255 S. Airport Boulevard, South San Francisco, California; (2) New Orleans on May 6, 1994, at the Marriott Hotel, 555 Canal Street, New Orleans, Louisiana; (3) New York City on May 24, 1994, at the Customs Main Conference Room, Building 77, JFK Airport, New York City, New York, and; (4) Newark on May 25, 1994, at the Customs Main Conference Room, Hemisphere Center, Newark, New Jersey. All meetings are scheduled from 8:30 a.m. to 2 p.m.

Between 8:30 a.m. and 9:15 a.m., a general briefing covering the Office of Inspection and Control's operational, automation and enforcement issues will be conducted. Following the general briefing, staff members from the Office of Inspection and Control will conduct a series of presentations concentrating on vessel, air, truck and rail transportation proposals for implementing specific Mod Act provisions. Among the topics to be discussed at these sessions will be: Carrier manifest requirements, electronic transmission of data, carrier entry and clearance procedures, and carrier liability issues. Participants will be given ample opportunity to ask questions and provide suggestions during this session.

Persons planning to attend are requested to pre-register by FAX with the local contact listed below. Individuals not having access to facsimile equipment may pre-register by calling the following local contacts:

For the San Francisco Meeting: Mr. Thomas O'Brien, Telephone: (415) 705–4340, Fax: (415) 705–4334.

For the New Orleans Meeting: Ms. Joell Johnson, Telephone: (504) 589–6323, Fax: (504) 589–7305.

For the New York City and Newark Meetings: Ms. Susan Mitchell, Telephone: (212) 466–4500, Fax: (212) 466–4507.

Attendees are encouraged to arrive approximately 15 minutes in advance of the meeting.

Customs intends to hold similar public meetings at the following locations: Chicago, Illinois, and Washington, D.C. Other locations are still being considered. The dates, times, and locations of these public meetings will be published in the **Federal Register** at a later date.

Dated: March 25, 1994.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 94–7740 Filed 3–31–94; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 63
Friday, April 1, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, March 29, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured depository institutions.

Matters relating to the Corporation's corporate and supervisory activities.

Personnel matters.

In calling the meeting, the Board determined, on motion of Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: March 29, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94–7940 Filed 3–30–94; 9:52 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 4, 1994.

An open meeting will be held on Wednesday, April 6, 1994 at 10:00 a.m. A closing meeting will be held on Thursday, April 7, 1994, at 9:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)A and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, April 6, 1994, at 10:00 a.m., will be:

The Commission will consider whether to issue two orders approving the proposed rule changes by the Municipal Securities Rulemaking Board ("MSRB") that: (1) adopt a new rule (G–37) regulating the political contributions of municipal securities dealers; and (2) amend rule G–19 relating to the suitability of recommendations by municipal securities dealers. For further information, please contact Scott Kursman at (202) 942–0168.

The subject matter of the closed meeting scheduled for Thursday, April 7, 1994, at 9 a.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Felicia Kung (202) 272–2300.

Dated: March 30, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7967 Filed 3–30–94; 11:42 am]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 63
Friday, April 1, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

RIN 0596-AA42

Land Exchanges

Correction

In rule document 94-4997 beginning on page 10854 in the issue of Tuesday, March 8, 1994, make the following corrections:

§ 254.5 [Corrected]

1. On page 10870, in the second column, in§ 254.5(a), in the second line, remove the word "is".

§ 254.7 [Corrected]

2. On page 10870, in the third column, in § 254.7(a)(2), in the ninth line from the bottom, "parties" should read "parcels".

§ 254.14 [Corrected]

3. On page 10873, in the second column, in § 254.14(b), in the fifth line, the period at the end should be a colon; and in (b)(1), the colon at the end should be a semi-colon.

§ 254.17 [Corrected]

4. On page 10874, in the third column, in the fourth line, "§ 254.4" should read "§ 254.14".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 226

Defense Federal Acquisition Regulation Supplement; Preference for Local and Small Business

Correction

In rule document 94-5818 beginning on page 12191, in the issue of Wednesday, March 16, 1994, make the following corrections:

On page 12191, in the second column, under ACTION:, in the first line, "respect" should read "request".

226.7100 [Corrected]

On page 12192, in the first column, in section 226.7100, in the first line, "1912" should read "2912".

226.7103 [Corrected]

On page 12192, in the second column, in section 226.7103 (c)(2), in the third line, after the word "small" insert "business".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fiscal Year (FY) 1994 Indian Child Welfare Act (ICWA) Grant Program, Availability of Title II ICWA Funds for Federally Recognized Indian Tribes

Correction

In notice document 94-7059 beginning on page 14310, in the issue of Friday, March 25, 1994, make the following correction:

On page 14311, in the third column, in the table entitled "FY 1994 TITLE II ICWA FUNDING DISTRIBUTION PLAN FOR TRIBES---Continued", under the heading "Service area population", in the fourth line, "90,001-14,000" should read "90,001-140,000".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-19658, File No. S7-26-92]

RIN 3235-AF01

Investment Company General Partners Not Deemed Interested Persons; Investment Company Limited Partners Not Deemed Affiliated Persons

Correction

In rule document 93-21109 beginning on page 45834 in the issue of Tuesday, August 31, 1993, make the following correction:

§ 270.2a19-2 [Corrected]

1. On page 45838, in the second column, in § 270.2a19-2(a)(4), in the eighth line, "of" should read "or".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8520]

RIN 1545-AR15

Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit

Correction

In rule document 94-3515 beginning on page 10067 in the issue of Thursday, March 3, 1994, make the following corrections:

§ 1.42-12 [Corrected]

On page 10074, in the third column, in § 1.42-12(a), in the sixth line, insert a comma after "1994"; and in the second line from the bottom, "1.42-9" should read "1.42-8".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8516]

RIN 1545-AS29

Revisions of the Section 338 Consistency Rules With Respect to Target Affiliates That Are Controlled Foreign Corporations

Correction

In rule document 94-666 beginning on page 2956 in the issue of Thursday, January 20, 1994, make the following correction:

§ 1.338-4T [Corrected]

On page 2957, in the second column, in § 1.338-4T(h)(4), in the first line, "(1) *General*" should read "(i) *General*".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8513]
RIN 1545-AJ31

Bad Debt Reserves of Banks

Correction

In rule document 93-31577 beginning on page 68753 in the issue of Wednesday, December 29, 1993, make the following corrections:

§ 1.585-1 [Corrected]

1. On page 68757, in the second column, in § 1.585-1(b)(2), in the second line from the bottom, the first word should read "for".

§ 1.585-5 [Corrected]

2. On page 68760, in the second column, in § 1.585-5(c)(4)(ii), "tax/book ratio" should read "*tax/book ratio*" in the following places:

a. Beginning in the sixth line;
b. In the 11th line; and
c. In the 14th line.

3. On the same page, in the third column, in § 1.585-5(d)(2), in the third line from the bottom, "excluded member" should read "*excluded member*".

§ 1.585-6 [Corrected]

4. On page 68762, in the 3d column, in § 1.585-6(d)(5), *Example 3*, in the 18th and 29th lines, insert a comma after "percent"; and in the last line, insert a period after "December 15, 1988".

§ 1.585-7 [Corrected]

5. On page 68763, in the first column, in § 1.585-7(d)(1), in the second line, insert a period after "*general*".

§ 1.585-8 [Corrected]

6. On page 68764, in the second column, in § 1.585-8(b)(2), beginning in the first line, "Certain tax returns filed before December 29, 1993." should read "*Certain tax returns filed before December 29, 1993.*"

BILLING CODE 1505-01-D

federal register

Friday
April 1, 1994

Part II

Environmental Protection Agency

40 CFR Parts 63 and 70
Hazardous Air Pollutants: Proposed Regulations Governing Constructed, Reconstructed or Modified Major Sources; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 70

[FRL–4849–5]

RIN 2060–AD06

Hazardous Air Pollutants: Proposed Regulations Governing Constructed, Reconstructed or Modified Major Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The proposed rule would implement the provisions in section 112(g) of the Clean Air Act (Act). The section 112(g) requirements are new provisions of the 1990 amendments to the Act. Section 112(g) applies to the owner or operator of a constructed, reconstructed, or modified major source of hazardous air pollutants (HAP). After the effective date of a title V permit program in a State, all owners or operators of major sources that are constructed, reconstructed, or modified in that State would be required to install maximum achievable control technology (MACT). The proposed rule establishes requirements and procedures for the owners or operators to follow in order to comply with section 112(g). The proposed rule also contains guidance permitting authorities in implementing section 112(g). When no applicable Federal emission limitation has been promulgated, the Act requires the permitting authority (generally a State or local agency responsible for the program) to determine a MACT emission limitation on a case-by-case basis. Procedures are proposed for making these determinations. The proposed rule includes proposed *de minimis* emission rates for all of the listed HAP. These *de minimis* values are critical in defining the scope of the section 112(g) requirements. Pursuant to section 112(g), an owner or operator may provide emission offsets to avoid requirements for modifications. The proposed rule provides procedures for providing and reviewing offset demonstrations, including procedures for evaluating whether emission offsets are "more hazardous" than emission increases being offset. Finally, the proposal includes a number of clarifying amendments to previously proposed or promulgated regulations. These proposed amendments would clarify the relationship between those requirements and section 112(g) of the Act.

DATES: *Comments.* Comments must be received on or before June 30, 1994. The EPA does not intend to extend this date.

Public Hearing. If anyone contacts the EPA requesting a public hearing by May 2, 1994, a public hearing may be held June 1, 1994 beginning at 10 a.m.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by May 2, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE–131), Attention Docket Number A–91–64 (see Docket section below), room M1500, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. The docket is located at the above address in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 12 p.m. and 1 p.m. to 3 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rule making are available for review in the docket. A reasonable fee may be charged for copying docket materials.

Public Hearing. If anyone contacts the EPA requesting a public hearing, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Theresa Adkins, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5502.

Docket. Docket No. A–91–64, containing supporting information used in developing the proposed rule is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Smith (regulatory issues), telephone (919) 541–4718, Dr. Jane Caldwell-Kenkel (hazard ranking issues), telephone (919) 541–0328, or Ms. Lynn Hutchinson (MACT determination procedures), telephone (919) 541–5624, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Summary of Proposed Rule
A. Requirements for Constructed and Reconstructed Major Sources
B. Requirements for Modified Major Sources
C. Software Illustrating the Proposed Requirements
II. Background Discussion
A. Clean Air Act Amendments: Section 112
B. Clean Air Act Amendments: Provisions for Constructed, Reconstructed and Modified Major Sources of Hazardous Air Pollutants
C. Process To Develop the Proposed Rule
III. Summary and Rationale for § 63.40 Through 63.47, and § 63.49, of the Proposed Rule
A. Section 63.40—Applicability
B. Section 63.41—Definitions
C. Section 63.42—Requirements for Constructed and Reconstructed Major Sources
D. Section 63.43—Requirements for Modified Major Sources
E. Section 63.44—*de minimis* Levels
F. Section 63.45— MACT determinations
G. Sections 63.46 and 63.47. Offset Demonstration
H. Section 63.49. Requirements for Emission Units Subject to a Subsequently Promulgated MACT Standard or MACT Requirement
IV. Proposed Approach for Demonstrating that Offsets are "More Hazardous": Summary and Rationale (§ 63.48)
A. Statutory Requirements for a "More Hazardous" Finding
B. Overview of the Alternatives Considered for a "More Hazardous" Finding
C. The Establishment of Relative Hazard Between Categories of Pollutants
D. The Determination of Relative Hazard Within Categories of Pollutants
E. The Determination of a "More Hazardous" Decrease in Emissions
F. Miscellaneous Hazard Ranking Issues
V. Discussion of the Relationship of the Proposed Requirements to Other Requirements of the Act
A. Relationship of section 112(g) Implementation to Title V Program
B. Relationship to section 112(l) Delegation Process
C. Section 112(i)(5) Early Reductions Program
D. Section 112(j) "Hammer" Provision
E. Subpart A "General Provisions"
F. Section 112(g) Implementation During the Transition Period
VI. Administrative Requirements
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
VII. Suggest Format for Comments

The proposed regulatory text is not included in the **Federal Register** notice, but is available in Docket No. A–91–64 or by request from the EPA contact persons designated earlier in this note. The proposed regulatory language is also available on the technology Transfer Network (TTN), of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call.

Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on the TTN is needed call the HELP line at (919) 541–5384.

The purpose of this document is to provide the public with an opportunity to comment on the proposed rule implementing the requirements of section 112(g) of the Act. This preamble is organized to serve readers needing: (1) an overview of the proposed requirements of the section 112(g) program, and (2) a detailed discussion of the alternatives considered in the developing the proposed requirements.

Section I of the preamble provides an overview of the requirements of the regulations being proposed today.

Section II provides background on section 112(g) in the context of the 1990 amendments to the Act.

Section III provides a detailed discussion of the requirements of the proposed rule and the rationale for these requirements including other regulatory options that were considered.

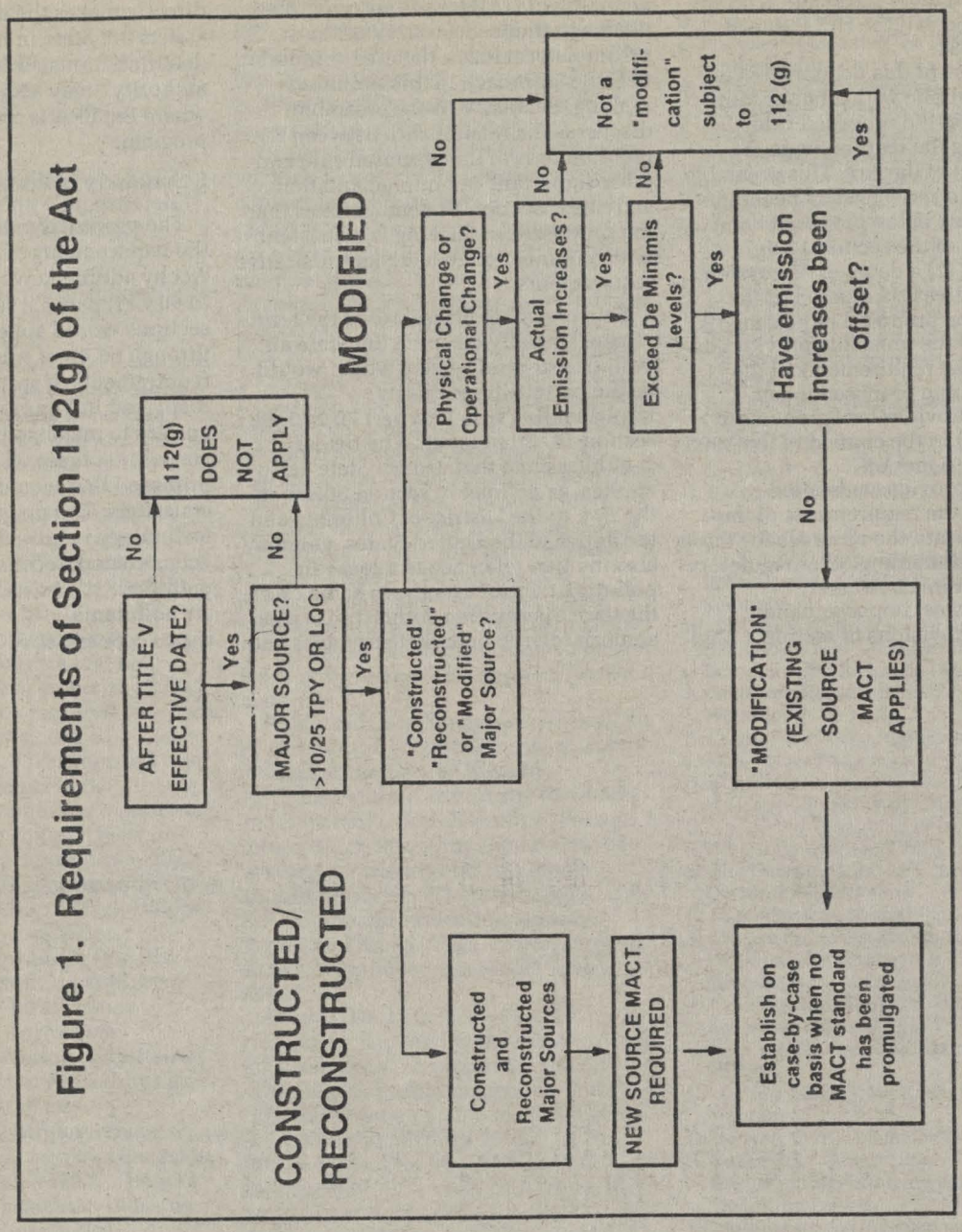
One of the most important and challenging provisions of section 112(g) is the requirement that the EPA provide a ranking of HAP for purposes of offset demonstrations. Section IV of the preamble provides a detailed discussion of EPA's approach to this pollutant ranking. Section V of the preamble discusses the relationship between the requirements of the proposed rule and other important Act implementation activities. Section VI demonstrates that the proposed rulemaking is consistent with a number of Federal administrative requirements.

This preamble makes use of the term "State," usually meaning the State air pollution control agency which would be the permitting authority implementing title V or part 70 and the section 112(g) program. The reader should assume that use of "State" also applies, as defined in section 302(d) of the Act, to the District of Columbia and territories of the United States, and may also include reference to a local air pollution control agency. In some cases, the term "permitting authority" is used and can refer to both State agencies and to local agencies (when the local agency directly makes the determinations or assists the State in making the determinations). The term "permitting authority" may also apply to the EPA, where the EPA is responsible for the program.

I. Summary of Proposed Rule

The proposed rule would implement the requirements of section 112(g) of the Act by adding new regulatory sections to 40 CFR part 63, subpart B. The new sections would appear as §§ 63.40 through 63.49 of subpart B. The requirements of section 112(g) are displayed in Figure 1. The program applies to major sources of hazardous air pollutants for which changes are proposed that would lead to increases in emissions. The program imposes control technology requirements on "constructed, reconstructed, or modified" major sources of hazardous air pollutants.

BILLING CODE 6560–50–P



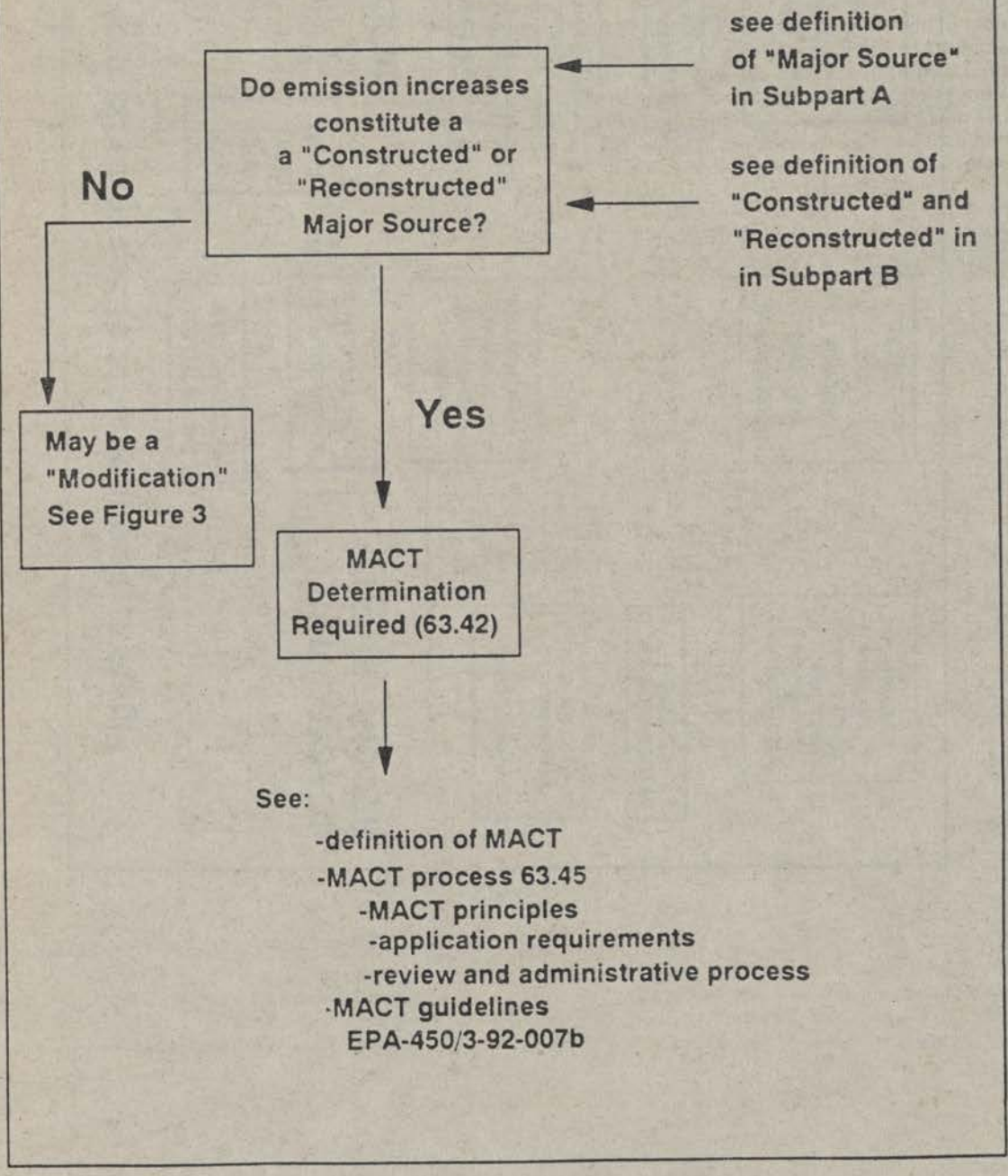
BILLING CODE 6560–50–C

A. Requirements for Constructed and Reconstructed Major Sources

Figure 2 displays the requirements of the proposed rule for constructed or reconstructed major sources.

BILLING CODE 6560-50-P

Figure 2. Structure of Proposed Rule (40 CFR Part 63, Subpart B) for Constructed and Reconstructed Major Sources



BILLING CODE 6560-50-C

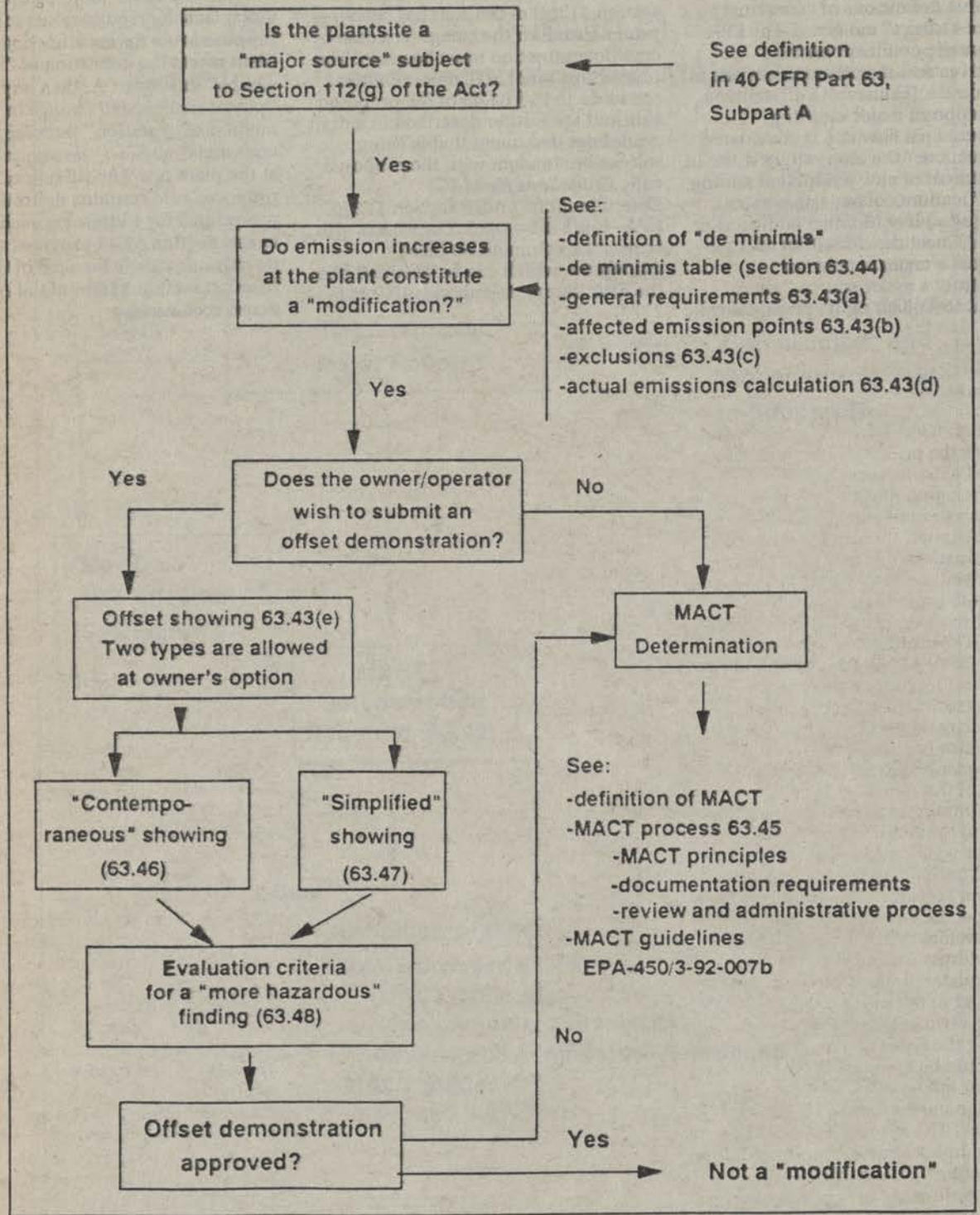
The definition of "major source" can be found in a subpart A to 40 CFR part 63. (This subpart is expected to be promulgated at roughly the same time as today's proposal implementing section 112(g). In this proposed rule, two alternative definitions of "construct" and "reconstruct" are given. The EPA is taking public comment on the alternatives and intends to select one in the final rule. (Under both alternatives, construction of major-emitting equipment on a new site is considered "construction;" the alternatives differ in the treatment of new equipment adding "major" amounts of emissions to an existing site.) If equipment additions or overhauls meet the definition of "construct a major source" or "reconstruct a major source," then, pursuant to § 63.42 of the proposed rule, the owner or operator must demonstrate that emissions will be controlled to a level consistent with the "new source MACT" definition in section 112(d)(3) of the Act. When no applicable MACT standard (i.e., promulgated under section 112(d) of the Act) has been promulgated for the category, a case-by-case determination must be made. The procedures for MACT determinations are set forth in § 63.45 of the proposed rule and are further described in a draft guidelines document that is being released in tandem with the proposed rule. *Guidelines for MACT Determinations under Section 112(g)*, EPA–450/3–92–007b). The EPA is also requesting comment on these guidelines, which can be obtained from the EPA library, telephone (919) 541–2777.

B. Requirements for Modified Major Sources

The statutory requirements in section 112(g) of the Act for "modifications" to a major source are more complex. Figure 3 displays the requirements in the proposed rule for modifications. If a plant meets the definition of "major source" in subpart A, then any "physical change or change in the method of operation" increasing "actual emissions" above a "*de minimis* level" at the plant is a "modification." This proposed rule contains definitions and procedures for addressing each of these terms. Section 63.44 provides a table of *de minimis* values for each of the HAP listed in section 112(b) of the Act.

BILLING CODE 6560–50–P

Figure 3. Structure of Subpart B (of 40 CFR Part 63) Proposed Requirements for Modifications



BILLING CODE 6560-50-C

Past Federal air quality regulations have excluded a number of activities from the definition of "physical change or change in the method of operation." In paragraph 63.43(c) of the proposed rule, the EPA proposes to provide a similar list of exclusions for purposes of section 112(g) of the Act. There are a number of possible approaches to the determination of an "actual emission increase." In paragraph 64.33(d), the EPA proposes a calculation procedure for "actual emissions."

The Act requires the owner or operator of a major source "modification" to demonstrate that an "existing source MACT" level will be met. The language in section 112(g) is ambiguous regarding the extent of coverage at a plant site when a modification has occurred. Paragraph 63.43(b) in the proposed rule is intended to clarify the ambiguity by describing the equipment that would require MACT when a "modification" occurs.

Section 63.45 of the proposed rule outlines the principles and procedures for the "existing source MACT" demonstration. If no applicable standard has been promulgated by the Administrator, then a case-by-case determination of MACT must be made. More detail on the procedures described in § 63.45 is given in a draft MACT Guidelines Document, Guidelines for MACT Determinations under section 112(g) (EPA–450/3–92–007b). This document includes a process for demonstrating that the control technology recommended by the owner or operator is consistent with minimum requirements described in section 112(d) of the Act.

One important provision of section 112(g) of the Act is that an owner or operator wishing to avoid the MACT demonstration requirement may provide emission "offsets." The Act provides little specific guidance on these offsets, and therefore the proposed regulation must address a number of complex issues related to the offsets. In §§ 63.46 and 63.47 of the proposed rule, the EPA provides two optional approaches for defining the types of emission decreases that would be credited as offsets. The owner or operator wishing to provide an offset demonstration could use either approach. The approach in § 63.46 is the more complex approach and resembles the "netting" process used for the criteria pollutant "prevention of significant deterioration" program (40 CFR 52.21) and nonattainment new source review provisions (40 CFR 51.165 and 166). The approach in § 63.47 is a more simplified approach which imposes greater restrictions on the types of decreases that would be creditable.

Section 112(g)(1) allows for offsetting between pollutants. This is a major departure from other "offset" or "netting" programs which allow for decreases to be credited only towards increases of the same pollutant or pollutants within broad classes. Section 112(g)(1)(B) requires that the EPA provide guidance for determining that offsetting decreases are "more hazardous" than the increase being offset. In § 63.48 of the proposed rule, the EPA requests comment on a possible method for making a "more hazardous" demonstration.

C. Software Illustrating the Proposed Requirements

The EPA recognizes the complexity of this proposed rule and the need for assistance in clarifying the provisions for potentially affected plant operators and permitting authorities. In order to help communicate the requirements, the EPA is developing software that should provide this assistance. This software is designed to provide users with the opportunity to explore for example cases how to determine whether "construction," "reconstruction," or "modifications" requirements apply and whether an example pollutant is considered "more hazardous" than another. The EPA hopes that this software can facilitate an improved review of the proposed rule.

II. Background

A. Act Amendments. Section 112

The Act amendments of 1990 [Public Law 101–549] contain major changes to section 112 of the Act pertaining to the control of HAP emissions. Section 112(b) includes a HAP list that is composed of 189 chemicals, including 172 specific chemicals and 17 compound classes. Section 112(c) requires publication of a list of source categories of major sources emitting these HAP, and of area sources that warrant regulation. Section 112(d) requires promulgation of emission standards for each listed source category according to a schedule set forth in section 112(e).

B. Act Amendments. Provisions for Constructed, Reconstructed, and Modified Major Sources of HAP

The amendments to section 112 include a new section 112(g). This section is entitled "Modifications," but it contains control technology requirements for constructed and reconstructed major sources as well as major source modifications.

1. Statutory Requirements for Constructed and Reconstructed Major Sources. Section 112(g)(2)(B) contains requirements for constructed and reconstructed major sources, as follows:

> After the effective date of a permit program under title V in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

This section mandates a more stringent minimum level of control for "constructed" and "reconstructed" major sources than for "modified" sources. In addition, this section mandates the setting of a case-by-case emission limitation based on a technology determination for major sources that are constructed or reconstructed after the effective date of a title V permit program, but before the establishment of Federal emission limitations.

2. Statutory Requirements for Modifications. The requirements for major source modifications differ from those for constructed and reconstructed major sources. Section 112(g)(2)(A) states that:

> After the effective date of a permit program under title V in any State, no person may modify a major source of hazardous air pollutants in such State, unless the Administrator (or the State) determines that *the maximum achievable control technology emission limitation under this section for existing sources* will be met. *Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.* (emphasis added)

The underlined phrases signal important differences between section 112(g) and the way modifications have been treated previously under sections 111 and 112 of the Act. Previously, a "modification" has been treated as a change to an existing air pollution source which caused it to be subject to an emission standard or level of control that would be required for new equipment. Under section 112(g), "modified" equipment need only meet an existing source level of control which was envisioned to be potentially less demanding. Congress was apparently concerned that treating modifications as "new sources" would be overly stringent. Senator Lautenberg summarized the Congressional discussion as follows:

> * * * one of the differences between the House and Senate air toxics provisions was

their treatment of modifications to existing sources. The House bill included modified existing sources in its definition of new source, while the Senate bill had limited the new source definition to new and reconstructed sources.

As the Author of the Senate provision, I was concerned that the House definition would have unduly hampered routine operations of many manufacturing facilities that may make frequent operational or physical changes which may result in increased and different mixes of air pollutants. For example, many pharmaceutical and electronic manufacturing facilities in my State make frequent changes in their operations which result in variation in their air emissions. Simply substituting one hazardous air pollutant for another more hazardous air pollutant in a process could have caused the source to be considered a new source. Or, simply initiating the manufacturing of new or different products causing certain alterations and increases in the emissions, could have triggered the new source definition.

The implications of the new source definition in the House bill would have been substantial for an existing major source. This could have caused time-consuming delays as well as imposing the unreasonable burden of retrofitting the modification to bring it into compliance with new source MACT.[1]

136 Cong. Rec. S 17124–5 (October 26, 1990).

A second important difference between section 112(g) and the pre-amendment treatment of modifications is that case-by-case control technology judgments must be made where no applicable emission limitations have been established by the Administrator. Modifications that occur after the "effective date" of the operating permits program (see discussion below in section II.A of this preamble), but before the promulgation by the EPA of a section 112(d) standard for a given source category, must comply with emission limitations that reflect a case-by-case judgment on the part of the reviewing authority.

The Act establishes a number of complex considerations in determining what constitutes a "modification." The definition of a major source "modification" is given in section 112(a)(5) and additional considerations are given in section 112(g)(1)(A). Section 112(a)(5) states that:

> The term 'modification' means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by *more than a de minimis amount* or which results in the emissions of any hazardous air pollutant not previously emitted by *more than a de minimis amount.* (emphasis added)

This definition of modification is very similar to the definition contained in section 111 of the Act. One important difference in this definition is that it allows for an exception for modifications that result in an increase which is less than a *de minimis* amount, while section 111 regulates "any emission increase" caused by the physical change or change in the method of operation.

Section 112(g)(1)(A) provides for consideration of emission offsets in the definition of "modification." Section 112(g)(1)(A) states that:

> A physical change in, or change in the method of operation of, a major source which results in a greater than *de minimis* increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous.

Congress recognized the difficulty in interpreting the phrase "which is deemed more hazardous." In section 112(g)(1)(B), the EPA is required to provide a hazard ranking of the chemicals, as follows:

> The Administrator shall, after notice and opportunity for comment and not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, publish guidance with respect to implementation of this subsection * * * [i.e. section 112(g)] * * * Such guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants listed under * * * [section 112(b)] * * * sufficient to facilitate the offset showing authorized by * * * [section 112(g)(1)(A)] * * * Such guidance shall not authorize offsets between pollutants where the increased pollutant (or more than one pollutant in a stream of pollutants) causes adverse effects to human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutants.

Finally, Congress directed the EPA to prevent unnecessary delays in the review of modifications, particularly where no case-by-case control decision is needed. Section 112(g)(3) says that:

> The Administrator (or the State) shall establish reasonable procedures for assuring that the requirements applying to modifications under this section are reflected in the permit.

Again citing Senator Lautenberg,

> As long as the permit provides that the existing source MACT standard will be complied with in the event of a modification, the objectives of the modification provision in the law will have been satisfied. If there is no existing source MACT standard, then the Congress expects an expeditious determination of what emission limitations the modification must meet.

3. Requirement for Guidance. Need for Rulemaking. Section 112(g)(1)(B) of the Act directs the EPA to "publish guidance with respect to the implementation of *this subsection.*" The EPA believes that "subsection" refers to all of the requirements of "subsection 112(g)" of the Act, and that guidance is required to provide consistency in implementing all of the section 112(g) requirements.

The EPA requests comment on an alternative reading that would require guidance only for the ranking of pollutants. The EPA believes that although section 112(g)(1)(B) states that the pollutant ranking is to be included in the guidance, the EPA does not believe that this language means that the guidance should be limited to the pollutant ranking.

In any case, there is no requirement in section 112(g) that the EPA publish a rule to implement the requirements. At a minimum, the EPA must issue "guidance" after "notice and opportunity for comment." The EPA believes that there are sound policy reasons for promulgating a rule rather than issuing informal guidance. First, the requirement for "opportunity for comment" on the guidance suggests that any guidance that is issued would require a review process similar to a rulemaking. Second, the EPA believes that a rulemaking would serve to provide a consistent basis for interpreting a number of ambiguous phrases in the statute. In the absence of such a rule, a consistent interpretation of the Federal requirements would not exist and the potential for litigation and delays could increase.

C. Process To Develop the Proposed Rule

The EPA has undertaken a substantial effort to obtain feedback from interested parties in the development of the proposed rule.

During July 1991, a 2-day meeting was held with an ad hoc group consisting of representatives of environmental organizations, industrial trade groups, and State and local air quality agencies. This meeting served to introduce the principal issues involved with section

[1] It has been held that although "such statements by individual legislators should not be given controlling effect, * * * when they are consistent with the statutory language and other legislative history, they provide evidence of Congress' intent." *Brock v. Pierce County,* 476 U.S. 253, 263 (1986). While Senator Lautenberg's statement alone would not be sufficient to impose requirements not grounded in the statute itself or limit the Agency's discretion, it is a helpful explanation of Congressional intent.

112(g) implementation. Written comments were received from a number of participants. These comments are included in the Docket for the proposed rule.

During October 1991, the EPA consulted an independent panel of scientific experts for input into the hazard ranking process. This panel of the EPA's Science Advisory Board (SAB) was apprised of the EPA's theoretical outline for hazard ranking in a public meeting held on October 28 and 29, 1991. The consultation meeting provided members of the SAB an opportunity to provide verbal feedback on several approaches.

On November 19, 1991, ideas for developing section 112(g) guidance were discussed at the meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC). At the NAPCTAC, staff of the EPA presented a number of preliminary positions on a number of section 112(g) issues. A copy of the EPA presentation and a summary of the NAPCTAC meeting are also included in the Docket.

Finally, the EPA has consulted with a subcommittee of the Clean Air Act Advisory Committee for input on approaches to implementing section 112(g). Meetings were held on May 26 and June 29, 1992 to present a summary of section 112(g) issues and to provide the subcommittee with the EPA's staff thinking with respect to those issues. A third meeting was held on September 24, 1992 to obtain feedback on a draft of the proposed rule. A copy of the draft rule submitted to the subcommittee, and several comment letters on that draft, are included in the Docket. Additional meetings were held with the subcommittee on January 15, 1993. In February 1993, a revised draft of the rule and a first draft of this preamble were circulated to subcommittee members. On March 19, a meeting was held to discuss procedures for case-by-case MACT determinations. A copy of the February draft of the rule and preamble, and associated feedback from subcommittee members, is included in the Docket.

III. Summary and Rationale for Section 63.40 Through 63.47, and Section 63.49, of the Proposed Rule

This section of the preamble is a detailed discussion of the provisions of the proposed rule. This discussion outlines the rationale for the decisions that were made, and describes other options that were considered. The overall structure of the proposed requirements for constructed and reconstructed sources is displayed in Figure 2. The overall structure of the proposed requirements for modifications is displayed in Figure 3.

A. Section 63.40—Applicability

Section 63.40 describes the timing of the requirements of the proposed rule and the situations it is generally intended to address.

1. 63.40(a)—Subpart B applicability. Paragraph 63.40(a) of the proposed rule indicates that the intent of the rule is to implement section 112(g) of the Act.

2. 63.40(b)—Overall requirements. Paragraph 63.40(b) of the proposed rule indicates the overall applicability of section 112(g) to the owner or operator of a major source of HAP who constructs, reconstructs or modifies a major source after the "effective date of a title V program" in each State.

