Board of Parole. The practice of the federal paroling authorities and the Bureau of Prisons for many years has been to treat previously earned good time as being "used up" once a prisoner is placed on supervision by parole or mandatory release. Thus, such good time under this practice does not shorten the period of reimprisonment to which the offender may be subjected if his parole or mandatory release is revoked. This has sometimes been characterized as a "forfeiture" of the old good time credits as a consequence of the revocation decision. See, *e.g.*, *Bentsen* v. *Ralston*, 658 F.2d 639 (8th Cir. 1981). However, it has not been the practice of the Parole Commission or the Board of Parole to make specific orders on the forfeiture of pre-parole good time, because forfeiture of previously earned good time is not provided for as one of the decisions the Commission is statutorily obliged or authorized to make at a parole revocation hearing.

In any event, it makes no difference how the practical result of this sentence computation method is characterized. Regardless of whether the pre-release good time is considered "used up" at the time of release or "forfeited" as a consequence of revocation, the pre-release good time does not have the effect of reducing the period of imprisonment after revocation.

Prior to the enactment of the Parole Commission and Reorganization Act of 1976 (PCRA), the parole statutes addressed the maximum length of a parole violator term in 18 U.S.C. 4205 (1970), which stated: "The unexpired term of imprisonment of any such prisoner shall begin to run from the date he is returned to the custody of the Attorney General. . . ." Since the parole violator was subject to reincarceration for the unexpired term of imprisonment (i.e., the time remaining on his sentence when he was paroled) the good time earned before parole was not seen as reducing the parole violator term. The Board's regulations explained that once parole or mandatory release had been revoked, the prisoner could be required to serve the remainder of his sentence "less such good time as he may earn following his recommitment." 28 CFR 2.40 (1973).

Another provision in the pre-1976 parole statutes stated: "If such order of parole shall be revoked and the parole so terminated, the said prisoner may be required to serve all or any part of the remainder of the term for which he was sentenced." 18 U.S.C. 4207 (1970). It has been suggested that the "all or any part" language in that section gave the Board of Parole the power to restore good time which had been earned before release.

However, that was not the way that language was interpreted by the Board of Parole. The function of good time restoration had not been expressly conferred on the Board of Parole (as it has been conferred on the Attorney General in 18 U.S.C. 4166). Rather than treating § 4207 as an implicit conferral of powers in the good time area, the Board of Parole viewed the "all or any part" language as giving it the power to reparole a parole violator at any time during the violator term without regard to any pre-parole good time.

The PCRA did not contain any provisions directly analogous to the former sections 4205 and 4207, which prescribed the maximum length of parole violator terms. The current section 4210 did change the law to the extent of requiring full sentence credit for time spent on parole except for parolees convicted of new crimes, section 4210(b)(2), and parolees who intentionally failed to respond to an order or warrant of the Commission, section 4210(c). However, in other respects, the Commission has treated the matter of maximum violator terms (in particular, the effect of pre-parole good time) as being the same as under the former sections 4205 and 4207.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Probation and parole, Prisoners.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.35, *Mandatory Release in the Absence of Parole*, is amended by redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to read as follows:

§ 2.35 Mandatory release in the absence of parole.

* * * * *

(b) It is the Commission's interpretation of the statutory scheme for parole and good time that the only function of good time credits is to determine the point in a prisoner's sentence when, in the absence of parole, the prisoner is to be conditionally released on supervision, as described in subsection (a). Once an offender is conditionally released from imprisonment, either by parole or mandatory release, the good time earned during that period of imprisonment is of no further effect either to shorten the period of supervision or to shorten the period of imprisonment which the offender may be required to serve for violation of parole or mandatory release.

* * * * *

Dated: October 17, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-26412 Filed 11-6-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 103

Amendments to Implementing Regulations; Currency and Foreign Transactions Reporting Act; Correction

AGENCY: Office of the Secretary, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects a legal citation contained in the regulatory amendments implementing regulations for the Currency and Foreign Transactions Reporting Act which were published October 22, 1985 (50 FR 42691).

FOR FURTHER INFORMATION CONTACT: Robert J. Stankey, Jr., Financial Crimes and Frauds Advisor, Office of the Assistant Secretary (Enforcement and Operations), Department of the Treasury, Room 1458, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 566-8022.

§ 103.43 [Corrected]

Accordingly, the Office of the Secretary is correcting 31 CFR 103.43(b) by changing the reference to "Executive Order 12356", to read "Executive Order 12333".

Dated: October 31, 1985.

David D. Queen,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-26577 Filed 11-6-85; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

31 CFR Part 355

Regulations Governing Fiscal Agency Checks

Correction

In FR Doc. 85-24934 beginning on page 42518 in the issue of Monday, October 21, 1985, make the following correction:

On page 42520, in the second column, § 355.5(b)(4), in the second line, "identification" should have read "indemnification".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore, MD Regulation 85-09]

Security Zone Regulations; Chesapeake Bay, Baltimore Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Emergency Rule.

SUMMARY: The Coast Guard is establishing a security zone in the Baltimore Harbor, Dundalk Marine Terminal, Baltimore, Maryland. This security zone is needed to protect a military exercise. Entry into this zone is prohibited unless authorized by the Captain of the Port Baltimore.

EFFECTIVE DATES: This regulation becomes effective beginning at 8:00 am e.s.t. 9 November 1985 or upon the arrival of the vessel American Eagle whichever is earlier. It terminates at 11:00 p.m. e.s.t. 11 November 1985 or upon the departure of the vessel American Eagle, whichever is later, unless sooner terminated by the Captain of the Port Baltimore.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander D.E. Henrickson, Chief Port Operations Department, USCG Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (301) 962-5105.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days from the date of this publication. Publishing a NPRM and delaying the effective date of this security zone would be contrary to the public interest since action is needed to safeguard a military exercise of the scheduled dates.

Drafting Information

The drafters of this regulation are Lt. J.J. Hannon, project officer for the Captain of the Port Baltimore, MD and Lcdr. F.E. Couper, Project Attorney, Fifth Coast Guard District Legal Office (Baltimore Branch).

Discussion of Regulation

The event requiring this regulation will occur on 9 through 11 November 1985. This security zone is necessary to protect the vessel American Eagle while it is participating in a military exercise at a commercial port facility. This action will minimize the hazards to the vessel American Eagle, its personnel and cargo from possible damage from any person or persons.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, vessels, waterways.

Regulation

PART 165—[AMENDED]

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.49 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. A new § 165.T0509 is added to read as follows:

§ 165.T0509 Security Zone: Baltimore Harbor, Baltimore, MD.

(a) *Location.* The following area in the Baltimore Harbor is a security zone: A perimeter of 100 yards in every direction from the vessel AMERICAN EAGLE, official number 658479, call sign WFPJ, while it is moored at the Dundalk Marine Terminal, Berth 8.

(b) *Regulations.* (1) In accordance with the general regulation in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Baltimore, MD.

Dated: September 25, 1985.

R.C. Pickup,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 85-26623 Filed 11-6-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

36 CFR Part 327

Public Use of Water Resource Development Projects Administered by the Chief of Engineers

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule: Correction.

SUMMARY: This document corrects a final rule on Lakeshore Management on Civil Works Projects that appeared at page 35555 in the **Federal Register** of Monday, September 3, 1985, (50 FR 35555). This action is necessary to correct an administrative error that inadvertantly omitted the reserved §§ 327.27, 327.28, 327.29, and adding § 327.30 as Lakeshore Management on Civil Works Projects.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Darrell E. Lewis, Chief, Natural Resources Management Branch, U.S. Army Corps of Engineers, HQUSACE, ATTN: DAEN-CWO-R, Washington, DC 20314-1000.

The following corrections are made in FR Doc 85-20946 appearing on page 35555 in the issue of September 3, 1985: the table of contents on page 35556 and the regulatory text of Part 327 on page 35561 are corrected by adding §§ 327.27 [Reserved], 327.28 [Reserved], 327.29 [Reserved] and 327.30 Lakeshore Management on Civil Works Projects.

John O. Roach, II,

Department of the Army Liaison Officer with the Federal Register.

