility using the following equation:

$$G_n = \frac{M_{on} + M_{dn}}{L_{sn}}$$

(v) Calculate the mass of VOC's used with the control device in operation ($M_{oc} + M_{dc}$) during each calendar month for each affected facility using the following equation:

$$M_{oc} + M_{dc} = \sum_{i=1}^{n} L_{ci} D_{ci} W_{oi} + \sum_{j=1}^{m} L_{dj} D_{dj}$$

where

n is the number of different coatings used with the control device in operation during the calendar month, and

m is the number of different VOC-solvents added to coatings used with the control device in operation during the calendar month.

(vi) Calculate the volume-weighted average of the total mass of VOC's used per unit volume of coating solids applied with the control device in operation (G_c) during each calendar month for each affected facility using the following equation:

$$G_c = \frac{M_{oc} + M_{dc}}{L_{sc}}$$

(vii) Determine the overall reduction efficiency (R) for the capture system and control device using the procedures in § 60.463(c)(2)(i) (A), (B), and (C) or § 60.463(c)(3) (i), (ii), and (iii), which is applicable.

(viii) Calculate the volume-weighted average of VOC emissions to the atmosphere (N) during each calendar month for each affected facility using the following equation:

$$N=\frac{G_n L_{sn}+G_c L_{sc}(1-R)}{L_{sn}+L_{sc}}$$

(ix) Calculate the emission limit(s) for each calendar month for each affected facility using the following equation:

$$S=\frac{0.28\,L_{sn}+0.1\,G_c L_{sc}}{L_{sn}+L_{sc}} \text{ or } \frac{0.28\,L_{sn}+0.14\,L_{sc}}{L_{sn}+L_{sc}}$$

which is greater.

(x) If the volume-weighted average mass of VOC's emitted to the atmosphere for each calendar month (N) is less than or equal to the calculated emission limit (S) for the calendar month, the affected facility is in compliance. Each monthly calculation is a performance test.

§ 60.464 Monitoring of emissions and operations.

(a) Where compliance with the numerical limit specified in § 60.462(a) (1) or (2) is achieved through the use of low VOC-content coatings without the use of emission control devices or through the use of higher VOC-content coatings in conjunction with emission control devices, the owner or operator shall compute and record the average VOC content of coatings applied during each calendar month for each affected facility, according to the equations provided in § 60.463.

(b) Where compliance with the limit specified in § 60.462(a)(4) is achieved through the intermittent use of emission control devices, the owner or operator shall compute and record for each affected facility the average VOC content of coatings applied during each calendar month according to the equations provided in § 60.463.

(c) If thermal incineration is used, each owner or operator subject to the provisions of this subpart shall install, calibrate, operate, and maintain a device that continuously records the combustion temperature of any effluent gases incinerated to achieve compliance with § 60.462(a) (2), (3), or (4). This device shall have an accuracy of ±2.5° or ±0.75 percent of the temperature being measured expressed in degrees Celsius, which is greater. Each owner or operator shall also record all periods (during actual coating operations) in excess of 3 hours during which the average temperature in any thermal incinerator used to control emissions from an affected facility remains more than 28° C (50° F) below the temperature at which compliance with § 60.462(a) (2), (3), or (4) was demonstrated during the most recent measurement of incinerator efficiency required by § 60.8. The records required by § 60.7 shall identify each such occurrence and its duration. If catalytic incineration is used, the owner or operator shall install, calibrate, operate, and maintain a device to monitor and record continuously the gas temperature both upstream and downstream of the incinerator catalyst bed. This device shall have an accuracy of ±2.5• C or ±0.75 percent of the temperature being measured expressed in degrees Celsius, whichever is greater. During coating operations, the owner or operator shall record all periods in excess of 3 hours where the average difference between the temperature upstream and downstream of the incinerator catalyst bed remains below 80 percent of the temperature difference at which compliance was demonstrated during the most recent measurement of incinerator efficiency or when the inlet temperature falls more than 28° C (50° F) below the temperature at which compliance with § 60.462(a) (2), (3), or (4) was demonstrated during the most recent measurement of incinerator efficiency required by § 60.8. The records required by § 60.7 shall identify each such occurrence and its duration.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.465 Reporting and recordkeeping requirements.

(a) Where compliance with the numerical limit specified in § 60.462(a) (1, (2), or (4) is achieved through the use of low VOC-content coatings without emission control devices or through the use of higher VOC-content coatings in conjunction with emission control devices, each owner or operator subject to the provisions of this subpart shall include in the initial compliance report required by § 60.8 the weighted average of the VOC content of coatings used during a period of one calendar month for each affected facility. Where compliance with § 60.462(a)(4) is achieved through the intermittent use of a control device, reports shall include separate values of the weighted average VOC content of coatings used with and without the control device in operation.

(b) Where compliance with § 60.462(a) (2), (3), or (4) is achieved through the use of an emission control device that destroys VOC's, each owner or operator subject to the provisions of this subpart shall include the following data in the initial compliance report required by § 60.8:

(1) The overall VOC destruction rate used to attain compliance with § 60.462(a) (2), (3), or (4) and the calculated emission limit used to attain compliance with § 60.462(a)(4); and

(2) The combustion temperature of the thermal incinerator or the gas temperature, both upstream and downstream of the incinerator catalyst bed, used to attain compliance with § 60.462(a) (2), (3), or (4).

(c) Each owner or operator subject to the provisions of this subpart shall maintain at the source, for a period of at least 2 years, records of all data and calculations used to determine monthly VOC emissions from each affected facility and to determine the monthly emission limit, where applicable. Where compliance is achieved through the use of thermal incineration, each owner or operator shall maintain, at the source, daily records of the incinerator combustion temperature. If catalytic incineration is used, the owner or operator shall maintain at the source daily records of the gas temperature, both upstream and downstream of the incinerator catalyst bed.

§ 60.466 Test methods and procedures.

(a) The reference methods in Appendix A to this part, except as provided under § 60.8(b), shall be used to determine compliance with § 60.462 as follows:

(1) Reference Method 24, or data provided by the formulator of the coating for determining the VOC content of each coating as applied to the surface of the metal coil. In the event of a dispute, Reference Method 24 shall be the reference method. When VOC content of waterborne coatings, determined by Reference Method 24, is used to determine compliance of affected facilities, the results of the Reference Method 24 analysis shall be adjusted as described in Section 4.4 of Reference Method 24;

(2) Reference Method 25, both for measuring the VOC concentration in each gas stream entering and leaving the control device on each stack equipped with an emission control device and for measuring the VOC concentration in each gas stream emitted directly to the atmosphere;

(3) Method 1 for sample and velocity traverses;

(4) Method 2 for velocity and volumetric flow rate;

(5) Method 3 for gas analysis; and

(6) Method 4 for stack gas moisture.

(b) For Method 24, the coating sample must be at least a 1-liter sample taken at a point where the sample will be representative of the coating as applied to the surface of the metal coil.

(c) For Method 25, the sampling time is to be at least 60 minutes, and the minimum sample volume is to be at least 0.003 dry standard cubic meter (DSCM); however, shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(d) The Administrator will approve testing of representative stacks on a case-by-case basis if the owner or operator can demonstrate to the satisfaction of the Administrator that testing of representative stacks yields results comparable to those that would be obtained by testing all stacks.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

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