(a) Effective date. The meaning of "effective date of a title V permit program" is indicated in the final regulations for implementation of title V of the Act, which are contained in 40 CFR part 70, and which were published on July 21, 1992 (57 FR 32250). Under these regulations, States are required to submit a permit program for review by the EPA on or before November 1993. The EPA is required to approve or disapprove the permit program within 1 year after receiving the submittal. The EPA's program approval date is termed the "effective date."

Congressional intent for using this effective date as the trigger date for section 112(g) requirements is clear. According to Senator Lautenberg (Congressional record, S. 17125, October 26, 1990):

> Requirements for modifications do not apply to a source until there is an approved permit program in that State. This should ensure that there is a permit program in place that is designed to expeditiously deal with modifications.

The effective date of title V permit programs is defined in section 502(h) of the Act, which says "The effective date of a permit program, or partial or interim program, approved under * * * [title V] * * * shall be the effective date of approval by the Administrator. The effective date of a permit program, promulgated by the Administrator shall be the date of promulgation." This definition is incorporated into the operating permit regulations as 40 CFR 70.4(g).

This language refers to two types of title V programs: one type where the EPA "approves" the title V program under 40 CFR part 70 and another type where the EPA "promulgates" a program under 40 CFR part 71. Programs "approved" by the EPA under Part 70 will be developed by the State or local area and submitted to the EPA for approval. The language in section 502(h) of the Act makes these programs immediately effective upon EPA approval. Programs "promulgated" by the EPA under part 71 are anticipated to be rare, and they occur only where a State failed to submit a program or submitted a program that EPA could not approve. The EPA is required by section 502(d)(3) of the Act to promulgate and administer a title V program if, by November 1995, the EPA has not approved the State program. The language in section 112(g), because it refers to the effective date of a title V program in any State (and not by any State), means that the program will apply to both the EPA "approved" and "promulgated" programs.

The title V regulations provide for approval of "interim" and "partial" programs in certain limited circumstances. The EPA believes that, because partial programs must ensure compliance with "all requirements established under section 112 applicable to 'major sources' and 'new sources'," and interim programs must "substantially meet the requirements of [title V]," an interim or partial program would trigger the requirements of section 112(g).

A significant issue in the beginning of a section 112(g) program is to define the activities that would "grandfather" a project that is already underway. As described in the proposed rule, "construction, reconstruction, or modification" are triggered from the "onsite fabrication, erection, or installation" of a project. If such activities occur after the effective date, then the proposed rule would be applicable. The EPA requests comment on other alternatives such as: (1) Grandfathering projects for which a complete application has been submitted to the permitting authority, (2) grandfathering projects which have submitted an application, or (3) grandfathering projects which have not yet received a permit.

(b) Major Source. Section 112(g) applies only to major sources as defined in section 112(a)(1) of the Act. This definition, already included in 40 CFR part 63, subpart A, (the general provisions of part 63), is as follows:

> The term 'major source' means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants * * *

The definition also allows the EPA to establish a lesser quantity than 10 or 25 tons to define "major source" with respect to particular HAP where warranted on the basis of potency, persistence, and other factors. To date, no such lesser quantities have been established.

As a result of this definition, the section 112(g) requirements do not apply if the total emissions from an entire "contiguous area under common control" (in general, the entire plant site) are less than the listed amounts. Once plant-wide emissions exceed this total, then certain activities at the plant site are subject to the section 112(g) requirements that are outlined in the proposed rule.

It is necessary to note that neither the proposed Subpart A requirements nor this proposed rule contain consideration of Standard Industrial Classification Codes (SIC codes) in the definition of "major source." The EPA considered using the 2-digit SIC code for this proposed rule, in a manner similar to that for the proposed 40 CFR part 70 operating permits rule. The EPA believes, however, that this would be inconsistent with the definition of "major source" in section 112(a) of the Act, which does not restrict a "contiguous boundary" to equipment within a 2-digit SIC code. For purposes of implementing section 112(g), such a restriction could, in some cases, restrict the portion of the plant from which emission offsets could be obtained. In other cases, a portion of the plant within a given 2-digit SIC code may not be subject to regulation, because that portion would not emit enough to be considered a "major source" in and of itself. The EPA recognizes that the treatment of 2-digit SIC codes under section 112 of the Act is not consistent with the 40 CFR part 70 operating permits regulation. The EPA requests comment on whether the operating permits rule should be amended to eliminate this inconsistency.

An important element of the major source definition is the term "potential to emit." "Potential to emit" is based on the source's capability to emit hazardous air pollutants with consideration to Federally enforceable limitations. Such limitations include restrictions on capacity, restrictions on the types of materials used, emission limitations, and other types of restrictions. A definition of "potential to emit" is contained in the proposed 40 CFR part 63 subpart A General Provisions.

3. 63.40(c)—Exclusion for Steam Generating Units. Paragraph 63.40(c) of the proposed rule clarifies that electric utility steam generating units are not yet subject to the requirements of section 112(g).

Section 112(n)(1) requires the EPA to perform a study of the hazards to public health associated with HAP emissions from electric utility steam generating units. This paragraph states that:

> The Administrator shall regulate electric utility steam generating units *under this section*, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this paragraph. (emphasis added)

The EPA reads the phrase "under this section" as a broad exemption from regulation under section 112, including section 112(g), pending the results of the utility health hazards study. The EPA requests public comment on this reading.

4. 63.40(d)—Relationship to State and Local Requirements. Most State and local regulatory agencies maintain regulatory programs that involve toxic air pollutant reviews for constructed and modified sources. Paragraph 63.40(d) clarifies that the requirements of section 112(g) do not supersede any requirements of these programs that are more stringent than the proposed rule.

5. 63.40(e)—Relationship to Other Standards. The proposed rule contains an exemption for sources emitting less than that which is regulated by promulgated standards in other subparts of 40 CFR part 63. Without this exemption, permitting authorities would be required to conduct a case-by-case MACT determination in cases where: (1) The emission rate exceeds a *de minimis* level as defined in the proposed rule for purposes of section 112(g) of the Act, but (2) the emitting equipment is below an applicability cutoff in a promulgated MACT standard. Such standards may describe an equipment size or capacity, or a stack concentration below which the requirements may be inapplicable. The EPA believes that emissions below such a cutoff are consistent with "MACT" because a MACT evaluation was made in establishing the cutoff.

An example should serve to clarify this exemption. First, for equipment leaks for synthetic organic chemical manufacturing, the EPA has proposed regulation of streams in "VHAP service," i.e., where HAP contribute more than 5 percent of the stream. (See description of proposed 40 CFR part 63, subpart H requirements, 57 FR 62617–62719, December 31, 1992.) There may be instances where less than 5 percent of such a stream represents an increase that is greater than a *de minimis* emission rate listed in this proposed rule. If the final chemical plant standard, when promulgated, contains the 5 percent cutoff, the EPA believes that a case-by-case review for pollutants emitted at less than 5 percent was not intended by Congress in writing section 112(g).

The last sentence of paragraph 63.40(e) is intended to make clear that this paragraph is only intended to address situations involving a regulatory cutoff for specifically evaluated emission points. For example, the proposed synthetic organic chemical plant standard does not address boilers or other combustion equipment. If a physical change resulted in a greater than *de minimis* increase from such equipment, then paragraph 63.40(e) should not be interpreted to mean that they are exempted from the proposed rule.

B. Section 63.41—Definitions

1. Terms Defined in the General Provisions. A number of terms used in the defined rule have already been proposed for all of 40 CFR part 63 by the General Provisions contained in subpart A. Readers interested in the definitions and rationale for those terms should refer to recently promulgated subpart A. Relevant terms defined in the General Provisions include:

—Act
—Approved permit program
—Capital expenditure
—Effective date
—Federally enforceable
—Hazardous air pollutant
—Major source
—Permit program
—Potential to emit
—Relevant standard
—Title V Permit

2. Terms Related to Construction and Reconstruction. As noted above in section II of this preamble, the Act imposes more stringent requirements for major source "construction" and major source "reconstruction" than for major source "modification." There is a degree of ambiguity in the statute regarding what must occur in order to "construct" or "reconstruct" a major source. The following terms reflect two alternative readings of the statute and are included in section 63.41:

—Construct A Major Source
—Reconstruct A Major Source
—Green-field Site
—Emission Unit

A detailed discussion of these definitions and the two approaches is included in section II.C of this preamble.

3. Terms Related to MACT. Definitions for the following terms

related to levels of control technology are included in section 63.41 of the proposed rule:

—Available information
—MACT
—Control Technology
—MACT Floor
—MACT Emission Limitation for Existing Sources
—MACT Emission Limitation for New Sources

The basis for the MACT definitions is statutory language contained in section 112(d) of the Act. The term MACT appears only in section 112(g) of the Act, and does not appear elsewhere in section 112. There is, however, considerable legislative history indicating that this term refers to the level of control required by section 112(d) emission standards. This term was used in this context in the House Bill, H. R. 3030. For purposes of the definitions in the proposed rule, the EPA assumes that is a reference to the "maximum degree of reduction in emissions" language contained in section 112(d)(3). The minimum control technology requirements of section 112(d), often referred to as the "MACT floor" are cited a number of times in the proposed rule. To avoid repeating these requirements each time, the regulation includes a definition of "MACT floor." The term "available information" is used to define the extent of review for permitting authorities and applicants for case-by-case MACT determinations.

4. Terms Affecting Extent of Coverage by MACT. The following terms are used to describe equipment subject to a MACT determination:

—Emission point
—MACT-affected emission unit
—List of source categories

An "emission point," as defined in the regulation, is defined narrowly to refer to any individual point of release to the atmosphere. As described below, an individual MACT determination will often be made at once for a number of emission points. The term "MACT-affected emission unit" is used to refer to the collection of all emission points considered when such a MACT determination is made.

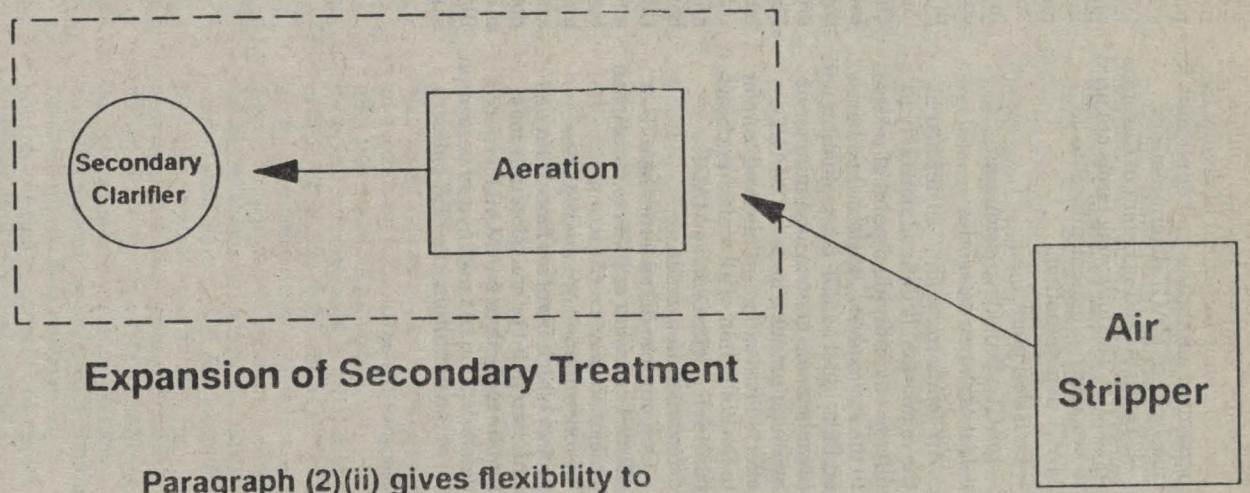
One purpose of the term "MACT-affected emission unit" is to clarify that a major source "construction" "reconstruction" or "modification" project which involves more than one emission point or emission unit may require more than one MACT determination. As outlined in paragraph (3) of the definition, the EPA believes that MACT determinations consistent with section 112(d) of the Act may not include combinations of emission points involving more than one category on a published list of source categories (57 FR 31576). For example, most types of combustion sources appear as individually listed categories. As a result, a "construction" "reconstruction" or "modification" involving boilers and other process equipment must make a separate MACT determination for the boilers.

Another purpose of the term "MACT-affected emission unit" is to provide owners and operators of modified major source with additional flexibility. There are situations, such as that displayed in Figure 4, for which there may be overall technologies that would reduce emissions more effectively than applying MACT to each emission point being changed. Accordingly, paragraph (2)(ii) of the definition gives the owner and operator the discretion to include emission points in the "MACT-affected emission unit" in addition to those that are "affected by the modification." A detailed discussion of "affected by the modification appears below in section III.D of this preamble.

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Figure 4. Example Illustrating Paragraph (2)(ii) in the Definition of "MACT-affected emission unit"



The EPA considered requiring that the "MACT-affected emission unit" include additional emission points in cases where it is contrary to common practice to consider them in isolation from the emission point for which the "modification" has occurred. For example, the addition of a single pump or valve to a production unit may yield a determination to require a leak detection and repair program as the control measure. The EPA believes that it would not be good engineering practice to suggest a leak detection program for that unique pump or valve, or a different leak detection program from that for other equipment within the same production unit. By including all equipment in the production unit as part of the "MACT-affected emission unit," a more reasonable assessment of control alternatives may result. The EPA believes, however, that inclusion of Figure 4. Example Illustrating Paragraph (2)(ii) in the Definition of "MACT-affected emission unit" this provision is probably not needed, because permitting authorities will generally treat such equipment as a single grouping. In addition, this provision may lead to confusion as to which situations would require broader MACT coverage. The EPA requests comment on whether this provision should be included in the final rule.

5. *De minimis*. The definition of *de minimis* is discussed below in section III.E. of this preamble.

6. Electric Utility Steam Generating Unit. The definition of electric utility steam generating unit in the proposed rule is taken directly from section 112(a) of the Act.

7. Source Reduction Project. As discussed below (see discussion related to § 63.47 of the proposed rule), the proposed rule provides for source reduction projects to be considered in identifying emission offsets. The definition of "source reduction project" is intended to be consistent with the Pollution Prevention Act, Public Law 101–503.

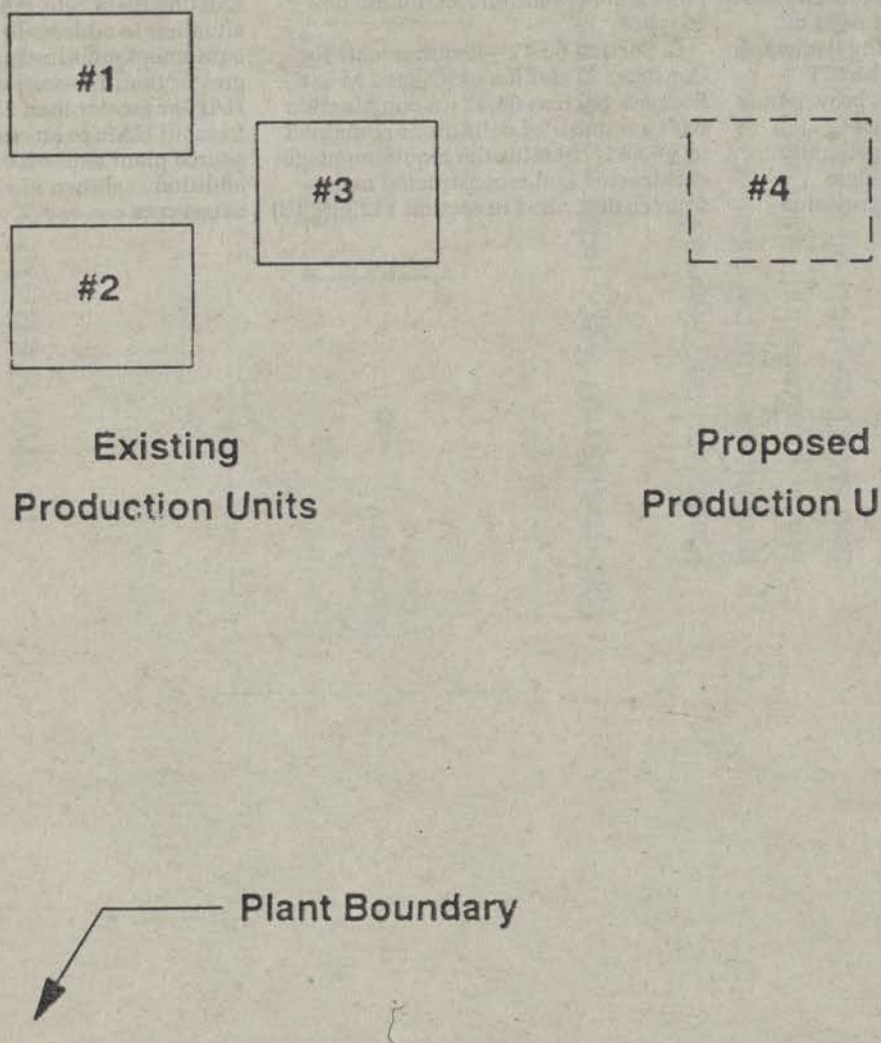
C. Section 63.42—Requirements for Constructed and Reconstructed Major Sources. Section 63.42 (in combination with a number of definitions contained in § 63.41) contains the requirements for constructed and reconstructed major sources described in section 112(g)(2)(B) of the Act. Equipment affected by this section must comply with a "new source MACT" level of control. The EPA requests comment on its interpretation of the statutory language pertaining to constructed and reconstructed major sources.

1. "Green-field" Facilities. The most straightforward case for section 112(g) is for a new plant site emitting (or having the potential to emit) more than major amounts of HAP (that is, 10 tons/yr individually, 25 tons/yr collectively, or amounts that exceed any lesser quantity cutoffs that may be established under subpart C of part 63). The EPA believes that the statute clearly requires such a new plant site to be treated as a "constructed major source" subject to a "new source MACT" level of control.

2. Addition of Equipment at an Existing Plant Site. Another important situation to address is the addition of equipment emitting major amounts, i.e., greater than 10 tons per year of one HAP, or greater than 25 tons per year from all HAP, to an existing major source plant site. An example of such an addition is shown in Figure 5.

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Figure 5. Example Plant



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The EPA believes that there are two possible readings of the Act with respect to this situation, and that both readings are consistent with the definition of "major source" in section 112(a) of the Act. Under the first reading, the addition of equipment at an existing plant site would constitute "construction of a major source" because the addition would entail the construction of "a stationary source or group of stationary sources" emitting major amounts (that is, 10 tons/yr individually, 25 tons/yr collectively, or amounts that exceed any lesser quantity cutoffs that may be established under subpart C of part 63). This equipment addition would be subject to a "new source MACT" level of control which is likely to be more stringent than the "existing source MACT" level of control for "modifications." Also, there would be no opportunity to provide for emission offsets in lieu of a control technology demonstration.

Under the second reading, the entire plant site would be treated as a "stationary source or group of stationary sources" and any such addition would be treated as a major source "modification." If treated as a possible "modification," then the Act provides the opportunity to seek such offsets and, if such offsets are provided, then the new equipment could be operated without controls, or with controls that are less stringent than MACT, until an applicable standard is promulgated under section 112(d). If offsets were not provided, the equipment would be controlled with existing source MACT.

The EPA believes that there are advantages and disadvantages of both readings.

The "construction" reading ensures that major-emitting equipment additions (that is, those emitting more than 10 tons/year of a HAP, or 25 tons per year from all HAP, or amounts exceeding a lesser quantity cutoff), which generally would represent sizeable investments, would be built with state-of-the art control technology. It is generally recognized that it is more straightforward to build such a level of control technology into the original design, and that it is difficult or impossible to retrofit such controls at a later date. A fundamental goal of programs such as the new source performance standards (NSPS) program under section 111 of the Act and the effluent guidelines program under the Clean Water Act is to achieve long-term reductions in emissions by requiring "best" controls as old production operations are replaced with new operations. However, the "construction" definition precludes offsetting—which in some cases might result in a greater reduction in overall hazard by focusing controls on pollutants of greater regulatory concern and by reducing the total quantities of pollutants.

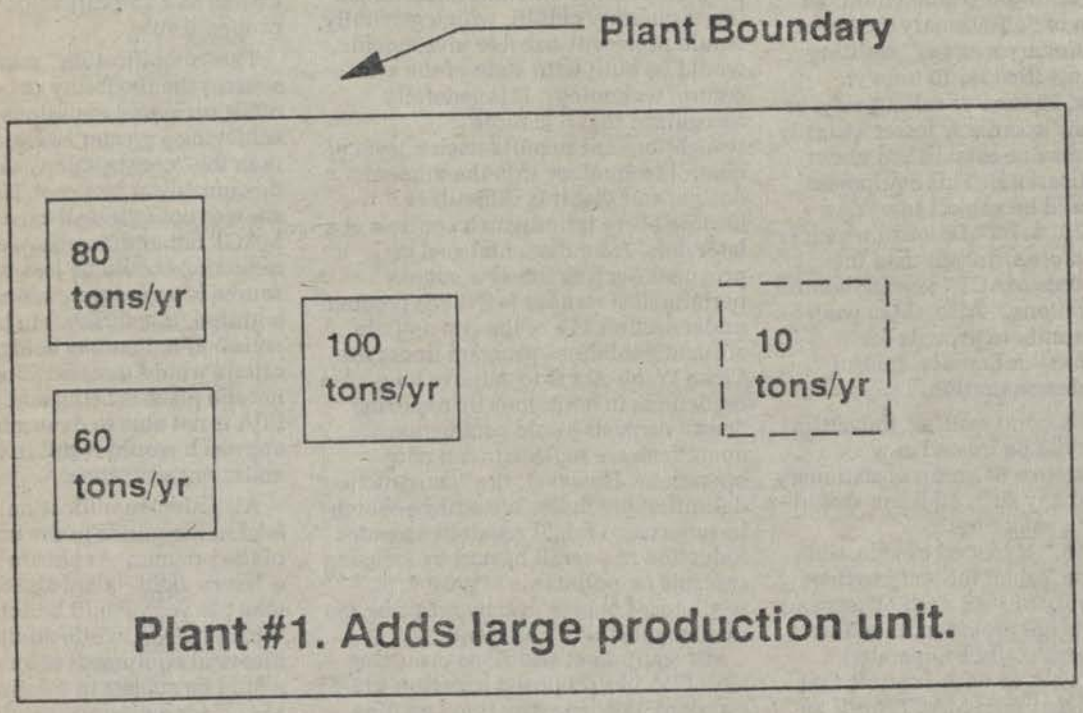
For equipment additions occurring after EPA has proposed a section 112(d) standard, the "construction" reading would provide greater consistency if the equipment addition meets the definition of "new source" in that section 112(d) standard. If the equipment is a "new source" in the proposed standard, any such "new source" constructed after the proposal date of the standard is required to install "new source MACT" upon promulgation of the standard. Inconsistencies would result if the same equipment, if major-emitting, was treated as a "modification" in today's proposed rule.

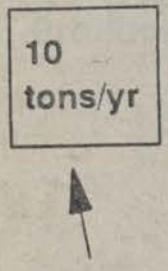
The "modification" reading provides sources the flexibility to completely offset increased emissions—thereby achieving a greater emission reduction than the "construction" definition, presumably at less cost. However, where sources opt to install existing source MACT rather than offset, emission reductions could be less than if the source installed new source MACT. In addition, it is difficult to judge whether emission reductions being used as offsets would have occurred whether or not the plant is being modified. The EPA is not able to determine which approach would result in lower net emissions over time.

Also, the "modification" reading may lead to inequities in the implementation of the program. As shown in Figure 6, a "green-field" plant site emitting 10 tons per year would be subject to a new source MACT, while addition of identical equipment at an existing plant would be subject to existing source MACT (or emissions would have to be offset).

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Figure 6. Equity Issue





Plant #2. Small new greenfield plant.

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The "modification" reading would appear to be the most consistent with the approach taken by the EPA in the prevention of significant deterioration (PSD) and non-attainment new source review (NSR) programs for criteria air pollutants. The PSD program includes a "netting" provision which takes into account plant-wide emission increases and decreases in evaluating whether a "modification" has occurred. The NSR program also takes plant-wide emission reductions into account in determining applicability of the program to equipment additions. The ability to consider plant-wide emission reductions was upheld in a 1985 Supreme Court decision [Chevron USA, Inc. v. Natural Resources Defense Counsel, 467 U.S. 837 (1984)]. One difference between the PSD and NSR programs and the section 112(g) program in the proposed rule is that most equipment additions which avoid "best" or "lowest achievable" controls under these programs must still meet a "best demonstrated" level of control if NSPS standards have been established. For section 112(g), however, an equipment addition could avoid controlling HAP emissions entirely until a MACT standard is established. Additionally, the PSD and NSR programs are focused on preserving or attaining national ambient air quality standards. The EPA requests comment on whether the lack of such ambient criteria for HAP would suggest a greater technology focus under section 112(g).

The EPA requests public comment on these two interpretations. For the proposed rule, both interpretations are presented as separate "alternatives."

Under Alternative A, addition of a major-emitting "emission unit" is included within the definition of "construct a major source." The definition of emission unit is the same as that used for regulations proposed pursuant to section 112(j) of the Act. The definition is intended to provide permitting authorities with considerable flexibility in determining the "entity" which would be treated as "construction." The EPA requests comment on whether more prescriptive language for this term would be desirable.

Under Alternative B, the only activity that is included within the definition of "construct a major source" is the addition of major-emitting equipment at a green-field site. By implication, any such activity at a site which is not a green-field site is regulated under the modifications provisions of § 63.43 of the proposed rule. The term "green-field site" generally refers to equipment constructed in a previously undeveloped area. There are, however, situations where a virtually undeveloped area or small commercial or industrial equipment could exist at a site for which a major source is to be constructed. Accordingly, the proposed definition of "green-field site" includes as "green-field" a site for which the total emissions of any given HAP are less than *de minimis*. The EPA requests comment on other possible definitions of this term.

The EPA also requests comments on other possible approaches to the definition of "construct a major source." One approach suggested to the EPA would include any equipment addition at a major source emitting more than *de minimis* quantities within the definition of "construct a major source." The EPA believes that this reading is inconsistent with the statute. In addition, in structuring standards under section 112(d), it is unlikely that the EPA will promulgate standards that would treat all equipment additions as "new." The EPA requests public comment on whether such an interpretation is appropriate.

3. Reconstruction. Section 112(g) continues the concept of "reconstruction" contained in past regulatory programs. The concept of reconstruction is intended to prevent the circumvention of "new source" requirements by completely overhauling existing equipment. Current air pollutant emission standards under previous requirements of the Act treat replacement of components as a reconstruction if the replacement represents more than 50 percent of an entirely new facility.

For section 112(g), the requirements apply to the reconstruction of a "major source," and the proposed rule defines "reconstruct a major source" as the replacement of components at a major source such that the replacement exceeds 50 percent of the capital cost of an entirely new major source. Two alternative definitions of "reconstruct a major source" are included in § 63.41 of the proposed rule; these two definitions are intended to coincide with the two alternative definitions of "construct a major source" discussed previously.

Under Alternative A, "reconstruct a major source" is based upon an emission unit. If an emission unit emits major amounts, then the replacement of components at that unit would be considered a "reconstruction" if the cost of the replacement exceeds 50 percent of the cost of an entirely new unit. In this case, new source MACT would be required for the emission unit.

Under Alternative B, "reconstruct a major source" is based upon all equipment within the entire contiguous plant site. The definition includes only those situations where the replacement of components would exceed 50 percent of the cost of the entire plant site. Under Alternative B, the probability that a reconstruction would occur is substantially decreased. If, however, a reconstruction did occur under this definition, it would require the entire plant to install new source MACT.

The EPA requests public comment on the definition of "reconstruct a major source" in the proposed rule.

4. Control Technology Review Requirements For Constructed and Reconstructed Major Sources. Section 63.42 reflects the statutory requirement that an owner or operator who proposes to "construct or reconstruct" a major source must obtain a determination from "the permitting authority" that a new source MACT emissions limitation will be met. The "permitting authority" is defined as the agency responsible for the title V permit program. Further discussion on this issue, and on other issues related to implementation of section 112(g), is contained in section V of this preamble.

The requirements and procedures for obtaining the MACT determinations are contained in § 63.45 of the proposed rule (see discussion below).

D. Section 63.43—Requirements for Modified Major Sources

Section 63.43 of the proposed rule is intended to clarify the requirements in sections 112(a) and 112(g) of the Act related to major source modifications.

Section 112(a) of the Act defines the term "modification" as:

> any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a *de minimis* amount or which results in the emissions of any hazardous air pollutant not previously emitted by more than a *de minimis* amount.

Section 112(g)(2)(A) of the Act states that:

> After the effective date of a permit program under title V in any State, no person may modify a major source of hazardous air pollutants in such State, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for existing sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

There are a number of questions raised by this statutory language for which interpretations are needed. In particular, three questions are addressed by § 63.43 of the proposed rule:

(a) How much of a major source must be controlled to a MACT level when a modification occurs?

(b) What is a physical change or change in the method of operation?

(c) How should actual emission increases be calculated?

The EPA requests public comment on the various statutory interpretations contained in this section. One important overall interpretation is that the process for a modification under section 112(g) of the Act should follow a similar two-step process as contained in previous modifications requirements under the NSPS and PSD programs.

1. General Requirements for Modifications (Paragraph 63.43(a). Paragraph 63.43(a) outlines the overall statutory requirements for major source modifications. An owner or operator who wishes to modify a major source is required by this paragraph to obtain a determination from the permitting authority that "the MACT emission limitation for existing sources" will be met. The "permitting authority" is defined in the proposed rule as the agency implementing title V of the Act (see further discussion in section V.A of this preamble).

Paragraph 63.43(a) requires that the MACT determinations be made consistent with § 63.45 of the proposed rule (see discussion below). A determination is required for "all emission points affected by the modification" according to paragraph 63.43(b). The phrase *all emission points* is used intentionally rather than *each* emission point in order to provide the flexibility to evaluate control technologies over the entire modification. In some cases, a MACT determination made for a combination of emission points may yield a more cost-effective strategy than controlling each emission point individually.

Paragraph 63.43(a) also refers to two important exceptions. First, certain activities, listed in paragraph 63.43(c), are excluded from consideration as "physical changes" or "changes in the method of operation." Second, paragraph 63.43(e) gives the owner and operator the option to provide an offset demonstration.

2. Paragraph 63.43(b). "Modification" and "Emission Points Affected by the Modification." Section 112(g)(2)(A) of the Act requires that "the MACT emission limitation for existing sources will be met," but it does not specify *which* emitting equipment at the major sources is subject to the MACT determination when a modification occurs. For the proposed rule the term "emission points affected by the modification" is used as an approach to clarifying this ambiguous phrase.

Paragraph 63.43(b) in the proposed rule clarifies how the terms "modification" and "emission points affected by the modification" are used in the proposed rule.

Paragraph 63.43(b)(1) identifies three different situations which could be a "modification:"

—An emission increase from a single emission point that is greater than *de minimis*,

—Construction of any emission point at a major source that emits greater than *de minimis* amounts, but not enough to be considered "construction" in accordance with § 63.42 of the proposed rule, and

—Emission increases from multiple emission points where the sum of the emission increases exceeds *de minimis* amounts for a given modification project. (The intent of this latter provision is to ensure that modification projects are considered as a whole in evaluating whether the increase is greater than *de minimis*. This provision is not intended to require owner or operators to keep a running tally of all emission increases and decreases.)

Paragraph 63.43(b)(2) further clarifies how an "emission increase" is to be determined for purposes of identifying a "modification." An "emission increase" occurs if a "physical change in or change in the method of operation of" the major source leads to an actual emission increase as calculated in accordance with paragraph (e) (see discussion below).

Paragraph 63.43(b)(3) identifies as "emission points affected by the modification" those emission points that increase in emissions, as determined by paragraph 63.43(b)(2), and that "contribute" to a greater than *de minimis* increase in emissions. The word "contribute" means that emission points are included in cases where that emission point in any of itself does not increase emissions by more than a *de minimis* amount, but the modification as a whole does. The EPA considered an option which would identify as affected only those emission points that "significantly" contribute to a greater than *de minimis* increase. In some cases, the total emissions resulting from a project may exceed *de minimis* amounts for a given HAP, but some emission points may have very small emission increases of that HAP. For such cases, the inclusion of the term "significant" could serve to exempt such equipment from review. The EPA is concerned, however, that it is difficult to define "significant" in a way that would be reasonable and consistently applied. The EPA believes that the inclusion of such sources in other programs, such as BACT reviews in the PSD program, has not led to the imposition of unreasonable controls. The EPA requests comment on whether the term "significant" should be included in this paragraph, and, if so, how it should be defined.

The EPA considered alternative approaches to MACT coverage that may also be consistent with the Act. One approach would apply MACT plant-wide when a change to the plant constitutes a modification. This approach would interpret the language to mean that a modification of a major source requires MACT for the entire major source. While this approach would maximize emission reductions, the EPA believes that it would greatly complicate the review process. Many plants have hundreds of emission points that release HAP to the atmosphere. The EPA does not believe that Congress intended for a case-by-case review of all emission points any time one emission point was modified, or any time an emission point was added to the plant. This would greatly increase the review time, would increase the burden on State and local agencies to analyze the available control technologies for existing equipment. Also, there would be an increase in the costs associated with an equipment modification. The EPA does not believe that these results were intended.

Another approach considered would be to subdivide a given major source plant site into distinct major-emitting emission units. Such an approach would treat each subdivision as a separate "major source" in and of itself and would apply MACT to all emission points within the "major source" being modified. Under this approach, MACT would not apply to the entire plant, but could incorporate additional emission points. The EPA believes that such an approach would be very complex to administer in that it would be difficult to define the appropriate "major source" subdivisions. The EPA requests comments on whether such an approach is consistent with the intent of the statute.

3. Paragraph 63.43(c) Activities Excluded from the Definition of Physical Change or Change in the Method of Operation. (Step 1 of the 2-Step Process to Identify Modifications). In paragraph 63.43(b), the term "physical change or change in the method of operation" is used frequently. For both the PSD program (40 CFR 52.21), the NSPS program (40 CFR part

60), the program for National Emission Standards for Hazardous Air Pollutants (NESHAP) prior the 1990 amendments to the Act (40 CFR part 61), and the criteria pollutant nonattainment area new source review (NSR) program, there are a number of activities that are *not* considered to be a physical change or change in the method of operation. For the PSD program (see 40 CFR part 52.21), the following activities are excluded:

(a) Routine maintenance, repair and replacement;

(b) Use of an alternative fuel or raw material by reason of an order under section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule under section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which:

(1) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any Federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166; or

(2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any Federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166.

Under the NSPS/NESHAP program (see 40 CFR part 60.15 and 61.15), the following activities are specifically excluded from the definition of a modification:

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

(b) An increase in production rate of an existing facility if that increase can be accomplished without a capital expenditure on that facility;

(c) An increase in the hours of operation;

(d) Use of an alternative fuel or raw material if prior to the date of * * * [a particular NSPS or NESHAP], the existing facility was designed to accommodate that alternative use. A facility shall be considered to be designed to accommodate an alternative fuel or raw material if that use could be accomplished under the facility's construction specifications as amended prior to the change. Conversion to coal required for energy considerations, as specified in section 111(a)(8) of the Act, shall not be considered a modification.

(e) 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 Congress intended the EPA to base the exclusions for HAP modifications under section 112(g) on these existing criteria. According to Senator Lautenberg (136 Cong. Rec. S 17124–5 (October 26, 1990).):

> With the exception of the allowance for a *de minimis* increase in emissions, the definition is identical to the definition of modifications in section 111 of existing law. Under this provision, the EPA has issued regulations specifying certain kinds of activities which would not constitute a modification. *Clearly it is intended that such kinds of activities would also be excluded from triggering the modification definition under the new section 112.* (emphasis added)

The proposed rule incorporates a very similar list of exclusions in paragraph 63.43(c). Regarding increases in production rate, the proposed rule uses the "capital expenditure" language in part 60. The definition of a "capital expenditure" is given in the proposed Subpart A "General Provisions" to 40 CFR part 63. A standard procedure for the determination of "capital expenditure," using methods in an Internal Revenue Service (IRS) publication, is provided in this definition. Similar to the PSD program, increases in the hours of operation are not considered a physical change under the proposed rule unless they are prohibited by an existing Federally enforceable requirement. The proposed rule uses the effective date of the title V permit program as the date by which an alternative fuel or raw material must have been accommodated.

The EPA requests comment on use of these exclusions in the proposed rule. In particular, the EPA requests comment on whether a raw material substitution involving a substitution of one raw material with another raw material of greater hazard should be automatically excluded from consideration as a modification. The proposed rule considers substitution with a "more hazardous" raw material to constitute a possible "modification" unless the use of the substitute raw material was already allowed by a permit. The proposed rule includes a definition of "operations that the major source is designed to accommodate" which allows for materials accommodated by an existing permit to be used without triggering section 112(g) requirements. In addition, this definition allows for operational changes to be made in cases where they are clearly within the permit. For example, some batch chemical reaction trains are allowed by permits to produce a number of different chemicals. In switching from production of one chemical to another, it may be necessary to make a number of pre-approved equipment changes. The EPA requests comment on whether such equipment changes, if approved in a permit, issued prior to the effective date of the section 112(g) rule, should constitute "operations that the major source is designed to accommodate" and should not trigger a "modifications" review pursuant to section 112(g).

The EPA also seeks comment on whether such operational changes, contained in permits issued prior to the effective date of the section 112(g) rule, should be incorporated into a title V permit without triggering section 112(g) review.

The EPA also seeks comment on whether such operational changes, contained in permits issued prior to the effective date of the section 112(g) rule, should be incorporated into a title V permit without triggering section 112(g) review.

In addition, § 63.45(c)(3) of the proposed rule provides that a source may seek approval of case-by-case MACT determination for new alternate operating scenarios (that were not incorporated in a State permit) when obtaining it's title V permit. As a result, the source would then be free to activate any such alternative operating scenario without having to undergo further section 112(g) review. The EPA requests comment on whether the approach contained in proposed § 63.45(c)(3) is an appropriate approach to application of section 112(g) requirements to alternate operating scenarios.

4. Calculation of Actual Emissions Increase. (Step 2 of the Process to Identify a Modification). Once a physical or operational change has been identified for a given emission point or set of emission points, the next step is to determine whether there has been an increase in "actual emissions," and to calculate the amount of the increase. If such an "actual emission increase" is more than a *de minimis* level (per § 63.44 of the proposed rule, see discussion below), then the change constitutes a "modification."

Any method for calculating an increase must provide for a "before" case, often referred to as the "baseline," and an "after" case representing the emission after the change.

When the physical change involves addition of a new emission point, the baseline is zero emissions and it is only

necessary to define anticipated future emissions. For the proposed rule, the "after" case is considered to be the potential to emit. "Potential to emit" is defined in subpart A. Physical and operational limitations can be considered if the limitations are Federally enforceable.

When the physical or operational change involves an emission increase from already existing equipment, emissions before and after the change must be compared.

In developing an approach to this case for the proposed rule, the EPA reviewed two approaches to emission increase calculations which have been used in past air pollution programs for criteria air pollutants. The first approach is the approach used in the new source performance standard (NSPS) program to determine whether "any emission increase" has occurred due to a physical change or change in the method of operation. The second approach is the "actual emission increase" approach used in the PSD program.

The approach used for the NSPS program (and the NESHAP program in 40 CFR part 61, before the 1990 Act amendments) is more straightforward than that used for the PSD program. For these regulations, a "modification" occurs if the physical change leads to "any increase" in emissions. In making this determination, they must follow the approach outlined in 40 CFR 60.14(b). This approach considers "any increase" to occur if the source, operating at its production capacity, will release more emissions (on a pound per hour basis) to the atmosphere. If the emission factor (that is, the amount of emissions per unit of production) increases, or the equipment is otherwise inherently more emitting (for example, due to a capital expenditure increasing the size or capacity of equipment), an increase is considered to have occurred and the equipment is subject to the NSPS. In some cases, source tests before and after the change are used to demonstrate whether an emission increase has occurred.

This approach is fairly straightforward to implement and relies on immediately available data rather than past records. In addition, Senator Lautenberg's belief that the definition of actual emissions is "identical to that in section 111" may suggest that Congressional intent was for the NSPS approach to identifying modifications.