[FR Doc. 85-26571 Filed 11-6-85; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-2862-3]

National Emission Standards for Hazardous Air Pollutants; Amendments to General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) proposed amendments to Subpart A, the General Provisions for national emission standards for hazardous air pollutants, on June 6, 1984

(49 FR 23568). This Federal Register notice responds to comments on the proposed amendments and promulgates the amendments to the General Provisions. The amendments codify procedures and criteria used in implementing these emission standards and eliminate the repetition of general information in subparts of future standards. A summary of the specific amendments is provided at the beginning of the **SUPPLEMENTARY INFORMATION** section of this notice.

DATE: Effective November 7, 1985. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this notice is available *only* by filing a petition for review in the United States Court of Appeals for the District of Columbia circuit within 60 days of today's publication. Under section 307(b)(2) of the CAA, 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.

ADDRESS: *Docket.* Docket No. A-81-12 contains supporting information used in developing the promulgated amendments. This docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Gail K. Lacy or Mr. Gilbert H. Wood, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION:

Summary of Amendments

Under the authority of section 112 of the CAA, EPA has been promulgating national standards for the emissions of hazardous air pollutants from existing and new stationary sources. The standards are contained in Part 61 of 40 CFR, each constituting a subpart. Subpart A comprises general provisions that apply to all of the standards.

Many provisions have been repeated in each standard's subpart. The amendments promulgated today add these provisions into the General Provisions, thus eliminating the need to repeat them in the subparts of future standards. They mainly comprise procedures related to emission testing and monitoring.

These amendments also provide criteria and procedures for determining whether proposed changes to a source would constitute modification. They are designed to clarify EPA's implementation of modification, as it is defined in the CAA and in the present Part 61, for owners or operators who propose to make changes to a source which may result in increased emissions.

In addition, the amendments add procedures that would be followed when any person requests that the Administrator permit the use of an alternative design, piece of equipment, work practice or operation in place of one specified by a standard. This amendment is consistent with the CAA, which provides that the Administrator may permit the use of an alternative method of controlling emissions if, after notice and opportunity for a public hearing, the Administrator determines that the alternative method is equivalent, in terms of reducing emissions, to that specified in the applicable standard.

The amendments also add two lists. The first is a list of hazardous air pollutants. The second is a list of other substances for which the Agency has published a notice that included consideration of the serious health effects, including cancer, from ambient air exposure to the substance.

The amendments simplify Part 61 by eliminating the concept "equivalent method," a method of emission testing that is equivalent to a reference method specified in a standard, meaning that it has a consistent and quantitative relationship to the appropriate reference method. Under these amendments, each test method approved by the Administrator that is not a reference method, or a minor change from thereof, would be classified as an alternative method, meaning that it has been demonstrated to the Administrator's satisfaction to produce results adequate for the determination of compliance.

The amendments also simplify the wording and punctuation in Subpart A.

Public Participation

At the time of proposal, public comments were solicited and copies of the proposal were distributed to interested parties. The public was also given the opportunity to present views at a public hearing concerning the proposed standards in accordance with section 307(d)(5) of the CAA. The public comment period was from June 6 to August 20, 1984. No one requested to speak at the public hearing, so a public hearing was not held. Eight comment letters were received. They were submitted by industry representatives and a State air pollution control agency.

Significant Comments and Changes to the Proposed Amendments

The comments have been carefully considered and, where determined appropriate by the Administrator, changes have been made to the proposed amendments. In the section on emission testing, the provisions for use of alternative methods were clarified, and provisions for the use of reference methods with minor changes were added. Similar provisions were also added to the monitoring section. In the section on modification, an additional reference source was added to provide emission factors to be used to determine emission increases. The new reference source is the background information document published for each individual subpart. In addition, the definition of capital expenditure, used in determining if modification has occurred, was clarified for sources constructed in 1980 and thereafter. A new pollutant, coke oven emissions, was added to the list of hazardous air pollutants under Section 112 of the CAA. Also, a list was added for other substances for which the Agency has published a notice that included consideration of the serious health effects, including cancer, from ambient air exposure to the substance.

The significant comments and EPA's responses are discussed below. Also included are discussions of changes that are not related to public comments. The discussions are organized in the same order as the sections of the General Provisions to which they apply.

Lists of Pollutants

The proposed amendments included a list of hazardous air pollutants. In addition, the promulgated amendments include a list of other substances for which EPA has published a notice that included consideration of the serious health effects, including cancer, from ambient air exposure to the substance.

Publication of both of these lists serves to inform the public as to the status of EPA's program for assessing potentially toxic air pollutants as well as providing a useful reference for those Federal Register publications dealing with potentially toxic air pollutants. In addition, the first of these lists will remove uncertainty that the public may have as to the status of a particular pollutant between listing of the pollutant and promulgation of emission standards for that pollutant. The second of these lists will also convey to the public the scope of the Agency's air toxics program by identifying all of the actions that EPA has taken with respect to potentially toxic air pollutants.

Definition of "Standard"

The proposed amendments redefined "standard" to include design, equipment, work practice, and operational standards, or any combination thereof. Two commenters thought that the proposed definition should be changed to only apply to actions subsequent to the 1977 Amendments to the CAA. They were concerned that under the proposed definition, work practice requirements in the current vinyl chloride standard, which are in their opinion, invalid, would be considered valid by virtue of the change in the General Provisions of Part 61. The EPA disagrees. By simply promulgating a definition that conforms to the current section 112 of the CAA, EPA is not attempting to address any questions regarding the work practice requirements of the vinyl chloride standard. Therefore, EPA decided it was inappropriate to change the proposed definition of standard.

Another commenter thought that a clearer wording of the definition might be: "A national emission standard 'and/or' (rather than the proposed 'including') a national design, equipment, work practice or operational standard." The proposed wording of the definition of "standard" was derived from section 112(e)(5) of the CAA, which states that any design, equipment, work practice, or operational standard, or any combination thereof, shall be treated as an emission standard. Therefore, the proposed definition is consistent with the CAA whereas the definition suggested by the commenter is not.

Address

Comments on the Address section (§ 61.04) all related to the delegation of standards to the States. The proposed revisions to this section stated that EPA may permit requested information to be submitted to the State agency only, instead of to both the State agency and to EPA. Three commenters requested that, when standards have been delegated to State agencies, the owner should be required to submit information only to the appropriate State agency in all cases, rather than EPA permitting it in some cases. The EPA disagrees with the commenters' request because both EPA and the States have enforcement responsibilities. There are aspects of all the standards that EPA will not delegate to any State. Moreover, EPA reserves oversight authority for delegated activities. The EPA would permit sources to submit information solely to the State agency only in cases where the permission has been specifically granted in the written delegation.

Another comment suggested that the word "Administrator" be replaced by "authorized agency" throughout the General Provisions. As mentioned above, not all provisions are delegated to the States. Furthermore, EPA always has the responsibility to ensure enforcement; section 112(d)(2) of the CAA reserves the Administrator's authority to enforce standards even when enforcement has been delegated to a State. Use of the term "authorized agency" could imply that the delegated agency has sole authority to enforce. Therefore, "Administrator" is the more appropriate term.

One commenter suggested that the listing of States with approved delegation should note the extent of delegation allowed each State, or at least identify the **Federal Register** notices wherein such delegations have been made. Most States have full delegation of all applicable NESHAP. The listing already notes the exceptions to full delegation for some of the States. The EPA plans to continue updating the listing to show exceptions to full delegation on a case-by-case basis.

Two commenters questioned if States with delegated authority will be required to revise their provisions to match these amendments. The States are required only to have provisions at least as stringent as the ones that have been delegated to them. However, these amendments do not add any more stringent requirements to the General Provisions. Therefore, it is not expected that States will be required to change their provisions.

Applications for Approval of Construction or Modification

One commenter suggested a wording change to the paragraph describing the necessary information to be included in an application for approval of modification § 61.07(c). The suggestion was to replace the words "the precise nature of the proposed changes" with "a description of the proposed changes." The EPA believes that the wording "precise nature" more clearly conveys that EPA needs exact information, rather than a vague or general description of the proposed changes.