The EPA believes that calculations based upon the NSPS method could serve as a reasonable surrogate for an "actual emissions" calculation. In an ideal sense, a true "actual emissions" calculation would require perfect knowledge of the level of emissions that actually occurred in the past, and perfect knowledge of the emissions that would actually occur in the future if the change were to take place. In practice, past emissions are difficult to document (and for HAP, perhaps impossible if appropriate data have not been collected), and future emissions cannot be predicted with certainty. In this context, the EPA believes that a policy decision can be made to consider the NSPS test as a possible method for actual emissions calculations. Although this approach does not attempt to gather "actual" data on past emission rates, the EPA believes that it can be a reasonable surrogate for describing the "actual" difference between future and past emissions.

The term "actual emissions increase" has been used in the PSD program. For PSD, the term "baseline" is used to describe emissions before a physical or operational change. The "baseline" for actual emissions for an emission unit as of a particular date is defined as the average rate, in tons per year, at which the unit actually emitted the pollutant during a 2-year period which precedes the particular date and is representative of normal source operation. A different time period is allowed if the permitting authority deems that it is more representative of normal source operation. Under this approach, emissions after the operational change are the potential to emit, in tons per year. This approach requires that records be supplied of the actual rates of operation during the baseline period.

The EPA is concerned that the PSD approach may be administratively complex. For the PSD program, this approach to applicability has proven very complex for criteria pollutants such as volatile organic compounds (VOC). Protracted discussions are often required to establish the appropriate time period for the actual "before" case emissions and to approve documentation for the actual rates of production and operation. This approach would be more complex for HAP for which VOC totals would need to be speciated into individual HAP subtotals. It may be very difficult or impossible in many cases to provide for adequate documentation of these HAP subtotals.

The EPA also notes that there is an ongoing project aimed at reforming the PSD program. A number of options are being considered. If the PSD program is revised to accommodate one of these approaches, that approach may be applicable to section 112(g) implementation. The PSD reform project is proceeding in parallel with the effort to develop this proposed rule. The EPA requests comment on whether any suggested applicability approach in the proposed rulemaking for a restructured PSD program should be selected as the approach to implementation of section 112(g) of the Act. The EPA requests comment on whether any of these approaches should be included in the final rule.

The proposed rule contains, as paragraph 63.43(d), an approach to "actual emissions" that closely resembles the NSPS approach. The EPA believes that this approach will yield a more consistently implemented program that ensures a technology review when a physical change causes increased emissions during the operation of the equipment being changed. The approach differs slightly from the NSPS approach for pollutants for which the *de minimis* value listed in § 63.45 of the proposed rule is expressed as a tons per year value. For such pollutants, paragraph 63.43(d) includes a two-step process. The first step is to determine the pounds per hour increase, as would be done for the NSPS test. The second step is to convert the pounds per hour value to a tons per year value based upon the future hours of operation of the equipment. For this conversion, it is assumed that the equipment will operate 8760 hours per year unless constrained by a Federally enforceable limitation.

5. Paragraph 63.43(e)—Offsets. If a physical change leads to actual emission increases by more than a *de minimis* amount, that increase is *not* a "modification", if, according to section 112(g)(1)(A) of the Act:

> such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous

Paragraph 63.43(e) of the proposed rule incorporates this offset provision. This paragraph allows the owner or operator to submit a showing (consistent with § 63.46 and § 63.47, see discussion below) to demonstrate the acceptability of the offset. The process for determining whether offsets are "deemed more hazardous" is contained in § 63.48 of the proposed rule (see discussion in section IV of this preamble).

Paragraph 63.43(e) identifies some general restrictions on the offsets that are used. (Additional restrictions are contained in §§ 63.46 and 63.47 of the proposed rule.) First, a decrease in actual emissions cannot credit any amount of actual emissions that exceeds

allowable emissions under a Federally enforceable requirement. Second, the decrease must be Federally enforceable before operation of the physical change being offset. There are a number of mechanisms for Federal enforceability including: (1) A Notice of Offset approval under § 63.46 or § 63.47, a requirement of a State program approved under section 112(l) of the Act, (2) a permit condition contained in a permit issued pursuant to 40 CFR part 70 or 40 CFR part 71, (3) a Federally enforceable requirement of a PSD or NSR permit, (4) a requirement of a Federally approved State Implementation Plan, or (5) a Federally enforceable court order. Third, the owner or operator may not credit any emission decreases used under the "early reductions" program to obtain the compliance extensions granted by section 112(i)(5) of the Act. Any amount exceeding the 90 (or 95) percent reduction required by the early reduction program is, however, creditable. The EPA considered adding a further restriction on: (1) Emission reductions of volatile organic compounds (VOC) that were necessary to achieve progress towards attainment of the ozone standard, and (2) reductions of VOC and other pollutants previously credited under the PSD or NSR programs. The proposed rule would in some cases allow such emission reductions to be creditable as offsets. The EPA requests comment on this issue.

6. Paragraph 63.43(f). Increases and Decreases of the Same Pollutant. There is some ambiguity in the Act regarding cases where a modification leading to an increase in a given pollutant will be accompanied by a decrease in the same pollutant elsewhere in the plant. Paragraph 63.43(f) is intended to clarify EPA's position on this issue. For such cases, the proposed rule requires that the emission decreases be documented using the procedures of § 63.46 or 63.47 of the proposed rule. If the net emission increase is less than *de minimis*, then a modification has not occurred.

The EPA considered an alternative that would require that emission decreases in such cases to completely offset the increase such that an overall decrease would occur. The EPA believes that the requirements of proposed § 63.43(f) reflect the most natural reading of the statute. The EPA requests comment on this issue.

E. Section 63.44. De Minimis Levels

As mentioned previously, an emission increase must exceed *de minimis* levels in order to constitute a "modification" under section 112(g) of the Act. The proposed rule includes, as § 63.44, a table displaying *de minimis* emission rates for each of the HAP.

1. *De Minimis.* General Principles. The statute gives little specific direction on how to establish *de minimis* quantities. In establishing *de minimis* values, the EPA believes there are general principles that have been established. A good discussion of these principles is included in the April 20, 1979 *Alabama Power* decision. (*Alabama Power* v. *Costle*, 656 F. 2nd 323 (1979). Generally, *de minimis* authority gives regulatory agencies such as the EPA the ability to provide exemptions when "the burdens of regulation yield a gain of trivial or no value." Further, "the *de minimis* exemption must be designed with the specific administrative burdens and specific regulatory context in mind." The overall intent of such exemptions is to prevent relatively trivial items from needlessly draining administrative resources.

In keeping with these general principles, the EPA believes the main test in establishing *de minimis* values is to define the emission level for HAP for which regulation under section 112(g) would "yield a gain of trivial or no value."

It appears that some limited consideration can be given to administrative resource implications resulting from a selected *de minimis* emission level. For example, if a selected *de minimis* cutoff yielded very small benefits, but would increase the number of applications, reviews, and enforcement resources by an unreasonable degree, and a slightly higher cutoff would not create as unreasonable a burden, the EPA believes that this could be taken into consideration.

The EPA recognizes, however, that its authority to provide *de minimis* exemptions is strictly limited. Again citing *Alabama Power*,

> That implied authority * * * [for *de minimis*] * * * is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs.

The EPA believes that the interpretation of *de minimis* detailed herein correctly balances the requirement to meet regulatory objectives, while alleviating the burdens of regulation which would yield a trivial value *in this specific regulatory context.*

2. *De Minimis* Concepts in Section 112 of the Act. The EPA believes that Congress has provided guidance in what is considered to be a "trivial" level of a hazardous air pollutant. In section 112(c)(9) of the Act, the EPA may delete a source category from possible regulation under section 112 if no source in the source category would result in: (1) Emission of a carcinogen that could cause a lifetime risk of cancer of one in one million to the individual in the populations who is most exposed, and (2) emission of a non-carcinogen that would exceed air quality levels that would exceed a level adequate to protect public health with an "ample margin of safety" and would not result in adverse environmental impacts. The concepts behind section 112(f) of the Act appear similar for "residual risk" emission standards to address risks remaining after application of technology-based standards. The EPA believes that it is reasonable to use the one-per-million cancer risk and ample margin of safety criteria for establishing *de minimis* levels under section 112(g). The EPA has traditionally believed that exposures that cause a risk above one in one million are considered important.

3. Basis for *de minimis* Values Listed in § 63.44 of the Proposed Rule. The table in § 63.44 of the proposed rule lists the *de minimis* values for the 189 HAP listed in section 112(b) of the Act. Readers interested in documentation for each *de minimis* value can refer to a technical support document, Background Document. Documentation of De Minimis Emission Rates for Proposed 40 CFR part 63, subpart B. (EPA–453/R–93–035) The following discussion is intended to provide an overview of the methods used to develop these values.

The section 112(b) list includes 172 pollutants that are listed as individual chemicals, and 17 pollutants that are listed as chemical groups. Where appropriate, the 17 chemical groups were subdivided into sub-groupings or individual compounds within the group. The table indicates, for each chemical or chemical group, a *de minimis* emission rate and the basis for each *de minimis* rate.

The EPA considered expressing the *de minimis* values as ambient concentrations, rather than emission rates. This would require either the applicant or the permitting authority to perform a dispersion calculation for each proposed release to determine whether a *de minimis* concentration would be exceeded. The EPA believes that this would greatly increase the complexity and thus the resources need to implement the program. Although the EPA believes that States wishing to include this dispersion review as part of an overall section 112(g) program should be given the flexibility to do so

(see discussion below), the EPA believes that most States would prefer *de minimis* values to be expressed as emission rates, rather than concentrations.

It is important to note that the *de minimis* values listed in § 63.44 were developed specifically for the section 112(g) program, and that the values were developed in part based upon the interim nature of the time period for which case-by-case MACT determinations are required. Such case-by-case MACT determinations are required under section 112(g) prior to emission standards promulgated pursuant to section 112(d). The EPA does not consider these values to be necessarily indicative of the emission rate which may be considered *de minimis* for other programs or decisions, for which the decisions would be more long-term in nature. In particular, these values should not be considered as precedent-setting for other section 112 issues such as the residual risk standard-setting process under section 112(f) or the risk criterion established for delisting categories pursuant to section 112(c) of the Act.

(a) Values for "nonthreshold" HAP which have evidence of carcinogenicity. For "nonthreshold" HAP which have evidence of carcinogenicity (see discussion in section IV.C.3 of this preamble for the rationale for identifying such pollutants), the following descriptors are used in the "Basis" column in the table:

—UR
—UR-CAP
—DEF=1

The "UR" descriptor indicates that the *de minimis* value was calculated based upon a risk-specific dose for the pollutant. The risk-specific dose is the exposure level associated with a given lifetime cancer risk, in this case, a risk management decision of 10^{-6} lifetime risk. The risk-specific dose is derived from the unit risk, an upper-bound estimate of the excess cancer risk over background associated with a continuous lifetime exposure to the pollutant. Readers should be aware that there are many uncertainties in the derivation of unit risk.

De minimis emission rates were calculated in four steps. First, based upon the unit risk value, the EPA calculated the concentration in the ambient air that would yield a lifetime cancer risk of one-per-million. Using benzene as the example, lifetime continuous exposure to 1 microgram per cubic meter of benzene is associated with a risk as high as 8.3 in one million, and a lifetime risk of one-per million is equivalent to 0.12 micrograms per cubic meter (one divided by 8.3).

The second step in the calculation was to adjust the risk-specific dose to account for the expected maximum exposure duration for a major source subject to a case-by-case MACT determination under section 112(g) of the Act. The EPA selected a 7-year exposure period as the duration of exposure, rather than the more frequently used 70-year lifetime exposure. The 7-year period was selected because emission increases avoiding modification requirements under a section 112(g) *de minimis* exemption would be still subject to maximum achievable control technology requirements within roughly 7 years under sections 112(j) or 112(d). The EPA is required to promulgate MACT standards in accordance with a schedule in section 112(e) of the Act by November 15, 2000. Such standards would require compliance for existing sources by no later than the year 2003. Even if the EPA does not meet every deadline in its schedule for promulgation of section 112(d) emission standards, States are required to develop equivalent emission standards within 18 months after the EPA fails to meet a deadline. As a result, the longest time for which standards would not be developed is 18 months after November 15, 2000, i.e., May 2002. Because the section 112(g) program will start up in most States in early 1995, (as soon as operating permit programs commence) about 7 years (2002 minus 1995), is a reasonable, conservative estimate of the time that would elapse before imposition of technology requirements for emission increases avoiding "modification" requirements.

Adjusting for this 7-year exposure period, using benzene as the example, a lifetime risk of one-per-million (0.12 micrograms per cubic meter over 70 years) is equivalent to the risk associated with exposure to 1.2 micrograms per cubic meter over 7 years. The EPA requests comment on this adjustment. Other exposure adjustments were considered, including: (1) No exposure adjustment, and (2) adjustment by a factor less than 70/7. The EPA requests comment on whether these or other alternatives better identify emission increases which can be considered *de minimis* for this program.

As a third step, in order to express the *de minimis* values as emission rates, rather than ambient concentration, the EPA developed a "model plant." This model plant represents a standard set of conditions for the nature of the release and the exposure. The following model plant was used:

—stack height: 10 meters
—stack diameter: 1 meter
—distance to nearest exposed individual: 200 meters
—stack temperature: ambient
—exit velocity: 0.1 m/sec
—worst-case down-wash is assumed

The EPA proposes these conditions as a reasonable set of conditions for purposes of setting *de minimis* values under section 112(g) of the Act.

For this model plant, the EPA performed calculations using 314 sets of meteorological data. (A complete description of these calculations is contained in the docket for the proposed rule.) The results of these calculations indicated, on average, that for each microgram per cubic meter of a pollutant added to the atmosphere at the assumed fence-line of 200 meters, there would be 2 tons of emissions. This ratio, 2 tons/yr per 1.0 $\mu g/m^3$, annual average, was used as the relationship between emission rate and ambient concentration.

As a fourth step, the EPA used the risk-specific dose at a one-per-million risk, identified in Step 2 above, in tandem with the relationship between emission rate and concentration developed in Step 3, to calculate a *de minimis* emission rate. For example, for benzene, Step 2 indicated an exposure associated with one-per-million risk of 1.2 $\mu g/m^3$ over the 7-year exposure period. In order to reach this exposure level, the model plant would need to emit 1.2×2, or 2.4 tons/year of benzene. For purposes of the proposed rule (i.e., the table in § 63.44), each of the values is rounded to one significant figure; for benzene, 2.4 tons/year is rounded to 2 tons/year. The EPA believes that one significant figure is appropriate, given the uncertainties in the unit risk values and exposure assumptions on which the values are based.

The EPA requests comment on the methodology for *de minimis* values, including the appropriateness of the assumptions used to develop the model plant. It is recognized that there are other model plant assumptions that would result in less dispersion, and that the selected model plant does not represent an absolute worst-case. For example, less dispersion could be experienced for: (1) Releases for which weather conditions represent the worst-case of the 314 stations, rather than the median of the 314 stations, (2) releases at ground level, rather than the assumed height of 10 meters, (3) releases immediately adjacent to residences, which could occur at distances less than the assumed 200 meters. The results of the dispersion calculations (which are

listed in Appendix A of the technical background document) indicated that the highest concentration experienced at the 314 stations was 15.6 μg/m³, while the lowest concentration was 2.2 μg/m³. The median value, 5.0 μ/m³, therefore, could underpredict by a factor of approximately 3, or could overpredict by a factor of approximately 2. The EPA also explored the sensitivity of the results to stack height and distance to nearest receptor. The following table illustrates this sensitivity analysis. (Stack release parameters not shown in the table are identical to those listed above.) The results indicate that, for a given 10 tons/year release, the resulting concentration could be significantly higher than, or significantly lower, than that resulting from the selected model plant.

Stack height (meters)	Distance to nearest residence (meters)	Median concentration (μg/m³)
1	200	16
3	100	34
3	500	3.4
10	100	6.7
10	200	*5.0
10	500	2.8
15	200	2.5
50	200	0.15
100	200	0.026

*These conditions are the model plant used for the proposed rule.

The EPA is considering an approach for which two tables would be required to set *de minimis* values: (1) The table in § 63.44, and (2) a second table which would include an adjustment factor for site-specific conditions. For example, the adjustment factor would lead to lower *de minimis* values for sources with a 1 meter stack height and 50 meter distance to the receptor, but higher *de minimis* values for a source with a 25 meter stack and 1000 meter distance to the receptor. This approach would not require the applicant or the permitting authority to perform site-specific dispersion calculations. Rather, the table would specify adjustment factors that would apply to given ranges of conditions. (For example, there could be an adjustment factor applicable to stack heights from 1 to 3 meters, in combination with distances 100 meters or less to the receptor). This approach would have the advantages of taking site-specific variables into account (the EPA also requests comment on whether other variables, such as flow rate and temperature could be included). The EPA has two concerns with this approach. First, the approach would add administrative complexity to the process, in that documentation and enforcement of stack height, distance, etc., would be required. Second, the EPA requests comment on the policy advantages and disadvantages of an approach that would yield different levels of control for similar equipment.

The "UR–CAP" description in the table indicates that the unit risk approach yielded an emissions rate greater than 10 tons per year. Emissions of 10 tons per year or more of such pollutants from the model facility would yield risk levels below the *de minimis* bench mark. The proposed rule "caps" *de minimis* emission rates at 10 tons per year because the EPA believes that it would be difficult to assume that Congress intended, simultaneously, for an emission rate to be considered both "major" for identifying major sources and smaller than "trivial" for emission increases. However, the EPA is concerned that capping *de minimis* rates at 10 tons per year could bring sources into the program with modifications that pose a trivial threat to human health. The EPA seeks comments on this approach, on the feasibility of promulgating *de minimis* emission rates above 10 tons per year, and on the desirability of capping *de minimis* rates at a level less than 10 tons per year.

The "DEF=1" descriptor indicates that the pollutant was assigned a default value of 1 ton/yr. This default value was assigned for pollutants identified as possible, probable or known human carcinogens, but for which no unit risk value was available. The choice of 1 ton/yr is a policy decision based upon a review of the pollutants with potency values. The EPA does not believe that these pollutants should be assigned the 10 tons/year cap; if potency values were available, and were consistent with the other such pollutants, the value would likely be less than 10 tons per year. The EPA requests comment on this default value.

(b) Values for noncancer effects. For the remaining pollutants on the section 112(b) list that have not been evaluated for carcinogenicity or which have been assigned a weight of evidence classification of D or E, the EPA believes that *de minimis* values should be established that would be consistent with concentration benchmark that represent an "ample margin of safety."

The descriptor "RfC" in the table indicates that the *de minimis* emission rate was calculated based upon the EPA's inhalation reference concentrations (RfC's). The RfC is defined as an estimate (with an uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a long-term period of exposure. For the proposed rule, the EPA assumes that the RfCs themselves represent an ample margin of safety level for noncancer effects from long-term exposures. The methodology for developing RfCs is discussed in Interim Methods for Development of Inhalation Reference Concentrations, EPA/600/8–90–066A. For the relatively few chemicals for which RfCs have been established, the EPA used a similar method to that described above for carcinogens, with the exception that there was no adjustment for the exposure period. No adjustment is made here because the RfC is designed to protect against chronic exposures, which is interpreted as less than lifetime (i.e., 7 years in this case).

There are a number of pollutants that have not been associated with cancer, and for which RfCs have not been developed. For these pollutants, default *de minimis* emission rates are derived from composite score values. The descriptor "CS" indicates when this approach was used. The composite score is a chronic toxicity ranking system developed for establishing reportable quantities (RQs) under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The basis for these composite scores is described in greater detail in section III of this preamble. For the CERCLA section 102 program, RQs are established for chronic noncancer effects as follows:

CS value	RQ (pounds)
1–5	5000
6–20	1000
21–40	100
41–80	10
81–100	1

The EPA believes that for section 112(g) purposes, pollutants with a relatively low CS value, (less than or equal to 20) can be assigned a *de minimis* emission rate at the 10 tons per year maximum. For pollutants with greater CS values, the EPA believes that *de minimis* emission rates less than the 10 tons per year "cap" should be established. For the proposed rule, the EPA has assigned *de minimis* emission rates that mirror the magnitude of the difference in the RQ values. That is, pollutants with CS scores between 21 and 40 are assigned *de minimis* emission rates which are a factor of 10 less than those for which the CS score is between 6 and 20. Pollutants with CS scores greater than 40 are assigned *de minimis* emission rates that

are a factor of 10 less than those for which the CS score is between 21 and 40. (Note that none of the threshold HAP for section 112(g) have a CS value greater than 80.) The EPA believes that the assignment of the *de minimis* emission rates in this manner for these ranges of CS values represents a reasonable default approach in absence of a more rigorous method. The EPA requests comment on this issue and on other approaches that could be used. The default assumptions are as follows:

Range of composite score	De minimis emission rate
CS = 1 to 20	10 tons/yr.
CS = 21 to 40	1 ton/yr.
CS = 41 and greater .	0.1 ton/yr.

The descriptor "DEF=5" indicates the method used for pollutants with neither composite score, reference concentration, weight of evidence indicating carcinogenicity, or identified as acutely toxic (see section C below). For such pollutants, a default value of 5 tons/year was used. This value is greater than the 1 ton/year value for the pollutants which may be carcinogens. The EPA believes that this is reasonable considering the values for the other pollutants. The EPA requests comment on the selection of this 5 tons/year default value.

(c) *de minimis* values for short-term exposures. As discussed below in section IV.C. of this preamble, several pollutants on the HAP list produce health effects from short-term exposures. Examples of these pollutants include arsine, phosgene, and methyl isocyanate. These pollutants are addressed as follows.

First, a policy decision was made to assign a default annual *de minimis* emission rate of 0.1 tons per year. In this way, these pollutants are assigned a *de minimis* emission rate that is equal to the default value assigned for the pollutants of highest concern for chronic noncancer health effects.

Second, for a number of these pollutants, the EPA considered establishing and listing in the table short-term *de minimis* emission rates, expressed in pounds/hour. The EPA believes that such short-term values would be a better indicator of *de minimis* for pollutants which the primary concern is health effects resulting from short-term exposures. At this time, however, the EPA is not proposing these pounds/hour *de minimis* levels for three reasons. First, the EPA has not established consistent procedures for establishing RfCs for short-term exposures. Ideally, *de minimis* values for acutely toxic pollutants should be based on such short-term RfCs. However, there is currently only one short-term RfC which has been developed by the EPA (a value of 0.3 ppm for developmental toxicity by exposures of 30 minutes or less to ethylene oxide). Second, the EPA feels that additional information is needed on whether the inclusion of such short-term values would add significantly to the overall scope of the section 112(g) program. Finally, the EPA has some concern with the potential difficulty of collecting or reporting data on short-term emission rates from affected facilities.

The EPA is considering an interim method to establish short-term *de minimis* values based upon Levels of Concern (LOC). The LOC have been established for chemicals on the Superfund Amendments and Reauthorization Act (SARA) title III section 302 list of "extremely hazardous substances." The LOC indicate levels of airborne concentrations of chemicals for which no serious irreversible health effects occur following a short-term exposure (30 minutes). The LOC are by definition one-tenth of "Immediately Dangerous to Life and Health" levels (IDLH) produced by National Institute for Occupational Safety and Health (NIOSH).

The EPA believes that LOC have some possible merit for use in setting short-term *de minimis* values. The LOC are the only values, of which the EPA is aware, which have an extensive data-base and are designed to protect from serious effects of short-term or acute exposures. The LOCs are intended to protect the general population, including sensitive individuals.

There are, however, several disadvantages for using LOC to set *de minimis* levels; that is, in establishing a level below which public health is protected with an ample margin of safety for non-carcinogenic effects. Most of the LOC values are based upon animal lethality data. Benchmarks derived from such data may not protect against all health effects in humans. In addition, the safety factor of 10 which is applied to IDLH to protect sensitive individuals of the population and for protection against serious health effects may not be adequate. There are questions concerning the scientific peer review of the rationale for each LOC and supporting data. Finally, it is not known what the maximum duration of exposure at the LOC would be for protection against adverse effects.

Despite these serious disadvantages, LOC may be appropriate on an interim basis for setting short-term *de minimis* levels for acutely toxic pollutants in the absence of a better methodology and data. The EPA requests comment on the methodology and short-term *de minimis* emission rates described below and seeks suggestions concerning other methods and supporting data to use in determining such concentrations. In addition, the EPA requests comment on the number of major sources of HAP whose modifications would cause such *de minimis* emission rates to be exceeded.

The methodology the EPA is considering is as follows. First, for each pollutant of concern for acute exposures, a short-term *de minimis* concentration for each pollutant would be derived by dividing its LOC by a safety factor of 1000. This factor of 1000 is a crude estimate of the factor needed to convert the LOC, which is based upon mortality or very severe effects, into a level that would ensure that no adverse human health effects would be observed. Second, a "reasonable worst case" model plant is developed to describe the relationship between the *de minimis* concentration and a *de minimis* emission rate. For the examples described below, the same model plant was used as that described above for setting *de minimis* levels for long-term exposures:

Stack height is 10 meters;
Exit gas velocity is negligible;
Stack diameter is 1 meter;
Exit gas temperature is equal to the ambient temperature;
Worst-case down-wash is assumed;
The nearest exposed individual is at a distance of 200 meters.

For this model plant, the "Tier 1 screening approach" described in A Tiered Modeling Approach for Assessing the Risks Due to Hazardous Air Pollutants, EPA–450/4–92–01, is used to describe the relationship between the *de minimis* concentration and a pound/hour *de minimis* emission rate. Use of this approach results in a ratio of maximum off-site short-term concentration to emission rate of 314 (micrograms/m^3)/(lb/hr) or 0.314 (milligrams/m^3)/(lb/hr). This factor indicates that the prototypical facility which emits 1 pound of pollutant in an hour will have a maximum short-term concentration off-site which will equal to 0.314 milligrams/m^3.

The short-term concentration predictions made using the Tier 1 method are interpreted as 1-hour average concentrations, i.e., they account for the dilution due to the general meander of a dispersed plume over the course of a 1-hour period. Since the *de minimis* concentration values

relate to "peak" or very short-term exposure levels (maybe on the order of a few seconds), the EPA believes it would be desirable to derive peak concentration values from the 1-hour predictions. Data taken by the EPA indicate that the concentration levels during any few second time interval within the 1-hour period will not vary more than a factor of two. Therefore, for purposes of the examples described below, a "peak-to-mean" ratio of two was used, that is, the peak concentration is assumed to be twice that of the 1-hour average.

Using the value, [(0.314 milligrams/m^3)/(lb/hr)], coupled with the peak-to-mean ratio of two, the *de minimis* emission rate, E_{dm}, from the *de minimis* concentration level, C_{dm}, for each acutely toxic pollutant would be calculated as follows:

$$E_{dm}=[C_{dm}/(2)]/0.314$$

The following lists a number of examples illustrating the LOCs and the short-term *de minimis* emission rates that would result based upon this method. (Note: the value for ethylene oxide is derived from a short-term RfC of 0.3 parts per million, rather than an adjusted LOC). The EPA requests comment on whether the final rule should incorporate these values, and on other possible alternative methods that could be used to derive short-term *de minimis* emission rates.

(d) *de minimis* values for pollutants having multiple health concerns. Some HAP may produce a spectrum of health effects including both cancer and effects other than cancer, including acute health effects. The *de minimis* value for these pollutants was the lowest value calculated for the cancer and chronic noncancer health effects using the procedures described in paragraphs (a) and (b). A short-term pounds/hour *de minimis* emission rate, if developed, would, for some pollutants, appear in addition to the annual emission rate.

4. Proposed *de minimis* considerations for pollutants of concern under EPA's section 112(m) Great Waters program. The descriptor "GWP" in the table of *de minimis* values indicates that a value of 0.01 tons per year was a "Great Waters Pollutant" for which a special *de minimis* value was assigned as a policy decision. The EPA requests comment on this selected value and on several alternatives that were considered.

CAS #	Pollutant	LOC (mg/m^3)	Short-term *de minimis* value (lbs/hr)
107028	Acrolein	1.15	0.00183
7783702	Antimony pentafluoride	2.70	0.00430
1303282	Arsenic pentoxide	8.00	0.0127
1377533	Arsenic oxide	1.40	0.00223
7784421	Arsine	1.90	0.00302
94077	Benzotrichloride	0.700	0.00111
100447	Benzyl chloride	5.18	0.00824
57578	beta-Propiolactone	1.50	0.00239
1366190	Cadmium oxide	4.00	0.00637
7782505	Chlorine	7.25	0.0115
79118	Chloroacetic acid	1.80	0.00286
107302	Chloromethyl methyl ether	1.82	0.00290
10025737	Chromic Chloride	0.0500	0.0000795
10210681	Cobalt carbonyl	0.270	0.000430
77781	Dimethyl sulfate	5.00	0.00800
534521	4,6-Dinitro-0-cresol and salts	0.500	0.000800
151564	Ethyleneimine	4.00	0.00636
75218	Ethylene oxide[1]	0.3ppm	.....
62207765	Fluomine	3.00	0.00477
77474	Hexachlorocyclopentadiene	0.0195	0.0000310
7664393	Hydrogen fluoride	1.64	0.00261
7783075	Hydrogen selenide	0.660	0.00105
12108133	Methylcyclopentadienylmanganese	0.600	0.000955
60344	Methyl hydrazine	0.940	0.00150
624839	Methyl isocyanate	4.70	0.00748
13463393	Nickel carbonyl	0.350	0.000557
56382	Parathion	2.00	0.00318
75445	Phosgene	0.800	0.00127
7723140	Phosphorous	3.00	0.00477
151508	Potassium cyanide	5.00	0.00796
143339	Sodium cyanide	5.00	0.00796
13410010	Sodium selenate	1.60	0.00255
10102188	Sodium selenite	2.30	0.00366
78002	Tetraethyllead	4.00	0.00637
75741	Tetramethyllead	4.00	0.00637
7550450	Titanium tetrachloride	1.00	0.00159
584849	Toluene diisocyanate	7.00	0.0111

[1] This is not a LOC but a short-term RFC for a 30-minute exposure and is in ppm rather than mg/m^3. The value in mg/m^3 is 0.54.

The EPA believes that *de minimis* values under section 112(g) can take into account a hazardous air pollutant's potential for causing non-air quality health and environmental impacts. For example, deposited pollutants which are persistent and bioaccumulate are of special concern to the living resources in the ecosystem into which they are deposited. The EPA is required by section 112(m) of the Act to investigate the potential for adverse impacts of

atmospheric deposition to the Great Lakes, Chesapeake Bay, Lake Champlain and Coastal Waters (collectively referred to as the "Great Waters." Interim results of these investigations indicate the following 13 HAP appear to be of the greatest concern: lead and lead compounds, polycyclic organic matter (POM), hexachlorobenzene, mercury, polychlorinated Biphenyls (PCBs), chlorinated dioxins, chlorinated furans, toxaphene, chlordane, DDE, D(lchloro)D(lphebyl)T(Richloroethane) (DDT), lindane, a-hexachlorcyclo-hexane, and cadmium. Ref: Swain et al., Exposure and Effects of Airborne Contamination for the Great Waters Program Report. December 22, 1992.

For these pollutants, the EPA does not believe that methods are currently available to quantify the relationship between emission rates and exposures for these pollutants. Accordingly, the EPA does not believe that a quantitative method for developing *de minimis* values yet exists. However, since these reports identify these specific pollutants as posing a potentially serious environmental risk, the EPA believes that it is appropriate to place greater emphasis by assigning relatively low *de minimis* values to these pollutants.

For the proposed rule, a "cap" of 0.01 tons per year was used. This value represents 10 percent of the lowest value assigned based upon chronic toxicity (i.e., 10 percent of the value assigned to pollutants with a composite score greater than 40). If the value based upon other considerations (described above) yielded a value greater than 0.01 tons per year, the 0.01 tons per cap was assigned. For example, for mercury compounds, the health-based and default criteria yielded values of 0.1, 0.6, and 5 tons per year, depending on the specific compound involved. For each of these mercury compounds, the proposed rule lowers the value by assigning the 0.01 tons per year "cap." On the other hand, the value for dioxin was already well below 0.01 tons per year, so the 0.01 tons per year "cap" was not the limiting consideration.

Other policy approaches were considered. One approach would be to select an alternative "cap" such as 0.1 tons per year. Another possible approach might be to lower the *de minimis* values to one-tenth that of the default or health-based values. The EPA requests comment on whether special consideration is needed to account for atmospheric deposition to water bodies, and on other alternatives that could be considered.

For POM, the EPA requests comment on the appropriate method for determining whether POM emissions exceed a *de minimis* amount. POM is a general term referring to a complex mixture of thousands of polycyclic aromatic compounds, including many diverse classes of hydrocarbons (e.g., polycyclic aromatic hydrocarbons or PAH), substituted aromatic hydrocarbons/e.g., nitrated PAH), and heterocyclic aromatic compounds (e.g., aza-arenes). Combustion sources using any of a variety of fuels are a major source of POM and routinely emit a large number of different POM compounds with the level and composition of POM emissions generally dependent on the extent of incomplete combustion. Important combustion sources of POM include diesel and gasoline engines, heaters, burners, and incinerators. Other sources include coke ovens, petroleum refineries, primary aluminum smelters, carbon black production, asphalt roofing manufacturing, hot asphalt processing plants, wood charcoal production, secondary lead smelting and ferroalloy production.

Because there is no widely accepted method for measuring or assessing risks from all POM emissions, the EPA is soliciting comment on a preferred approach for determining POM emissions for the purposes of today's proposed rule. Various approaches have been used in past studies wherein a single POM, such as benzo-a-pyrene (B(a)P), or the sum of representative or particularly toxic PAH species, have been used as surrogates for POM. [ref: Cancer Risk from Outdoor Exposure to Air Toxics, Volume II, EPA–450/1–90–004b; Roussel, et al., Atmospheric Polycylic Aromatic Hydrocarbons at a Point Source of Emissions, J. Air Waste Manag. Assoc. 42:1609–1613; Assessing Multiple Pollutant Multiple Source Cancer Risks from Urban Toxics, EPA–450/2–89–010.] Alternatively, the EPA's Office of Research and Development has been developing an approach using the extractable organic matter (EOM) content of particulate matter as an appropriate measure of complex POM mixtures. The EOM is believed to contain the PAH and substituted-PAH compounds that predict cancer risk better than any individual PAH or any sum of PAH species. [Lewtas, Environmental Health Perspective, 100: 211–218 (1993)]

All of these methods for estimating POM emissions in the context of this proposal contain some inherent advantages and disadvantages. Using B(a)P alone is not thought to represent adequately either the total mass of POM emissions or the related cancer risks. However, a reasonable data base exists for determining B(a)P emission from a wide variety of sources. Using a "sum-of-individual PAH species" approach, while perhaps better than using B(a)P alone, may still not represent adequately the cancer-related risks from some sources that emit significant levels of substituted-PAH compounds. However, a reasonably extensive, data base exists for speciated PAH emissions. Unfortunately, there is little consistency as to what particular PAH compounds have traditionally been measured (L&E for POM]) and moreover, the widely varying toxicities of various PAH compounds further complicates the determination of a single POM *de minimis* level based on the sum of PAH species. Regarding the use of EOM as a measure of POM, the EPA is evolving a data base of EOM emissions from a variety of sources and has evaluated the toxicity of a number of EOM mixtures (Lewtas). It may be possible to list differing toxicity-weighted *de minimis* emission rates for EOM for a number of combustion and industrial categories of sources. This approach may be the most consistent with evolving the EPA health evaluations of POM mixtures. This approach, however, would require applicants to calculate an expected EOM emission rate which would be compared to the *de minimis* value(s). Because test data for EOM may not be as widely available as for B(a)P, it may be more difficult for some applicants to make these calculations.

The EPA requests comment on this issue not only in terms of the section 112(g) program, but also in terms of the appropriate treatment of POM in other section 112 programs such as the urban area source effort under section 112(k) and the specific pollutant program under section 112(c)(6).

5. State Option for Case-by-Case Dispersion Calculations. The definition of *de minimis* in section 63.41 of the proposed rule allows a State the option of establishing *de minimis* values on a case-by-case basis. Such case-by-case values, established according to subparagraph (2) of the definition of *de minimis* in § 63.41 of the proposed rule, would supersede any *de minimis* values contained in the table in § 63.44 of the proposed rule. States wishing to use the option are required to obtain approval from the EPA at the time EPA reviews a submittal from the State for delegation of authority under section 112(l) of the Act for implementation of the section 112(g) program.

The EPA has developed draft guidelines for use in this delegation review process. These draft guidelines are contained in the docket to the proposed rule. The guidelines contain procedures for identifying air quality

benchmark concentrations and procedures for dispersion calculations for use in identifying case-by-case *de minimis* values. In no case would EPA approve a benchmark (e.g., risk-specific doses associated with one-per-million, RfCs) less stringent than the EPA's. State programs that use benchmarks at least as stringent as those contained in the guidelines would be approved.

Further, any case-by-case *de minimis* values developed pursuant to a delegated program may not exceed 10 tons per year. As stated previously, the EPA believes that a "cap" of 10 tons per year is suggested by the major source cutoff in section 112(a) of the Act.

6. Other Alternatives Considered. Other alternatives for setting *de minimis* values were considered. One suggested alternative would presume that the 10 tons per year major source cutoff is adequate for purposes of establishing *de minimis* values. The EPA believes that many pollutants on the list would present a substantial health concern at values considerably less than 10 tons per year (depending on exposure scenarios), and that use of the 10 tons per year criterion would not adequately provide for a level that could be considered "trivial."

A second alternative would calculate *de minimis* emission rates for each pollutant based upon a selected fraction of the major source cutoff. For example, under this approach the EPA might establish 1 percent or 10 percent of the 10 tons/yr major source cutoff as a *de minimis* value. The EPA favors the approach in the proposed rule, because it explicitly takes into account differences in toxicity.

The EPA also requests comment on whether the *de minimis* values listed in § 63.44 should be rounded to one significant figure, as is the case in the proposed rule, or "binned" into order-of-magnitude groupings (for example, assign values of 0.01, 0.1, 1, 10, etc.).

The EPA also requests comment on whether pollutants should be considered as less than *de minimis* if they are present in less than a specified concentration in a product or mixture. For example, for reporting to the toxic release inventory (TRI) required under section 313 of the Emergency Planning and Community Right to Know Act (EPCRA), chemicals do not need to be reported if they are present at concentrations less than 1 percent (0.1 percent for carcinogens). The proposed rule does not provide for such an exemption. The EPA is concerned that pollutants present as small percentages of the total emissions could be of substantial concern in evaluating whether a modification should be required to install emission controls. For example, pollutants such as dioxin and hexavalent chromium are hazardous at such small concentrations that emission increases present at quantities well below 0.1 percent in a stream may be of concern. In addition, the EPA believes that the 10 tons per year *de minimis* values for many commonly-used HAP will ensure that in most cases there will not be an unreasonable analytical burden on solvent mixtures. For such mixtures, in most cases the EPA believes that 10 tons per year will not involve undetectable quantities of the HAP. The EPA has, however, not collected data to confirm this judgment and comment is requested.

7. Pollutant Mixtures. For the proposed rule, pollutants are evaluated individually with respect to the *de minimis* values in § 63.44. For pollutant mixtures, the emission increase for each pollutant in the stream is compared individually to the *de minimis* value for that pollutant. There may be situations for which no one pollutant exceeds the *de minimis* rate, but several pollutants are approaching the *de minimis* rate. The EPA requests comment on an alternative that would create a *de minimis* "index" for which the contributions toward *de minimis* are treated as additive. The EPA believes that this alternative would increase the complexity of the program and would probably not greatly affect the scope of the program.

8. Updates to *De Minimis* Table. The EPA intends to provide periodic updates to the *de minimis* table contained in § 63.44. Such updates will be appropriate when the health data used as the basis for the tables are revised, or if new health studies become available for pollutants with "default" values in the table.

9. *De Minimis* Values for Radionuclides. One of the 189 listed HAP, for which *de minimis* values must be established, is "radionuclides." This grouping comprises a large number of different radionuclides. For today's proposed rule, the EPA relies on previous efforts to evaluate cancer risks from radionuclide exposures. The definition of *de minimis* for radionuclides is listed as paragraph 3 of the definition.

For radionuclides, the EPA believes that an effective dose equivalent of 0.3 millirem per year for a 7 year exposure period would result in a cancer risk consistent with the one-per-million criterion used for other nonthreshold pollutants on the HAP list. Accordingly, this 0.3 millirem level serves as the basis for a *de minimis* evaluation. Techniques for evaluating the level of radionuclide emissions that would result in a 0.3 millirem dose are contained in subpart B and I, and Appendix E of 40 CFR part 61. These techniques are available for a large number of individual radionuclides, including those that would be expected to be emitted by major sources of HAP subject to section 112(g) of the Act. The EPA requests comment on the proposed *de minimis* definition for radionuclides, including comment on the types of emitting sources that may exceed such *de minimis* values.

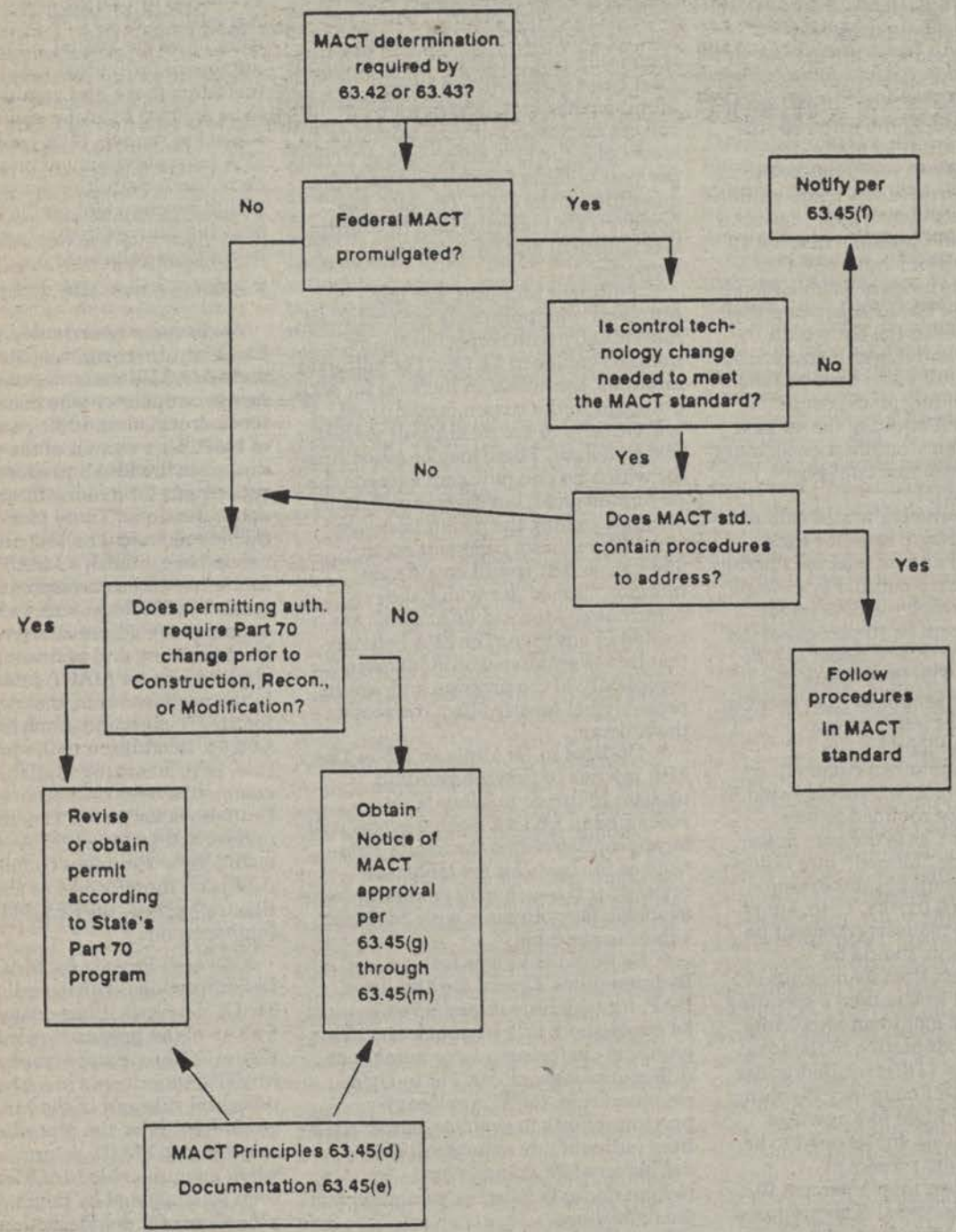
F. Section 63.45. MACT Determinations

As discussed previously, §§ 63.42 and 63.43 require permitting authorities to make MACT determinations for an owner or operator who constructs, reconstructs, or modifies a major source of HAP. This section of the preamble discusses the EPA's proposed procedures for making these MACT determinations. These procedures include technical review procedures needed to establish a MACT emission limitation and a corresponding MACT control technology, and, (where appropriate), administrative procedures for submitting and reviewing applications for MACT determinations. In the proposed rule, the overall process for MACT determinations is outlined in § 63.45. In addition to the proposed rule, EPA is making available for public comment a draft document entitled Guidelines for MACT Determinations under Section 112(g) (EPA–450/3–92–007b). This document contains more details on the procedures and examples illustrating how they could be implemented.

1. Overall Process for MACT Determinations. The overall process for MACT determinations contained in § 63.45 of the proposed rule is shown in Figure 7. The primary emphasis, for the MACT requirements in § 63.45 of the proposed rule and in the MACT guidelines, is on the procedures for case-by-case MACT determinations when no applicable MACT standard has been promulgated by the EPA. The procedures for determinations after MACT standards have been promulgated are more straightforward.

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Figure 7. Structure of Proposed Section 63.45



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When a MACT standard has been promulgated for a given category, section 112(g) does not require a case-by-case determination of a MACT emission limitation. Rather, section 112(g) requires that "the Administrator (or the State) determine" that a MACT emission limitation will be met. For existing equipment being modified, there may be some such modifications for which no change in control technology will be required to meet the MACT emission limitation, even though the emissions may increase above section 112(g) *de minimis* levels. For such modifications, the EPA believes that a notification to the permitting authority prior to operation should suffice for purposes of the "determination." For the proposed rule, such a notification is required before operation of the modified equipment. The EPA requests comment on whether this notification should be required prior to startup, for example, 30 or 60 days before startup. Requirements for what such a notification should contain are included as § 63.45(f) of the proposed rule.

In other cases where a MACT standard has been promulgated, the MACT standard itself will contain administrative procedures for modifications affecting the level of control. For example, in the proposed standard for synthetic organic chemical plants (57 FR 62608–62808, December 31, 1992), there are administrative procedures dictating the review when "Type 2" equipment (requiring a lesser degree of control) is modified to become "Type 1" equipment (requiring a greater degree of control). Where such administrative provisions exist in the standard, the EPA believes that such provisions would suffice for the "determination" requirements for any such changes that would be considered "modifications" under section 112(g).

Where no MACT standard has been promulgated, section 112(g) requires a case-by-case determination of the MACT emission limitation. The EPA believes that the "determination" could take two broad options: (1) A revision to a Part 70 permit, or (2) a "Notice of MACT Approval." These two options are described in § 63.45(c) of the proposed rule. Under either approach, the process for review would be conceptually similar.

The process begins with a MACT analysis by the owner and operator. This MACT analysis must be consistent with the Guidelines for MACT Determinations, including general principles described in paragraph 63.45(d). The owner or operator provides an application for a MACT determination to the permitting authority. Requirements for the contents of this application are listed in paragraph 63.45(e). (The EPA wishes to clarify that the requirement in § 63.45(e)(2)(vi) to list emission rates is intended as background information to enable the permitting authority to identify the pollutants requiring MACT controls. The EPA recognizes that there is often a significant effort required to obtain precise estimates of HAP emission rates and specifications. The EPA does not intend in this paragraph to require a greater level of detail than is necessary for evaluating applicability and emission control issues). This application for a MACT determination is then reviewed by the permitting authority according to either: (1) The administrative procedures outlined in 40 CFR part 70, where this option is selected, or (2) the administrative procedures described in paragraph 63.45(g). If approvable, the permitting authority would either: (1) Revise the Part 70 permit, or (2) issue a Notice of MACT Approval. In either case, the owner or operator would be required to comply with requirements described in paragraph 63.45(h). Provisions dealing with compliance with the requirements of the Notice of MACT Approval are described in paragraphs 63.45(j), (k), (l) and (m).

Where EPA determines that the MACT determination made by the permitting authority fails to meet any of the requirements of paragraph 63.45, EPA may take one of two actions to address the deficient MACT determination.

(a) Where the MACT determination is made part of a source's part 70 permit, EPA may veto issuance of the permit in accordance with the provisions of 40 CFR 70.8(c). The EPA may also use the veto process outlined in 40 CFR 70.8(c) where the State has "enhanced" its section 112(g) process to incorporate the part 70 procedures.

(b) Where the MACT determination is made through a Notice of MACT Approval before the source obtains or revises its part 70 permit, EPA may exercise the authority authorized under section 113(a)(5) of the Act to prohibit construction or modification, issue an administrative penalty order or bring a civil action against the source upon finding that the State has not acted in compliance with any requirement or prohibition relating to the construction of new sources or the modification of existing sources.

2. Requirement for Preconstruction Determination. Section 63.45 requires the MACT determination before construction, reconstruction or modification of the major source. The requirement is based upon the language in section 112(g)(2) (A) and (B) requiring that the Administrator (or the State) determine that MACT "will be met." The EPA believes that the future tense suggests an up-front determination.

Commentors to the EPA have suggested that the future tense does not suggest a preconstruction review. These comments assert that the phrase "unless" the Administrator (or the State) determines that MACT will be met does not impose the same requirement that would be imposed if the language were to read "until" the Administrator (or the State) determines that MACT will be met. Moreover, these commentors suggest that Congress intended to avoid preconstruction reviews for modifications, and that this is the reason for the language in section 112(g)(3) requiring "reasonable procedures" for assuring that modification requirements are reflected in the major source's operating permit. Although the EPA currently believes that a requirement for preconstruction review reflects the better reading of the Act, the EPA requests comment on the alternative suggested by these commentors.

Specifically, the EPA requests comment on an alternative approach that would incorporate a similar administrative process to the proposed rule, except that the review, and the associated terms and conditions, would have to be completed prior to commencement of operation, rather than construction. Under such an approach, the source owner would be allowed to construct at its own risk pending the outcome of the review. If the permitting authority during its review were to determine that the increase would fail to meet the control technology requirements of this rule, the source would be liable for violating the requirement to apply case-by-case MACT and would not be allowed to operate the equipment until MACT was installed. The risk of violating the MACT requirement would fall entirely on the source making the election to bypass the pre-approval process.

The EPA believes that the risk of such a retrofit would create an incentive for the source to ensure that the selected control technology in fact complies with the requirements of this rule. Moreover, sources may adopt an even greater level of control under this approach in order to ensure that its MACT demonstration complies with the requirements of this rule. Under this circumstance, it is possible that there could be greater emission reductions than would be legally required, as well as the economic

benefits of providing a process that allows source to avoid the delays associated with a pre-construction approval process.

The EPA believes that there are substantial implementation disadvantages for any program that would allow equipment to be constructed before a determination is made. The EPA's past experience in enforcing air quality regulations suggests strongly that it would be very difficult to require substantial changes in the design of equipment once it is in place. The EPA feels that fairness or equity arguments, based on investments already made and the costs of retrofit and shutdown, could be made by a source seeking to begin operation under these circumstances. Under the alternative approach described above, the EPA believes that such arguments are not valid. The EPA requests comment on the practical viability of preventing operation under this approach.

The EPA is sensitive to the concern that the program should not lead to unreasonable delays for small changes to equipment. The EPA believes that the treatment of "physical change" and "actual emissions" in § 63.43, and the provision for *de minimis* values, as well as the opportunity to offset emission increases, should ensure that very small changes in operations, particularly those changes within existing allowable operating scenarios do not require a review. In addition, § 63.45 contains streamlined administrative procedures which should ensure that the preconstruction review is completed quickly. The EPA recognizes that with a requirement for a "preconstruction" review there remains some ambiguity with respect to activities that are prohibited without a review. For some rules, the term "commence" construction is used. This term prohibits an owner from entering into binding contracts prior to the review. Alternatively, the term "begin actual construction" has been used to describe the actual on-site fabrication of equipment. For the proposed rule, language very similar to a "begin actual construction" definition is used. As proposed, the owner and operator must obtain the determination before they are allowed to "fabricate (on-site), erect, or install" regulated emission points. The EPA requests comment on this issue.

3. General Principles for MACT Determinations. Paragraph 63.45(d) reviews a number of general principles that would govern MACT determinations under the proposed rule. When a MACT standard has been promulgated, the control technology selected by the owner or operator must be capable of achieving the emission standards and requirements of the standard. When a MACT standard has not been promulgated, a case-by-case MACT determination is needed.

In general, the purpose of a case-by-case MACT determination is to develop technology-based limitations for HAP emissions that the Administrator (or a permitting agency to whom authority has been delegated) approves as equivalent to the emission limitations that would be required for the source category if promulgated MACT standards were in effect under section 112(d) or section 112(h) of the Act.

When no MACT standard has been promulgated, today's proposed rule requires a case-by-case determination by the permitting authority that the technology selected by the owner or operator is consistent with what would have been required under section 112(d) of the Act.

Section 112(d)(2) of the Act describes the general considerations for a MACT determination. A MACT level of control is "the maximum degree of reduction in emissions of the hazardous air pollutants that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new and existing sources in the category or subcategory * * *" This paragraph of the Act continues to describe a number of items that might be considered in designing MACT standards such as material substitutions, enclosure of processes, capture and control of emissions, design and work practice standards, and operational standards. In the proposed rule, this list of items is included in the definition of "control technology" in § 63.41 of the proposed rule.

Section 112(d) also imposes certain minimum requirements on the determination of "maximum achievable control technology." Collectively, these minimum requirements are defined in the proposed rule as the "MACT floor."

For constructed and reconstructed major sources, the MACT floor for a case-by-case MACT determination, consistent with section 112(d), is the level of control that is achieved in practice by the best controlled similar source. The definition of MACT floor for new source MACT in the proposed rule does not require consideration of sources outside the United States; the EPA requests comment on this issue.

For existing sources, the MACT floor for the case-by-case determination, consistent with section 112(d) of the Act, is an emission limitation equal to the average emission limitation achieved by the best performing 12 percent of existing sources for categories or subcategories with 30 or more sources, or the average emission limitation achieved by the best five sources for categories with fewer than 30 sources. The MACT floor for existing sources also takes into account sources achieving the "lowest achievable emission rate" as defined for the criteria pollutant new source review program under section 171 of the Act. The EPA interprets the "best performing 12 percent" to mean the best performing 12 percent of sources in the United States. The phrase "in the United States" is added to the existing source MACT floor definition in order to clarify that territories and possessions of the United States are included.

In rules currently under development, the EPA is considering two interpretations of the statutory language concerning the MACT floor for existing sources. One interpretation groups the words "average emission limitation achieved by" the best performing 12 percent. This interpretation places the emphasis on "average." It would correspond to first identifying the best performing 12 percent of the existing sources, then determining the average emission limitation achieved by these sources as a group. Another interpretation groups the words "average emission limitation" into a single phrase and asks what "average emission limitation" is "achieved by" all members of the best performing 12 percent. In this case, the "average emission limitation" might be interpreted as the average reduction across the HAP emitted by an emission point over time. Under this interpretation, the EPA would look at the average emission limits achieved by each of the best performing 12 percent of existing sources, and take the lowest. This interpretation would correspond to the level of control achieved by the source at the 88th percentile if all sources were ranked from the most controlled (100th percentile) to the least controlled (1st percentile).

The EPA is proposing to adopt the first interpretation and solicits comment on its interpretation of "the average emission limitation achieved by the best performing 12 percent of existing sources" (section 112(d)(3)(A) of the Act). The draft MACT Guidelines (EPA–450/3–92–007b), reflect the first interpretation. The EPA is also soliciting comment on these two interpretations in a separate **Federal Register** notice, which is a reopening of the comment period for the hazardous organic

national emission standard. Persons wanting to comment on this issue are asked to submit comments to docket A–90–19. However, comments specific to this issue as it relates to section 112(g) should be submitted to the section 112(g) docket.

The EPA recognizes that when information is available to define a MACT floor, the Act clearly requires that the case-by-case MACT determination must take that information into account. The EPA is working to develop data bases and other approaches which could facilitate transfer of information on available technologies and calculations of the MACT floor. In the proposed rule, § 63.45(c)(3) requires that the owner or operator must determine whether a MACT floor exists, based upon the available information. The MACT Guidelines (EPA–450/3–92–007b) contain several methods that could be used to provide the documentation for a MACT floor calculation. The EPA requests comment on the treatment of the MACT floor in the proposed rule.

A key element in the floor finding is to review the "available information." In some instances, such information sources are readily apparent. For example, if a Federal MACT standard has been proposed, but not yet promulgated, the EPA expects that a MACT floor determination will strongly consider that proposal. (Other information may be available in some cases, for example, based upon public comment on the MACT proposal, but such data would need to be adequate to refute the floor finding in the proposal). In other cases, the EPA will have generated background documents summarizing MACT floor findings which should be readily available.

In addition to these background documents, the EPA currently maintains a number of data bases that may be useful as a resource for information on available control technologies or to obtain data to calculate the MACT floor. These data bases include the National Air Toxics Information Clearinghouse (NATICH), the Best Available Control Technology/Lowest Achievable Emission Rate (BACT/LAER) Clearinghouse, and the Aerometric Information Retrieval System (AIRS)/ AIRS Facility Subsystem (AFL). These data systems are included within the definition of "available information" as sources of data to explore in determining whether a MACT floor exists.

The EPA is also designing a data management system to support case-by-case MACT determinations. The data base under development for this purpose is called the MACT data base. The EPA is intending to use AIRS/AFL for States to store and retrieve information in the data base. The EPA is making changes to AIRS/AFL for the MACT Data Base to better meet the needs of States, industry and other interested users in accordance with comments and input received over the last 18 months of its development. The EPA is developing guidance documents on how to use the MACT Data Base and how its correct use assists States in determining MACT on a case-by-case basis.

Under the current design plans, EPA will make information available on source categories currently under study for the development of MACT standards pursuant to section 112(d). States will be asked to submit source category-specific data to the data management system in accordance with a pre-determined schedule for the remaining source categories. This schedule will be coordinated with the Draft Schedule for the Promulgation of Emission Standards, (57 FR 44147). In addition to this data collection effort, EPA intends to require States to report all case-by-case MACT determinations that are made to the MACT Data base. This overall approach avoids repetitive data collection efforts, and provides States, industry and environmental groups access to information on section 112 major sources and pollutants in order to develop case-by-case MACT determinations that are consistent on a nationwide basis. The EPA requests comments on the design and use of this data base for case-by-case MACT determinations. In particular, EPA requests comments from users on whether other existing data bases, such as a modified BACT/LAER Information System (BLIS), might be a better repository for part or all of the information collected.

Several comments received indicated that both States and industry would favor the MACT Data Base as the sole source of available information for making a MACT floor finding, if a proposed standard and background information document are not available. The EPA is requesting comment on whether use of this data base alone would constitute a sufficient effort for making a MACT floor finding. While the EPA agrees that a centralized location for available information for MACT floor determinations is highly desirable, the EPA has some concerns with absolute reliance on such a system as the sole source of MACT floor information. First, it is likely that in some instances there may be readily available industry or EPA-supported studies which may provide useful information with respect to the application of given technologies. In addition, reliance on the data base may suggest the need for a mandatory reporting requirement that States submit source-category-specific information for certain source categories. The EPA requests comment, particularly from those supporting reliance on the MACT data base as the sole source of MACT floor information, on the feasibility and need for such a mandatory reporting requirement on the part of States.

The EPA requests comment on the cutoff date that should be incorporated into the definition of "available information." For the proposed rule, information is considered to be "available" if it is available as of the permitting authority's final determination, i.e., the date the permitting authority makes the final determination after receiving all comments. The EPA requests comment on other alternatives including: (1) The date of a complete application, (2) the date of a preliminary determination, and (3) the deadline for comments from the public and the EPA.

When a MACT floor exists based upon the "available information," the proposed rule requires that the control technology selected by the owner or operator achieve an equal or greater level of control than that MACT floor. The owner or operator should consider, in determining whether to select a control technology achieving a level of control greater than the floor, the cost, non-air quality health and environmental impacts and energy requirements of achieving that level of control. (See section 112(d)(2) of the Act.)

When a MACT floor cannot be determined, the proposed rule requires a maximum degree of reduction in emissions with consideration to the cost, non-air quality health and environmental impacts and energy requirements. The MACT Guidelines discuss procedures for establishing a case-by-case MACT emission limitation under these circumstances. These procedures are conceptually similar to the procedures for establishing BACT requirements under criteria pollutant permitting programs.

4. General Issues with Regard to the MACT Floor Determinations. For both "new source MACT" and "existing source MACT," there are general issues for which the EPA requests public comment. For "new source MACT" the EPA requests comment on the criteria for identifying the "best controlled similar source." For "existing source MACT," the EPA requests comment on

the degree of subcategorization which should be permitted in determining the level of control associated with the best performing 12 percent of sources.

For constructed and reconstructed major sources, section 112(g) of the Act requires an emission limitation consistent with a "new source MACT" level of control. The Act states, "the maximum degree of reduction that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as defined by the Administrator." The Act does not specifically define the term "best controlled similar source." In addition, unlike for existing sources for which the Act states, "the average emission limitation achieved by the best performing 12 percent of the existing sources * * * in the category or subcategory for categories or subcategories with 30 or more sources," the Act does not specifically indicate that the determination of the best controlled similar source should be limited to from within the source category.

For the purposes of section 112(g), EPA is proposing to use two criteria to determine if a source is similar: (1) Whether the two sources have similar emission types, and (2) whether the sources can be controlled with the same type of control technology. The EPA has developed a draft emission classification system to help determine emission types for case-by-case MACT determinations. When comparing emission types under this classification scheme, consideration should be given to the concentration and constituents of a gas stream. The five types within this draft system are: (1) Process vent or stack discharges, (2) equipment leaks, (3) evaporation and breathing losses, (4) transfer losses, and (5) operational losses. The draft guidance document MACT Determinations under Section 112(g) provides more detailed descriptions of each of these emission types. EPA request comments on the usefulness of this classification scheme in distinguishing similar sources.

The EPA believes that because the Act specifically indicates that existing source MACT should be determined from within the source category and does not make this distinction for new source MACT that Congress intends for transfer technologies to be considered when establishing the minimum criteria for new sources. EPA believes that the use of the word "similar" provides support for this interpretation. The EPA believes that Congress could have explicitly restricted the minimum level of control for new sources, but did not. The use of the term "best controlled similar source" rather than "best controlled source within the source category" suggests that the intent is to require a consideration of transfer technologies when appropriate.

The EPA believes that there will be cases when such technology transfers are entirely reasonable. For example, suppose that the best controlled tank within a source category did not have state-of-the-art controls. Yet, tanks from outside the source category storing similar organic liquids use state-of-the-art controls vented to an emission control device. EPA believes that such tanks are clearly "similar" within the language of Section 112(d). The EPA also believes that the Act does not compel such technology transfers in all cases, and that emission types and the ability to install such controls are strong factors in determining when sources should be considered similar. For example, within source category X, spray booths tend to be uncontrolled due to gas streams with low concentrations and relatively high airflows. The EPA does not believe that controls from another category should be considered in determining the best controlled similar source where emissions from spray booths are of high concentration and low airflow. The emissions from these sources are clearly not similar. However, if it is technologically feasible, these same controls could be considered in establishing the new source level of control if consideration is given to cost, non-air quality health and environmental impacts and energy requirements. The EPA requests comment on language that could serve to clarify the meaning of "similar" for cases involving technology transfer from other source categories.

A general problem that must be addressed, in determining the MACT "floor" for existing sources, is the identification of the universe of equipment that must be considered in establishing that floor. The list of source categories established in section 112(c)(1) of the Act (see 57 FR 31579) provides some guidance in this regard. The EPA believes, however that additional guidance may be needed regarding the degree of subcategorization of these categories that might be appropriate for case-by-case evaluations.

When the notice of initial list of categories of sources under section 112(c)(1) of the Act was published (57 FR 31576), the EPA listed broad categories of major and area sources rather than narrowly defined categories. The EPA chose to establish broad source categories at the time the source category list was developed because there was too little information to identify technically distinct groupings within these broad categories. During the standard-setting process, EPA may find it appropriate to further subcategorize to distinguish among classes, types and sizes of sources.

This lack of subcategorization may pose some difficulty to owners and operators, and to reviewing agencies, in establishing a case-by-case emission limitation. The source category list contains categories that will regulate more than one process type. Within these different processes different types of materials may be used or similar emission units may be used for different applications. In both instances, the emission potential of the emission unit may vary. For example, there are several different methods for applications of inks within the printing and publishing (surface coating) source category. One method may have an inherently lower potential to emit hazardous air pollutants, or it may not emit hazardous air pollutants at all. When the EPA develops a MACT standard for this industry, after gathering information on the source category, a decision will be needed on whether it is appropriate to: (1) Consider all process and emission units as one source when determining the MACT floor level of control or, (2) subcategorize the category in technically distinct groupings. The EPA believes that similar exercises may be needed in setting a "MACT floor" for case-by-case MACT determinations.

The EPA has discussed several possible approaches to dealing with subcategorization for the purposes of case-by-case MACT determinations. These discussions involved environmental interest groups, industry, and State agencies through meetings with the Clean Air Act Advisory Committee. Under the first approach, EPA would further subcategorize the source category list into subcategories for the purposes of case-by-case MACT determinations. While this option may provide for the greatest consistency in MACT determinations from all permitting authorities, this approach may not be feasible. As noted, the EPA lacked information to properly characterize each source category at the time the source category list was developed under section 112(c)(1). Doing so for implementation of section 112(g) would be expensive and time consuming.

Under a second option, EPA would allow the applicant to submit a suggested method for subcategorizing

the source category. The EPA would review the proposed subcategorization scheme. If the method is an acceptable method for the purposes of case-by-case MACT determinations, a notice would be issued in the **Federal Register**. This option has merit in that members of a source category would be given the opportunity to demonstrate, using their knowledge about the differences in emission units, that technically distinct subcategories exist within the category. On the other hand, having EPA issue a **Federal Register** notice may make this option too time consuming to be practical.

As a third option, the EPA could also delegate authority for subcategorization of categories to individual permitting authorities, and each permitting authority could address the problem on a case-by-case basis. This would allow permitting authorities the greatest flexibility in case-by-case MACT determinations. However, some permitting authorities have indicated that reviewing agencies may not have the resources to address this subcategorization issue. Also, this option would not promote nationwide uniformity in MACT determinations.

Finally, EPA could disallow subcategorization for the purposes of making a MACT floor finding for a case-by-case MACT determinations. This policy would be the easiest to establish and enforce. However, as discussed above, this could lead to inequitable MACT floor findings.

At this time, EPA is seeking additional comments on these or other approaches to dealing with subcategorization of categories for case-by-case MACT determinations. If subcategorization is allowed, EPA is also seeking comment on the criteria for which subcategorization would be allowed. Possible criteria might include technically distinct processes or operations (including differences between batch and continuous operation) fundamental differences in emission characteristics or control device applicability, cost differences, differences in safety considerations, and the appropriate consideration of opportunities for pollution prevention.

5. Application for a MACT Determination.

Paragraph 63.45(e) of the proposed rule describes the information the owner or operator is required to provide with an application for a MACT determination or in a part 70 application for which a MACT determination is requested. These information requirements are designed to identify the "MACT-affected emission units" and to demonstrate that the selected control technology for those units is consistent with or exceed the requirements of the statute. Further information on the uses of this information are described in the MACT Guidelines.

Paragraph 63.45(f) of the proposed rule describes the notification requirements for an application when a MACT standard for a MACT-affected emission unit has been promulgated. The requirements are much more straightforward for such cases, because the technical justification for a case-by-case determination is not required. This paragraph is designed to identify any possible situations for which the existing control technology in place may affect the ability of the emission unit to continue to comply with the promulgated standard.

6. Review Process. Analysis of the relationship of section 112(g) to the operating permits program. The proposed rule, in paragraphs 63.45(g),(h),(i) and (j) establishes an Administrative process for reviewing a request by an owner or operator for a MACT determination. As discussed previously, the EPA believes that section 112(g) of the Act requires such a determination to be made before constructing, reconstructing, or modifying a major source.

In order for commenters to understand the structure of the proposed § 63.45, it is necessary to discuss the EPA's reading of the Act regarding relationship of the MACT review process required by section 112(g) to the operating program requirements pursuant to title V of the Act. The requirements for State title V permit programs, contained in 40 CFR part 70, were published on July 21, 1992 (57 FR 32250). One approach to establishing an administrative process for determinations under section 112(g) of the Act would be to rely on the part 70 or part 71 review process as the sole mechanism for establishing MACT requirements. The EPA believes that, while in some cases this may be a viable approach, the section 112(g) program cannot rely solely upon this process. First, the part 70 requirements clearly do not require a new green-field plant to apply for an operating permit until 1 year after the plant begins operation. Because the part 70 permit must be issued within 18 months of the application, it could be up to 30 months after operation before section 112(g) requirements would be incorporated into the permit. The EPA believes that an alternative federally enforceable mechanism is needed in the interim for such cases. Second, even for modifications at already permitted facilities, the part 70 requirements do not ensure that a MACT determination will be conducted before construction. As noted above, the EPA believes that section 112(g) requires a determination be made before construction. While in some cases, States with part 70 programs may require preconstruction reviews as part of the operating permit process, this will not always be the case. Third, there is an important time period for section 112(g) implementation for which the title V permit process is not equipped to handle section 112(g) determinations. Section 112(g) determinations are required at the beginning of the title V permit program, upon the "effective date" of the program. According to part 70, sources subject to the permitting requirements are required to submit permit applications within 1 year of the effective date, and there is a 3-year period under which states can issue the initial permits. As a result, there is a potentially lengthy transition period under which the title V process is not designed to handle section 112(g) determinations.

The question of when a part 70 permit must be revised to reflect a case-by-case determination of MACT for a modification is presently the subject of some uncertainty. It has come to EPA's attention that certain provisions of the part 70 regulations can be interpreted as yielding conflicting results on this issue. In particular, § 70.5(a)(1)(ii), addressing the timeliness of applications, provides:

> Part 70 sources required to meet the requirements under section 112(g) of the Act, or to have a permit under the preconstruction review program approved into the applicable implementation plan under part C or D of title I of the Act, shall file a complete application to obtain the part 70 permit or permit revision within 12 months after commencing operation or on such earlier date as the permitting authority may establish. Where an existing part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation.

This provision would allow a source required to obtain a section 112(g) case-by-case determination to apply for a part 70 permit revision up to 12 months after commencing operation of the modification, unless the change would conflict with the terms of an existing permit.

Section 70.4(b)(15), on the other hand, requires that title V program submissions must contain:

> provisions prohibiting sources from making, without a permit revision, changes that are not addressed or prohibited by the part 70 permit, if such changes are subject to any requirements under title IV of the Act or are

modifications under any provision of Title I of the Act.

This provision requires that an approvable State program must prohibit changes that are modifications under title I from taking place at a permitted facility without a prior permit revision. Because section 112(g) case-by-case determinations are modifications under title I, § 70.4(b)(15) could be read as prohibiting these changes from commencing operation prior to title V review, as authorized by § 70.5(a)(1)(ii).

The EPA believes that the approach set out in § 70.5(a)(1)(ii) should govern the incorporation of section 112(g) determinations into title V permits. Accordingly, the EPA is proposing in today's rulemaking to revise the part 70 regulations to more consistently reflect this approach. The proposed revision to § 70.4(b)(15) allows that section 112(g) case-by-case determinations, as well as modifications under part C and D of title I, need not submit a part 70 permit application until up to 12 months after commencing operation. For the reasons discussed below, EPA is proposing to retain the § 70.4(b)(15) prohibition that modifications under section 111 of the Act not be allowed to commence operation at a permitted facility until the permit is revised.

It is a key underlying principle of title V that changes that are not expressly prohibited by the permit may occur without a prior permit revision. These changes are referred to in the part 70 rule as "off-permit" changes. As stated in the preamble to the operating permits rule:

> The Agency continues to believe that section 502(a) allows certain facility changes at a permitted facility that need not be incorporated into the permit until renewal. Section 502(a) prohibits a source from operating any of certain listed types of sources "except in compliance with a permit * * *" EPA's view is that it does not violate this prohibition for a source to operate in ways that are neither addressed nor prohibited by the permit.
>
> 57 Fed. Reg. 32269.

The language of the section 502(a) prohibition does not suggest differential application for sources subject to review as title I modifications. To the contrary, section 502(a) expressly lists sources "required to have a permit under parts C or D of title I" as being subject to the prohibition not to operate except in compliance with a permit. Since section 502(a) is the underpinning for the off-permit authorization, this language provides a textual basis for concluding that title I modifications may occur without a prior title V permit revision.

The EPA believes it is reasonable to interpret section 502(a) such that title I modifications not addressed or prohibited by the permit can occur without prior review under title V. Changes triggering a title I modification by their nature merit a higher degree of review than other less significant source changes. However, in structuring the part 70 requirements for these types of changes, the EPA believes it is appropriate to consider not only the review requirements imposed by title V, but also those imposed under title I itself. The EPA regulations for modifications under parts C or D of title I already require a very substantial review of the proposed change prior to construction, involving public review and notice to EPA. This preconstruction review establishes the applicable requirements for that modification, and results in a Federally enforceable preconstruction permit incorporating the emissions limitations and other requirements resulting from that review.

One possible reading of title V would allow EPA discretion to require that title V review occur pre-operation for all title I modifications at a permitted source. However, in the case of part C or D title I modifications, pre-operation review may entail a needless expenditure of administrative resources. Once pre-construction review has occurred, there is little if any gain to be had from imposing further operational requirements prior to the source's commencing operation. If title V review is to result in more effective regulation of the source's operation, for instance by the addition of compliance requirements provided for in § 70.6, it may be more appropriate to conduct this review after a period of operation during which the effectiveness of the preconstruction permit requirements can be measured. The EPA believes this scheme of post-operation incorporation of the preconstruction permit requirements may yield a more rational integration of the title I and title V review requirements, and, depending on the characteristics of the particular State program, may result in additional improvements in air quality than a scheme which required the operating permit review to occur prior to operation. The EPA solicits comment on this issue.

The reasoning set forth above regarding title I modifications under part C and D applies with equal force in the context of section 112(g) modifications. As proposed here, changes qualifying as modifications under section 112(g) must undergo pre-construction review, including public and EPA review of the proposed case-by-case determination. As with modifications under part C and D of title I, this process should obviate the need for additional review prior to operation.

That this treatment of section 112(g) modifications is consistent with the intent of the Act is also evidenced by the language of section 112(g)(3), which requires EPA (or the State) to establish "reasonable procedures for assuring that the requirements for applying to modifications under this section are reflected in the permit." The requirement that these determinations be merely "reflected" in the permit suggests that Congress viewed pre-operation title V review as unnecessary. The legislative history supports this interpretation of section 112(g)(3). 136 Cong. Rec. S 17124–5 (October 26, 1990).

As noted above, EPA believes this treatment of title I major modifications is consistent with the general structure of the Act and the purpose of title V to function as an operating permits program. The EPA has therefore reconsidered the policy position taken in the preamble to the operating permits rule, where it stated that "it is not reasonable to allow [title I] modifications to be made outside the title V permit system" 57 FR 32269.

The EPA has also reconsidered the legal rationale stated in the same preamble discussion. The preamble stated that, because section 502(b)(10) explicitly excludes title I major modifications from the class of changes that can be made without a permit revision, it would be anomalous to read section 502(a) as authorizing this same flexibility. As a textual matter, however, EPA has read section 502(b)(10) to allow certain changes that contravene existing permit terms. It is not anomalous to strictly limit changes which contravene an express determination by the permitting authority by, among other things, excluding title I modifications, while allowing title I modifications to occur off-permit where determinations made in the title V permit remained unaltered. Moreover, the fact that title I modifications have already been subject to examination in the pre-construction review process further supports the conclusion that this reading of the Act does not produce anomalous results.

Although this proposal would allow both title I modifications and other types of source changes not addressed or prohibited by the permit to occur without a prior permit revision, there is an important difference in the treatment of these categories of source changes. For source changes that are not title I modifications, § 70.4(b)(14) mandates that a State may not, except as a matter of State law, require off-permit activities to undergo title V review prior to

operation. Under § 70.5(a)(1)(ii), however, a State may require sources subject to the requirements of part C or D, or section 112(g) of title I to submit applications any time earlier than 12 months after commencing operation. This would allow a State, at its option, to require title V review to occur prior to operation, or even contemporaneously with the preconstruction review. The primary reason for this differential treatment is that it would allow a State to integrate its preconstruction and operating permit programs. The EPA recognizes that, depending on the particulars of a State's preconstruction and operating permits program, this approach to integration may be the most efficient from an air quality control and administrative standpoint.

The proposed revision to part 70 should not result in any State having to revise its operating permits program to gain approval under part 70. A State program that followed the alternative reading of § 70.4(b)(15) and required the part 70 permit to be revised prior to operation of a title I modification would be consistent with the requirements of § 70.5(a)(1)(ii), and thus would also be consistent with this proposed regulatory revision.

7. Implications. The EPA believes, based upon the above considerations, that there will be cases when the title V permit process will be used for section 112(g) reviews, and there will be cases when it will not be used and MACT determinations will be incorporated into the permit after commencement of operation. Section 63.45(c) of the proposed rule states that when the title V procedures are used, this process would be sufficient. When the title V process does not occur until after construction, reconstruction, or modification of a major source requiring a case-by-case MACT determination, the proposed rule requires that the owner or operator follow an administrative review process contained in paragraphs 63.45 (g), (h), (i), and (j). Where the change that is subject to section 112(g) review is addressed or prohibited by an existing title V permit, the change would of course need to be processed as a revision to the title V operating permit prior to commencing operation.

Regardless of the timing for incorporation of section 112(g) determinations into the operating permit, there are certain part 70 requirements that apply. The title V permit must be revised or issued according to procedures set forth in §§ 70.7 and 70.8. In addition, the permit must incorporate compliance provisions of § 70.6. If, during the EPA's review of the section 112(g) determination, it becomes apparent that the determination is not in compliance with the Act, then EPA must object to the issuance or revision of that permit.

These requirements are obviously satisfied either if part 70 requires revision to an existing title V permit prior to operation, or if the permitting authority otherwise requires incorporation into a title V permit as a step in the section 112(g) determination process. However, even where there is no formal incorporation into a title V permit prior to operation, subsequent title V review may effectively be avoided if the State's section 112(g) process is "enhanced" to include the required title V procedures, thereby allowing for later incorporation into the title V permit by administrative amendment.

Section 70.7(d) of the operating permits rule defines an "administrative amendment" to include a revision that "incorporates into the part 70 permit the requirements from preconstruction review permits authorized under an EPA-approved program, provided that such a program meets procedural requirements substantially equivalent to those contained in §§ 70.7 and 70.8 of this part and compliance requirements substantially equivalent to those contained in § 70.6 of this part." This process of "enhancement" of preconstruction procedures was discussed in the preamble to the operating permits rule in the context of existing State new source review programs (see 57 FR 32289), but was not discussed in relation to section 112(g) because the procedures associated with section 112(g) determinations had not been articulated. However, the language of § 70.7(d)(v) would allow for use of administrative amendments for an enhanced section 112(g) process, and the EPA believes such use is clearly within the intent of that provision.

Enhancement of the section 112(g) process may be partial only, incorporating some elements of the required part 70 review or compliance provisions in the section 112(g) process itself, with the remaining elements occurring during the title V process. For instance public review of the section 112(g) determination that meets the requirements of § 70.7(h) need not be repeated at the time of incorporation into the title V permit. However, for the administrative amendment procedures to be available for determinations that have been through an enhanced process, the public, EPA and affected States must have had the opportunity to review all aspects of the section 112(g) determination, including any compliance provisions required under § 70.6. Thus, public review during the preconstruction section 112(g) process would not suffice for purposes of title V if the preconstruction process did not specify the application of compliance provisions substantially equivalent to those in § 70.6, including monitoring, reporting, record-keeping, and compliance certification.