Another commenter requested that the enforcement authority should be allowed at least 120 days, rather than 60 days, to respond to applications for approval of construction or modification. The commenter believes that a longer time is particularly important when processing applications that are subject to other rules requiring public notice and/or an opportunity for a public hearing. The EPA disagrees that the allowed response time should be lengthened Approvals of construction or modification under the NESHAP program are based on the expected ability of the source to meet the applicable NESHAP emission standard. The EPA is not convinced that any more than 60 days is necessary for this type of determination. For cases where the construction or modification is subject to a public hearing under another rule, the enforcement authority should be able to determine if the construction or modification would be approvable under Part 61 regardless of the public hearing outcome. For cases in which the construction or modification is not subject to a rule requiring a public hearing, it would be unfair to the source for the enforcement authority to delay a determination any longer than necessary.

Notification of Startup

The proposed § 61.09(a)(1) requires notification of anticipated startup no more than 60 days and no less than 30 days before the planned startup date. One commenter suggested that some provisions should be added to include those sources whose planned startup falls within 30 days after the effective date of the applicable standard.

The EPA believes that it is unlikely that a source would start up within 30 days of the effective date. Any new or modified source that has not had initial startup before the effective date is required to submit an application for approval of construction or modification, as specified in § 61.07. Startup could not occur before the Administrator approves the construction or modification. To increase the possibility that approval takes place within 30 days after the effective date, the owner or operator could submit the application for approval before the effective date. The owner or operator could notify the Agency of the anticipated startup date at the same time. However, EPA cannot require that these items be submitted before the effective date. Therefore, EPA did not add any special provisions to § 61.09.

Waiver of Compliance

Several commenters stated that EPA should provide that a source will not be considered to be in violation of the standard during the time between submittal of a waiver of compliance and final action on the waiver by EPA, if final action has not taken place before the 90-day compliance period is over. One of these commenters suggested that the 90-day period for coming into compliance should be removed from the General Provisions and decided separately for each standard.

The CAA clearly states in section 112(c)(1)(B) that an existing source shall comply with the standard within 90 days of the effective date unless the source is operating under a waiver of compliance. If would be inconsistent with the statute to change the 90-day period or to add the provision requested by the commenters. Thus, the owner or operator of a source should submit the waiver application as soon as practicable to allow time for the Agency to make a determination within the 90-day period after the effective date. One should note that all substantive standards are proposed prior to being promulgated. The owner or operator should take advantage of the time between proposal and promulgation to prepare significant portions of a plan for achieving compliance. In addition, the source should continue to take all possible steps toward achieving compliance while the Agency is evaluating the waiver application.

One commenter requested that EPA describe the compliance schedule requirements for waivers of compliance applying to work practice, design, or operational standards. The commenter also suggested that EPA modify the example "request for waiver" form in Appendix A of Part 61 to accommodate work practice, design, or operational standards. The EPA agrees that the information requested in the waiver application is oriented toward equipment. This information would be appropriate for design and equipment requirements, as well as for standards with a numerical emissions limit. However, EPA disagrees that the General Provisions or Appendix A should be revised to describe the compliance schedule information required in applications for waivers of compliance with work practice or operational standards. In most cases, the owner or operator should be able to implement work practice and operational requirements within 90 days of the effecitive date. Furthermore, even if a waiver may be justified, the information needed in the waiver application would be specific to the particular standard. Therefore, it is more appropriate that detailed guidance be given in the subpart of the standard or by the enforcement agency, rather than in the General Provisions. General guidance is that the waiver application should contain sufficient information to show why the source is unable to comply within 90 days, the steps that the source is taking to achieve compliance in the minimum amount of time, and the dates for completing each step.

Compliance with Standards and Maintenance Requirements

One commenter suggested a minor wording change in the first paragraph of the provisions in the proposed § 61.12 on compliance determinations. The wording in the proposed section said that compliance shall be determined by emission tests established in § 61.13 or as otherwise specified in an individual subpart. The EPA agrees that this language was ambiguous. The intent of EPA is that the individual subpart would take precedence over the General Provisions. The final wording removes this ambiguity.

Another comment suggested that EPA remove the proposed words "for minimizing emissions" from the provision requiring the operation of the source and associated air pollution control equipment "in a manner consistent with good air pollution control practice for minimizing emission." The EPA believes that these words serve to clarify the phrase "good air pollution control practice" and therefore should be included.

Other comments on this section related to the provisions of alternative means of emission limitation. One suggested that the language be made consistent with the CAA by stating that the Administrator "shall" (instead of the proposed "will") publish in the **Federal Register** a notice permitting the use of the alternative means. The commenter believes the "shall" more clearly states the Administrator's obligation to permit the use. The EPA disagrees. Throughout the General Provisions, the word "will" is used to describe the actions which will be performed by the Administrator. The EPA decided to leave "will" to maintain consistency between this section and the rest of the General Provisions and because this properly describes the actions to be taken by the Administrator.

The same commenter also requested the addition of a sentence to § 61.12(d)(1) following the statement that the permission to use an alternative means may be conditioned on requirements for the operation and maintenance of the alternative means. The suggested sentence states that such operation and maintenance requirements will be no more severe than necessary to ensure that the alternative method of emission limitation will be operated and maintained in such a manner as to achieve a reduction in emissions at least equivalent to the reduction to be achieved under any design, equipment, work practice or operational standard required by the Administrator for a particular pollutant. The EPA agrees that the intent of the operation and maintenance provisions is to ensure that the alternative means achieves at least as must emission reduction as the standard, instead of necessarily achieving more emission reduction than the standard. The EPA believes, however, that in most cases, it is infeasible to quantify the effect of the operation and maintenance requirements on the amount of emission reduction. For example, it would often be infeasible to estimate that, with one set of maintenance requirements, the control method would achieve 90 percent control; yet with another set of maintenance requirements, it would achieve 95 percent control. The selection of operation and maintenance requirements will be EPA's best judgment of what is necessary to ensure that the alternative method will achieve a reduction in emissions at least equivalent to the standard. Therefore, it is not appropriate to change the proposed regulation.

Emission Testing

Comments were received on the proposed § 61.13(b), which provides that the Administrator may require emission testing in addition to the initial emission test "at any other time under section 114 of the Act." The commenters believed that one could infer from the proposed wording that Section 114 gives unlimited authority to EPA to require testing. The EPA agrees with the commenters that the wording of this paragraph could be improved. The final amendments state that the Administrator may require an owner or operator to test emissions from the source at any other time, when such action is authorized under section 114 of the Act. This suggested wording was chosen over other suggestions because it most accurately reflects the intent of the provision.

Another commenter requested that the time for analyzing test samples be lengthened from 30 to 45 days, and the time for submitting a report after emission testing be lengthened from 31 to 60 days. The commenter believes this time is needed especially when samples have to be shipped off-site for analysis. The EPA intends to specify as short a time period as reasonable to minimize delay in determining the compliance status of the source. The individual subparts in Part 61 that require emission testing allow 30 days for determining emission test results, and require the results to be sent to EPA the next business day following the determination. In enforcing these standards, EPA has generally found these deadlines to be reasonable. The commenter did not provide any case to illustrate any specific difficulty. The proposed General Provisions allow for a different time period to be specified in a particular subpart, if necessary, and EPA will address testing schedules when each subpart is reviewed. Consequently, EPA disagrees with the commenter's suggestion to change the proposed time period.

The same commenter pointed out that the requirements for emission test facilities (e.g., sampling ports) in § 61.13(d) would be applicable only to those sources required to perform emission testing. The EPA agrees with the commenter and has clarified this point in the final regulation.

Two commenters requested clarification of the provisions for use of alternative methods for emission testing that are in the proposed § 61.13(h). One commenter stated that the section needs to address the date for submission of requests to use an alternative test method during the initial emission test for new sources that have initial startup before the effective date of the applicable standard. The EPA agrees with the commenter that for these sources the date should be the same as for existing sources, which is 30 days after the effective date. Another commenter requested that EPA consider requests to use an alternative test method at any other time, in addition to during the initial emission test. The EPA also agrees with this request. The final regulation incorporates provisions addressing these points in § 61.13(h).