Paragraph 63.45(f)(4) of the proposed rule clarifies that notification of the permitting authority is sufficient for modifications when no case-by-case review is needed because an applicable MACT standard has been promulgated and the MACT-affected emission unit does not require a change in control technology. When the modification requires a change in control technology in order to continue to comply with the MACT standard, the EPA believes that a preconstruction review is appropriate Readers should note that section 112(i)(1) of the Act requires a preconstruction review for major sources subject to new source MACT under a promulgated MACT standard.

8. Streamlined Administrative Process. Paragraphs 63.45 (g), (h), (i) and (j) of the proposed rule establish an administrative review process for case-by-case MACT determinations. This process, patterned after the existing administrative process for reviewing proposed equipment subject to emission standards under 40 CFR part 61, is displayed in Figures 8 and 9. The process begins with a 30-day completeness determination. Once a complete application is received, approval or an intent to disapprove the application is required. If an intent to disapprove is issued, the owner or operator is given the opportunity to provide further information. The proposed decision to either approve or disapprove the application is then subject to public review. This proposed rule would provide for public review through issuance of a notice containing all the relevant background information about the application and allowing 45 days for the public to comment on whether the application should or should not be granted. In order to expedite approval of noncontroversial case-by-case MACT determinations the proposed rule would allow such determinations to go final following the close of the comment period if no adverse comments have been received. If adverse comments are received, a final notice must be published either approving or disapproving the application and addressing the comments.

This proposal requiring public review prior to approval of case-by-case MACT

determinations is consistent with current EPA practice in other Clean Air Act programs where Federal enforceability is required. For example, 40 CFR 51.161 requires a 30 day public comment period for review of an agency's proposed approval or disapproval of a minor new source permit. Similarly, in a 1989 rulemaking EPA enumerated five criteria that must be met before a State issued operating permit can become Federally enforceable. One of those criteria is that the permit must be subject to public review before issuance. This criteria was described in the notice as being consistent with the EPA's current practice for construction permits codified at 40 CFR 51.161. (See 54 FR 27283 (June 28, 1989).

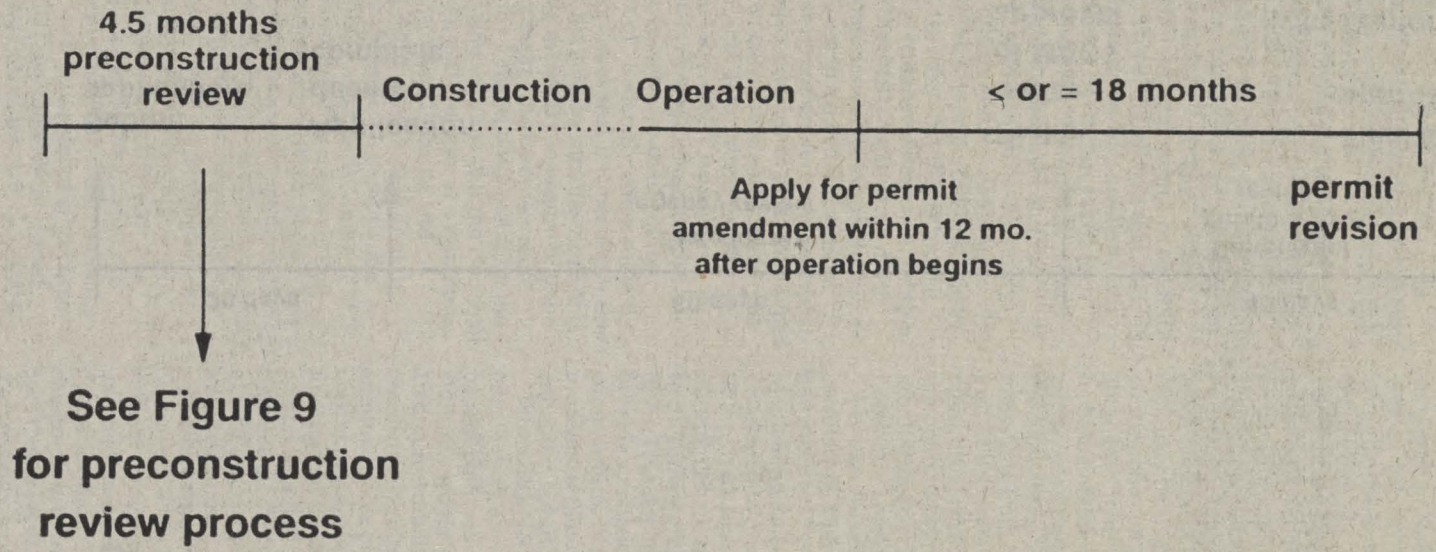
Thus, the EPA's current practice is to require public review of decisions required to be Federally enforceable. Without a compelling reason to deviate from this established practice the EPA must continue to follow it. As stated by the Supreme Court in *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Automobile Insurance Co. et al.*, 463 U.S. 27, 43 (1983), "an agency changing its course is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance." In this case there is an established practice of requiring public review as a prerequisite to federal enforceability. The EPA proposes to follow that practice in this case unless a compelling reason can be provided for either changing that practice or deviating from it in this case.

As discussed above, the EPA is proposing to require public review as a prerequisite to Federal enforceability of case-by-case MACT determinations. Comment is specifically requested concerning whether public review should be a prerequisite to Federal enforceability of case-by-case MACT determinations, and if it should not, what justification there would be for deviating from established practice by the EPA in this area.

The EPA recognizes that there are cases for which sources would prefer to minimize delays in the process; particularly for operations which change relatively frequently, and where the owner or operator is willing to control emissions from those changes with technologies that could be recognized as best available controls. The EPA is exploring suggestions that the general permit procedures, outlined in 40 CFR 70.6(d), be available for such situations. The general permit may have application for section 112(g) determinations where the permitting authority is able to make a presumptive determination of MACT for a given type of source. The general permit would have to set forth the controls required by part 70. Once the general Figure 8: Timeline for S. 112(g) Administrative Process—CBC MACT permit is issued, subsequent application of the MACT determination at a particular source would involve merely a determination that the source falls within the source category covered by the general permit. Sources in that category may then apply for authorization under the general permit as the modifications occur.

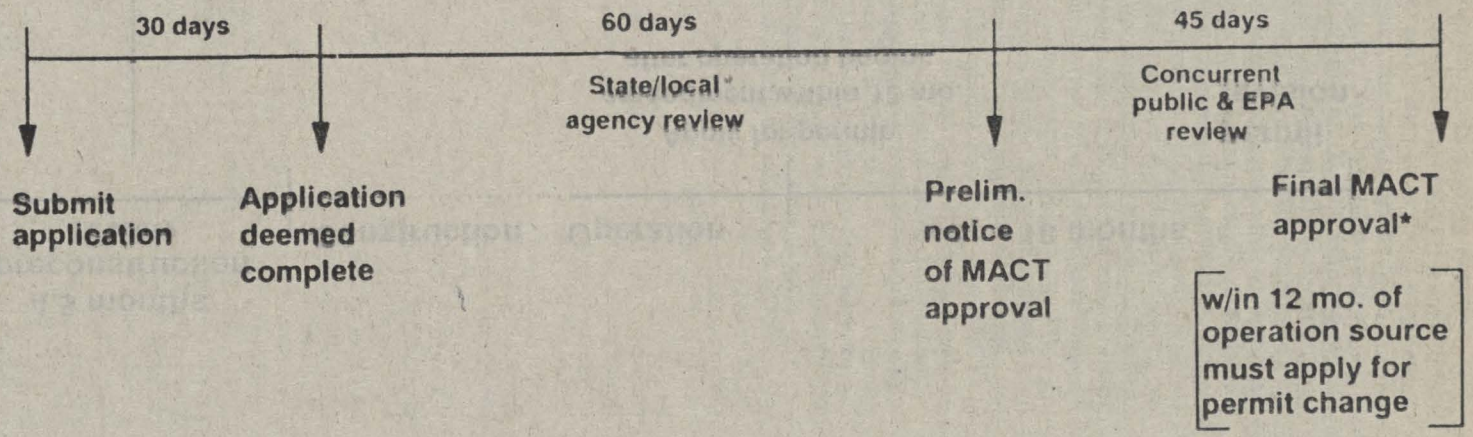
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Figure 8. Timeline for Section 112(g) Administrative Process - CBC MACT



BILLING CODE 6560-50-C

Figure 9. Preconstruction Review Process - CBC MACT



* direct final if no comments
otherwise, State action within 30 days

As discussed in the preamble to the operating permit regulations, general permits may be issued to cover discrete emissions units at permitted facilities, 57 FR 32279. While a general permit cannot be used to modify the terms of an existing title V permit, it may be issued to any change at an existing plant that otherwise would be eligible to apply for a new individual permit. In that case, the requirements of the general permit could be incorporated into the permit for the facility at renewal.

The EPA also recognizes that some State programs may have well-established administrative procedures that are similar to, but not identical to the administrative process in § 63.45. For example, some States may require determinations in a slightly shorter or longer time period than the 60 day period in the proposed rule. The EPA believes that if such programs are substantially equivalent to the process in § 63.45, and include all steps needed to ensure Federal enforceability, then EPA could approve such alternatives in accordance with section 112(l) of the Act. The EPA requests comment on this point, which is included in the proposed rule as paragraph 63.45(g)(7).

9. Notice of MACT Approval. The end result of the proposed administrative review process is a determination set forth in a document that is termed a "Notice of MACT Approval." Requirements for this Notice are provided in paragraph 63.45(h) of the proposed rule. This Notice is required to contain the emission limitations, notification, operating and maintenance, performance testing, monitoring, reporting, record-keeping and any other requirements needed to ensure that the case-by-case MACT emission limitation will be met.

The Notice of MACT Approval serves to provide a mechanism for Federal enforceability of these conditions in the interim time period between initial operation of the constructed, reconstructed, or modified major source and the time the conditions are added to the part 70 or part 71 permit.

The EPA is considering adding a provision under which a Notice of MACT approval would expire if construction does not begin within a specified time frame. Specifically, the EPA requests comment on whether the Notice should expire if construction has not begun within 18 months. Such an 18 month period is included in criteria pollutant preconstruction review programs.

10. Compliance. The Notice of MACT Approval must establish compliance dates for MACT. For constructed and reconstructed major sources subject to a "new source MACT" level of control, compliance upon startup is required. For modifications, compliance upon startup is required unless the owner or operator demonstrates that the time needed to install the control technology exceeds the time needed to accomplish the modification.

The EPA considered two other compliance date requirements for modifications. The first alternative would require compliance upon startup in all cases, consistent with the current approach under other major source modification programs such as the PSD program. The EPA believes that such an approach would be inconsistent with the provisions in section 112(i) for promulgated MACT standards, which allow for up to 3 years for sources subject to these standards to comply. The second alternative would be to allow the full 3 year period in all cases. The EPA believes that this approach would also be inconsistent with section 112(i) in that MACT standards must ensure compliance "as expeditiously as practical, not to exceed three years."

Another important issue with respect to compliance is how to define the types of requirements that are needed for the Notice of MACT Approval in order to ensure that the MACT emission limitation is Federally enforceable. As noted above (see discussion of the definition of "Federally enforceable"), the EPA believes that it is necessary that emission limitations include terms and conditions necessary to ensure that the limitation is practically enforceable.

To ensure Federal enforceability, the proposed rule requires that the Notice of MACT approval contain, at a minimum, monitoring, recordkeeping and reporting requirements sufficient to document the source's compliance. Because major sources obtaining MACT determinations will incorporate that determination into a title V permit, the proposed rule includes a requirement that the monitoring, recordkeeping, and reporting requirements required for a case-by-case MACT determination be consistent with the compliance requirements contained in part 70.

In addition to part 70 compliance requirements, additional requirements may need to be considered at the time of the MACT determination. Under section 114(a)(3) of the Act, the EPA is required, for major sources, to incorporate enhanced monitoring into all new rules promulgated after the 1990 Act amendments. The goal of these monitoring requirements is to assure that owners or operators are accountable for their emissions and compliance status on a continuous basis. In this way, the EPA is assured that the emissions reductions intended by regulations are in fact achieved.

It is important to distinguish between continuous compliance and continuous monitoring. Under section 112 of the Act, to demonstrate continuous compliance, a source may not be required to record emissions data on a continuous, instantaneous basis such as with a continuous emission monitor. Depending on the type of standard, regular parameter monitoring, equipment inspections, and/or maintenance of raw material records, etc., may be sufficient to demonstrate continuous compliance. For all standards, monitoring frequency must be based on the averaging time of the applicable limitation or standard, and the likely variability of potential emissions from a particular emissions unit. If the potential variability is high, monitoring must be done frequently. If the potential variability is low, monitoring may be conducted less frequently at regular intervals.

For examples of enhanced monitoring, source owners or operators may refer to EPA's Enhanced Monitoring Reference Document being developed in conjunction with the 40 CFR part 64 regulation. For more information on this document, contact Keith Brown of the EPA at (703) 308–8676. This document is intended to provide a constantly evolving compendium of monitoring systems and procedures that can be used to satisfy enhanced monitoring requirements.

Where the Notice of MACT approval fails to meet any requirement of paragraph 63.45, EPA may exercise its authority under section 113(a)(5) of the 1990 Amendments to prohibit construction or modification, issue an administrative penalty order or bring a civil action against the source upon finding that the State has not acted in compliance with any requirement or prohibition relating to the construction of new sources or the modification of existing sources.

11. Reporting to National Data Base. Section 63.45(n) requires permitting authorities to provide EPA with information on all MACT determinations. The intent of this paragraph is to use EPA's MACT data base to store data on well-controlled sources and on previous MACT determinations to help facilitate the MACT determination process.

G. Section 63.46 and 63.47—Offset Showing

As mentioned previously in section III.D.4 of this preamble, section 112(g)(1)(A) of the Act requires owners

and operators to submit a "showing" to the permitting authority if they choose to provide offsets to avoid MACT requirements. Sections 63.46 and 63.47 of the proposed rule provide the requirements for the offset showing. These sections provide two alternative approaches an owner or operator could use.

1. Statutory Language. Section 112(g)(1)(A) of the Act states that a physical change otherwise meeting the definition of a "modification" in section 112(a) shall not be considered a modification if the emissions "will be offset by a decrease * * *" The EPA believes that the phrase "will be offset" can be interpreted in several ways. One interpretation would be that the offsetting decreases must occur no earlier than the corresponding increases in emissions. Alternatively, the phrase could be interpreted to mean that, by the time the physical change or change in the method of operation has occurred there must have been corresponding decreases in emissions. Such decreases could have occurred before the increases that they are offsetting. The EPA believes that the statute does not mandate choosing one reading over the other

2. Proposed Approaches. a. *Approach under the PSD program.* One overall approach to an offset demonstration would be to design the program to allow for a "contemporaneous" period similar to that in the PSD program.

The PSD program is a stationary source permitting program that was established in the 1970's in reaction to general language in the Act directing the EPA to ensure that air pollution regulations serve to protect and enhance air quality. The program was born as the result of a major court decision, and it has been formally included in the Act since 1977 as part C, section 160 through 169a. The goal of the PSD program is to ensure that, for major sources of pollutants contributing to increases in ambient levels of "criteria air pollutants" (particulate matter, sulfur dioxide, nitrogen oxides, volatile organic compounds, etc.), that emission increases from these sources do not "significantly degrade" nearby air quality.

One aspect of the PSD program, generally referred to as the "netting" procedure, is used to define which types of increases in emissions are subject to review. (For more information on PSD "netting," see New Source Review Workshop Manual. Prevention of Significant Deterioration and Non-attainment Area Permitting. Draft, October 1990. This document is available from the New Source Review section of EPA's Office of Air Quality Planning and Standards, Mail Drop 15, Research Triangle Park, NC 27711). The "netting" procedure involves the accounting of the overall plant-wide emission patterns for a given pollutant. For a given physical change, the "netting" process involves the following steps. First, the emissions increase from a given physical change are evaluated. If they exceed "significant" levels then they would constitute a modification. If, however, the emission increases from the change, when added to all other "net increases and decreases" at the plant, would not lead to a "significant" increase, then the physical change is not subject to the BACT and air quality impacts analysis requirements of the program.

Under the "netting" process, the owner and operator must account for all increases and decreases at the plant within the recent past. The PSD program uses the term "contemporaneous" to refer to a 5-year time period for which the net increases and decreases must be tallied.

One approach to the treatment of "offsets" for the section 112(g) program would view the emission "offsets" under the program as analogous to the "netting credits" for the PSD program. As such, the program would contain a similar accounting system and would require establishment of a "contemporaneous" period. Under this approach, the overall goal would be to ensure that the overall hazard of plant-wide emissions is not increased in the interim period between the onset of the title V program (which triggers section 112(g) requirements) and the issuance of MACT standards.

The EPA has a number of concerns with this approach. First, the approach presumes that a reference condition exists that can be defined as acceptable. For example, the PSD program is intended to preserve air quality levels that are considered acceptable. So long as overall emissions do not increase, then this acceptable air quality is not "degraded." For purposes of section 112(g), use of the contemporaneous period would presume, in essence, that a reference point in time at the beginning of the contemporaneous period constitutes a condition of "acceptable" hazardous air pollutant emissions. In light of the general intent of section 112 to provide for steady reductions in hazardous air pollutant emissions, the EPA is uncertain whether this approach is reasonable for offsetting in accordance with section 112(g).

Another problem with the contemporaneous approach is that it imposes an additional administrative burden. Owners and operators would be required to document all increases and decreases over the contemporaneous period. For large and complex facilities, this might involve considerable documentation and recordkeeping. In addition, it may be more difficult to provide adequate documentation of hazardous air pollutant increases and decreases than it has been for pollutants addressed in the criteria pollutant program such as VOC and sulfur dioxide. While total VOC emissions may be adequately documented, it may be more difficult to provide for reliable estimates of the emission rates of individual HAP, for which a reliable accounting of speciated VOC totals or speciated particulate matter totals may not be available.

b. *Prospective Approach.* Another approach to offset demonstrations was considered. Under this approach, the demonstration would not require an accounting of all recent increases and decreases. The offset demonstration, under this approach, would involve only prospective reductions and would require accounting of: (1) Increases from the emission points for the proposed change and (2) decreases from one emission point, or a few emission points which could achieve "extra" reductions that would were not otherwise required.

This approach would make it less likely that emission reductions used as offsets would represent "windfalls" from emission reduction activities that would likely have occurred even in the absence of the MACT requirement. As a result, this approach would likely increase the number of modifications under the program, increase the number of MACT determinations, and possibly lead to greater overall emission reductions.

This approach, however, does have potentially serious disadvantages. If offsetting reductions occurring before the increase were absolutely prohibited, then owners and operators would be discouraged from providing early reductions in HAP emissions or from completing pollution prevention projects. Where feasible, there would be an incentive to preserve emission reduction credits until the time of the increase.

c. *Proposed Approach.* In the proposed rule, the EPA allows for both types of offset demonstrations. The owner or operator of a modification who is seeking offsets would have the option of providing either type of demonstration.

Section 63.46 allows the owner and owner and operator to provide for a "contemporaneous" demonstration

resembling a "netting" demonstration under the PSD program. Section 63.47 allows for companies to opt for a more simplified demonstration in cases where additional control measures can be undertaken.

The contemporaneous offset procedure borrows a number of terms from the PSD program. The proposed rule retains the PSD definitions of what increases and decreases are "creditable." Emission decreases must be Federally enforceable prior to the change being offset. Emission changes that were taken into account in issuing another permit under the section 112(g) program cannot be "double-counted" in a subsequent permit action. In addition, emission reductions used for a MACT extension under the section 112(i)(5) program, which according to that program must be "permanent," are not creditable as emission decreases under the proposed rule. (The proposed rule does, however, note that any amount exceeding the 90 or 95 percent criteria in the section 112(i)(5) program are creditable.)

Section 63.47 provides for a "simplified" offset demonstration. Under this approach, as described in paragraph 63.47(b), only limited activities would be considered creditable as decreases. The control measure would need to constitute a new emission reduction that would be accomplished after the date of the application but before the startup of operation of the physical change being offset. The control measure could not be a shutdown or curtailment. Section 63.47 does, however, provide for special consideration for source reduction activities. The EPA believes that it is important to provide incentives for such activities. The EPA requests comment on this "simplified" offset approach, particularly the prohibition on the use of shutdowns or curtailments and the special consideration for source reduction activities.

The EPA requests comment on both of the approaches to offsetting (the "contemporaneous" and "simplified" approaches) including whether they are feasible alternatives, and whether one of these approaches ought not to be included in the rule.

3. Administrative Process for Offsets

Section 112(g)(1)(A) of the Act requires that the owner or operator seeking offsets in lieu of modification must submit a "showing" to the permitting authority that the increase "has been offset." Although this language is not entirely clear, the proposed rule represents the EPA's policy decision that the program should require review of the offset demonstration before the emission increase being offset commences operation. The EPA believes that this is the better approach because of a concern that the enforceability of the program would be adversely affected if the modifications could occur before an offset demonstration is approved.

In addition to the approach the EPA is proposing today, the EPA is considering an alternative mechanism for approving offsets. The EPA is considering this alternative approach because of concerns which have been expressed about the costs of delay which industries may experience as a result of the offset pre-approval process. Under the alternative approach, a source owner or operator would reduce emissions sufficient to offset the planned emission increase. The source would submit its offset demonstration to the permitting authority at the time it begins operation of the equipment causing the increase. The permitting authority would review the offset demonstration upon submittal—that is, after the equipment has begun operation. This review process could be structured according to the administrative process in the proposed rule, or an alternative process established by the permit authority. If the permitting authority during its review were to determine that the offset failed to meet the offset requirements of this rule, the source would be liable for violating the requirement to apply case-by-case MACT to the equipment causing the increase and would be subject to the full range of enforcement activities and penalties available under the Act. The risk of violating the MACT requirement would fall entirely on the source making the election to bypass the pre-approval process.

The EPA is mindful that this approach puts not only the source at risk, but potentially could result in greater (or more hazardous) emissions for the period during which the source operated without an appropriate offset. The EPA believes that the penalties faced by sources under the Act could create an incentive for the source to ensure that the offset in fact complies with the requirements of this rule. Moreover, the severity of the penalties under the Act are such that sources may adopt an even greater margin of safety under this approach in order to ensure that its offset demonstration complies with the requirements of this rule. Under this circumstance, it is possible that there could be greater emission reductions than would be legally required, as well as the economic benefits of providing a process that allows source to avoid the delays associated with a pre-operation approval process.

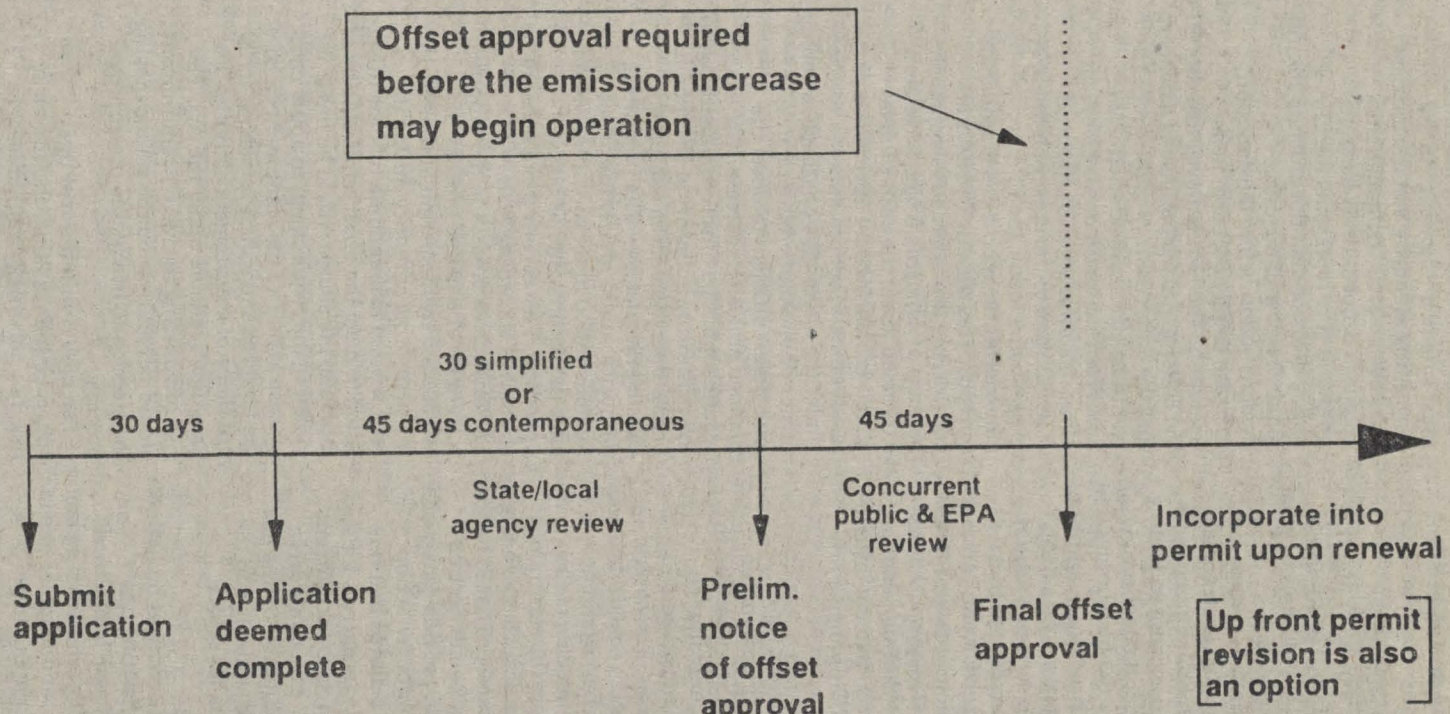
Consequently, the EPA believes that this approach deserves consideration and seeks comment on whether such an approach would provide a significant benefit to industry by reducing delays and whether it would be likely to create a risk to human health or would yield human health benefits. In addition, the EPA is interested in comments on whether this approach would create obstacles to enforcement, and the nature of those obstacles, by the federal or State governments or citizens should it be determined that the source's offset was inadequate. In weighing this option, the EPA also requests that commenters consider other provisions of the rule, including *de minimis* levels and applicable State and local review processes, that also affect the speed with which a source can proceed with construction when it intends to rely on an offset. In addition, the EPA is also interested in comments with specific examples on the extent to which alternative post-operation offset provisions might be appropriate in those cases where no additional new construction would be involved.

Sections 63.46 and 63.47 establish an administrative process for the offset demonstration. The processes are virtually identical. The process is very similar to the administrative process described above for MACT demonstrations under § 63.45. An overview of the process is displayed in Figure 10.

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Figure 10. Timeline for Section 112(g) Administrative Process - Offsets



The process begins with the submittal of an application containing the documentation of the emission increases and decreases. The contents of the application are described in paragraphs 63.46(d) and 63.47(c). The application must summarize and document each emission increase and decrease, and must document that the emissions meet the "more hazardous" requirement contained in § 63.48 of the proposed rule. (For more information on the "more hazardous" test, there is an extensive discussion in section IV of this preamble).

A streamlined administrative process for review of the application is provided in paragraphs 63.46 (e) and (f) and in paragraphs 63.47 (d) and (e). The permitting authority must review a "contemporaneous" demonstration within 45 days of receipt of a complete application, and must review a "simplified" demonstration with 30 days of receipt of a complete application. If approvable, the permitting authority issues a "Notice of Offset Approval." This Notice establishes emission limitations needed to ensure Federal enforceability of the offsets. The Notice is required to contain sufficient recordkeeping, monitoring and reporting requirements to demonstrate continuing compliance with Federally enforceable emission limits. Where EPA determines that the offset determination made by the permitting authority fails to meet any of the requirements of § 63.46 or § 63.47, EPA may take one of two actions to address the deficient offset determination: (1) Where offset determination is made as part of a source's part 70 permit, EPA may veto the issuance of the permit in accordance with the provisions of 40 CFR 70.8(c). The EPA may also use the veto process outlined in 40 CFR 70.8(c) where the State has "enhanced" its section 112(g) process to incorporate the part 70 procedures. (2) Where the offset determination is made through a Notice of Offset Approval before the source obtains or revises their part 70 permit, EPA may exercise the authority authorized under section 113(a)(5) of the Act to prohibit construction or modification, issue an administrative penalty order or bring a civil action against the source upon finding that the State has not acted in compliance with any requirement or prohibition relating to the construction of new sources or the modification of existing sources. The EPA requests comment on whether the offset determinations should be required to adhere to the compliance provisions in 40 CFR part 70, or any enhanced monitoring provisions pursuant to section 114 of the Act.

Unless and until a Notice of Offset Approval is issued, the physical change or change in the method of operation increasing emissions is considered a "modification." Operation of the change without a MACT demonstration or an offset approval would constitute noncompliance with section 112(g) of the Act. Because the "modification" requirements in § 63.43 prohibit the "fabrication (on site), erection, or installation" of the physical change or change in the method of operation unless MACT is established, the owner or operator will be out of compliance with § 63.43 if any offset demonstration is disapproved subsequent to such "construction" date. Accordingly, applicants are strongly encouraged to obtain offset approvals before construction of the physical change.

The EPA wishes to clarify with paragraphs 63.46(e)(8) and 63.47(d)(8) that the administrative process described in the proposed rule is not the only possible review process a permitting authority could use. Other administrative review processes would be acceptable if they ensure that the source provides federally enforceable emission reductions before operation of the increase being offset, and that those reductions have been approved by the permitting authority as meeting the emission quantity and offsetting restrictions outlined elsewhere in the proposed rule.

The EPA believes that the proposed procedures provide the opportunity for applicants to develop and document a continuing emission reduction program that can provide offsets for future activities. The EPA believes, in particular, that the proposed rule provides the opportunity for applicants to develop Federally enforceable source reduction programs which could serve to reduce emissions from a given production area while avoiding additional MACT requirements. The EPA requests comment on additional language that would serve to facilitate such programs.

H. Requirements for Emission Units Subject to a Subsequently Promulgated MACT Standard or MACT Requirement

Emission units for which a case-by-case MACT determination is obtained in accordance with § 63.45 of the proposed rule will be subject to future MACT requirements. For some emission units, at a future date, the emission unit may be a "source" in a subsequently promulgated MACT standard pursuant to section 112(d) of the Act. Also, some units subject to case-by-case MACT under section 112(g) may be in existence upon the date for which an "equivalent emission limitation by permit" is required pursuant to section 112(j) of the Act.

Section 112(g) of the Act does not explicitly address how such an emission unit complying with a case-by-case MACT emission limit pursuant to section 112(g) should be treated under MACT standards or section 112(j).

The EPA believes that there are cases where it would be reasonable to give emission units additional time to comply with Federally promulgated MACT standards, and that there are additional cases where compliance with the MACT standard should not be delayed. For example, if the case-by-case MACT standard required installation of a costly emission control device (for example, a state-of-the-art electrostatic precipitator), and if the subsequently promulgated MACT standard necessitated use of a similarly costly, but different device (for example, a dry scrubber followed by a fabric filter), then additional time would appear reasonable. On the other hand, if the only difference between the case-by-case standard and the promulgated standard was the use of a readily available alternate raw material, then little or no relief would appear reasonable.

The EPA believes that section 112(j) provides a reasonable policy precedent for treatment of section 112(g) determinations relative to subsequent MACT standards. Accordingly, § 63.49 of the proposed rule requires that emission units comply with subsequent MACT standards "as expeditiously as practicable" but afford the owner or operator the opportunity to justify a delay of up to 8 years. Such an approach is consistent with the statutory scheme of section 112(j), which is analogous to section 112(g) in this area. It is also a reasonable approach developed by the EPA to fill gaps left by Congress in section 112(g).

The EPA considered expanding to § 63.49 to clarify the EPA's proposed reading of section 112(j) of the Act for situations where a case-by-case MACT determination is already in existence under section 112(g). The EPA believes that if "case-by-case MACT" has been established under section 112(g), then it is not necessary to revisit this determination under section 112(j) for the portion of the major source subject to section 112(g). The EPA believes that this position is already taken in the proposed rule implementing section 112(j) of the Act, in proposed § 63.52 and proposed § 63.54. In §§ 63.52 and 63.54, if an owner or operator already

has a permit requiring "compliance with a limit that would meet the requirements of section 112(j) of the Act," then the owner or operator is not subject to any substantive review process. The EPA believes that a permit requiring a MACT emission limitation pursuant to a section 112(g) requirement would be one that "meets the requirements of section 112(j) of the Act." Of course, where section 112(g) has required MACT to be applied to part of a major source, section 112(j) may require more extensive coverage. The EPA requests comment on this reading, and on whether explicit mention should be made of this reading in the section 112(g) regulation. In addition, comment is requested concerning whether a time limit should apply regarding whether compliance with a section 112(g) case-by-case MACT limit is sufficient to meet the requirements of section 112(j). For example, if an emission unit receives a permit containing a case-by-case limit under section 112(g) in 1994, but the section 112(j) hammer does not fall until 1999, should the unit retain its 1994 limit, or be required to update it?

Paragraph 63.49(c) addresses situations where a case-by-case MACT determination pursuant to section 112(g) is more stringent than a subsequently promulgated standard pursuant to section 112(d) of the Act. This paragraph clarifies that the permitting authority is not required to relax the emission limitation for such situations. However, the EPA also wishes to clarify that the permitting authority is not required by the proposed rule to maintain the more stringent case-by-case emission limitation, and that it has the option to relax the emission limit to the 112(d) standard. The EPA requests comment on whether, if the emission limitation is not relaxed to the level of the 112(d) standard, the facility should be allowed to use the additional reduction as a credit for offset or trading purposes.

IV. Proposed Approach for Demonstrating That Offsets Are "More Hazardous" (§ 63.48). Summary and Rationale

The previous section of the preamble describes the overall requirements for the offset demonstrations pursuant to section 112(g)(1)(A) of the Act. One important aspect of these requirements is that the offsetting emission decreases must be deemed "more hazardous" than the emission increases. This section of the preamble describes the rationale for EPA's proposed approach for making such a "more hazardous" finding. The EPA requests comment on this approach. This discussion is supported by a technical background document which describes the rationale for the procedures in greater detail, and which provides documentation of the data used to evaluate the hazard of each listed HAP. (Draft Technical Background Document to Support Rulemaking Pursuant to the Clean Air Act section 112(g). Ranking of Pollutants with Respect to Hazard to Human Health, EPA 450/3–92–010).

A. Statutory Requirements for a "More Hazardous" Finding

As discussed in previous sections of this preamble, section 112(g) provides the owner and operator the option of providing emission "offsets." If the owner or operator proposes to make a physical change or change in the method of operation of a major source that would constitute a "modification," the control technology requirements for modifications can be avoided if emission offsets are provided.

1. Offset Provision. Alternative Readings of "More Hazardous." The offset provision in section 112(g)(1)(A) of the Act reads as follows:

> A physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous, pursuant to guidance issued by the Administrator * * *

The EPA believes that this language is ambiguous, because it is not entirely clear whether "pollutant" or "quantity" is being modified by the phrase "which is deemed more hazardous." The EPA believes this language would support multiple interpretations.

Under one interpretation, each HAP increasing emissions above a de minimis level would require an offsetting decrease by another HAP which must be deemed "more hazardous." For example, if emissions of pollutant A increased by 10 tons per year, a reduction of 10 or more tons per year of pollutant B could be allowed as an offset if pollutant B is considered to be more hazardous than pollutant A.

Under an alternative interpretation, the increased emissions of each HAP would be required to be offset by a "quantity of emissions of another HAP" which is deemed more hazardous. Under this approach, if emissions of pollutant A were increased by 10 tons, pollutant B would not necessarily have to be a "more hazardous pollutant" so long as the decreased emissions from pollutant B represented a "more hazardous quantity." Consequently, under this interpretation, the requirement that offsets must decrease "hazard" may be satisfied either by decreasing an equal or greater quantity of a "more hazardous pollutant," or by decreasing a "more hazardous quantity" of another pollutant.

2. Requirement for Guidance. Section 63.48 of the proposed rule is intended to satisfy the requirement in section 112(g)(1)(B) of the Act that EPA publish guidance that includes a relative ranking of the pollutants according to their "hazard to human health." The statute reads as follows:

> The Administrator shall, after notice and opportunity for comment and not later than * * * [May 15, 1992] * * * publish guidance with respect to * * * [section 112(g) of the Act] * * * Such guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants * * * [listed as HAP under section 112(b) of the Act] * * * sufficient to facilitate the offset showing * * * Such guidance shall not authorize offsets between pollutants where the increased pollutant (or more than one pollutant in a stream of pollutants) causes adverse effects to human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutant(s).

The EPA believes the phrase "to the extent practicable" indicates that Congress recognized the limitations and uncertainties in data and methodologies for evaluating relative hazard of the 189 listed HAP. This phrase gives the EPA discretion to identify pollutants or health effects for which a relative hazard ranking is "not practicable."

The EPA consulted an independent panel of scientific experts for input into the considerations that should be made in identifying the "practicable" limitations in methodologies and data for the relative hazard ranking. This panel of the EPA's SAB was apprised of the EPA's draft outline for hazard ranking in a public meeting held on October 28 and 29, 1991. The consultation meeting provided members of the SAB an opportunity to provide verbal feedback on several approaches. Summaries of a few of the comments by SAB panel members are included in this pollutant ranking discussion.

The EPA interprets the phrase "relative hazard to human health" to mean that only health effects relevant to humans should be considered in the ranking, and not other adverse effects to the environment such as to wildlife, aquatic life and other natural resources.

These latter effects are, however, addressed elsewhere in section 112 of the Act.

B. Overview of the Issues Involved in Establishing Procedures for a "More Hazardous" Finding

The requirement to identify the relative hazard of the 189 pollutants, and the requirement to provide guidance for determining whether any decrease in one of the pollutants is "more hazardous," both present a formidable challenge. Although air quality permit programs have, for years, allowed for emission offsets and "netting credits," none of these programs have ever allowed emission offsetting between different hazardous air pollutants. The task is made particularly difficult by the magnitude of the list (189 pollutants, 17 of these representing multi-pollutant groupings), the varying degrees of knowledge about the health effects caused by these chemicals, and the uncertainty in comparing the hazard potential of different health effects.

In developing an approach to the "more hazardous" finding, legal, policy, scientific, and practical judgments must be made. From a legal standpoint, the approach must be consistent with the statutory language. As discussed previously, the EPA believes that the statute would support alternative readings. From a scientific standpoint, the approach should be defensible to the scientific community and should be consistent with the EPA's overall goal of incorporating the best scientific information available for decision-making. (For further information on the role of science in EPA decision-making, see Safeguarding the Future: Credible Science, Credible Decisions. EPA/600–9–91–050. March 1992.) From a policy standpoint, any approach must: (1) Ensure that offsets are unlikely to increase the overall hazard to public health and (2) ensure consistency with the EPA's overall goal of providing regulated facility owners with the flexibility and incentives to seek emission reduction alternatives that are environmentally beneficial and cost-effective. From a practical standpoint, the approach must be implementable by applicants and by State and local permitting authorities and therefore must not be overly complex. In evaluating whether an emissions decrease is "more hazardous", the EPA believes that there is a tension between these overall objectives. The EPA requests public input as to whether the approach presented in the proposed rule strikes an appropriate balance.

Commentors on this proposed rule should note that in developing a pollutant ranking "to the extent practicable," that it was necessary to rely on current EPA methodologies and approaches. The EPA continues active efforts to review its approaches to assessing pollutant hazard. For example, the EPA is currently reviewing the implications of the recent NAS report entitled Science and Judgement in Risk Assessment, pending a detailed review, EPA may determine that changes to the section 112(g) hazard ranking are appropriate. In addition, section 112(f)(1) requires that the EPA issue a report, by November 5, 1996, on methods to calculate risk and section 112(o)(7) requires that EPA publish revised Cancer Risk Assessment that incorporates results of the NAS study, or explains why the EPA elected not to make changes. Finally, section 303(f) requires that the Risk Assessment and Management Commission issue a report by May 15, 1994, on risk assessment methods and risk management practices. All three of these allow opportunity for public comment. The EPA encourages the public to take advantage of opportunities, such as those described above, to provide input into its decision making process. For the proposed rule, the EPA encourages commentors to address the application of its current methodologies (e.g. Reportable Quantities Composite Score system for determinations of relative chronic toxicity) to the hazard ranking for section 112(g), rather than on fundamental issues with the approaches themselves.

The EPA realizes that no system of hazard ranking is going to be error free. Consequently, policy-based restrictions in this offset proposal that because of data limitation, etc., are intended to prohibit offsets that may increase hazard, may also restrict offsets which reduce hazard. The current proposal attempts to balance the concern with a potential increase in health hazards from offsets with the need for flexibility. That is, the proposal seeks to provide as wide a choice of offsetting possibilities from affected sources as is consistent with the need for a system which assures that the public health is protected, given the currently existing methodologies and data available from which to construct a hazard ranking system. The EPA requests comment on this approach and on specific changes that would increase the flexibility afforded by the offset program while assuring the protection of public health. The EPA also asks for comment on specific changes that would increase protection of public health while assuring that the program retains the flexibility necessary to an offset program. In either instance, changes suggested to the current approach should not increase the complexity of the system so as to render it too difficult to use or implement.

C. The Establishment of Relative Hazard Between Categories of Pollutants

Section 112(g) requires that the EPA distinguish pollutants for which "no safety threshold for exposure can be determined" from the listed pollutants for the purposes of offsetting. Consequently the pollutants must be, at a minimum, categorized as either "nonthreshold" or "threshold." The EPA proposes that a third category also be established for pollutants which may be of "high-concern" from either short term exposure (acute) or highly ranked for extremely severe chronic toxicity. Furthermore, the language in section 112(g) directs the EPA to relatively rank the hazardous air pollutants "to the extent practicable." Such language recognizes that it may not be possible to relatively rank some of the listed pollutants and thus a fourth category of pollutants is created in which "unrankable" pollutants are placed.

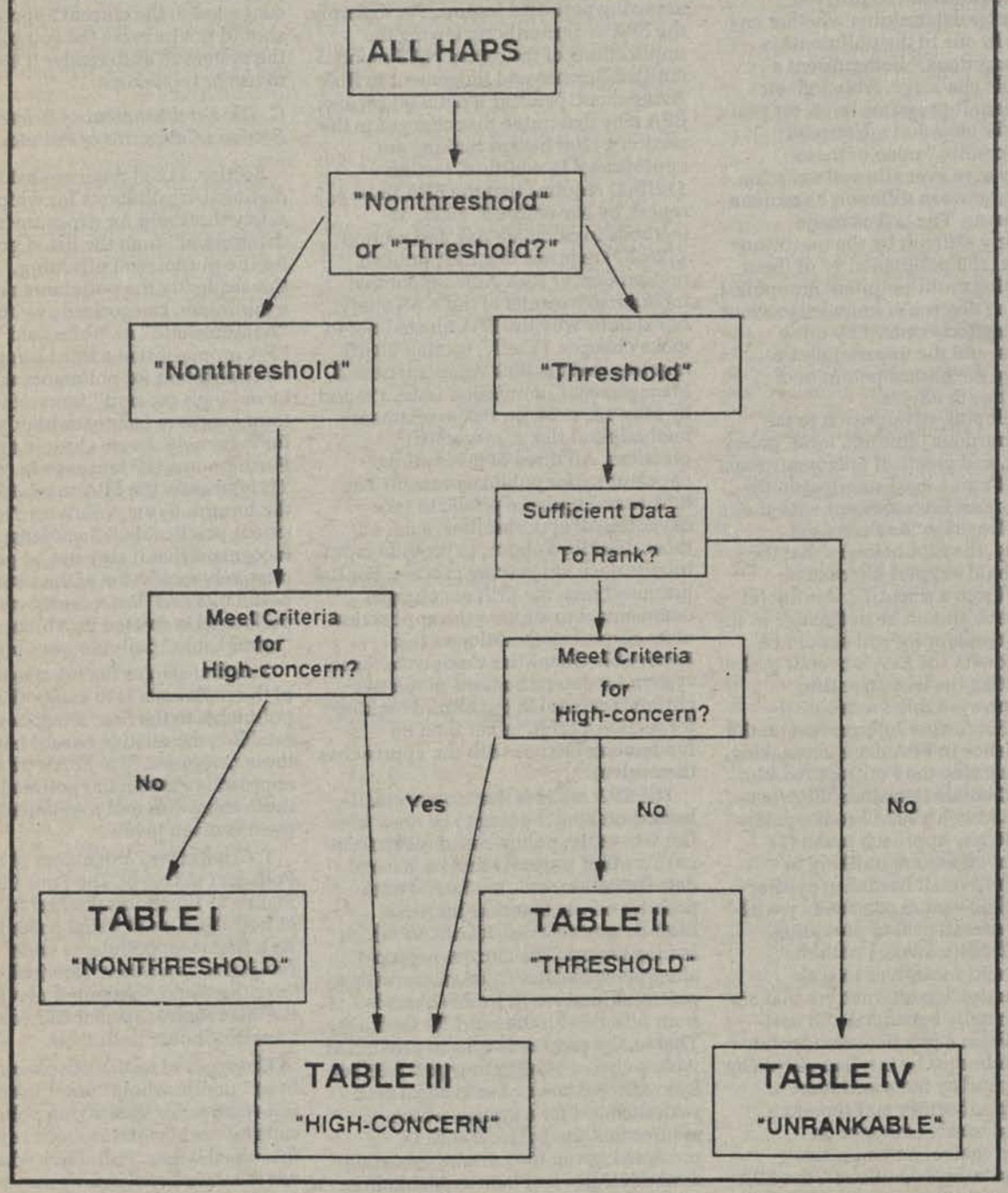
The first step in the relative ranking of the pollutants is to assign the pollutants to the four categories and to establish the relative hazard between these categories. The EPA's proposed approach to assign the pollutants to these categories and to relatively rank them is given below.

1. Criteria for Assignment of Each Pollutant to One of The Four Categories. Figure 11 illustrates the four categories of pollutants used in the hazard ranking. As a first step, pollutants were categorized as either "threshold" or "nonthreshold." As noted previously, the Act requires special consideration of "nonthreshold" pollutants.

The types of health effects considered to be "nonthreshold" and the sources of information for identifying pollutants causing such "nonthreshold" effects are discussed below. Pollutants which were not identified specifically as "nonthreshold" pollutants are categorized as "threshold" pollutants.

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Figure 11. Four Categories of HAPs.

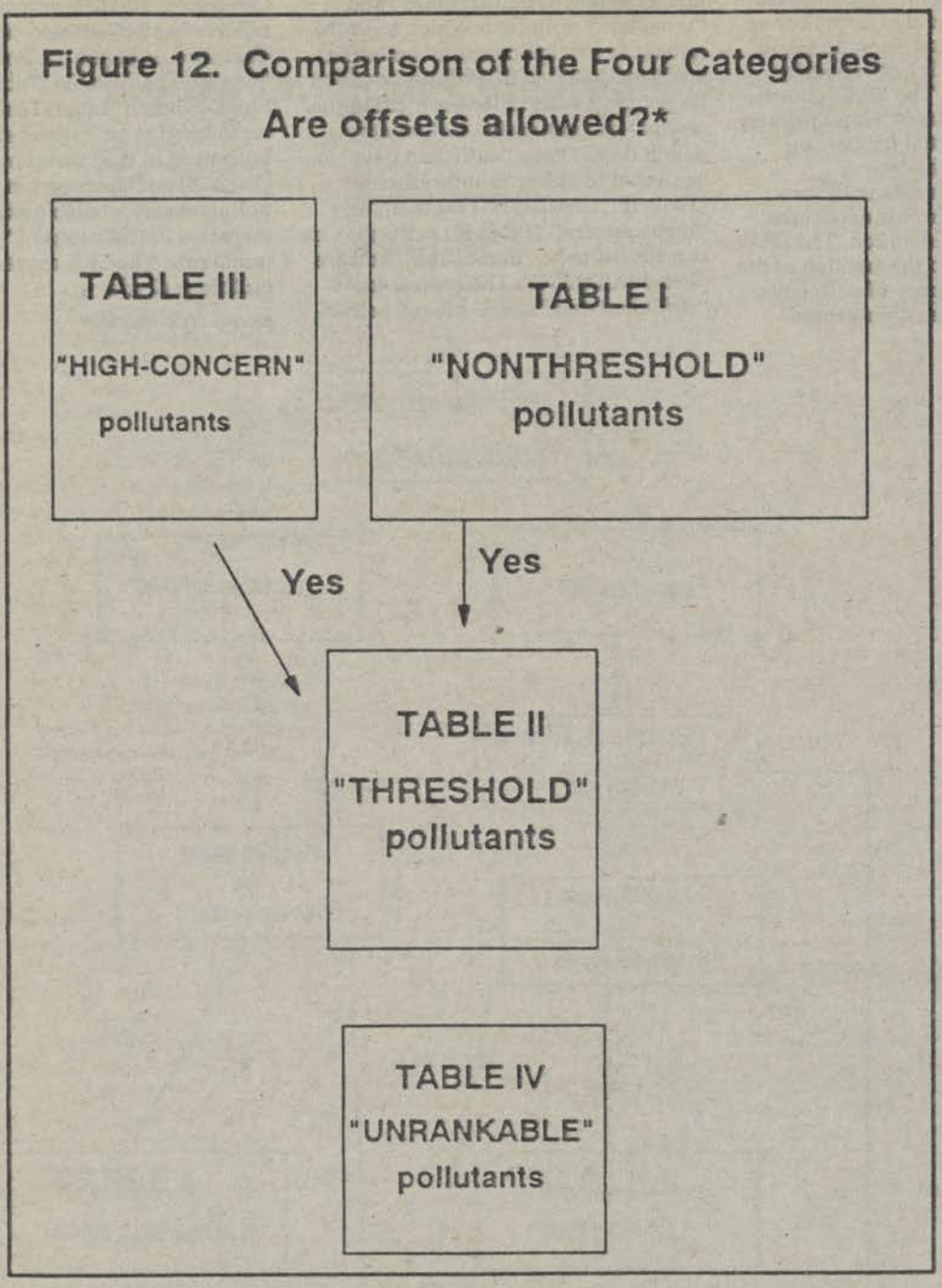


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As a second step, the EPA created a list of pollutants called "high-concern" pollutants to be separated from the rest of the "threshold" and "nonthreshold" pollutants. This list is not explicitly required by the Act. The EPA believes, however, that pollutants whose primary concern is the potential for causing health effects from short-term exposures, and pollutants with very high toxicity from chronic exposures, require special consideration. The EPA requests comment on the creation of the "high-concern" category of pollutants. The data used for identifying these "high-concern" pollutants is discussed further below. "Nonthreshold" and "threshold" pollutants which meet the criteria as a "high-concern" pollutant are listed in Table III. Pollutants which do not meet such criteria remain in the original two categories. Pollutants which do not have "sufficient data" to be placed in either "nonthreshold," (Table I), "threshold," (Table II), or "high-concern" (Table III) categories are considered to be "unrankable" and are placed in Table IV. The criteria for "sufficient data" are discussed below.

2. Relative Hazard Between Categories. The determination of relative hazard between categories is described in Figure 12. Pollutants in the "nonthreshold" table (Table I) and the "high-concern" table (Table III) are considered to be "more hazardous" than pollutants in the "threshold" table (Table II) and decreases in these pollutants are available as offsets for increases in emissions of "threshold" pollutants. The EPA requests comment on these criteria.

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* This diagram illustrates pollutant comparisons BETWEEN categories. The proposed rule also includes an approach for comparisons WITHIN categories

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The EPA considers it "not practicable" to establish the relative hazard between the "high-concern" and "nonthreshold" categories of pollutants. Emissions of a pollutant in Table I cannot, therefore, be used to offset emission increases of a pollutant listed in Table III. Similarly, emission reductions of a pollutant in Table III cannot be used to offset increases in the emissions of a pollutant listed in Table I.

The EPA also believes it is "not practicable" to establish the relative hazard between those "unrankable" pollutants listed in Table IV and those pollutants belonging to the other three categories. As a result, emission reductions of pollutants in Table IV are not available as offsets for emission increases of any HAP. In addition, emission increases of pollutants in Table IV cannot be offset by decreases in emissions of any other HAP.

3. Types of Toxicity Data Used To Assign Hazard To Pollutants In Each Category. Basis For Hazard Ranking.

a. Identification of "Nonthreshold" Pollutants. Although the Act does not provide specific direction for identifying pollutants that have "no safety threshold of exposure," Senator Lautenberg's testimony (136 Cong. Rec. S 17124) suggests that Congress intended for the EPA, at a minimum, to include pollutants with evidence of carcinogenicity in this category. The EPA presumes for cancer that any exposure is associated with some risk. Therefore, the consideration of carcinogens as having, in the absence of adequate evidence to the contrary, "no safety threshold" for exposure is consistent with the EPA's "Guidelines for Carcinogen Risk Assessment" (in The Risk Assessment Guidelines of 1986, U.S. EPA/ORD/OHEA, EPA 600/8–87–045), the Office of Science and Technology Policy (50 FR 10372–10442, March 14, 1985), and the National Research Council (Risk Assessment in the Federal Government: Managing the Process. National Research Council. National Academy Press, Washington, DC, 1983).

For the proposed rule for section 112(g), the EPA identified carcinogens based upon weight of evidence classifications described in the EPA's "Guidelines for Carcinogen Risk Assessment." The proposed rule treats as "nonthreshold" pollutants, those pollutants with a weight of evidence classification under the guidelines of either A (Human Carcinogen), B (Probable Human Carcinogen), or C (Possible Human Carcinogen), or the equivalent thereof.[2] The EPA believes that inclusion of all three categories for the proposed rule is consistent with section 112(f) of the Act which requires the EPA to promulgate emission standards to protect health and environment from "known, probable, and possible" human carcinogens. In addition, the EPA identified several pollutants which have been classified by the International Agency for Research on Cancer (IARC), but which have not been formally reviewed by the EPA. These pollutants are categorized by IARC as Group 1 (agent carcinogenic to humans), Group 2A (probable human carcinogen), and Group 2B (possible human carcinogen). These pollutants are also treated as "nonthreshold" pollutants under the proposed rule.

The EPA will consider as "nonthreshold" pollutants, HAP with a weight of evidence of "known, probable, and possible" human carcinogens since in the absence of evidence to the contrary, hazard may be associated with any exposure level. Knowledge of the mechanism of action can raise questions regarding threshold assumptions (Thyroid Follicular Cell Carcinogenesis: Mechanistics and Science Policy Considerations, U. S. EPA, Office of Research and Development, Draft document December 1987 (edited 1988), EPA 265/3–88–014A). Currently there is no HAP for which the EPA has found such considerations to indicate convincingly for the entire weight of evidence so that the default assumptions are not applicable.

The EPA's cancer guidelines include two additional weight of evidence categories: D (Not Classifiable, because there is insufficient data) and E (Evidence of Non-carcinogenicity). The proposed rule considers pollutants in either of these categories to be "threshold" pollutants pending further information.

The EPA recognizes that there may be additional health endpoints besides cancer for which a "nonthreshold" assumption would be reasonable. At this time, the EPA has not identified any pollutants that would be added to the "no safety threshold" list based upon such nonthreshold noncancer effects. One class of pollutants, lead compounds, which has been suggested as having an increasing dose-response relationship at current exposure levels for neurobehavioral effects, (Letter from R.C. Loehr and A. Upton to William K. Reilly. Subject: Science Advisory Board's Review of the Draft Assessment Document "Review of the Carcinogenic Potential of Lead Associated with Oral Exposure." November 21, 1989) is also identified as a "nonthreshold" pollutant based on it being considered probably carcinogenic to humans (B2). Based on these noncancer concerns, lead compounds are treated as "high-concern" hazardous air pollutants. The EPA requests comment on this approach and on other chemicals and health endpoints which should be considered as "nonthreshold."

4. Data Base for Ranking Pollutants in Table I ("Nonthreshold" Pollutants). Because all of the "nonthreshold" pollutants in the proposed rule have associated carcinogenic effects, the assignment of relative hazard of such pollutants was based on current EPA procedures for describing the hazard of carcinogens.

Consistent with the EPA's current cancer guidelines, a description of carcinogenic hazard has two parts, a qualitative characterization (the weight of evidence that a substance causes cancer in humans) and a quantitative characterization (the assessment of the dose-response relationship). The EPA believes that both of these parts are important in the ranking of carcinogens for section 112(g).

a. *Weight of evidence.* For the qualitative characterization, the EPA uses the previously identified weight of evidence classifications. Group A chemicals, relatively few in number, are those for which there is sufficient human evidence of carcinogenicity, often from epidemiologic studies of occupational exposure. Group B chemicals, which are more numerous, include chemicals for which there is "sufficient" animal evidence, but for which there is limited (Group B1) or "inadequate" (Group B2) evidence in human studies. Group C chemicals are those with "limited" evidence in animal studies (which includes data from a single species, strain, or from an exposure route not directly relevant to humans), and "inadequate" evidence in human studies.

The EPA used the following hierarchy of data sources in characterizing the weight of evidence of chemicals in the proposed cancer ranking: (The references are listed in order of preference, and are discussed in further detail in the Technical Background Document)

i. Weight of evidence characterizations in the EPA's Integrated Risk Information System (IRIS).

[2] The EPA is in the process of revising its cancer guidelines. These classifications may change in any future revisions of the guidelines, and hence may impact the hazard ranking as outlined in this proposal. The current guidelines are contained in 51 FR 3392; September 24, 1986 and the EPA publication number is EPA/600/8–87/045.

ii. For pollutants not yet reviewed by the EPA's carcinogen risk assessment verification endeavor (CRAVE) work group, weight of evidence characterizations in documents prepared by the EPA's Office of Research and Development (ORD), including various health assessment documents and profiles, and including documents prepared for Evaluating Potential Carcinogens in Support of Reportable Quantities of pursuant to CERCLA section 102. In addition, sources other than ORD documents were used (for example, SAB comments for perchloroethylene and trichloroethylene).

iii. For pollutants which have not been reviewed by the EPA, characterizations by IARC were used.

b. *Dose-response.* The characterization of the dose-response relationship is useful for making inferences about response associated with a particular level of exposure and for making relative comparisons between chemicals based on potency. The dose associated with a 10 percent increase over background in cancer incidence (ED10) is chosen as the parameter for which to compare relative potencies across "nonthreshold" HAP for several reasons. First, the ED10 is considered to be within the experimental data; issues related to the shape of the dose-response curve beyond the observable range are not relevant. Second, the ED10 is a statistically stable estimate and is relatively insensitive to the choice of the dose-response model.

The EPA has used the ED10 as a hazard ranking tool for adjusting statutory Reportable Quantities under section 102 of CERCLA (Methodology for Evaluating Potential Carcinogenicity in Support of Reportable Quantity Adjustment Pursuant to CERCLA section 102, EPA/600/8–89/053, June 1988). In addition, the same data which supports an estimate of the unit risk (as identified in IRIS or another EPA document) support the estimate of the ED10. The EPA requests comments on the use of the ED10 for ranking hazard.

There are a number of chemicals identified as "nonthreshold" in Table I, that are not supported by data sufficient to develop a potency estimate. There are others for which the potency has not yet been evaluated by the EPA. Such pollutants are included in Table I but cannot be relatively ranked within the category. (A similar problem would exist if any "nonthreshold" pollutants were identified for effects other than cancer.) For EPA's proposed approach, this type of pollutant is generally considered to be more hazardous than the "threshold" pollutants listed in Table II. However, because no potency value (1/ED10) is available, such "nonthreshold" pollutants cannot be ranked among the other "nonthreshold" pollutants. Consequently, EPA's proposed approach for identifying a "more hazardous" decrease in emissions in the proposed rule does not allow them as offsets for or to be offset by "nonthreshold" pollutants having potency estimates. Similarly, pollutants without potency estimates are not allowed as offsets for each other.

The EPA requests comment on another option which is to assign default values to "nonthreshold" pollutants with no potency determination. Although such an option would provide a greater pool of pollutants available for offsets, the number of offsets that could potentially increase the human health hazard would also increase. Specifically, the EPA requests input on the default values that would be selected, and the data or policy assumptions that would be used to support such default values. The EPA also asks for comments on the use of structure-activity relationship analysis as one possible method for deriving quantitative potency estimates.

c. *Uncertainties.* Several uncertainties arise in developing a relative ranking of hazard. First, in the absence of human data, an assumption is made that human sensitivity may be as great as the most sensitive responding animal species. Exceptions to the assumption of human sensitivity may be expected, however. For example, recent research shows that the development of kidney tumors through proximal tubule damage, resulting from accumulation of alpha 2 micro-globin in hyaline droplets, appears specific for the male rat (U. S. EPA, 1991;Alpha 2 micro-Globin: Association with Chemically Induced Renal Toxicity and Neoplasia in the Male Rat, EPA/625–3–91/019F). For pollutants for which the primary concern is kidney tumors in the male rat, such tumors may have diminished relevance in evaluating the potential for human health effects. In this and in similar situations, humans may be qualitatively different than animals. In addition, it is assumed that the human response is quantitatively similar to the most sensitive animal species. That is, humans will have the same shape of the dose-response curve as animals. Differences in pharmacokinetics, metabolic, and pharmacodynamic processes that influence dose-response have only been addressed in a limited number of cases.

Third, in many cases, the ranking is based on data from the oral exposure route since inhalation data are absent. Questions exist regarding the applicability of these data to identify an inhalation hazard since first-pass and dose-rate effects may be important. When route extrapolations have been made (e.g., when inhalation risks in IRIS are based on oral data), in almost all cases, an assumption of 100 percent absorption from all exposure routes was used. Only in one case (bromoform) was a difference (an arbitrary judgment) in absorption via an inhalation exposure accounted for in the estimate of the ED10. Data are sparse in which to gauge the magnitude of error introduced into the ranking from the use of oral data. Pelpelko (1991; Effects of Exposure Route on Potency of Carcinogens. Regulatory Toxicology and Pharmacology 13:3–17), in a limited comparison, observed, for systemic tumors, differences less than an order of magnitude between oral and inhalation routes for doses associated with either a 1 percent or 25 percent additional risk of cancer. It can be asserted from this comparison, that for HAP's which engender systemic carcinogenic hazards with both oral and inhalation exposures, the absence of inhalation data most likely does not lead to a large misclassification of HAP's in a relative ranking. No insight may be gained for HAP's which engender an oral hazard, but no inhalation hazard, or HAP's which elicit portal-of-entry effects.

5. Types of Toxicity Data Used for Relative Ranking of "Threshold" Pollutants. Under the proposed rule, pollutants which are not listed in Tables I, II, or IV are considered to have "safety thresholds of exposure" and are subsequently labeled "threshold" pollutants.

a. *Data Base Selected for Use—Reportable Quantities Data Base.* Under section 104 of CERCLA, the EPA developed a chronic toxicity scoring system as one of the methods used under CERCLA in establishing reportable quantities. (*Technical Background Document to Support Rulemaking Pursuant to CERCLA section 102. Volume 2. Report to EPA/ORD and EPA/OSWER. August 1986.*) This methodology explicitly takes both the dose and severity of effect into account, for chronic exposure, to determine the relative hazard of each pollutant. The hazard potential of each pollutant is determined by calculating a composite score (CS) which is the product of a dose rating (RV_d) and a severity of effect rating (RV_e). The RV_d is based upon the human minimum effective dose (MED) for a given endpoint, often derived from animal data. A log-based algorithm in the

scoring system is used to translate the MED into an RV_d value between 1 and 10. Effects which occur at a low MED are assigned a relatively high RV_d value. The severity rating, RV_e, is a number between 1 and 10 which assigns a numerical score to the severity of a given health endpoint. The system used to assign the RV_e values is included in this preamble as Table 1 as it appears in the technical support document for CERCLA section 102 volume 2. The resulting composite score, the product of the dose and severity ratings, is therefore a number between 1 and 100. Using this method, pollutants which elicit severe effects at relatively low doses are assigned a high composite score and those which produce relatively minor effects at high doses are given a low composite score.

There are a number of advantages to using the RQ approach as a relative ranking approach for "threshold" pollutants. Because the approach has been used by the EPA for a number of years in the RQ process, data are available for the majority of "threshold" pollutants on the HAP list (the section 112(b) list). Additionally, the EPA believes it is appropriate for the purposes of the proposed rule to consider severity of health effects in the ranking. The EPA recognizes in this proposal that the severity scores are somewhat subjective, but believes that this scoring system nonetheless represents the best available tool for relatively ranking the large number of HAP on the section 112(b) list.

The EPA used a number of data sources in evaluating the hazard of threshold pollutants. Three types of documents were available from EPA's Environmental Criteria and Assessment Office in the Office of Research and Development, including Reportable Quantity documents, Health and Environmental Effects Documents (HEEDs) and Health and Environmental Effects Profiles (HEEPs).

In addition to the above data sources, for which composite scores could be obtained directly, there were a number of additional pollutants for which composite scores could be calculated based upon information used to develop RfCs. Documentation of each composite score used in the "nonthreshold" pollutant ranking is contained in the Technical Support Document (EPA–450/3–02–010).

TABLE 1.—SEVERITY OF EFFECT RATING VALUES USED FOR DERIVATION OF THE COMPOSITE SCORE

Rating (RVe)	Effect
1	Enzyme induction or other biochemical change with no pathologic changes and no change in organ weights.
2	Enzyme induction and subcellular proliferation or other changes in organelles but no other apparent effects.
3	Hyperplasia, hypertrophy, or atrophy but no change in organ weights.
4	Hyperplasia, hypertrophy, or atrophy with changes in organ weights.
5	Reversible cellular changes: cloudy swelling, hydropic change or fatty changes.
6	Necrosis, or metaplasia with no apparent decrement of organ function. Any neuropathy without apparent behavioral, sensory, or physiologic change.
7	Necrosis, atrophy, hypertrophy, or metaplasia with a detectable decrement of organ functions. Any neuropathy with a measurable change in behavior, sensory, or physiologic activity.
8	Necrosis, atrophy, hypertrophy, or metaplasia with definitive organ dysfunction. Any neuropathy with gross changes in behavior, sensory, or motor performance. Any decrease in reproductive capacity. Any evidence of fetotoxicity.
9	Pronounced pathologic changes with severe organ dysfunction. Any neuropathy with loss of behavioral or motor control or loss of sensory ability. Reproductive dysfunction. Any teratogenic* effect with maternal toxicity.
0	Death or pronounced life shortening. Any teratogenic effect without signs of maternal toxicity.

*Because this table is taken directly from the guidance document for the development of Composite Scores, the term "teratogenic" appears here. The EPA now prefers to use the term "developmental" to refer to these effects.

b. Other alternatives considered for "threshold" pollutant ranking. Another approach considered by the EPA is to rank "threshold" pollutants using (RfCs and Oral Reference Doses (RfDs). The RfC is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime. The RfD is a similar type of estimate for oral exposures.

For purposes of the proposed rule, the EPA prefers the composite score of the RQ scoring system to an RfC/RfD system. If RfCs were available for more chemicals, the RfC may be an appropriate ranking tool for "threshold" pollutants. However, as of the time of this proposal, RfCs are available for only a relatively small number of the threshold pollutants on the section 112(b) list.

At this time, the EPA is reluctant to use RfDs, which are based on oral exposures, for ranking chemicals under a program for which inhalation exposures are the primary concern. Factors such as portal of entry effects (needed for metals, irritants, sensitizes) and liver first-pass effects limit the use of oral studies as meaningful indicators of toxicity from exposure by inhalation. The EPA requests comment on the relative merits of alternative approaches and their inherent uncertainties, and accompanying data sets in relatively ranking "threshold" pollutants and on chemical-specific information relevant to the hazard evaluation of each chemical.

Another approach to the ranking, suggested by members of EPA's SAB, would make use of an information matrix. Several members of the SAB expressed interest in having the EPA present more data about the pollutants than was represented by a single composite score for each pollutant. Rather than using one composite score to describe the endpoint of concern for a pollutant, it was suggested that, in essence, multiple scores be developed for the many effects a pollutant may elicit. Also, it was suggested that the "limiting effect" or effect of most concern for each pollutant be chosen from the matrix and that offsetting only be allowed between pollutants with the same endpoint of concern. Specifically, only pollutants with the same target organ and endpoint would be allowed as offsets. Selection criteria would have to be developed to determine the effect of most concern for each pollutant. If a pollutant was of concern for more than one endpoint, the classification of the pollutant and the offsetting restrictions that apply to each pollutant would have to be determined. This is further complicated due to the fact that few, if any, HAP have been tested on all organ systems.

The EPA considers this concept to be valid, but believes that the implementation of these suggestions would require more data on each pollutant than are currently available and would introduce another level of complexity for both sources and for the reviewing authorities. Also, the approach would greatly restrict the universe of pollutants available for offsets. The EPA invites comment on the information matrix approach suggested by SAB members for ranking threshold pollutants.

6. Criteria and rationale for identification of "high-concern" pollutants (Table III). The hazard ranking, which is used for determining a "more hazardous" decrease in emissions, categorizes pollutants as either "threshold" or "nonthreshold" in accordance with the requirements of the Act. A situation which must be addressed is the determination of a "more hazardous" decrease in emissions when the offsetting pollutant is a "nonthreshold" pollutant, but the pollutant being increased is a "threshold" pollutant.

a. *Statutory need.* As noted above, the language in section 112(g)(1)(B) of the Act specifically prohibits increases in emissions of pollutants having no "safety threshold for exposure" to be offset by decreases in "threshold" pollutants. However, the converse is not prohibited, and increases in emissions of "threshold" pollutants may be offset by decreases in "nonthreshold" pollutants if that decrease meets the "more hazardous" test. As stated previously, the "nonthreshold" pollutants are considered to be more hazardous than the "threshold" pollutants. However, because it may be impossible to determine the relative hazard between some "threshold" pollutants and certain "nonthreshold" pollutants, a problem exists in having only two categories of pollutants.

b. *Recommended approach.* The EPA recognizes the difficulty in evaluating pollutants for relative toxicity when there are two or more different types of effects (cancer and noncancer endpoints). Ultimately, in developing an approach to addressing this problem, there is no "scientific" solution, and policy judgements must be made. One possible approach would be to treat any "nonthreshold" pollutant as more hazardous than any of the "threshold" pollutants. While the EPA believes that this is appropriate in many cases, some weakly potent carcinogens on the "nonthreshold" list may represent a lesser human health hazard than certain highly toxic "threshold" pollutants. In order to begin to account for such cases, the proposed rule identifies a special category of pollutants which are referred to as "high-concern" pollutants.

The "high-concern" pollutants are listed in Table III of the proposed rule. Pollutants in this table are either: (1) Pollutants with composite scores above 20 (potent chronic toxicants), (2) pollutants whose primary toxicity is manifested from short exposures or peak releases at relatively low concentrations, or (3) pollutants for which concern from chronic toxicity may outweigh that of carcinogenicity (e.g., lead).

Threshold pollutants which are not identified as "high-concern pollutants" in Table III are deemed "threshold" pollutants and are listed in Table II.

The selection of the cutoff of 20 is a policy decision that is designed to be consistent with the approach taken for reportable quantities under CERCLA. For CERCLA, all carcinogens are assigned a reportable quantity of 100 pounds or less. For chronic noncancer effects, the CERCLA program assigns a reportable quantity of 100 pounds or less only to those pollutants with a composite score greater than 20.

The list of "high-concern" pollutants also includes a number of pollutants of concern for toxicity from short-term exposures. The EPA believes that toxicity from short-term exposures is not qualitatively or quantitatively comparable to carcinogenesis or chronic toxicity and therefore proposes that acutely toxic (and extremely potent) pollutants be identified and placed in the category of "high-concern" pollutants. For the proposed rule, the EPA has identified a number of pollutants of concern from short-term exposure using the "LOC" for "extremely hazardous substances" pursuant to section 302 of the SARA. Pollutants are treated as high concern from short-term exposure if the LOC value is less than 8.0 mg/m^3 or if an RFC exists for short-term exposure exists and is below the 8.0 mg/m^3 cutoff. The determination of this value is a policy decision based on the distribution of pollutants having LOC among the 189 HAP. Documentation of the LOC values for the HAP on the section 112(b) is provided in the draft technical background document (EPA 450/3–92–010). Although there are many caveats regarding the use of LOCs as a health safety benchmark or as "safe breathing levels," the EPA believes that their use for the proposed rule as a tool to identify acutely toxic pollutants avoids some of the drawbacks for their use.

The "high-concern" list in Table III includes a few carcinogens which are also of concern from short-term exposures. Where a LOC was available for a carcinogen, and that LOC is less than 8 milligrams per cubic meter, the carcinogen was placed in Table III instead of Table I, because of the implications for greater restrictions on offsetting.

The EPA believes that the LOC approach is a reasonable first step in identifying pollutants for which toxicity from short-term exposures would be of high concern. The LOC values are indicative of the relative concentrations at which the pollutants create an immediate danger of death or irreversible health effects. Although owners and operators of hazardous air pollutant sources regulated under section 112(g) are unlikely to propose emitting these "acutely" toxic substances at levels that would cause the LOC values to be exceeded, the EPA believes that these values can be used as a tool to identify pollutants of concern for toxicity from short-term exposures.

At the same time, the EPA recognizes that this is a very imperfect tool. The LOC values, which rank pollutants essentially by their relative ability to cause lethality, are probably an inadequate indicator of the relative likelihood that short-term exposures could cause effects such as neurological, developmental, and reproductive effects. The EPA requests comment on whether the "high-concern" category should be created, and on the policy decisions that were made in identifying the pollutants for this category. The EPA is particularly interested in comments concerning the merits of using Composite Scores and LOC values and the implications of its proposed cutoffs. In this regard, the EPA seeks comment concerning examples of offsets that reduce hazard which would be precluded by the criteria in the proposed rule. Similarly, the EPA asks for examples where the current proposal is not restrictive enough to prevent offsets from occurring which cause an increase in hazard. The EPA is attempting to identify other methods which could complement the LOC screening approach to identifying pollutants of concern for short-term exposures. The EPA requests comments on methodologies that could be used to address this specific issue.

7. Table IV. Unrankable pollutants. If a pollutant does not meet the criteria to be included as a "nonthreshold" pollutant in Table I, has insufficient chronic toxicity data for purposes of Table II, and does not meet the Table III criteria for a "high-concern" pollutant, then the EPA considers this pollutant as not "practicable" to rank at this time. As more information becomes available on such pollutants, the EPA will amend the hazard ranking to include the pollutants as is appropriate. Alternatively, a panel of experts may be convened by the EPA to rank such pollutants as necessary. The EPA asks for comment on how best to address these pollutants.

8. Treatment of chemical groups. There are 17 HAP listed under section 112(b) which are chemical groups having no unique chemical abstract service (CAS) numbers. These groups are as follows: antimony compounds, arsenic compounds (inorganic including arsine), beryllium compounds, cadmium compounds, chromium compounds, cobalt compounds, coke oven emissions, cyanide compounds, glycol ethers, lead compounds, manganese compounds, mercury compounds, fine mineral fibers, nickel compounds, polycyclic organic matter, radionuclides (including radon), and selenium compounds.

The pollutants within each chemical group do not always have homogeneous toxicological profiles. In some instances, the EPA believes it is reasonable to assume that all chemical species within a group are equally toxic. However, in order to provide a hazard ranking that meets the "extent practicable" test, the EPA believes that it is sometimes necessary to identify appropriate subgroupings or, in some cases, individual pollutants within these 17 broad classes with distinct toxicological properties.

One frequently used approach for chemical groups is to treat the group as a class according to most toxic pollutant or subgrouping within the class. Unlike other programs for which such an approach is health-protective, for the section 112(g) program this would not necessarily be the case. For example, if a group of chemicals was proposed as offsets based upon the most toxic chemical in the group, and if the pollutant actually being reduced was the least toxic chemical in the group, then an improper hazard comparison would result and an increased risk to the public would be allowed.

As a starting point in identifying appropriate subgroupings, EPA staff identified the chemicals and chemical classes within the 17 groups for which reportable quantities have been established under CERCLA. This served to identify the chemicals within the groups for which ED10s and composite scores were available, and therefore could be included within the ranking. The information supporting currently available RQ was complemented with some more recent information (for example, for cresols and for several glycol ether compounds). In some cases, hazard is inferred for a chemical class (e.g. inorganic arsenic compounds). In other cases, available data indicated a significantly different hazard potential (e.g., beryllium salts vs. other beryllium compounds). The rationale and documentation concerning the treatment of the 17 chemical groups is presented in the draft technical support document (EPA 450/3–92–010). The EPA requests public comment on the selection of the pollutants and subgroupings that were included in hazard ranking, and on the methodology for ranking them.

D. The Determination of Relative Hazard Within Categories of Pollutants

Requirements of the Proposed Rule

Having established the four categories of pollutants and the relative hazard between them, the next step is to assess the relative hazard of pollutants within each category. The proposed rule contains methods to define a "more hazardous" and "equally hazardous" pollutant within the categories.

1. "Nonthreshold" Pollutant Increases

Paragraph 63.48(a). a. Approach in Proposed Rule. As discussed above, all of the "nonthreshold" pollutants are included in Table I based upon their potential to cause cancer. For comparing the relative hazard of two "nonthreshold" pollutants, Table I lists both quantitative hazard information and weight of evidence information. This information is used in determining whether one "nonthreshold" pollutant is "more hazardous" than another. In order for a carcinogen to be deemed "more hazardous," three conditions must be satisfied.

First, the pollutant being decreased must be another pollutant in Table I. As discussed above, section 112(g)(1)(B) does not allow decreases in "threshold pollutants" as offsets for increases in "nonthreshold" pollutants."

Second, the pollutant must have an equal or greater weight-of-evidence classification. Pollutants with a weight of evidence of "A" or "B" according to the EPA's Guidelines for Carcinogen Risk Assessment (U.S. EPA, 1986) are determined to be "more hazardous" than pollutants with a weight of evidence of "C" (possibly carcinogenic to humans). For the purposes of the proposed rule, chemicals categorized as having weight of evidence of "Group A" or "Group B" are treated as having greater hazard than a weight of evidence of "Group C." The EPA feels that the evidence of carcinogenicity in either animals or humans which is defined as "sufficient" under EPA's cancer guidelines (U.S. EPA, 1986) provides a compelling case for a greater hazard concern than evidence defined as less than "sufficient", i.e., "limited" evidence in animals.

Third, the "more hazardous" pollutant must have a potency (1/ED10) value, listed in Table I of the proposed rule, which is greater than the "less hazardous" pollutant by at least a factor of 3. Any given potency value is uncertain and the EPA proposes, as a policy decision, that this uncertainty spans approximately one order of magnitude. This uncertainty is assumed, again as a policy decision, to effectively bracket each ED10 value by an amount equal to a factor of 3 (approximately the square root of one order of magnitude) both above and below the ED10 value. The EPA requests comment on this treatment of uncertainty in determining "more hazardous nonthreshold pollutants."

Three of the 189 hazardous air pollutants are considered to have weight of evidence which falls on the spectrum between "Group B_2" and "Group C." These are: perchloroethylene, trichloroethylene, and lindane. For the purposes of ranking hazard, these pollutants are considered by the proposed rule to be more like "B" than "C."

For "nonthreshold" pollutants listed in Table I, two pollutants are considered "equally hazardous" if the pollutants have potency (1/ED10) estimates that do not differ by more than a factor of 3, and the offsetting pollutant has the same (treating A and B carcinogens as one group) or a greater weight of evidence as the pollutant whose emissions are being increased.

The EPA requests comment on the merits of these three proposed criteria. In particular, the EPA is interested in the way carcinogens are grouped in the proposed rule. The EPA is also interested in comment on whether the proposed factor of three adequately takes into account uncertainty surrounding the potency estimate for the carcinogens. In this regard, the EPA seeks comment concerning examples of offsets that reduce hazard which would be precluded by the criteria in the proposed rule. Similarly, the EPA seeks

examples where the current proposal is not restrictive enough to prevent offsets from occurring which cause an increase in hazard.

b. Other Alternatives Considered for Identifying "More Hazardous" Decrease in Emissions of Carcinogens. The EPA reviewed several alternatives to the approach outlined in Paragraph 63.48(a) of the proposed rule.