Another change from the proposed emission test § 61.13(h) is the addition of a provision for the use of a reference method with minor changes in methodology. Minor changes pertain to contingencies that arise in the field and to authorizations that may appear in the regulations where the potential for advancement in test procedures, equipment, reagents, or analytic methods was anticipated. The reason for distinguishing minor changes to reference methods from alternative methods is related to procedures for approving their use. The decisions to approve minor changes may be made most efficiently and reasonably by the implementing agency, which may be a delegated State or local agency. Subsequent approval at the Federal level would be unnecessary because minor changes do not affect the precision or accuracy of the method and, therefore, are not of national significance. Conversely, EPA retains authority for the approval of alternative methods in order to ensure uniformity and technical quality in the test methods used for enforcement of national standards. Therefore, the new provision adds flexibility to the emission testing section.

Monitoring Requirements

One commenter stated that monitoring data obtained during periods of plant startup, shutdown, or malfunction should not be included in the monitoring data average, and emissions excesses recorded during those periods should not be considered violations of the standard. The EPA disagrees. The monitoring data collected during periods of plant startup, shutdown, and malfunction should be included because they contain relevant information about the event. It is important to know how much is being emitted during such a period, and how long the period lasts, especially during plant startup and malfunction. Unless specified otherwise in a particular subpart, compliance is determined by a performance test, and monitoring data are used to indicate excess emissions, or improper operation and maintenance. Therefore, no such provisions were added.

Provisions for the use of minor changes that do not affect the precision and accuracy of specified monitoring procedures were added to § 61.14(g). These provisions are similar in substance and purpose to those for the use of minor changes to reference emission-test methods. The provisions also state the Administrator's authority to require the use of the procedures specified under this part if the Administrator has reasonable grounds to dispute results obtained by an alternative method.

Modification

The EPA revised the proposed definition of "capital expenditure," which is used in determining whether some changes to an existing source are modifications. In the proposal, "capital expenditure" was defined as the product of the applicable "annual asset guideline repair allowable percentage" (AAGRAP) specified in the latest edition of the Internal Revenue Service (IRS) publication 534 and the existing source's basis. Recent tax revisions repealed the use of AAGRAP for property placed in service after December 31, 1980. Therefore, the EPA reviewed IRS Publication 534 to determine if the proposed procedure is practical for post-1980 assets. The publication continues to require the use of an existing source's basis, and also continues to report the AAGRAP because it is still used for tax purposes for pre-1981 assets. This means that asset records must be kept for post-1980 assets similarly as for pre-1981 assets. Thus, EPA is revising the definition of "capital expenditure" to clarify that the AAGRAP can be for post-1980 assets. The public comments on modification and EPA's responses are discussed below.

Two commenters stated that, to determine modification, the increase in emissions should be compared to the permitted emission level, rather than the actual level. They contended that measuring increases from the current operating level would penalize owners or operators for past reductions. The EPA disagrees with these commenters. The comparison of an emission increase to the permitted level of emissions instead of to the actual level is contrary to the statutory definition of modification. The definition of modification in sections 112(a)(3) and 111(a)(4) of the CAA refers to the increase in terms of "the amount of air pollutant emitted by the source."

Two commenters requested that only changes resulting in a "significant" increase in emissions be considered a modification. They noted that only significant increases are regulated under the modification provisions in 40 CFR 51.24 and 52.21, which are the prevention of significant deterioration (PSD) requirements of the State implementation plan (SIP) rules. The EPA believes the commenter's request is inappropriate for Part 61. Under the definition of modification in the CAA, any physical or operational change resulting in an increase in emissions constitutes a "modification." As the commenters note, the PSD rules in 40 CFR 51.24 and 52.21 apply to "major modifications" that result in a "significant" emissions increase, (i.e., greater than a specified *de minimis* amount). The promulgation of these rules followed the decision in *Alabama Power Co* v. *Costle*, 636 F.2d 323 (D.C. Cir 1979), in which the D.C. Circuit held that EPA has authority to interpret the definition of modification for PSD review so as to exempt sources with small emissions increases on grounds of administrative necessity. The *Alabama Power* decision does not require EPA to provide a *de minimis* exemption from application of the modification for NESHAP applicability purposes; nor does EPA expect an administrative need for exempting small emissions increases from the modification provisions under the NESHAP program. The NESHAP are categorically applicable emission standards and the administrative burden associated with their application is not overwhelming. In contrast, the PSD requirements involve an assessment of the effects of the modification on ambient air quality and a case-by-case technical review including opportunity for public comment.

The EPA received two comments that EPA should emphasize the use of other emission factors, rather than emission factors contained in "Compilation of Air Pollutant Emission Factors," EPA Publication No. AP-42, for determining emission increases. The commenters cited the lack of emission factors specific to the synthetic organic chemical manufacturing industry (SOCMI) in AP-42. In some cases, the most appropriate emission factors for determining emissions increases would be those used by EPA in developing the NESHAP. They are described in the documents providing background information for each standard. Therefore, the promulgated modification section refers to these documents, as well as AP-42, as sources of emission factors. The modification section would continue to provide for use of other emission factors determined by the Administrator to be superior for determining an emission increase to the emission factors in AP-42 or the background information documents. This determination could be made on a case-by-case basis, or more generally in the individual subparts.

One commenter questioned why the modification provision in 40 CFR 60.14(c) for the NSPS program is not included in the proposed provisions for Part 61. This provision states that "the addition of an affected facility to a stationary source or as a replacement for an existing facility shall not by itself bring within the applicability of this part any other facility within that source." This provision is inappropriate for Part 61. The EPA uses the term "affected facility" under Part 60 to designate the unit subject to a standard. The EPA does not use the term "affected facility" under Part 61.

Several comments were received on the exemptions to modification listed in the proposed § 61.15(d). One commenter had two comments on the exemption for an increase in production rate of a stationary source, if that increase can be accomplished without a capital expenditure on the stationary source (§ 61.15(d)(2)). One of these comments was that the definition of capital expenditure should be changed to use the replacement cost rather than the original cost. The comment stated that EPA at least should allow the alternative definition of capital expenditure that is included in the NSPS for equipment leaks (i.e., fugitive emissions) from petroleum refineries and SOCMI. The alternative definition to which the comment referred uses the replacement cost with an adjustment factor to approximate the original cost, rather than only the original cost. The reason was that the original cost for the particular equipment (e.g., valves and pumps) covered by these two NSPS may not be available, and may be very difficult to recreate at some plants. The alternative definition of capital expenditure achieves the same result by using the replacement cost and depreciating it to approximate the original cost. The EPA does not believe that the difficulties with original costs encountered by some of the plants subject to the equipment leaks NSPS are general enough to all standards to warrant inclusion of this alternative definition in the General Provisions. Furthermore, if an alternative definition were necessary for a specific standard, the definition would need to be tailored to the particular industry and equipment. For example, the inflation index used to depreciate the replacement cost may be different from that used for refineries and chemical plants.

The second comment was that EPA should use "process improvement" rather than "increase in production rate" in the exemption in § 61.15(d)(2). The use of "process improvement" is specific to the NSPS for equipment leaks from refineries and SOCMI and is not appropriate for the General Provisions of either Part 60 or Part 61. The equipment leaks NSPS are unusual because the affected facility (equivalent to the "source" under NESHAP) is broadly defined as the grouping of a large number of certain types of equipment within process units rather than the individual pieces of equipment for which there are requirements. In process units in refineries and chemical plants, many routine changes that may result in the minor addition of potentially leaking equipment, such as a few valves or a pump, are made for specific reasons. For other source categories, EPA has no evidence that such changes would routinely be made. If such changes exist for another source category, EPA would need to examine the details of specific examples before it would exempt the changes from modification.

One commenter stated that sources that are relocated should not be exempted from the modification provisions. The commenter stated that the exemption for relocated sources in the proposed § 61.15(d)(95) is inconsistent with other rules, such as SIP's. The EPA disagrees. Sections 112(a)(3) and 111(a)(4) of the CAA define modification to be a change in a source that increases emissions. Section 61.15(d)(5) merely provides that relocation of a source does not by itself constitute a modification. This is correct because relocation does not by itself increase emissions. However, § 61.15(d)(5) clarifies that the owner must report relocations and changes in ownership to the EPA, as described under § 61.10(c).

One commenter questioned why an exemption to modification in Part 60 was not included in the proposed provisions in Part 61. The specific exemption, in § 60.14(e)(5), is for "the addition or use of any system or device whose primary function is the reduction of air pollutants except when an emission control system is removed or is replaced by a system which the Administrator determines to be less environmentally beneficial." The EPA believes that this exemption to modification is inappropriate for the Part 61 General Provisions because of the hazardous nature of the subject pollutants. If the addition or use of an air pollution control device causes an increase in emissions of a hazardous air pollutant, the source should become subject to the applicable standard to protect the public health.

A commenter noted that paragraph § 61.15(e) referenced in the proposed paragraph § 61.15(a), was missing. The EPA found that the proposed paragraph (a) of the modification provisions was incorrect; there is no intended paragraph § 61.15(e). The final regulation has been corrected.

Miscellaneous

Major Rule Determination

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and therefore subject to certain requirements of the Order. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in section 1 of the Order as grounds for finding the regulation to be a "major rule." In fact, this action would impose no new regulatory requirements for owners or operators of sources to which a standard under Part 61 is applicable. The Agency has therefore concluded that this regulation is not a "major rule" under Executive Order 12291.

This regulation was submitted to the Office of Management and Budget

(OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to these comments are included in Docket Number A-81-12.

Paperwork Reduction Act

These amendments do not add any information collection burden for sources subject to standards currently in Part 61. Thus, this action is not an information collection request (ICR) under the Paperwork Reduction Act of 1980, 44 U.S.C. *et seq.*

Regulatory Flexibility Analysis Certification

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that these amendments to Part 61 will not have a significant economic impact on a substantial number of small entities. The amendments will not add any new regulatory requirements to Part 61. Consequently, they will not add significant costs.

List of Subjects in 40 CFR Part 61

Asbestos, Beryllium, Hazardous substances, Mercury, Radionuclides, Reporting and recordkeeping requirements, Vinyl chloride.

Dated: September 23, 1985.

Lee M. Thomas,
Administrator.

PART 61—[AMENDED]

40 CFR Part 61 is amended as follows:

1. The authority citation for Part 61 is revised to read as set forth below and the authority citations following all the sections in Part 61 are removed.

Authority: Secs. 101, 112, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. The table of contents is amended by revising the table of contents for Subpart A to read as follows:

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Subpart A–General Provisions

Sec.

* * * * *

3. Section 61.01 is revised to read as set forth below:

§ 61.01 Lists of pollutants and applicability of Part 61.

(a) The following list presents the substances that, pursuant to section 112 of the Act, have been designated as hazardous air pollutants. The **Federal Register** citations and dates refer to the publication in which the listing decision was originally published.

Asbestos (36 FR 5931; March 31, 1971)
Benzene (42 FR 29332; June 8, 1977)
Beryllium (36 FR 5931; March 31, 1971)
Coke Oven Emissions (49 FR 36560; September 18, 1984)
Inorganic Arsenic (45 FR 37886; June 5, 1980)
Mercury (36 FR 5931; March 31, 1971)
Radionuclides (44 FR 76738; December 27, 1979)
Vinyl Chloride (40 FR 59532; December 24, 1975)

(b) The following list presents other substances for which a **Federal Register** notice has been published that included consideration of the serious health effects, including cancer, from ambient air exposure to the substance.

Acrylonitrile (50 FR 24319; June 10, 1985)
Carbon Tetrachloride (50 FR 32621; August 13, 1985)
Chlorinated Benzenes (50 FR 32628; August 13, 1985)
Chlorofluorocarbon—113 (50 FR 24313; June 10, 1985)
Chromium (50 FR 24317; June 10, 1985)
Epichlorohydrin (50 FR 24575; June 11, 1985)
Manganese (50 FR 32627; August 13, 1985)
Methyl Chloroform (50 FR 24314; June 10, 1985)
Polycyclic Organic Matter (49 FR 31680; August 8, 1984)
Toluene (49 FR 22195; May 25, 1984)
Vinylidene Chloride (50 FR 32632; August 13, 1985)

(c) This part applies to the owner or operator of any stationary source for which a standard is prescribed under this part.

4. Section 61.02 is amended by removing the definition of "equivalent method" and "modification"; by correcting the definition of "Act"; by revising the definitions for "alternative method" and "standard"; and by adding definitions of "capital expenditure", "monitoring system", and "run". The revised and new definitions will read as follows:

§ 61.02 Definitions.

* * * * *

"Act" means the Clean Air Act (42 U.S.C. 7401 et seq.).

* * * * *

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference method but which has been demonstrated to the Administrator's satisfaction to produce results adequate for the Administrator's determination of compliance.

"Capital expenditure" means an expenditure for a physical or operational change to a stationary source which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the latest edition of Internal Revenue Service (IRS) Publication 534 and the stationary source's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to a stationary source must not be reduced by any "excluded additions" as defined for stationary sources constructed after December 31, 1981, in IRS Publication 534, as would be done for tax purposes. In addition, "annual asset guideline repair allowance" may be used even though it is excluded for tax purposes in IRS Publication 534.

* * * * *

"Monitoring system" means any system, required under the monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a record of emissions or process parameters.

* * * * *

"Run" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

"Standard" means a national emission standard including a design, equipment, work practice or operational standard for a hazardous air pollutant proposed or promulgated under this part.

* * * * *

5. Section 61.04 is amended by revising paragraph (b) introductory text to read as follows:

§ 61.04 Address.

* * * * *

(b) Section 112(d) directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce national emission standards for hazardous air pollutants for stationary sources located in such State. If the authority to implement and enforce a standard under this part has been delegated to a State, all information required to be submitted to EPA under paragraph (a) of this section shall also be submitted to the appropriate State agency (provided, that each specific delegation may exempt sources from a certain Federal or State reporting requirement). The Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to EPA and the State agency. The appropriate mailing address for those States whose delegation request has been approved is as follows:

* * * * *

6. Section 61.05 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 61.05 Prohibited activities.

(a) After the effective date of any standard, no owner or operator shall construct or modify any stationary source subject to that standard without first obtaining written approval from the Administrator in accordance with this subpart, except under an exemption granted by the President under section 112(c)(2) of the Act. Sources, the construction or modification of which commenced after the publication date of the standards proposed to be applicable to the sources, are subject to this prohibition.

(b) After the effective date of any standard, no owner or operator shall operate a new stationary source subject to that standard in violation of the standard, except under an exemption granted by the President under section 112(c)(2) of the Act.

(c) Ninety days after the effective date of any standard, no owner or operator shall operate any existing source subject to that standard in violation of the standard, except under a waiver granted by the Administrator under this part or under an exemption granted by the President under section 112(c)(2) of the Act.

* * * * *

7. Section 61.06 is revised to read as follows:

§ 61.06 Determination of construction or modification.

An owner or operator may submit to the Administrator a written application for a determination of whether actions intended to be taken by the owner or operator constitute construction or modification, or commencement thereof, of a source subject to a standard. The Administrator will notify the owner or operator of his determination within 30 days after receiving sufficient information to evaluate the application.

8. Section 61.07 is revised to read as follows:

§ 61.07 Application for approval of construction or modification.

(a) The owner or operator shall submit to the Administrator an application for approval of the construction of any new source or modification of any existing source. The application shall be submitted before the construction or modification is planned to commence, or within 30 days after the effective date if the construction or modification had commenced before the effective date and initial startup has not occurred. A separate application shall be submitted for each stationary source.

(b) Each application for approval of construction shall include—

(1) The name and address of the applicant;

(2) The location or proposed location of the source; and

(3) Technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including a description of any equipment to be used for control of emissions. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations.

(c) Each application for approval of modification shall include, in addition to the information required in paragraph (b) of this section—

(1) The precise nature of the proposed changes;

(2) The productive capacity of the source before and after the changes are completed; and

(3) Calculations of estimates of emissions before and after the changes are completed, in sufficient detail to permit assessment of the validity of the calculations.

9. Section 61.08 is revised to read as follows:

§ 61.08 Approval of construction or modification.

(a) The Administrator will notify the owner or operator of approval or intention to deny approval of construction or modification within 60 days after receipt of sufficient information to evaluate an application under § 61.07.

(b) If the Administrator determines that a stationary source for which an application under § 61.07 was submitted will not cause emissions in violation of a standard if properly operated, the Administrator will approve the construction or modification.