One alternative approach for determining the relative hazard between pollutants is to develop an ordinal ranking of potency estimates. Such a ranking would treat each potency estimate as a discrete value and would ignore the uncertainty of the estimate. For example, a potency value of 10 would indicate a greater hazard than a potency value of 9.5. The EPA believes that for the purposes of the ranking such fine scale distinctions should not be made when the uncertainty in the data is taken into account. Additionally, this approach could prompt frequent reordering of the ranking as new scientific data become available and the potency estimates change.

Another approach that EPA considered would subdivide the potency estimates into groupings or "bins." This approach increases the stability of the ranking, because for any given pollutant, small changes in the potency value would not cause a change in the bin assignment. This approach may also have advantages in the treatment of multiple-pollutant streams. (If a group of pollutants were in the same bin, an emission total for that bin could in some cases be more straightforward to evaluate than treating each pollutant individually). However, this approach does not adequately reflect the differences in hazard for pollutants immediately adjacent to the borderline of the bins. For example, using bins of 1–10, 10–100 and 100–1000, a pollutant with a value of 101 would be treated as more hazardous than a pollutant with a value of 99, while a pollutant with a value of 99 would be treated as equally hazardous as another pollutant with a value of 11. A comparison between the approach in the proposed rule and to the fixed bin approach is displayed in Tables 2 and 3. The EPA also considered alternatives that are based solely on quantitative estimates of potency, and which would not consider weight of evidence as a factor in the hazard comparison. Ignoring weight of evidence classification, for example, could allow increases of a known (Group A) human carcinogen of low potency to be offset by decreases in a moderately or highly potent possible (Group C) human carcinogen. The EPA requests comment on whether such an offset should be considered as a decrease in hazard. The EPA believes that weight of evidence is an important consideration in describing the hazard associated with carcinogens.

The potency (1/ED10) values for the cancer ranking were obtained using the data base for RQ under CERCLA as a starting point. In compiling these values, the EPA recognized that the data base generated for ranking air pollutants under section 112(g) of the Act would require a greater emphasis on inhalation. For the proposed rule, the EPA reviewed the ED10 values in the CERCLA data base and made adjustments where deemed appropriate (oral values adjusted to inhalation values). Adjustments were also performed to ensure that the data base used in the determination of the ED10 was consistent with that used to develop unit risk estimates of carcinogenic potency for pollutants listed in the EPA's IRIS. The documentation of the specific ED10s used for the proposed cancer ranking is discussed in the technical background document.

TABLE 2.—EXAMPLE OF PROPOSED "NONTHRESHOLD" POLLUTANT RANKING

CAS No.	Example pollutant	Potency (1/ED10) [1]	Weight of evidence classification
75558	1,2-Propylenimine	260	B
118741	Hexachlorobenzene	13	B
91941	3,3-Dichlorobenzidine	7.5	B
95534	o-Toluidine	1.6	B
79469	Vinylidene chloride	1.2	C
79469	2-Nitropropane	[2]	B

[1] The greater the potency value, the more hazardous the pollutant.
[2] Not available.

Example comparisons:

1,2-Propylenimine is more hazardous than Hexachlorobenzene because the potency value is more than three times greater (260 is more than 3×13) and because the weight of evidence classification is equal (both are Group B).

3,3-Dichlorobenzidine is "equally hazardous" than Hexachlorobenzene because the potency value is within a factor of three (13 is less than 3 times 7.5) and the weight of evidence classification is equal (both are Group B).

Vinylidene chloride cannot be considered more hazardous than any of the other pollutants because it does not have an equal or greater weight of evidence classification (Group C class is lower than the others which are either Group A or Group B).

2-Nitropropane (no potency value available) would not be allowed to offset, or be offset by other "nonthreshold" pollutants.

TABLE 3.—EXAMPLE ILLUSTRATING FIXED-BIN ALTERNATIVE APPROACH

CAS No.	Example pollutant	Potency (1/ED10)	WOE	Bin No.
75558	1,2-Propylenimine	260	B	1
118741	Hexachlorobenzene	13	B	2
91941	3,3-Dichlorobenzidine	7.5	B	3
95934	o-Toluidine	1.6	B	
75014	Vinyl chloride	1.6	A	

TABLE 3.—EXAMPLE ILLUSTRATING FIXED-BIN ALTERNATIVE APPROACH—Continued

CAS No.	Example pollutant	Potency (1/ED10)	WOE	Bin No.
75354	Vinylidene chloride	1.2	C	
79469	2-Nitropropane	(1)	B	?

[1] Not available.

Example comparisons: 1, 2-Propylenimine and Hexachlorobenzene are more hazardous than pollutants 3, 3 Dichlorobenzidine, o-Toluidine, Vinyl chloride and Vinylidene chloride because "Bin 1" and "Bin 2" pollutants are considered to be more hazardous than "Bin 3" pollutants.

2. "Threshold" Pollutant Increases

Paragraph 63.48(b). As discussed above, Table II contains pollutants that are considered to be "threshold pollutants." Two types of pollutants are considered "more hazardous" than pollutants listed in Table II.

First, consistent with the overall approach described in section IV.C. above, any "nonthreshold" pollutant in Table I is considered a "more hazardous pollutant" than any pollutant in Table II.

Second, any "high-concern" pollutant in Table III is considered to be a more hazardous pollutant than those in Table II.

A more hazardous pollutant from Table II can be defined by the following. In order to determine the relative hazard between pollutants listed in Table II, a "more hazardous pollutant" is defined as a pollutant whose composite score exceeds that of another pollutant by a sufficient amount. Similar to the approach described above for ranking carcinogens, the EPA believes that the uncertainty in the data should be considered in determining whether one threshold pollutant is "more hazardous" than another. For the proposed rule, a "threshold" pollutant is assumed to be more hazardous than another if its composite score exceeds that of the other pollutant by at least four composite score units. This value of four reflects a policy judgment by the EPA. A discussion of how this value was obtained is discussed in the draft technical support document (EPA 450/3–92–010). For the purposes of this rule, a "threshold" pollutant is considered to be "equally hazardous" to other "threshold" pollutants whose composite score is less than four composite score units. The EPA asks for public comment on whether the uncertainty in composite scores should be considered and, if so, how it should be considered for the section 112(b) pollutants.

The EPA recognizes that the policy decision in the proposed rule provides different treatment of pollutants which differ by 4 or more composite score units than those that are within 4 composite score units. In this regard, the EPA seeks comment concerning examples of offsets that reduce hazard which would be precluded by the criteria in the proposed rule. Similarly, the EPA asks for examples where the current proposal is not restrictive enough to prevent offsets from occurring which cause an increase in hazard.

3. "High-concern" Pollutant Increases

Paragraph 63.48(c). "High-concern" pollutants are listed in Table III. For some pollutants in Table III, a composite score is listed, while for other pollutants, the descriptor "A" is given. An asterisk indicates that the pollutant is also treated as a carcinogen.

Pollutants which list a composite score are included in the table on the basis of severe chronic toxicity. For these pollutants, a "more hazardous pollutant" is another pollutant in Table III whose composite score is at least four composite score units greater than the pollutant being increased.

Pollutants having the descriptor "A" are included on the list on the basis of severe effects from short-term exposures to relatively low concentrations. The EPA believes that it is not "practicable" to determine a "more hazardous pollutant" for pollutants of concern for "acute" toxicity. Therefore, pollutants appearing in the "high-concern" category with the designation of A are not allowed as offsets or to be offset with each other. Furthermore, they are not allowed to offset or be offset with pollutants in the category assigned composite scores.

The EPA requests comment on the merits of the proposed data and methodologies for identifying the "high-concern" category. In this regard, the EPA seeks comment concerning examples of offsets that reduce hazard which would be precluded by the criteria in the proposed rule. Similarly, the EPA asks for examples where the current proposal is not restrictive enough to prevent offsets from occurring which cause an increase in hazard.

4. "Unrankable" Pollutants

Paragraph 63.48(d). As discussed previously in section IV.C. of this preamble, the "unrankable" pollutants in Table IV cannot be used as offsets and cannot be offset by other HAP. The EPA requests comment on the merits of not allowing offsetting for "unrankable" pollutants. In this regard, the EPA seeks comment concerning examples of offsets that reduce hazard which would be precluded by the criteria in the proposed rule. Similarly, the EPA asks for examples where the current proposal is not restrictive enough to prevent offsets from occurring which cause an increase in hazard.

5. Treatment of Pollutant Mixtures

The EPA recognizes that not all proposed offsets will involve comparison of a single pollutant being increased with a single pollutant being decreased. The "more hazardous" finding must also address emission streams containing mixtures of pollutants being increased and decreased.

For the proposed rule, components of such pollutant mixtures are treated individually. The first step required, when an emission increase involves a mixture of pollutants, is to identify the HAP in the mixture which are being emitted in greater than *de minimis* quantities. A source owner seeking to offset the emission increases would need only to offset those pollutants which are increased above *de minimis* levels. Each pollutant in the stream is then categorized as being either "nonthreshold" (if listed in Table I), "threshold" (if listed in Table II), "high-concern" (if listed in Table III) or "not practicable" to rank (if listed in Table IV). Appropriate offsetting decreases must then be identified, depending on which of these categories the pollutant falls into. An example of the offsetting process for a stream of pollutants is given in Tables 4, 5, and 6 below.

If an appropriate offset cannot be identified for a given pollutant in the stream, then that stream is subject to the control technology requirements in section 63.35 of the proposed rule.

TABLE 4.—EXAMPLE EMISSION INCREASE INVOLVING A MULTI-POLLUTANT STREAM

[The following table illustrates an example emission increase from a multi-pollutant stream. The example stream contains several pollutants. For each pollutant, the example identifies where in the ranking (i.e., §63.48 of the proposed rule) the pollutant can be found. Finally, the table displays the type of data pertinent to that section of the proposed rule.]

CAS No.	Pollutant being increased	Ranking category (which section of rule?)	Potency (1/ED10)	Weight of evidence	Composite score
91941	3,3 Dichlorobenzidine	"Nonthreshold" Table I	7.5	B	
75014	Vinyl chloride	"Nonthreshold" Table I	1.6	A	
748794	Mercuric chloride	"High-concern" Table III			40
126998	Toluene	"Threshold" Table II			7

TABLE 5.—POLLUTANTS CONSIDERED "EQUALLY HAZARDOUS" UNDER THE EPA'S PROPOSED APPROACH

CAS No.	Stream pollutant	Which offsetting pollutants would be considered "equally hazardous"
91941	3,3-Dichlorobenzidine	Any "nonthreshold" pollutant, i.e., found in Table I, if: Weight of evidence is A or B and the potency (1/ED10) is in following range: Greater than 2.5 (i.e., 7.5/3) and less than 23 (i.e., 7.5 x 3).
75014	Vinyl chloride	Any "nonthreshold" pollutant if: Weight of evidence is A or B and the. Potency is in following range: Greater than 0.53 (i.e., 1.6/3) and less than 4.8 (i.e, 1.6 x 3).
748794	Mercuric chloride	Any "high-concern" pollutant, i.e., Table III, if: The composite score is greater than 36 (i.e., 40 minus 4) and less than 44 (i.e., 40 plus 4).
126998	Toluene	Any "threshold" pollutant, i.e., in Table II if: The composite score is greater than 3 (i.e., 7 minus 4) and less than 11 (i.e., 7 plus 4).

Pollutants in Table I are equally hazardous if the potency (1/ED10) value varies by less than a factor of 3 and weight of evidence restrictions are observed.

Pollutants in Table II are equally hazardous if the potency (composite score) value varies by less than + or −4 composite score units.

TABLE 6.—POLLUTANTS CONSIDERED "MORE HAZARDOUS" UNDER THE EPA'S PROPOSED APPROACH

CAS No.	Stream pollutant	Which offsetting pollutants would be deemed "more hazardous"
91941	3,3-Dichlorobenzidine	Must be another "nonthreshold" pollutant (Table I): must pass *potency* and *wt of evidence* tests. Potency must be > 23 (i.e., 3 x 7.5). Weight of evidence must be A or B.
75014	Vinyl chloride	Must be another "nonthreshold" pollutant (Table I). Potency must be > 4.8 (i.e., 3 x 1.6). Weight of evidence must be A or B.
748794	Mercuric chloride	Must be another "high-concern" pollutant (Table III). Composite score must be > 44 (4 + 40). "Nonthreshold" pollutants (Table I) are not considered "more hazardous".
126998	Toluene	Can be another "threshold" pollutant in Table II, if composite score is > or = 11. Any "high-concern" pollutant in Table III is considered "more hazardous". Any "nonthreshold" pollutant (including potency A, B, or C is "more hazardous").

E. Determination of a "More Hazardous" Decrease in Emissions

As mentioned previously, there are two possible interpretations of the language in section 112(g) describing an emissions decrease "which is deemed more hazardous." Under the approach based upon a "more hazardous pollutant" reading of the statute, a pollutant with increased emissions must be offset by an equal or greater quantity of emissions from another HAP considered to be "more hazardous."

The approach proposed by the EPA in this rule attempts to determine the quantity of emissions decrease needed to constitute a "more hazardous quantity." Under this approach, the EPA does not attempt to establish the magnitude of the difference between pollutants.

Under EPA's proposed approach, a "more hazardous quantity" consists of two possibilities: (1) A greater or equal decrease in a pollutant that is deemed "more hazardous" according to the scheme described above, and (2) more (the proposed rule requires 1.25 times as much) of a pollutant that is deemed "equally hazardous."

The EPA's proposed approach is similar to a "more hazardous pollutant" approach in all aspects except for one. Pollutants which have similar enough hazard estimates so that a determination cannot be made with certainty that they are different in hazard are considered to be "equally hazardous." While "equally" hazardous pollutants are not

allowed as offsets under the "more hazardous pollutant" approach, they are allowed as offsets under the EPA's proposed approach if a "more hazardous quantity" of an "equally hazardous" pollutant is used as an offset. The EPA's proposed approach does not attempt to establish the magnitude in difference in "hazard" between pollutants. The establishment of a "more hazardous quantity" of an "equally hazardous" pollutant is a fixed percentage increase and is a policy decision. The EPA proposes to set that percentage to be 25 percent more than the increase in emissions and recognizes that, due to uncertainty in the hazard estimates, it may not accurately reflect the actual differences in hazard between two pollutants. The EPA solicits comment on the merits of establishing a 25 percent minimum increase in reductions as the definition of a "more hazardous quantity" of equally hazardous pollutants. In this regard, the EPA seeks comment concerning examples of offsets that reduce hazard which would be precluded by the criteria in the proposed rule. Similarly, the EPA asks for examples where the current proposal is not restrictive enough to prevent offsets from occurring which cause an increase in hazard.

F. Miscellaneous Hazard Ranking Issues

The above discussion outlines the overall methods for ranking the pollutants under the EPA's proposed approach. Within this overall framework, rest a few important issues for which the EPA seeks comment.

1. Consideration of Non-Inhalation Hazard

A potentially important consideration in the hazard ranking is the potential of a given pollutant for non-inhalation routes of human exposure. This non-inhalation exposure potential could be particularly important for particulate HAP which could deposit in the vicinity of the release point, and which are persistent and/or bioconcentrate. Such pollutants could create a greater hazard for exposure by non-inhalation pathways such as soil, plant or fish ingestion, than would other pollutants which do not deposit, are not persistent, or do not tend to bioconcentrate. All other properties being equal, it would appear that a pollutant which has a high potential for such non-inhalation exposures should be considered more hazardous than another pollutant with a low potential.

The EPA believes that there are a number of unaddressed questions which need further discussion before non-inhalation exposure potential is explicitly accounted for in the ranking: (1) How would a qualitative criterion such as non-inhalation exposure potential be incorporated into the ranking methodologies proposed? (2) Should non-inhalation exposure potential be given the same weight as potency and weight of evidence for carcinogens and composite score for non-carcinogens? (3) Should the toxicity of certain pollutants be downgraded if non-inhalation exposure is not of great concern? and (4) Which dose should be used for consideration of effect; the doses received at the "fence line" immediately or the dose which is accumulated after a specified length of time?

For this proposal, there is no explicit consideration given for non-inhalation exposure potential in the hazard ranking. Currently, the EPA does not believe there is an adequate quantitative procedure for such a consideration.

The EPA considered possible approaches for addressing non-inhalation exposure potential in the ranking. Under section 112(i), Early Reductions, an additional weighting factor of 10 was added to pollutants of concern for bioaccumulation. As noted previously in this preamble in the discussion regarding *de minimis* values, in conjunction with the Great Waters study pursuant to section 112(m) of the Act, the EPA has identified a list of pollutants of greatest concern. One possible approach would be to make adjustments in the hazard ranking for the pollutants on this list. However, it would be difficult to select the amount of adjustment that should be made. Another option would be to use information on bioconcentration and persistence to place threshold pollutants onto the high-concern threshold pollutant list and further restrict the pollutants available for offsetting. The EPA requests comment on how this information could be used to provide for explicit consideration of non-inhalation exposure potential in the ranking.

2. Half-Life

Aside from the non-inhalation exposure considerations, another possible consideration in the ranking is the persistence of the pollutant in the atmosphere. The EPA considered accounting in the ranking for the fact that some pollutants (for example, carbon tetrachloride) have very long half-lives in the atmosphere, while other pollutants are highly reactive, with half-lives on the order of a few hours. Pollutants with relatively long half-lives would tend to expose greater numbers of people to very low concentrations. Pollutants with relatively short half-lives would tend to have a similar impact to nearby residents, but would have a lesser exposure potential further downwind.

The EPA proposes that half-life not be taken into consideration in the pollutant ranking. The EPA believes that the focus of the program should be the potential for ambient exposures to individuals exposed to potentially high concentrations. The EPA requests comment on this issue.

A corollary to this issue is the potential for reactive pollutants to form transformation products which may be more hazardous than the parent compounds. At present, the EPA has not identified a method for taking this into account in the ranking. The EPA requests comment on this issue.

3. Appeal Process; Consideration of Exposure Data and Other Mitigating Factors

The goal of the hazard ranking is to ensure that the offsetting emissions will provide for public health improvements relative to the emission increases that will occur. During the SAB consultation meeting and in other discussions, commentors have questioned whether a hazard ranking system can be developed that will never make a mistake, i.e., allow an increased risk, due to the complexity of the task and the sparseness of the scientific data. They identified a number of mitigating factors which have not been incorporated into the ranking which could affect the health impact. The SAB members and other commentors have advised that EPA provide for the opportunity to do an exposure analysis and to consider other physical parameters such as chemical properties and atmospheric formation or degradation potential in determining offsetting restrictions. The hazard ranking in the proposed rule, in effect, uses emission rates as a surrogate for exposure assessment. While a comprehensive site-specific risk assessment, which could include detailed information on exposure, would conceivably be more health protective, the EPA is concerned that the time required to perform and review such an assessment would seriously burden both affected industries and reviewing authorities. Such an extensive review time seems contrary to Congressional intent for minimizing the delays associated with these requirements.

In addition to the exposure issue, there are probably offsets allowed or prohibited by the hazard ranking that would be treated differently based upon a detailed case-by-case review of the health effects data base for the

chemicals in question. The EPA recognizes that any general scheme for ranking the hazard of pollutants as diverse as those listed in section 112(b) will not be error-free. Such situations were of particular concern to participants of the SAB consultation meeting, who advised that any hazard ranking include an appeal process to account for such errors.

The EPA requests public comment on whether the final rule should contain such an appeal process, either by the plant owner, by the permitting authority, or by the public. While recognizing the overall merits of such a process, the EPA is concerned that such an appeal process could substantially increase the time needed for review and subsequently the decision on whether a source could avoid a case-by-case MACT determination. Additionally, many of the permitting authorities, which EPA envisions will be implementing section 112(g), do not have staff with expertise in toxicology and exposure assessment. One option would be to centralize the appeal process at the Federal level, but this could substantially delay the review process.

4. Treatment of Noncancer Effects of Carcinogens

The EPA recognizes that "nonthreshold" pollutants may produce a variety of health effects in addition to cancer, including noncancer toxicity from "short-term," subchronic, and chronic exposures. For example, health effects data for some pollutants indicate that exposure may produce noncancer effects such as respiratory irritation, neurotoxicity, or developmental toxicity in addition to cancer. The EPA's proposed approach currently ranks carcinogens primarily by their carcinogenic potency. Potential human carcinogens which are acutely toxic, or manifest toxicity from relatively low concentrations at short durations of exposure, are unavailable as offsets to be offset by other carcinogens. Such pollutants are also not available as offsets with each other but are considered to be "more hazardous" than the "threshold" pollutants.

A question which the present approach does not address is how to treat carcinogens which may also be of concern for chronic toxicity. Two options for evaluation of noncancer toxicity of carcinogens have been developed by the EPA. In option 1, "noncancer" pollutants with sufficient evidence and extent of noncancer toxicity are identified as "high-concern" pollutants. In option 2, "nonthreshold" pollutants are evaluated for noncancer health effects in addition to cancer concerns by application of expanded offset rules. The EPA asks for comment on two basic approaches which may be considered for appropriately taking into account the non-carcinogenic effects of carcinogens. Both approaches would have problems with implementation due to inadequate data and would increase the complexity of the current scheme.

In the first approach, "nonthreshold" pollutants which may have sufficiently high chronic noncancer toxicity as the endpoint of concern rather than carcinogenicity are identified as "high-concern pollutants." The first step would be to assign appropriate composite scores to all "nonthreshold" pollutants, identify those which would be of concern for chronic toxicity (i.e., have high composite scores). Then those pollutants which have composite scores greater than 20 would be put into the "high-concern" category. A variation of that approach is to put a subset, only those pollutants with either no or a low potency estimate (1/ED10 less than 0.1) and a Composite Score greater than 20, into the "high-concern" category. Once placed in the "high-concern" category, these pollutants would not be available as offsets for other potential human carcinogens, other pollutants in the "high-concern" category with composite scores, or pollutants identified as being acutely toxic. These pollutants would still be considered to be more hazardous than "threshold" pollutants. This group of compounds would have a status similar to lead compounds under the current EPA approach.

In the second approach, the spectrum of health effects associated with pollutants are considered in evaluating pollutant offsets. The health effects that may result from exposure to pollutants are generally identified as: (1) carcinogenicity (equated in this guidance with "nonthreshold"), (2) noncancer effects from chronic exposures, and (3) noncancer effects from "short-term" exposures. In option 2, both carcinogenicity and noncancer toxicity from chronic exposures are explicitly considered in evaluating offsets, while noncancer toxicity from acute exposures is evaluated insofar as identifying pollutants that meet the "high-concern" list criteria. A sequential evaluation of carcinogenicity and noncancer effects from chronic exposures occurs in this option. First, cancer is evaluated according to the procedures in § 63.48 of the proposed rule. Then, emissions of the pollutant being increased are compared to *de minimis* values to determine if noncancer toxicity from chronic exposures should be evaluated. If the emissions are above a *de minimis* value for noncancer effects from chronic exposures, then the composite scores are evaluated consistent with the determination of relative hazard for threshold pollutants (as discussed in § 63.48). To implement this approach requires both *de minimis* values for noncancer effects from chronic exposures as well as composite scores. Public comments are requested on these options, on the availability of data to implement this approach, and on the scientific and policy options the EPA should consider when little or no health effects data needed to implement the approach are available.

The EPA requests comments on the overall concepts of Option 2, and on the practicality and availability of data of each of the proposed options.

5. Weighted Offsets

Another critical decision in the determination of "a more hazardous" decrease in emissions is whether or not to allow for "weighted offsets."

Under the proposed rule, a "more hazardous" decrease in emissions may be determined in two ways: (1) A greater or equal decrease in emissions of a pollutant that is deemed "more hazardous" according to the scheme described above, or (2) more (the proposed rule requires 1.25 as much) of a pollutant that is deemed "equally hazardous."

Under a weighting system, a policy judgment would be made that would assign a weighting factor for each pollutant. For each pollutant being increased, the emission rate would be multiplied by the weighting factor to yield a weighted emission increase. The sum, over all pollutants, of the weighted emission increases would yield an overall weighted emission increase for the modification. Similarly, for each pollutant being proposed as offsets, the emission decrease would be multiplied by the weighting factor to yield a weighted emission decrease. The sum over all pollutants being decreased would yield an overall weighted decrease. If the sum of the weighted decreases exceeded the sum of the weighted increases by a specified amount or ratio, then the offsets would be approved. Such a simple system of weighting factors for the most toxic HAP has been developed by the EPA for use in another Clean Air Act program for early reductions pursuant to section 112(i)(5).

A number of commentors to the EPA have supported the concept of weighted trading as providing more flexibility for sources to find acceptable offsets. Such

a system could create more opportunities for offsets than the proposed rule. For example, a system of weighted offsets would allow offsets of a "more hazardous" quantity of "less hazardous" pollutants as well as less than 1 to 1 offsets of a "more hazardous" pollutant if the exact quantity of that pollutant which is "more hazardous" can be determined.

Another commenter to the EPA has suggested that the "more hazardous pollutant" language in section 112(g) does not provide for weighted offsets. Consequently only an equal or greater quantity of a "more hazardous" pollutant will satisfy the requirements for a "more hazardous emissions decrease."

The EPA attempted to develop a system of weighting factors for use in the section 112(g) rule and a draft approach was circulated internally within the EPA and to members of the Clean Air Act Advisory Committee. During the review process, EPA scientists emphasized their belief that is not possible to develop a generalized system of weighting factors for such a large and diverse number of pollutants that is scientifically credible. This conclusion is based upon limitations in the scientific data base on health effects for the various HAP, and in particular the uncertainty in methods for quantifying the difference in hazard between pollutants with varying endpoints of concern. In order to provide a basis for public dialogue on this issue, the EPA is providing in the public docket for the proposed rule: (1) A description of the EPA draft weighting factor system, and (2) a critique on the issue of weighting factors by the EPA's Office of Research and Development. The EPA requests comment on the scientific defensibility of this approach, and other possible weighting factor approaches, relative to the approach in the proposed rule.

The EPA believes that there are important differences between the needs of the section 112(g) program and those of the section 112(i)(5) "early reductions" program. The approach used in the early reductions program is described in detail in the **Federal Register** notice for the program (56 FR 27738, June 13, 1991). For the early reductions program, the Act requires the EPA to "limit" the offsetting of "high-risk" pollutants. Accordingly, weighting factors were selected for a relatively small subset of the list of 189 HAP. For section 112(g), an approach is needed which addresses the entire list of 189 HAP. For the early reductions program, it was felt that emissions of an extremely small (trace) amount of a very hazardous pollutant could prevent a company from participating in the program (they may not be able to reduce such an amount by 90 percent); the weighting factors were developed principly to allow companies to reduce hazard by controlling emissions which could be reduced instead of the trace amount, thus, avoiding this trace emission problem. For section 112(g), the EPA believes that trace emission increases of HAP will not prevent beneficial results, because trace emission increases likely will not be greater than the *de minimis* emission rates established in the proposed rule.

Another important difference between the two programs is that the early reductions program will always involve an environmental benefit, i.e., the 90 or 95 percent reduction in HAP emissions. If weighting factors are inaccurate under the early reductions program, the environmental benefits would be somewhat minimized, but benefits would nonetheless occur. On the other hand, if a weighting system is used for the section 112(g) rule and is inaccurate, offsets could lead to an increase in hazard or the health risk.

The EPA believes that it is important to recognize that the early reductions weighting approach was not intended to serve as a precedent for other programs. In the June 13, 1991 **Federal Register** preamble, the EPA emphasized this point as follows:

> The selection of today's approach for purposes of section 112(i)(5)(E) is not intended to establish a precedent for the other provisions affected by hazard ranking or preclude the consideration of other alternatives * * * (See 56 FR 27361).

In particular, the weighting factors of 1 and 10 for non-carcinogens, which were based upon a broad policy decision for the early reductions program, are inadequate for describing the differences in potency or severity between pollutants for purposes of offset comparisons under section 112(g). The actual differences in potency between the non-carcinogens could span many orders of magnitude.

The EPA recognizes the need to provide updated information related to potency estimates and weight of evidence as new scientific data become available. The EPA requests comment on two approaches to providing such updates. The first approach would be to provide for periodic updates to the ranking, which would involve periodic revisions to the proposed rule. A second approach would be to provide for a data base which could reflect automatic updates to the regulation. The latter approach could provide for a more expeditious process for updating the ranking. The primary disadvantage of this approach is that it might require the data base to be consulted frequently to ensure an up-to-date assessment.

V. Discussion of the Relationship of the Proposed Requirements to Other Requirements of the Act

The previous sections of this preamble discuss the requirements of the proposed rule in defining the requirements of section 112(g) of the Act as it relates to constructed, modified or reconstructed major sources of HAP. In addition, there are a number of issues concerning the relationship between the requirements of section 112(g) and other requirements of the Act that are relevant to the implementation of the requirements of the proposed rule. These issues are important in defining the overall responsibilities of States and the EPA in carrying out the requirements of section 112(g), and in understanding how section 112(g) requirements relate to other important requirements of the Act. The purpose of this section of the preamble is to present, and to take comment on, a number of regulatory and statutory interpretations related to these implementation issues.

A. Relationship of Section 112(g) Implementation to Title V Program Approval

Title V of the Act and the part 70 regulations provide that a State seeking to obtain or retain approval of a title V program must have authority to assure compliance with all applicable requirements through the title V permit. Section 502(b)(5)(A); 40 CFR 70.4(b)(3)(i). The preamble to the proposed operating permits rule explains that, in the context of section 112, the permitting authority must have authority to, "develop and enforce case-by-case determinations of MACT for new, reconstructed, or modified sources where no applicable emissions limitations have been yet established." (56 FR 21723 (May 10, 1991)). This is reaffirmed in the preamble to the final operating permits rule. (See 57 FR 32260 (July 21, 1992).) The final rule and preambles to the proposed and final rule thus make clear that, to "assure compliance" with section 112(g), the State must be able to make case-by-case determinations of MACT.

This rule and preamble language represent what EPA considers to be the most natural reading of section 112(g). The EPA reads the reference in section 112(g)(2) to case-by-case determinations made by "the Administrator (or the State)" to mean that these

determinations must be made by the title V permitting authority. This reading is consistent with the reference in section 112(g)(2) to the effective date of the title V program as the date on which the requirements of section 112(g) become applicable, and with the title V requirement that major sources of HAP submit applications for title V permits regardless of whether they are subject to a MACT standard. It is also consistent with the reference in section 112(j) to "the Administrator (or the State)" as the entity that must make case-by-case determinations of MACT and issue permits incorporating these determinations.

As noted above, the authority to implement all aspects of section 112(g) is a prerequisite to obtaining and retaining title V approval. However, since section 112(g)(2) does not take effect until the effective date of a title V program, EPA believes it is not necessary for the State to have this authority upon the date of submittal of the title V program. For purposes of the permit program submittal, it is sufficient for the State to demonstrate that it has the broad legislative authority needed to implement all aspects of section 112(g), to include a commitment that it will have the necessary additional authority and resources to implement section 112(g) upon the effective date of the title V program. In practical terms, this means the State must be able to demonstrate the adequacy of its authority and resource capabilities with respect to section 112(g) prior to the approval of the title V program. However, the EPA does not intend to require a formal demonstration of adequate authority and resources at that time unless it believes there is reason to question the State's ability to implement section 112(g).

B. Relationship to the Section 112(l) Delegation Process

Under section 112(l) of the Act, States have the option of developing and submitting to the Administrator a program for implementing the requirements of section 112, including section 112(g). The EPA promulgated a rule for the implementation of section 112(l) on November 26, 1993 (58 FR 62262). This rulemaking added §§ 63.90 through 63.96 to 40 CFR part 63.

The EPA proposes that the approval processes provided under section 112(l) be used to facilitate the implementation of section 112(g) by States in a way that minimizes disruption of existing State and local toxic air pollutant permit programs. During the mid to late 1980's, most States adopted regulations or procedures to review toxic air pollutant emissions from new and modified sources. In some cases, those programs already regulate some or all of the equipment covered by section 112(g). In other cases, the programs affect fewer pollutants or do not require as stringent control requirements. The section 112(l) process can be used by States to preserve existing requirements, while incorporating the requirements of this proposed rule, into an overall program that meets the requirements of the Act.

The section 112(l) rule provides a State with several options for gaining EPA approval of alternative State requirements. Two of these options are applicable to section 112(g). Under the first option, addressed by 40 CFR 63.92 of the section 112(l) rule, a State may submit a program implementing section 112(g) with changes that clearly make their program no less stringent than the Federal rule (i.e., the final version of 40 CFR part 63, subpart B). These changes are referred to in the section 112(l) rule as "adjustments" and are listed in 40 CFR 63.92. An example of such an adjustment for section 112(g) would be lower *de minimis* values. Another option which is available to a State wishing to make broader changes, or when it is less clear that differences in the State's program make them as stringent as the Federal rule, is to submit a detailed demonstration in accordance with 40 CFR 63.93. States wishing to use this approach must provide a detailed demonstration ensuring that for all affected sources, the State rule is no less stringent than the Federal rule.

Some States may choose to adopt the Federal section 112(g) program with no changes. Where this is the case, the EPA does not believe that a formal review process is required under section 112(l). For such States, the EPA believes that the review and approval process involved in its review of the part 70 permit program submission is adequate to ensure that the section 112(l)(5) criteria for approval of the State's section 112(g) program are met.

There are two important issues related to section 112(l) program submittals as they relate to the section 112(g) requirements. The EPA requests comment on these two issues, for purposes of providing guidance to EPA Regional Offices and States regarding the section 112(l) approval process for section 112(g) programs.

First, a number of State programs contain technology requirements (sometimes referred to as Toxic Best Available Control Technology, or T–BACT). An important issue with regard to approval of section 112(l) programs is whether such T–BACT programs need to include consideration of the "MACT floor" described in section 112(d) of the Act. The EPA believes that the MACT floor is a fundamental requirement of section 112(g) determination, and hence, the "MACT floor" must be considered to obtain approval of section 112(g) authority. As discussed previously in this preamble, the EPA is working with State agencies to develop technology transfer methods to ensure that the consideration of the MACT floor is not unduly burdensome.

Second, a number of States have expressed interest in implementing the section 112(g) program without the provision for emission offsets. The EPA requests comment on whether the deletion of offsets could be considered an "adjustment" which could be added to the list of adjustments in 40 CFR 63.92. For existing State law or programs which do not provide for offsets, the EPA believes that the inclusion of emission offsets provided by the Federal section 112(g) rule would be of little practical use. Accordingly, if a State chose to continue their program, a choice which is specifically allowed by section 112(l), and that program does not provide offsets, then EPA does not believe that an insistence on offsets as a condition of a section 112(l) approval is necessary. Furthermore, the EPA believes that States have broad authority to make changes to specific offset requirements that are imposed under the Federal rule (for example, a State requirement for a risk assessment in addition to the requirements in the section 112(g) rule), so long as those changes ensure that the State program is no less stringent than any requirement imposed by the Federal rule. The EPA requests comment on the above discussion with respect to State programs without offsets, including any specific changes to the proposed rule which could serve to clarify this issue.

C. Section 112(i)(5) Early Reductions Program

Section 112(i)(5) allows owners and operators, that provide early reductions in hazardous air pollutant emissions, to be granted a 6-year extension of any compliance date for emission standards issued under section 112(d). In order to participate in the section 112(i)(5) program, the owner or operator defines a "source" at a plant site for which a 90 or 95 percent reduction in emissions can be accomplished before the proposal date of the emission standard. There are a number of items of clarification on the relationship between the section 112(i)(5) requirements and section 112(g).

First, the extension granted by section 112(i)(5) applies only to that equipment incorporated within the "source" for which the 90 or 95 percent reduction was accomplished. Other equipment at a plant-site not included within that "source" definition are subject to section 112(g) requirements if they make changes that would be considered to be construction, reconstruction, or modification of a major source pursuant to the proposed rule.

On the other hand, equipment within the "source" definition for which there is an approved early reductions submittal are not subject to further control technology requirements under section 112(g). Section 112(g) requires case-by-case MACT where no "applicable emission limitation" exist. The EPA proposes that the "alternative emission limitation" under section 112(i)(5) be considered an "applicable emissions limitation" for purposes of section 112(g), such that compliance with such alternative emissions limitation shields a source from having to comply with section 112(g).

D. Section 112(j) "Hammer" Provision

Section 112(j) of the Act contains case-by-case MACT requirements for sources for which EPA has not promulgated emission standards according to the schedule contained in section 112(e) of the Act. If EPA has not promulgated an emission standard for a category, then, within 18 months of the deadline for that standard, the owner or operator must submit a permit application to obtain a case-by-case emission limitation judged by the permitting authority to be equivalent to a Federal MACT emission limitation. The EPA has proposed a rule that would implement the section 112(j) requirements. (58 FR 37778, July 13 1993.)

States and sources implementing the requirements of section 112 of the Clean Air Act need to understand the potentially complex relationships among the requirements of section 112(d), (g) and (j).

The EPA's primary goal is to create as seamless a web as possible between case-by-case MACT determinations under section 112(g) and implementation of subsequent section 112(d) standards for those same source categories. In addition, the EPA desires to rationalize the section 112(g) provisions with the section 112(j) provisions requiring case-by-case MACT determinations for constructed, reconstructed, and modified major sources. While under the Act some of the specific substantive requirements of section 112(g) differ under the Act from the substantive requirements of sections 112(j) and 112(d), the EPA intends to ensure the greatest possible operational consistency among section 112(d), (g), and (j) provisions.

One fundamental principal guiding the design of all three programs is that substantive control requirements under section 112(g) hold only until the requirements of a sections 112(j) or 112(d) standard become effective. In other words, after the effective date of a section 112(j) case-by-case MACT determination or a section 112(d) MACT standard, the control requirements of section 112(j) or section 112(d) supersede the control requirements of section 112(g).

The EPA considered an alternative approach, i.e., the finding that section 112(g) governs all changes and additions of new emission units at existing sources whether or not a section 112(d) or section (j) standard exists. The EPA rejected this approach for reasons enumerated below. Nevertheless the EPA requests comment on both approaches.

One reason for rejecting the approach that section 112(g) control extends to sources covered by section 112(d) or section 112(j) standards is that it leads to the conclusion that many new sources within the section 112(a)(4) definition of new source would forever escape having to apply a new source MACT level of control. Such an interpretation is in conflict with the requirements of section 112(d).

Section 112(a)(4) defines a new source as "a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source." Thus, once a standard has been set under section 112(d), any new source will be subject to new source MACT. Moreover, under section 112(a), a "stationary source" can be "major" section (112(a)(1)) or "area" section (112(a)(2)). The MACT standard will define the portion of a facility that is considered a "source" for the purposes of the particular standard.

Section 112(g) applies to construction, reconstruction, or modification of major sources, and in many cases will have an effect on sources earlier than sections 112 (d) or (j) standards. However, section 112(g) only requires new source MACT on new major sources, and considers any other new emission unit to be a modification of an existing major source. As a "modification," such a new emission unit will be required to apply for existing source case-by-case MACT determination under section 112(g). Therefore, if section 112(g) were to constrain the application of a subsequent section 112(j) or section 112(d) standard, many new emission units under the section 112(a)(4) definition of "new source" would never be required to comply with new source MACT.

In addition, under section 112(g) a new emission unit might not even be required to meet an existing source MACT level of control. Section 112(g) allows for modifications to either: (1) Comply with a case-by-case "existing source" MACT determination under section 112(g); (2) offset emissions increases in lieu of applying section 112(g) existing source MACT requirements; or (3) if its emissions were below section 112(g) *de minimis* levels, not be subject to any control requirements at all. The EPA believes that section 112(g) thus provides major sources with a great deal of needed flexibility before section 112 (d) or (j) standards are set; but that once those standards are in place the Act intends that these sources must comply with the specific requirements of those standards.

Finally, the interpretation that section 112(g) governs the addition of new equipment at major sources to which section 112 (d) or (j) standards already apply has some anomalous implications. One example would be a new emission unit whose emissions are below section 112(g) *de minimis* levels for a particular hazardous air pollutant. If that emission unit were added to a major source, it would be exempt from the requirements of section 112(g), but would be required to apply new source MACT control under section 112(j). However, if that emission unit were *not* below section 112(g) *de minimis* levels, it would be required to comply with section 112(g). If section 112(g) requirements limit the application of section 112(j), then the source would be required to apply existing source MACT. In this instance, a smaller emission unit would be required to control more stringently than a larger emission unit.