(c) Before denying any application for approval of construction or modification, the Administrator will notify the applicant of the Administrator's intention to issue the denial together with—

(1) Notice of the information and findings on which the intended denial is based; and

(2) Notice of opportunity for the applicant to present, within such time limit as the Administrator shall specify, additional information or arguments to the Administrator before final action on the application.

(d) A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 60 days of presentation of additional information or arguments, or 60 days after the final date specified for presentation if no presentation is made.

(e) Neither the submission of an application for approval nor the Administrator's approval of construction or modification shall—

(1) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or of any other applicable Federal, State, or local requirement; or

(2) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

10. Section 61.09 is revised to read as follows:

§ 61.09 Notification of startup.

(a) The owner or operator of each stationary source which has an initial startup after the effective date of a standard shall furnish the Administrator with written notification as follows:

(1) A notification of the anticipated date of initial startup of the source not more than 60 days nor less than 30 days before that date.

(2) A notification of the actual date of initial startup of the source within 15 days after that date.

(b) If any State or local agency requires a notice which contains all the information required in the notification in paragraph (a) of this section, sending the Administrator a copy of that notification will satisfy paragraph (a) of this section.

11. Section 61.10 is amended by revising paragraphs (a) introductory text, (a)(4), (a)(6), (a)(7), (b) introductory

text, (b)(2)(i), (b)(2)(iii), (c), and (d) to read as follows:

§ 61.10 Source reporting and request for waiver of compliance.

(a) The owner or operator of each existing source or each new source which had an initial startup before the effective date shall provide the following information in writing to the Administrator within 90 days after the effective date:

* * * * *

(4) A brief description of the nature, size, design, and method of operation of the stationary source including the operating design capacity of the source. Identify each point of emission for each hazardous pollutant.

* * * * *

(6) A description of the existing control equipment for each emission point including—

(i) Each control device for each hazardous pollutant; and

(ii) Estimated control efficiency (percent) for each control device.

(7) A statement by the owner or operator of the source as to whether the source can comply with the standards within 90 days after the effective date.

(b) The owner or operator of an existing source unable to comply with an applicable standard may request a waiver of compliance with that standard for a period not exceeding 2 years after the effective date. Any request shall be in writing and shall include the following information:

* * * * *

(2) A compliance schedule, including the date each step toward compliance will be reached. The list shall include as a minimum the following dates:

(i) Date by which contracts for emission control systems or process changes for emission control will be awarded, or date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

* * * * *

(iii) Date by which onsite construction or installation of emission control equipment or process change is to be completed; and

* * * * *

(c) Any change in the information provided under paragraph (a) of this section or § 61.07(b) shall be provided to the Administrator within 30 days after the change. However, if any change will result from modification of the source, §§ 61.07(c) and 61.08 apply.

(d) A possible format for reporting under this section is included as Appendix A of this part. Advice on reporting the status of compliance may be obtained from the Administrator.

12. Section 61.11 is revised to read as follows:

§ 61.11 Waiver of compliance.

(a) Based on the information provided in any request under § 61.10, or other information, the Administrator may grant a waiver of compliance with a standard for a period not exceeding 2 years after the effective date of the standard.

(b) The waiver will be in writing and will—

(1) Identify the stationary source covered;

(2) Specify the termination date of the waiver;

(3) Specify dates by which steps toward compliance are to be taken; and

(4) Specify any additional conditions which the Administrator determines necessary to assure installation of the necessary controls within the waiver period and to assure protection of the health of persons during the waiver period.

(c) The Administrator may terminate the waiver at an earlier date than specified if any specification under paragraphs (b)(3) and (b)(4) of this section are not met.

(d) Before denying any request for a waiver, the Administrator will notify the owner or operator making the request of the Administrator's intention to issue the denial, together with—

(1) Notice of the information and findings on which the intended denial is based; and

(2) Notice of opportunity for the owner or operator to present, within the time limit the Administrator specifies, additional information or arguments to the Administrator before final action on the request.

(e) A final determination to deny any request for a waiver will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 60 days after presentation of additional information or argument; or within 60 days after the final date specified for the presentation if no presentation is made.

(f) The granting of a waiver under this section shall not abrogate the Administrator's authority under section 114 of the Act.

13. Section 61.12 is revised to read as follows:

§ 61.12 Compliance with standards and maintenance requirements.

(a) Compliance with numerical emission limits shall be determined by emission tests established in § 61.13 unless otherwise specified in an individual subpart.

(b) Compliance with design, equipment, work practice or operational standards shall be determined as specified in an individual subpart.

(c) The owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

(d)(1) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions of a pollutant from a source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice or operational standard, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with the standard. The notice will restrict the permission to the source(s) or category(ies) of sources on which the alternative means will achieve equivalent emission reductions. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

(2) Any notice under paragraph 1 shall be published only after notice and an opportunity for a hearing.

(3) Any person seeking permission under this subsection shall, unless otherwise specified in the applicable subpart, submit a proposed test plan or the results of testing and monitoring, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring.

14. In § 61.13, "emission tests" is added to the heading and the section is revised to read as follows:

§ 61.13 Emission tests and waiver of emission tests.

(a) If required to do emission testing by an applicable subpart and unless a waiver of emission testing is obtained under this section, the owner or operator shall test emissions from the source—

(1) Within 90 days after the effective date, for an existing source or a new

source which has an initial startup date before the effective date; or

(2) Within 90 days after initial startup, for a new source which has an initial startup date after the effective date.

(b) The Administrator may require an owner or operator to test emissions from the source at any other time when the action is authorized by section 114 of the Act.

(c) The owner or operator shall notify the Administrator of the emission test at least 30 days before the emission test to allow the Administrator the opportunity to have an observer present during the test.

(d) If required to do emission testing, the owner or operator of each new source and, at the request of the Administrator, the owner or operator of each existing source shall provide emission testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to each source.

(2) Safe sampling platform(s).

(3) Safe access to sampling platform(s).

(4) Utilities for sampling and testing equipment.

(5) Any other facilities that the Administrator needs to safely and properly test a source.

(e) Each emission test shall be conducted under such conditions as the Administrator shall specify based on design and operational characteristics of the source.

(f) Unless otherwise specified in an applicable subpart, samples shall be analyzed and emissions determined within 30 days after each emission test has been completed. The owner or operator shall report the determinations of the emission test to the Administrator by a registered letter sent before the close of business on the 31st day following the completion of the emission test.

(g) The owner or operator shall retain at the source and make available, upon request, for inspection by the Administrator, for a minimum of 2 years, records of emission test results and other data needed to determine emissions.

(h)(1) Emission tests shall be conducted as set forth in this section, the applicable subpart and Appendix B unless the Administrator—

(i) Specifies or approves the use of a reference method with minor changes in methodology; or

(ii) Approves the use of an alternative method; or

(iii) Waives the requirement for emission testing because the owner or operator of a source has demonstrated by other means to the Administrator's satisfaction that the source is in compliance with the standard.

(2) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative method, he may require the use of a reference method. If the results of the reference and alternative methods do not agree, the results obtained by the reference method prevail.

(3) The owner or operator may request approval for the use of an alternative method at any time, except—

(i) For an existing source or a new source that had an initial startup before the effective date, any request for use of an alternative method during the initial emission test shall be submitted to the Administrator within 30 days after the effective date, or with the request for a waiver of compliance if one is submitted under § 60.10(b); or

(ii) For a new source that has an initial startup after the effective date, any request for use of an alternative method during the initial emission test shall be submitted to the Administrator no later than with the notification of anticipated startup required under § 60.09.

(i)(1) Emission tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the standard, or the source is being operated under a waiver or compliance, or the owner or operator has requested a waiver of compliance and the Administrator is still considering that request.

(2) If application for waiver of the emission test is made, the application shall accompany the information required by § 61.10 or the notification of startup required by § 61.09, whichever is applicable. A possible format is contained in Appendix A to this part.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later cancelling the waiver. The cancellation will be made only after notice is given to the owner or operator of the source.

15. Section 61.14 is revised to read as follows:

§ 61.14 Monitoring requirements.

(a) Unless otherwise specified, this section applies to each monitoring system required under each subpart which requires monitoring.

(b) Each owner or operator shall maintain and operate each monitoring system as specified in the applicable subpart and in a manner consistent with good air pollution control practice for minimizing emissions. Any unavoidable breakdown or malfunction of the monitoring system should be repaired or adjusted as soon as practicable after its occurrence. The Administrator's determination of whether acceptable operating and maintenance procedures are being used will be based on information which may include, but not be limited to, review of operating and maintenance procedures, manufacturer recommendations and specifications, and inspection of the monitoring system.

(c) When required by the applicable subpart, and at any other time the Administrator may require, the owner or operator of a source being monitored shall conduct a performance evaluation of the monitoring system and furnish the Administrator with a copy of a written report of the results within 60 days of the evaluation. Such a performance evaluation shall be conducted according to the applicable specifications and procedures described in the applicable subpart. The owner or operator of the source shall furnish the Administrator with written notification of the date of the performance evaluation at least 30 days before the evaluation is to begin.

(d) When the effluents from a single source, or from two or more sources subject to the same emission standards, are combined before being released to the atmosphere, the owner or operator shall install a monitoring system on each effluent or on the combined effluent. If two or more sources are not subject to the same emission standards, the owner or operator shall install a separate monitoring system on each effluent, unless otherwise specified. If the applicable standard is a mass emission standard and the effluent from one source is released to the atmosphere through more than one point, the owner or operator shall install a monitoring system at each emission point unless the installation of fewer systems is approved by the Administrator.

(e) The owner or operator of each monitoring system shall reduce the monitoring data as specified in each applicable subpart. Monitoring data recorded during periods of unavoidable monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in any data average.

(f) The owner or operator shall maintain records of monitoring data, monitoring system calibration checks, and the occurrence and duration of any period during which the monitoring system is malfunctioning or inoperative. These records shall be maintained at the source for a minimum of 2 years and made available, upon request, for inspection by the Administrator.

(g)(1) Monitoring shall be conducted as set forth in this section and the applicable subpart unless the Administrator—

(i) Specifies or approves the use of the specified monitoring requirements and procedures with minor changes in methodology; or

(ii) Approves the use of alternatives to any monitoring requirements or procedures.

(2) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, the Administrator may require the monitoring requirements and procedures specified in this part.

§ 61.15 [Redesignated as § 61.16]

16. Section 61.15 is redesignated as § 61.16.

17. A new § 61.15 is added to read as follows:

§ 61.15 Modification.

(a) Except as provided under paragraph (d) of this section, any physical or operational change to a stationary source which results in an increase in the rate of emission to the atmosphere of a hazardous pollutant to which a standard applies shall be considered a modification.

(b) Upon modification, an existing source shall become a new source for each hazardous pollutant for which the rate of emission to the atmosphere increases and to which a standard applies.

(c) Emission rate shall be expressed as kg/hr or any hazardous pollutant discharged into the atmosphere for which a standard is applicable. The Administrator shall use the following to determine the emission rate:

(1) Emission factors as specified in the background information document (BID) for the applicable standard, or in the latest issue of "Compilation of Air Pollutant Emission Factors," EPA Publication No. AP-42, or other emission factors determined by the Administrator to be superior to AP-42 emission factors, in cases where use of emission factors demonstrates that the emission rate will clearly increase or clearly not increase as a result of the physical or operational change.

(2) Material balances, monitoring data, or manual emission tests in cases where use of emission factors, as referenced in paragraph (c)(1) of this section, does not demonstrate to the Administrator's satisfaction that the emission rate will clearly increase or clearly not increase as a result of the physical or operational change, or where an interested person demonstrates to the Administrator's satisfaction that there are reasonable grounds to dispute the result obtained by the Administrator using emission factors. When the emission rate is based on results from manual emission tests or monitoring data, the procedures specified in Appendix C of 40 CFR Part 60 shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the Administrator shall specify to the owner or operator. At least three test runs must be conducted before and at least three after the physical or operational change. If the Administrator approves, the results of the emission tests required in § 61.13(a) may be used for the test runs to be conducted before the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum degree feasible for all test runs.

(d) The following shall not, by themselves, be considered modifications under this part:

(1) Maintenance, repair, and replacement which the Administrator determines to be routine for a source category.

(2) An increase in production rate of a stationary source, if that increase can be accomplished without a capital expenditure on the stationary source.

(3) An increase in the hours of operation.

(4) Any conversion to coal that meets the requirements specified in section 111(a)(8) of the Act.

(5) The relocation or change in ownership of a stationary source. However, such activities must be reported in accordance with § 61.10(c).

18. Section 61.16 is redesignated as § 61.17 and is revised to read as follows:

§ 61.17 State authority.

(a) This part shall not be construed to preclude any State or political subdivision thereof from—

(1) Adopting and enforcing any emission limiting regulation applicable to a stationary source, provided that such emission limiting regulation is not less stringent than the standards prescribed under this part; or

(2) Requiring the owner or operator of a stationary source to obtain permits, licenses, or approvals prior to initiating construction, modification, or operation of the source.

§ 61.171 [Redesignated as 61.19 and amended]

19. Section 61.17 is redesignated as § 61.19 and the words "subject to the provisions of this part" are removed from the first sentence.

20. In § 61.33, the introductory text of paragraph (a) is revised to read as follows:

§ 61.33 Stack sampling.

(a) Unless a waiver of emission testing is obtained under § 61.13, each owner or operator required to comply with §61.32(a) shall test emissions from the source according to Method 104 of Appendix B to this part. Method 103 of Appendix B to this part is approved by the Administrator as an alternative method for sources subject to § 61.32(a). The emission test shall be performed—

* * * * *

21. In § 61.44, paragraph (a) is revised to read as follows:

§ 61.44 Stack sampling.

(a) Sources subject to § 61.42(b) shall be continuously sampled, during release of combustion products from the tank, according to Method 104 of Appendix B to this part. Method 103 of Appendix B to this part is approved by the Administrator as an alternative method for sources subject to § 61.42(b).

* * * * *

22. Section 61.53 is amended by revising paragraph (a)(1) introductory text, (b)(1) introductory text, and (c)(2) introductory text to read as follows:

§ 61.53 Stack sampling.

(a) Mercury ore processing facility.

(1) Unless a waiver of emission testing is obtained under § 61.31, each owner or operator processing mercury ore shall test emissions from the source according to Method 101 of Appendix B to this part. The emission test shall be performed—

* * * * *

(b) Mercury chlor-alkali plant—hydrogen and end-box ventilation gas streams.

(1) Unless a waiver of emission testing is obtained under § 61.13, each owner or operator employing mercury chlor-alkali cell(s) shall test emissions from hydrogen streams according to Method 102 and from end-box ventilation gas streams according to Method 101 of Appendix B to this part. The emission test shall be performed—

* * * * *

(c) Mercury Chlor-alkali plants—Cell room ventilation system.

* * * * *

(2) Unless a waiver of emission testing is obtained under § 61.13, each owner or operator shall pass all cell room air in force gas streams through stacks suitable for testing and shall test

emissions from the source according to Method 101 in Appendix B to this part. The emission test shall be performed—

* * * * *

§ 61.65 [Amended]

23. Section 61.65 is amended by removing the words "equivalent or" throughout paragraphs (b)(8)(i) and (c).

§ 61.67 [Amended]

24. Section 61.67 is amended by removing the words "an equivalent method or" and "equivalent or" throughout paragraph (g).

§ 61.68 [Amended]

25. Section 61.68 is amended by removing the words "equivalent or" throughout paragraph (b).

§ 61.70 [Amended]

26. Section 61.70 is amended by removing the words "equivalent or" throughout paragraph (c).

Appendix A [Amended]

27. In Appendix A, paragraph (II)(B) is amended by replacing the words "of beryllium or mercury pollutants" with the words "subject to emission testing."

Appendix B [Amended]

28. In Method 103 of Appendix B, paragraph 1.1 is amended by removing the words "as specified under the provisions of § 61.14 of the regulations."

[FR Doc. 85-26366 Filed 11-6-85; 8:45 am]
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40 CFR Part 716

[OPTS-84020A; FRL-2920-7]

Health and Safety Data Reporting; Urea-Formaldehyde Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the TSCA section 8(d) model health and safety data reporting rule to exempt the reporting of certain agronomic plant growth or damage studies on urea-formaldehyde resins (UF resins).

EFFECTIVE DATE: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 3, 1985 (50 FR 18861), EPA promulgated an amendment to the TSCA section 8(d) model health and safety data reporting rule which added UF resins to the list of substances for which persons are required to submit lists and copies of unpublished health and safety studies. That amendment became final on June 3, 1985. In the amendment, EPA discussed its rationale for requiring reporting of UF resins. Persons wishing to obtain an in-depth discussion of the Agency's information requirements for UF resins are encouraged to read that **Federal Register** publication.

Shortly before the deadline for reporting unpublished health and safety studies was reached, the Fertilizer Institute, acting on behalf of its member companies who manufacture, import, or process UF resins, requested that EPA reconsider the requirement for reporting plant growth or damage data in this instance, and to remove the requirement to report these data for UF resins. The model health and safety data reporting rule at 40 CFR 716.3(e)(2)(ii) defines health and safety data to be reported as including plant growth or damage tests.

The Fertilizer Institute pointed out that many fertilizer products are either urea, stabilized by reaction with small amounts of formaldehyde, or are UF resin type slow-release fertilizers. Both of these fertilizer products are either entirely, or contain some amount of UF resin. As part of a normal course of business, fertilizer manufacturers conduct extensive testing of their fertilizers to demonstrate the effectiveness of the materials as plant growth promoters, or to show that the product will not damage target plants when used as intended. For UF resin fertilizers alone, the total number of such agronomic plant growth or damage tests may number well over 1,000. Subsequent reporting of newly initiated plant growth or damage tests could number between 100 and 200 per year.

In developing the 8(d) reporting rule on UF resins, EPA was not aware of the extensive number of studies that have been conducted to demonstrate the efficacy of UF resins as fertilizer products. That UF resins are effective as fertilizers is well documented in the published literatre. These data, which demonstrate the UF resins perform their commercial function as intended, would do little to aid the Agency in determining the health or environmental effects of UF resins, or allow the Agency to identify gaps in existing health and safety data.

As a result of the large number of these agronomic plant growth or damage tests that would need to be submitted to the Agency, several fertilizer-producing companies would be saddled with a disproportionately large financial burden in reporting these tests. EPA would also need to expend considerable resources to process and review all of the submitted tests.

Because these data are not vital to EPA's assessment of the health and environmental effects of UF resins at this time, and since requiring these data would result in an unanticipated burden to both the Government and industry, the Agency has decided to exempt certain agronomic plant growth or damage data from the reporting requirement.

II. Provisions of This Amendment

EPA is amending the language contained in the provision at 40 CFR 716.17(a)(11), which added UF resins to the model health and safety data reporting rule. The amendment requires persons to submit unpublished health and safety data to EPA, except such persons are not required to submit agronomic plant growth or damage tests that demonstrate only that the listed UF resins stimulate plant growth, or that target plants are damaged when the product is applied as a fertilizer. The listed UF resins are: urea, polymer with formaldehyde (CAS No. 9011-05-6) and urea, reaction product with formaldehyde (CAS No. 68611-64-3).

However, this exemption does not exclude all plant growth or damage tests from the reporting requirement. Plant growth tests that demonstrate a combination of effects, such as plant growth and genotoxicity, would still be required to be reported. Algal growth studies would also be required to be reported. Any study demonstrating a deleterious or potentially deleterious effect to individuals, species, ecosystems, or the environment would also not be exempt.

III. Final Rule

EPA issued regulations under section 8(d) of TSCA, which were published in the **Federal Register** of September 2, 1982 (47 FR 38780), to require submission of lists and copies of unpublished health and safety studies on specifically listed chemicals by chemical manufacturers, importers, and processors. The rule, codified at 40 CFR Part 716, establishes standardized reporting requirements and provides for amending the list of chemicals subject to the rule. Section 716.18(b) of the rule provides that chemicals designated by the Interagency Testing Committee (ITC) may be made subject to the rule by the publication of a final regulation to that effect in the **Federal Register**.

As discussed in the regulations adding UF resins to the section 8(d) model rule at 40 CFR 716 (50 FR 18861), UF resins were designated by the ITC in its Twelfth Report to the Administrator of EPA, published in the **Federal Register** of June 1, 1983 (48 FR 24443). (At that time, the ITC termed UF resins "methylolurea" based on its experience with a UF resin commercial product trade-named methylolurea.)

The regulations adding UF resins became effective on June 3, 1985, 30 days after their promulgation. This rulemaking is merely a technical amendment to that regulation, and is designed to limit its coverage. Since this rulemaking involves the same ITC-designated chemical, § 716.18(b) of the 8(d) rule applies and publication of this amendment in final without notice and comment rulemaking is permissible. Moreover, this is a technical amendment involving matters of which the public is unlikely to be interested. Notice and comment procedures would be of no value or help in light of the purposes for which public participation is generally desired. Therefore, EPA finds that good cause exists to exempt this rule from public participation because notice and comment is unnecessary and contrary to the public interest. The Agency is therefore proceeding directly with a final rule.

IV. Interim Actions

This amendment affects several fertilizer manufacturing firms who may have unpublished agronomic plant growth or damage studies on UF resins that were not submitted on or before the August 1, 1985 deadline for UF resin reporting. These firms are technically in non-compliance with the May 3, 1985 rule which added UF resins to 40 CFR Part 716. However, the Fertilizer Institute, on behalf of its member companies, notified EPA as soon as potential compliance problems were foreseen, and has continued to work with the Agency to ensure EPA's data needs are met without imposing an undue burden on industry. EPA has notified the Fertilizer Institute that the Agency was planning to show enforcement discretion regarding argonomic plant growth or damage tests until such time as this amendment was promulgated. Until this amendment is final, EPA does not intend to take enforcement action under TSCA section 16 in cases involving reporting on chemicals listed in 40 CFR 716.17(a)(11).

V. Economic Impact

EPA expects this amendment to result in a net actual reduction in costs to industry in submitting the required health and safety data to the Agency. In preparing the original economic analysis for the May 3, 1985 amendment adding UF resins to the model section 8(d) health and safety data reporting rule, EPA was not aware of the extensive collections of studies demonstrating the effectiveness of UF resins as plant growth promoters. The Agency therefore did not include the costs of reporting these agronomic plant growth or damage data in estimating the total costs of submitting unpublished health and safety data on UF resins to EPA.

If these agronomic plant growth or damage tests were now required to be reported to EPA, it is likely that there would be as much as a tenfold increase in the cost of this regulation over the original estimate. Because the Agency is amending the regulation to exempt the submission of agronomic plant growth or damage data on UF resins, the cost of this regulation will remain at EPA's original estimate of $57,000.

VI. Rulemaking Record

EPA has established a public record (docket number OPTS-82020A) for this rulemaking document. All documents, including the index to this public record, are available for inspection in the OTS Reading Room, Room E-107, 401 M Street SW., Washington, DC from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. This record includes basic information considered in developing this rule.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. This regulation is not major because it will not result in an effect on the economy of $100 million or more, an increase in costs or prices, or any of the adverse effects described in the Executive Order.

This amendment was not submitted to the Office of Management and Budget (OMB) for review because the automatic listing of designated substances is provided for in 40 CFR 716.18(b). That final rule has been previously reviewed by OMB under the terms of the Executive Order.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), EPA certifies that this rule will not have a signficant impact on a substantial number of small businesses.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070-0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Health and safety data, Hazardous substances, Recordkeeping and reporting requirements.

Dated: October 31, 1985.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

PART 716—[AMENDED]

Therefore, 40 CFR Part 716 is amended to read as follows:

1. The authority citation for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. By revising § 716.17(a)(11) to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) * * *

(11)(i) As of June 3, 1985, the following chemical substances are subject to Subpart A of this Part.

CAS No.	Name
9011-05-6	Urea, polymer with formaldehyde.
68611-64-3	Urea, reaction product with formaldehyde.

(ii) Persons are not required to submit agronomic plant growth or damage tests demonstrating only that these listed ureaformaldehyde resins stimulate plant growth, or cause plant damage when applied as a fertilizer.

* * * * *

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