Another example of anomalies resulting from this reading of the statute would be a section 112(d) standard that sets new source MACT for new area sources in a source category. Under this reading, major sources adding new sources could avoid new source MACT, but any new area source would have to meet new source MACT. Again, a smaller unit would be required to control more stringently than a larger emission unit.

Therefore EPA believes that the substantive control requirements of section 112(g) are pre-empted by the

requirements of a relevant section 112(j) or section 112(d) standard, in cases where the construction, reconstruction or modification occurs after the date section 112(j) or section 112(d) standards apply.

However, as noted above in the discussion on § 63.49 of the proposed rule, the EPA believes that an emission unit already complying with a case-by-case determination under section 112(g) should be assumed to comply with the requirements of section 112(j).

E. Subpart A "General Provisions"

As mentioned previously, the EPA has proposed "general provisions" to the MACT program as proposed Subpart A to 40 CFR part 63 (58 FR 42760, August 11, 1993). These general provisions contain a number of definitions and provisions that generally affect the subparts of part 63 that follow, including Subpart B discussed here. Another purpose of the general provisions is to provide general descriptions of requirements that are intended to direct the reader to appropriate subparts. The proposed general provisions envisioned that a subsequent rulemaking would add language to cover general aspects of the section 112(g) requirements. In today's proposed rule, the EPA proposes a number of additions to subpart A to accomplish this goal. These additions are not intended as substantive interpretations of section 112(g) of the Act, but are intended to direct a reader of the general provisions to the substantive requirements in Subpart B. The EPA requests comment on these general provisions additions.

F. Section 112(g) Implementation During the Transition Period

Section 112(g)(2)(A) requires that after the effective date of a part 70 permit program to implement title V of the Act in any State, no person may modify, construct or reconstruct a major source of HAP in such State, unless the Administrator (or the State) determines that the MACT limitation in this section has been met or that sufficient offsets have been provided. The EPA interprets the statute to require that States must implement section 112(g), including development of case-by-case MACT determinations, in order to obtain and retain approval of a part 70 permit program. The EPA also believes that the prohibition on construction, reconstruction, or modification takes effect on the approval date of the part 70 program. That is, subject sources may not construct, reconstruct, or modify unless the permitting authority has approved either a case-by-case MACT determination or an offset showing.

Under section 502(a), the EPA must approve or disapprove within 12 months a State submittal to implement title V which is due November 15, 1993. As a result, the final EPA rule defining technical and procedural requirements for source changes subject to section 112(g) likely will not be published until or after the effective date of some State title V programs. Under this scenario, these States would be faced with implementing section 112(g) without necessarily having sufficient time to adopt rules at the State level that specifically implement section 112(g) and, in some cases, before promulgation of the final section 112(g) rules. In an effort to avoid unnecessary disruption during this period, EPA is clarifying how States can implement and sources may comply with all aspects of section 112(g) during the transition period occurring as the State adopts the final EPA section 112(g) rule as needed or has an alternate program approved under section 112(l). Furthermore, the EPA proposes that in order to maintain full approval of this part 70 program, States must complete any rulemaking needed to implement EPA's final section 112(g) rules on or before 18 months from the date of their promulgation.

Any interim mechanism operating in the transition period must produce source requirements that are federally enforceable and consistent with those that otherwise would result from implementing the promulgated section 112(g) rule (or, prior to promulgation, reasonably consistent with the proposed rule). The EPA believes that any transition program must provide results consistent with the final rule (in substance and process) in order for sources to have reasonable certainty regarding their ability to comply with section 112(g) and its implementing regulations. Finally, the EPA believes that the transition program must be carried out through existing mechanisms which do not require significant new investments in time and infrastructure development by the State to implement or by sources in order to comply. The EPA prefers that these limited resources be instead focused on incorporating the requirements of the promulgated rule into existing State programs. The EPA believes that there are several potential mechanisms available to implement the section 112(g) requirements consistent with these criteria.

First, sources proposing changes that would be subject to section 112(g) could be issued a part 70 permit which would apply to all requirements applicable to the source under the Clean Air Act, including those under section 112(g) which apply to the HAP emissions from the constructed, reconstructed, or modified unit(s) of a facility and the additional facility emission units used in an offset demonstration, if any. Using this option could involve some additional procedural steps beyond those required in the section 112(g) rules and certainly would require more comprehensive permit conditions to be met than just those of section 112(g). However, this procedure would not necessarily result in large new delays because the Act does require expeditious processing of any part 70 permit involving a construction activity. In particular, section 503(c) of the Act in discussing the required schedule for State processing of operating permit applications necessitates:

> Such authority shall establish reasonable procedures to prioritized such approval or disapproval actions in the case of applications for construction or modification under applicable requirements of this Act.

The EPA interprets this language to require that States prioritized operating permit review for all facilities which have been or become subject to the requirements of section 112(g). The EPA expects that this priority schedule will further ensure timely compliance with the promulgated rule.

The EPA also takes comment on the possibility for States to issue specialty title V permits specific to section 112(g) actions. The State would determine terms and conditions for such a permit based on the promulgated EPA rule for section 112(g). Although the Act in general requires that any title V permit must address all applicable requirements, EPA believes that exceptions to this rule may be possible, but only in exceptional circumstances where the issuance of a short-lived single-purpose operating permit is necessary in order to implement clear statutory objectives. The EPA takes comment on whether this is the case here.

As a second basic option, the EPA proposes that all State Implementation Plans (SIP) approved new source review (NSR) programs are authorized to establish Federally enforceable conditions for HAP, as well as for criteria pollutants. Clearly, States can develop HAP emission limits meeting section 112(g) in the NSR program approved by EPA pursuant to section 110(a)(2)(C) as part of the State's overall plan to attain and maintain the national ambient air quality standards (NAAQS). Moreover, these existing programs either already require or can be

enhanced in any specific permit issuance situation to meet a process equivalent to that which is likely to be required in the final section 112(g) rules. Extending this recognition directly to all HAPs would be based in part on the general authority of section 112(l) to recognize State toxic control programs to establish Federally enforceable requirements, and in part on EPA's general authority under section 301 to "prescribe such regulations as are necessary to carry out its functions" under the Act. The EPA believes that such recognition is consistent with both the need for a workable transition program for section 112(g) and the reasonable need for a mechanism to allow sources to develop conditions limiting their potential to emit for HAP and their potential applicability to section 112.

Under this approach, the EPA would presumptively approve a State preconstruction program pursuant to section 112(l) to the extent that it would be used to meet criteria equivalent to those provided for in this proposal for notice of case-by-case MACT approvals. That is, EPA would, under section 112(l) authority, presume acceptance and use of this mechanism in conjunction with the approval of the part 70 program for a State, unless the State requests otherwise. Accordingly, in most States, no formal rulemaking pursuant to proposed Subpart E would be required. States working with this approach could then use the State's NSR permitting mechanism to develop appropriate limits under adequate procedures to meet the EPA's final rules to implement section 112(g).

The EPA requests comments on all aspects of the proposed approach to establishing workable section 112(g) procedures in the interim period before promulgation of the final section 112(g) rule and, in some cases, before requisite new authorities are obtained by State authorities. In particular, the EPA requests comments on the need for and appropriate maximum length of this interim period.

Finally, the EPA also requests comment on an alternative approach to facilitate implementation of section 112(g) requirements during this interim period. Under this approach, during this interim period only, the EPA would recognize any applicable limits that are State-enforceable as adequate to meet the requirements of the statute concerning section 112(g).

VI. Administrative Requirements

A. Executive Order 12866

A regulatory impact analysis (RIA) was prepared for the proposed regulation. The RIA was prepared under the guidelines outlined in Executive Order 12866 and submitted to the Office of Management and Budget (OMB) even though the proposed regulation is not expected to be "significant" as defined in the Order. The regulation is not expected to have an annual effect on the economy of $100 million or more; it is not expected to cause a major increase in costs or prices to society; and it is not expected to cause significant adverse effects on competition. The objective of the RIA is to evaluate the costs and benefits associated with the proposed regulation. A further objective of the RIA is to show that the proposed regulation will maximize net benefits to society.

It is difficult to address with precision the cost impacts of section 112(g) of the Act. The calculation of future impacts requires: (1) Data on the number of major sources of hazardous air pollutants in the United States, (2) predictions of the number of changes that would occur at these major sources that would trigger section 112(g), and (3) estimates of the average impacts each such change will experience if section 112(g) were to require early MACT controls and (4) estimates of the degree to which a typical construction, reconstruction or modification subject to section 112(g) would already be subject to a promulgated MACT standard or State and local requirement. Because great uncertainty exists in each of these areas, the RIA estimates for the various scenarios of section 112(g) approaches are intended to "bracket" the range of possible impacts, rather than to predict with precision the differences that may occur under various policy options.

The impacts (cost and emission reductions) of the section 112(g) program are assumed to begin in 1993 and increase as additional state agencies are subject to the program. Impacts are expected to extend to the year 2002.

The annual cost impacts are expected to reach a peak cost between 1995 and 1996 and decrease as more major sources become subject to Federal MACT standards issued under section 112(d). Scenario 1, which is used to illustrate a program with wide applicability and which creates little opportunity for obtaining offsets, would result in the greatest cost. Scenario 1 is estimated to result in an average annual cost of $96 million. Scenarios 2 and 3, involving intermediate coverage, would result in approximate annual control costs of $25 to $28 million, respectively. Scenario 4, which is used to illustrate a program with minimal coverage, would result in costs of about $9 million annually. These cost estimates do not include estimates of the opportunity cost associated with requiring approval of a proposed offset prior to operation and the pre-construction review requirements for case-by-case MACT determination. The EPA plans to develop a rough estimate of these costs in developing the final RIA, and solicits comments and quantitative information on the nature and magnitude of these costs. The scope and extent of analysis on these issues will be constrained by the EPA's budgetary limitations.

The absence of valuation and sufficient exposure-response information precludes a quantitative benefits analysis. However, there was an attempt made to determine the benefits that would be needed to justify general program directions. The EPA believes it is probable that the benefits of the proposed regulation are generally consistent with the predicted impacts.

The proposal identifies at several places key alternative options for implementing section 112(g). In developing a final rule, the EPA intends to analyze the costs and emission reductions associated with a few of the most important variables associated with these options. Examples of possible issues include costs associated with the alternative definitions of "construct," and opportunity costs of up-front reviews and offset restrictions. The EPA solicits comments on which such issues should be included, as well as comments and data on these issues that would support this analysis. The scope and extent of analysis on these issues will be constrained by the EPA's budgetary limitations.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of proposed regulations on small entities. If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on a substantial number of small entities, then a regulatory flexibility analysis must be prepared.

The Regulatory Act guidelines applicable to the proposed regulation indicate that an economic impact should be considered significant if it meets one of the following criteria: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a

percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities. A substantial number of small entities is generally considered to be more than 20 percent of the small entities in the affected industry. An analysis was conducted to assess the economic impacts associated with the proposed regulation. Although the number of facilities affected by section 112(g) can be identified, information on the sizes of these facilities is unavailable. However, it is expected that the control cost each facility may face will be small compared to the average annual revenues in the industries affected by section 112(g). Therefore, it is not expected that the impacts of section 112(g) will be considered significant as defined above.

This regulation does not affect a significant number of small businesses, small governmental jurisdictions, or small institutions. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposal have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An information collection request (ICR) document has been prepared by the EPA (ICR No. 1658.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM–2234), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or by calling (202) 260–2740.

The EPA prepared estimates of the average annual burden hours needed to collect and prepare information required under section 112(g) for each of the regulatory scenarios examined in preparing the Regulatory Impact Analysis (see discussion above). The burden estimates presented below are an accumulation of the estimated annual burden hours that would be experienced by industry respondents, state and local agencies, and EPA under the various regulatory scenarios.

The average annual burden-hours that would be required under Scenario 1, which was used to illustrate a wide-reaching program, is approximately 1,823,000 hours. Scenario 2 and 3, used to illustrate a program with intermediate coverage, would result in an average annual burden of approximately 460,000 and 390,000 hours, respectively. Scenario 4, a program with minimal coverage, would result in an average burden of approximately 228,000 hours. The estimates for Scenario 2 and 3 are probably the most consistent with the provisions of the proposed rule.

Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden to Chief, Information Policy Branch (PM–223Y); U.S. EPA, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

VII. Suggest Format for Comments

There are a relatively large number of issues for which the EPA is requesting comment on the proposed rule. Accordingly, the EPA expects a significant effort will be required in responding to those comments. The EPA would appreciate efforts by commenters to follow the general outline contained in Table 7. Additionally, the EPA would appreciate, if possible, that comments generated using a word processing software should be sent on a clearly labeled 3.5 inch IBM-compatible diskette. Comments formatted in WordPerfect 5.0 or 5.1 may be submitted as is; comments prepared by other word processing software should be submitted in an "unformatted" mode. Comments should refer to page numbers and columns whenever possible, and should cross-reference the issue number in Table 7.

Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

TABLE 7.—SUGGESTED FORMAT FOR COMMENTS ON THE PROPOSED SECTION 112(G) RULE

Topic and Issue No.	Citation in regulation	Citation in preamble	Issues
I. General Applicability Issues:			
1		II.B.3	Requirements for guidance under section 112(g).
2	63.40(b)	III.A.2.a	Grandfathering of projects already underway.
3	63.40(b)	III.A.2.b	SIC codes inclusion in definition of major source.
4	63.40(c)	III.A.3	Exclusion for Steam generating units.
II. Requirements for Constructed and Reconstructed Sources:			
5	63.42	III.C.2	Definitions of constructed and reconstructed sources.
6	63.42	III.C.2	Alternative readings of the Act regarding new equipment at an existing plant site. Preference for Alternative A vs. Alternative B.
7	63.42	III.C.2	Whether definition of emission unit should be more prescriptive under Alternative A.
8	63.42	III.C.2	Definition of "greenfield site".
9	63.42	III.C.2	Whether Act would support a reading treating all new equipment at a major source plant site as "construction".
10	63.42	III.C.2	Other possible definitions of "construct".
11	63.42	III.C.3	Definition of reconstruct a major source.
III. Requirements for Modified Major Sources:			
12	63.43(b)(3)	III.D.2	"Modification" and emission points affected by the modification.
13	63.43(b)(3)	III.D.2	Other approaches to MACT coverage, including plant-wide coverage or subdividing plant site into major-emitting emission units.

TABLE 7.—SUGGESTED FORMAT FOR COMMENTS ON THE PROPOSED SECTION 112(G) RULE—Continued

Topic and Issue No.	Citation in regulation	Citation in preamble	Issues
14	63.43(c)(1) through 63.43(c)(4) and 63.43(c)(7).	III.D.3	Exclusion issues (except for alternative raw materials and operations).
15	63.41, 63.43(c)(5) and (6).	III.D.3	Definition of "Operations that the major source is designed to accommodate." Permit-allowable framework for raw material substitutions/alternative operating scenarios.
16	63.43(c)(6)	III.D.3	Whether operational changes allowed in State permits can be incorporated into Title V permits without triggering section 112(g).
17	63.43(d)	III.D.4	Proposed method for determining actual emissions. NSPS vs. PSD approach.
18	63.43(e), 63.46 63.47.	III.D.4	Whether offsetting should be restricted for VOC reductions used for control of ozone or credited under PSD/NSR.
19	63.43(f)	III.D.5	Proposed treatment of increases and decreases of the same pollutant.
IV. De Minimis Values:			
20	63.44	III.E.3(a)	Adjustment for 7-year exposure period, including specific alternatives.
21	63.44	III.E.3(a)	Model plant assumptions.
22	63.44	III.E.3(a)	Alternative approach involving 2 tables, to account for site-specific conditions.
23	63.44	III.E.3(a)	10 ton cap on de minimis values.
24	63.44	III.E.3(a)	Default value of 1 ton/year de minimis for carcinogens with no potency estimate.
25	63.44	III.E.3(b)	Composite score approach to setting de minimis levels for threshold pollutants with no RfC.
26	63.44	III.E.3(b)	5 tons/year default de minimis levels for pollutants lacking data.
27	63.44	III.E.3(c)	Methodology and values described in preamble for setting de minimis rates for pollutants to reflect concerns regarding short-term exposure.
28	63.44	III.E.4	Cap of 0.01 tons per year for Great Waters pollutants; other alternatives such as 0.1 tons per year or 10% of health-based values.
29	63.44	III.E.4	Proposed approach to de minimis level determination for polycyclic organic matter (POM).
30	63.44	III.E.4	Comment on treatment of POM under section 112(k) and section 112(c)(6).
31	63.44	III.E.6	One significant figures approach vs. alternative "binning" of de minimis values.
32	63.44	III.E.6	Whether the de minimis definition should consider a specified concentration in a product or mixture.
33	63.44	III.E.7	Concept of de minimis index for addition of assessing contribution of multiple pollutants toward a de minimis level.
34	63.44	III.E.9	De minimis levels for radionuclides.
V. MACT Determinations:			
35	63.41	III.B.8	Inclusion of additional emission points in the definition of "MACT-affected emission unit".
36	63.45(b)(2) and 63.45(f).	III.F.1	Process outlined in Figure 7 pertaining to 112(g) requirements after MACT standard is issued. Notification requirements; alternative requirements, e.g. 30–60 days before startup.
37	63.45	III.F.2	Legal reading of the act regarding preconstruction review of MACT determinations.
38	63.45	III.F.2	Alternative approach requiring pre-operation review.
39	63.45	III.F.3	MACT floor determination. Inclusion of sources outside the U.S.
40	63.45, MACT Guidelines.	III.F.3	Treatment of MACT floor in the regulation, including suggested methods in MACT guidelines document.
41	63.45	III.F.3	Design and use of MACT Database; feasibility of reliance on data base for MACT floor information.
42	63.45	III.F.3	Cut-off date for "available information."
43	63.45	III.F.4	Approaches to subcategorization.
44	63.45	III.F.6	Relationship between Title III and Title V, particularly whether section 112(g) requirements can be added to the permit post-operation.
45	63.45(i)	III.F.8	Public review as a prerequisite to federal enforceability of case-by-case MACT determinations.
46	63.45(g)(7)	III.F.8	Use of section 112(l) to approve alternative State administrative requirements for review of case-by-case MACT determinations.
47	63.45(h)	III.F.9	Whether MACT approval should expire if failure to construct occurs after 18 months.
VII. Offset Demonstrations:			
48	63.47	III.G.2	Restriction on shutdowns and curtailments in simplified offset demonstration.
49	63.46, 63.47	III.G.2	Requirement for pre-operation review of offsets. Alternative approaching allowing for review post-operation.

TABLE 7.—SUGGESTED FORMAT FOR COMMENTS ON THE PROPOSED SECTION 112(G) RULE—Continued

Topic and Issue No.	Citation in regulation	Citation in preamble	Issues
50	63.46, 63.47	III.G.2(c)	General comments on the two approaches "contemporaneous" and "simplified" including whether one ought not be included in the final rule.
51	63.46, 63.47	III.G.3	Whether offset determinations should comply with certain provisions in 40 CFR part 70 or enhanced monitoring provisions pursuant to section 114 of the Act.
52	63.46, 63.47	III.G.3	Additional language to facilitate consideration of source reduction programs.
53	63.49	III.H	Compliance extension for emission units subject to subsequent MACT standards. Also, whether section 112(g) MACT is sufficient for subsequent section 112(j) requirements.
VIII. Proposed Approach for Demonstrating That Offsets Are "More Hazardous":			
54	63.48	IV.A	Two alternative readings of section 112(g)(1)(A). More hazardous "pollutant" vs. more hazardous "quantity."
55	63.48	IV.B	Whether overall approach to offsetting restrictions strikes an appropriate balance given legal, policy, scientific and practical considerations.
56	63.48	IV.C.1	Creation of the "high-concern" category of pollutants.
57	63.48	IV.C.2	Relative hazard between categories of pollutants.
58	63.48	IV.C.3(a)	Other endpoints and pollutants which qualify a pollutant to be considered "non-threshold".
59	63.48	IV.C.4(b)	Use of ED10 as a potency estimate for carcinogens in the hazard ranking.
60	63.48	IV.C.4(b)	Treatment of carcinogens without potency estimates with regard to relative hazard ranking.
61	63.48	1V.C.5.(b)	Matrix approach to the hazard ranking.
62	63.48	IV.C.6.(b)	Methodologies that could be used to identify and rank pollutants of concern for severe toxicity from short-term exposures.
63	63.48	IV.C.7	Treatment of "unrankable" pollutants.
64	63.48	IV.C.8	Treatment of the 17 HAPs listed under section 112(b) as chemical groupings. Selection of subgroupings included in the ranking. Methodology for ranking them.
65	63.48	IV.D.1(a)	Relative hazard determination between carcinogens: treatment of uncertainty of potency estimates.
66	63.48	IV.D.1(b)	Potential hazard reduction when a group A carcinogen is offset by a group C carcinogen of higher potency.
67	63.48(b)	IV.D.2	Treatment and consideration of uncertainty in composite score determination of relative hazard.
IX. Other Hazard Ranking Issues:			
68		IV.G.1	Consideration of non-inhalation hazard from hazardous air pollutants.
69		IV.G.1	How to consider explicitly information on bioconcentration and persistence to place threshold pollutants into the "high-concern" pollutant list and apply further offsetting restrictions.
70		IV.G.2	Half-life consideration in the hazard ranking.
71		IV.G.2	Treatment of reactive transformation products of hazardous air pollutants.
72		IV.G.3	Appeal process to address errors in a potential offset.
73		IV.G.4	Treatment of non-cancer effects of carcinogens: possible approaches.
74		IV.G.4	Comment on taking the spectrum of health effects directly into account for offset determinations and the policy and scientific options considered when little or no health effects data are available.
75		IV.G.5	Development of scientifically defensible system of weighted offsets.
76		IV.G.5	Approaches for providing updates to the ranking.
X. Discussion of the Relationship of the Proposed Requirements to Other Parts of the Act:			
77		V.A	Relationship of Section 112(g) implementation to Title V program approval.
78		V.B	Whether a State program deleting offsets could be considered an adjustment under section 112(l) of the act and added to 40 CFR 63.92.
79		V.B	Whether, in States with existing State rules which would make offsets unusable, that program can be approved under section 112(l) without offsets.
80		V.D	Relationship between 112(g), 112(d) and 112(j).
81		V.E	General provisions: additions to them in 112(g) rule.
82		V.F	Possibility for States to issue specialty title V permits specific to section 112(g) actions.
83		V.F	112(g) procedure in the interim period before promulgation of the final section 112(g) rule: need for and appropriate maximum length of the interim period.
84		V.F	Feasibility of approaches described for implementation of section 112(g) requirements during interim period.

TABLE 7.—SUGGESTED FORMAT FOR COMMENTS ON THE PROPOSED SECTION 112(G) RULE—Continued

Topic and Issue No.	Citation in regulation	Citation in preamble	Issues
XI. Analysis Relative to Federal Administrative Requirements:			
85		VI.A	Comments on regulatory impact analysis, including any additional analysis that could be prepared for the final rule.
86		VI.C	Comments relative to paperwork reduction act, including comments on burden analysis.

List of Subjects

40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations.

Dated: February 28, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–7241 Filed 3–31–94; 8:45 am]

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federal register

Friday
April 1, 1994

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Notice of Funding Availability for the Public and Indian Housing Drug Elimination Program; Fiscal Year 1994; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-94-3737; FR-3659-N-01]

NOFA for the Public and Indian Housing Drug Elimination Program (PHDEP)—FY-1994

AGENCY: Office of the Assistant Secretary for Public and Indian Housing.

ACTION: Notice of funding availability (NOFA) for Fiscal Year (FY) 1994.

SUMMARY: This NOFA announces HUD's FY 1994 funding of $231,978,631 under the Public and Indian Housing Drug Elimination Program (PHDEP) for use in eliminating drug-related crime. Funded programs must be part of a comprehensive plan for addressing the problem of drug-related crime. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, financial requirements, management, and application processing, including how to apply, how selections will be made, and how applicants will be notified of results. Hereafter, the term housing authority (HA) shall include public housing agencies (PHAs) and Indian housing authorities (IHAs).

DATES: Applications must be received at the local HUD Field Office on or before Friday, July 29, 1994, at 3:30 p.m., local time. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by any unanticipated or delivery-related problems. A FAX is not acceptable.

ADDRESSES: *(a) Application Kit:* An application kit may be obtained and assistance provided, from the local HUD Category A or other Field Office with delegated public housing responsibilities over an applying PHA, or from the Offices of Native American Programs (ONAPs) having jurisdiction over an IHA making an application, or by calling HUD's Resident Initiatives Clearinghouse, telephone: 1-800-578-3472 (DISC). The application package contains information on all exhibits and certifications required under this NOFA.

(b) Application Submission: An applicant may submit only one application per housing authority under each Notice of Funding Availability (NOFA). Joint applications are not permitted under this program with the following exception: housing authorities (HA) under a single administration (such as housing authorities managing another housing authority under contract or housing authorities sharing a common executive director) may submit a single application, even through each housing authority has its own operating budget. Applications (original and two copies) must be received by the deadline at the local HUD Category A or B Field Office other Field Office with delegated public housing responsibilities over the applying PHA Attention: Director, Public Housing Division or, in the case of IHAs, to the local HUD Field Office of Native American Programs, Attention: Administrator, Native American Programs with jurisdiction over the applying IHAs, as appropriate. A complete listing of these offices is provided in appendix "A" of this NOFA. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. Applications received after the deadline will not be considered.

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM, PUBLIC HOUSING, CONTACT: The local HUD Category A or B Field Office, Public Housing Division (See appendix "A" of this NOFA), or Malcolm E. Main, Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION ON THE PUBLIC AND INDIAN HOUSING DRUG ELIMINATION PROGRAM FOR NATIVE AMERICAN PROGRAMS CONTACT: The local HUD Category A or B Field Office, Administrator, Office of Native Americans (See appendix "A" of this NOFA), or Dominic Nessi, Director, Office of Native American Programs, Public and Indian Housing, Department of Housing and Urban Development, room 4140, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1015. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free telephone numbers.)

FOR FURTHER INFORMATION REGARDING ASSISTED (NON-PUBLIC AND INDIAN) HOUSING DRUG ELIMINATION PROGRAM CONTACT: Lessley Wiles, Office of Multifamily Housing Management, Department of Housing and Urban Development, room 6166, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-0216. TDD number (202) 708-4594. (These are not toll-free numbers.) The NOFA for Federally Assisted Low Income Housing Drug Elimination Grants for FY 1994 was published in the **Federal Register** Thursday, January 20, 1994.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and have been assigned OMB control number 2577-0124, expiration date November 30, 1995.

Environmental Review

Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR 50.20(p). However, prior to an award of grant funds, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

Coordination of Anti-Crime Efforts

To coordinate anti-crime related activities across local, State, and Federal levels for the purpose of maximizing their effectiveness, applicants are encouraged to contact, and work with, such programs as Operation Weed and Seed and Operation Safe Home, described below.

Operation Weed and Seed, conducted through the U.S. Department of Justice, is a comprehensive, multi-agency approach to combatting violent crime, drug use, and gang activity in high-crime neighborhoods. The goal is to "weed out" crime from targeted neighborhoods and then to "seed" the targeted sites with a wide range of crime and drug prevention programs, and human services agency resources to prevent crime from reoccurring. Operation Weed and Seed further emphasizes the importance of community involvement in combatting drugs and violent crime. Community residents need to be empowered to assist in solving crime-related problems

in their neighborhoods. In addition, the private sector needs to get involved in reducing crime. All of these entities, Federal, State, and local government, the community and the private sector must work together in partnership to create a safer, drug-free environment.

The Weed and Seed strategy involves four basic elements:

1. Law enforcement must "weed out" the most violent offenders by coordinating and integrating the efforts of Federal, State, and local law enforcement agencies in targeted high-crime neighborhoods. No social program or community activity can flourish in an atmosphere poisoned by violent crime and drug abuse.

2. Local police departments should implement community policing in each of the targeted sites. Under community policing, law enforcement works closely with residents of the community to develop solutions to the problems of violent and drug-related crime. Community policing serves as a "bridge" between the "weeding" (law enforcement) and "seeding" (neighborhood revitalization) components.

3. After the "weeding" takes place, law enforcement and social services agencies, the private sector, and the community must work to prevent crime and violence from reoccurring by concentrating a broad array of human services—drug and crime prevention programs, drug treatment, educational opportunities, family services, and recreational activities—in the targeted sites to create an environment where crime cannot thrive.

4. Federal, State, local, and private sector resources must focus on revitalizing distressed neighborhoods through economic development and must provide economic opportunities for residents.

For further information on Operation Weed and Seed, contact the Office of Planning Management and Budget, Office of Justice Programs, U.S. Department of Justice, 366 Indiana Avenue, NW., Washington, DC, 20531. Telephone (202) 307–5966.

Operation Safe Home was announced jointly by Vice President Albert Gore, HUD Secretary Henry G. Cisneros, Treasury Secretary Lloyd Bentsen, Attorney General Janet Reno, and ONDCP Director Dr. Lee Brown at a White House briefing on February 4, 1994. Operation Safe Home will combat violent crime in public housing through tightly coordinated law enforcement and crime prevention operations at targeted sites; federal initiatives and policies to strengthen law enforcement and crime and drug prevention in public housing; and improved consultation and coordination between HUD and federal law enforcement agencies and ONDCP on design and implementation of HUD crime-prevention initiatives. For more information on Operation Safe Home, contact the Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

I. Purpose and Substantive Description

(a) Authority

These grants are authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Public Law 101–625, and Section 161 of the Housing and Community Development Act of 1992 (HCDA 1992) (Public Law 102–550, approved October 28, 1992).

(b) Allocation Amounts

(1) Federal Fiscal Year 1994 Funding

The amount available, to remain available until expended, for funding under this NOFA in FY 1994 is $231,978,631. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1993, (approved October 28, 1993, Pub. L. 103–124), (94 App. Act) appropriated $265 million for the Drug Elimination Program and made not more than $198,750,000 of the total Drug Elimination Program appropriation available for grants to housing authorities with 1,250 public housing units or more, and not more than $53,000,000 of the total Drug Elimination Program appropriation available for grants to housing authorities with less than 1,250 public housing units. Of the total $265 million appropriated, $13,250,000 will fund the Youth Sports Program; $12,306,000 will fund the Assisted Housing Drug Elimination Program; $5 million will fund drug elimination technical assistance and training; and $1,162,000 will fund drug information clearinghouse services. A total of $249,498 is being awarded to the Lake County, IL Housing Authority that did not receive FY 1993 funding because of a computational error and due to statistical anomaly the Department will allow the funding of the following FY 1993 applications from Greenwich, CT ($127,786); Bristol, CT ($249,843); and New Haven, CT ($706.600). The remaining $231,948,273 of FY 1994 funds are being made available under this NOFA. In addition, $30,358 of recovered FY 1993 program funds are also being made available under this NOFA for a total of $231,978,631.

HUD is distributing grant funds under this NOFA on a national competition basis with $178,978,631 available for large housing authorities (1,250 units and above) and $53,000,000 available for smaller housing authorities (1,249 units and less).

(2) Maximum Grant Award Amounts

Maximum grant award amounts are computed on a sliding scale, using an overall maximum cap, depending upon the number of public housing agency or Indian housing authority units. The unit count includes rental, Turnkey III Homeownership, Mutual Help Homeownership and Section 23 leased housing bond-financed projects. Units in the Turnkey III Homeownership and Mutual Help programs are counted if they have not been conveyed to the homebuyers prior to the application deadline in this NOFA. For Section 23 bond-finance projects, units are counted if they have not been conveyed or will not be conveyed with clear title to the HA until the end of the bond term.

Eligible projects must be covered by an annual contributions contract (ACC) or annual operating agreement (AOA) during the period of the grant award. Unit counts will be taken from the HA low-rent operating budget (form HUD–52564) for the HA fiscal year ending March 31, June 30, September 30, or December 31, 1993.

Amendments to the Drug Elimination Program made by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), permit grants, under certain conditions as given in section (c)(9) of this NOFA, below, to be used to eliminate drug-related crime in housing owned by PHAs that is not housing assisted under the United States Housing Act of 1937 and is not otherwise federally assisted. Where an application is submitted for this category of housing, the amount of eligible funding will be determined on the same per-unit basis as for federally assisted housing units, above.

The maximum grant awards are as follows, although, as discussed below, in section I.(b)(4) (Reduction of Requested Grant Amounts and Special

Conditions), the Department may adjust the amount of any grant award:

Up to $53,000,000 for Drug Elimination grants is available to housing authorities with less than 1,250 housing units as follows:

For housing authorities with 1–1,249 units: The award will be $300 per unit, with a minimum grant award of $10,000, and a maximum grant award of $300,000.

To give examples under this scale, a housing authority with 499 units could apply for a maximum grant award of $149,700, i.e., $300.00 per unit X 499 units = $149,700, which is LESS THAN the maximum flat grant award of $300,000. A housing authority with 1,100 units could only apply for a maximum grant award of $300,000, i.e., $300.00 per unit X 1,100 units = $330,000, which is MORE THAN the maximum flat grant award of $300,000.

Up to $178,978,631 Drug Elimination grants is available to housing authorities with 1,250 or more housing units as follows:

For housing authorities above 1,250 units: the maximum grant award that may be requested is $250.00 per unit.

An applicant shall not apply for more funding than is permitted in accordance with the maximum grant award amount as described above.

Any application requesting funding that exceeds the maximum grant award amount permitted will be rejected and will not be eligible for any funding unless a computational error was involved in the funding request. Section IV of this NOFA provides guidance regarding application curable and noncurable deficiencies.

Such an error will be considered a curable deficiency in the application. Section III.(d) (Checklist of Application Requirements) of this NOFA requires applicants to compute the maximum grant award amount for which they are eligible, as follows: Eligible dollar amount per unit x (times) number of units listed in the housing authority low-rent operating budget (form HUD–52564) for housing authority fiscal year ending March 31, June 30, September 30, or December 31, 1993. The applicant is required to confirm the unit count with the local HUD Field Office prior to submission of the application.

The amount computed in this way must be compared with the dollar amount requested in the application to make certain the amount requested does not exceed the maximum grant award.

(3) Reallocation

All awards will be made to fund fully an application, except as provided in paragraph I.(b)(4) (Reduction of Requested Grant Amounts and Special Conditions) below.

(4) Reduction of Requested Grant Amounts and Special Conditions

HUD may approve an application for an amount lower than the amount requested, withhold funds after approval, and/or the grantee will be required to comply with special conditions added to the grant agreement, in accordance with 24 CFR part 85.12 (PHAs), and 24 CFR 905.135 (IHAs) as applicable, and the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The application does not otherwise meet applicable cost limitations established for the program;

(iii) The applicant has requested an ineligible activity;

(iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(v) The applicant fails to implement the program in its plan and/or fails to submit required reports;

(vi) The applicant has demonstrated an inability to manage HUD grants, particularly Drug Elimination Program grants; or

(vii) For any other reason where good cause exists.

(c) Eligibility

Funding under this NOFA is available only for Public Housing Agencies and Indian Housing Authorities. Although section 161 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) makes public housing resident management corporations (RMCs) eligible for Drug Elimination Program funding, the 93 App. Act limited the funds appropriated "for grants to public housing agencies". The authorizing statute includes Indian housing authorities (IHAs) in the term "public housing agencies" and, therefore, IHAs are eligible for funding. Because RMCs, unlike IHAs, constitute a separate entity from PHAs under the authorizing statute, no funds are appropriated for RMCs as direct applicants under the 94 App. Act. However, RMCs may continue to receive funding from housing authority grantees to develop security and drug abuse prevention programs involving site residents as they have in the past.

An application for funding under this program may be for one or more of the following eligible activities. An applicant may submit only one application under this Notice of Funding Availability (NOFA). Joint applications are not permitted under this program with the following exception: Housing authorities (HA) under a single administration (such as housing authorities managing other housing authorities under contract or housing authorities sharing a common executive director) may submit a single application, even though each housing authority has its own operating budget. The following is a listing of eligible activities under this program and guidance as to their parameters:

(1) Employment of Security Personnel

(i) *Contracted security guard personnel.* Contracting for security guard personnel services, in public housing developments proposed for funding is permitted under this program.

(A) Contracted security personnel funded by this program must perform services not usually performed by local law enforcement agencies on a routine basis, such as, patrolling inside buildings, providing guard services at building entrances to check for identification cards (IDs), or patrolling and checking car parking lots for appropriate parking decals.

(B) Contract security personnel funded by this program must meet all relevant tribal, State or local government insurance, licensing, certification, training, bonding, or other similar requirements.

(C) The applicant, the cooperating local law enforcement agency, and the provider (contractor) of the security personnel are required to enter into and execute a security personnel contract that includes the following:

(*1*) The activities to be performed by the security personnel, their scope of authority, established policies, procedures, and practices that will govern their performance (i.e., a Policy Manual as described in section I.(c)(1)(i)(D)) and how they will coordinate their activities with the local law enforcement agency;

(*2*) The types of activities that the security personnel are expressly prohibited from undertaking.

(*3*) Expenditures for activities under this section may not be incurred until the grantee has executed a contract for security guard services.

(D) Security guard personnel funded under this program shall be guided by a policy manual (see below) that regulates, directs, and controls the conduct and activities of its personnel. All security personnel must be trained

at a minimum in the areas described below in paragraph (2) of this section.

(1) An up-to-date policy manual, which contains the policies, procedures, and general orders that regulate conduct and describe in detail how jobs are to be performed, must exist or be completed before a contract for services can be executed.

(2) Examples of areas that must be covered in the manual include but are not limited to: Use of force, resident contacts, response criteria to calls, pursuits, arrest procedures, reporting of crimes and workload, feedback procedures to victims, citizens complaint procedures, internal affairs investigations, towing of vehicles, authorized weapons and other equipment, radio procedures internally and with local police, training requirements, patrol procedures, scheduling of meetings with residents, record keeping and position descriptions on every post and assignment.

(E) If the contractor collects officer activity information (which the Department recommends) for the housing authority, the contractor must use a housing authority approved activity form for the collection, analysis and reporting of activities by officers funded under this section. Computers and software may be included as an eligible item in support of this housing authority data collection activity.

(ii) *Employment of housing authority police.* Employment of additional HA police officers is permitted only by housing authorities that already have their own housing authority police departments, which are the following:

Baltimore HA and Community Development, Baltimore, MD
Boston HA, Boston, MA
Chicago HA, Chicago, IL
Cuyahoga Metropolitan HA, Cleveland, OH
HA of the City of Los Angeles, LA, CA
Newark HA, Newark, NJ
New York City Department of Housing Preservation and Development, NYC, NY
HA of the City of Oakland, Oakland, CA
Philadelphia HA, Philadelphia, PA
HA of the City of Pittsburgh, Pittsburgh, PA

HAs that have their own housing authority police departments, but that are not included on this list, must contact the Drug-Free Neighborhoods Division, Office of Resident Initiatives, Public and Indian Housing, Department of Housing and Urban Development, room 4116, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–1197 to request approval before they may apply for funding under this paragraph.

(A) If additional HA police officers are to be employed for a service that is also provided by a local law enforcement agency, the applicant must provide a cost analysis that demonstrates the employment of additional HA police officers is more cost efficient than obtaining the service from the local law enforcement agency.

(B) Additional HA police officers to be funded under this program must be an increase in the number of HA police officers authorized by the housing authority, although such additional HA police officers funded under a prior Drug Elimination Program Grant may qualify for funding as a continuing activity under section I.(c)(8) (Continuation of Current Program Activities) of this NOFA.

(C) An applicant seeking funding for this activity must describe the baseline services by describing the current level of services provided by the local law enforcement agency and then demonstrate to what extent the additional HA police officers will represent an increase over these services. For purposes of this NOFA, the current level of services is defined as ordinary and routine services provided or required to be provided under a cooperation agreement to the residents of public housing developments as a part of the overall, city and county-wide deployment of police resources, to respond to crime and other public safety incidents. These include the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding, and the kinds of services provided, e.g., 9–1–1 communications, processing calls for service, and investigative follow-up of criminal activity.

(D) HA police funded by this program must meet all relevant tribal, state or local government insurance, licensing, certification, training, bonding, or other similar requirements.

(E) The applicant and the cooperating local law enforcement agency are required to enter into and execute a contract that describes the following:

(1) The activities to be performed by the HA police, their scope of authority, established policies, procedures, and practices that will govern their performance (i.e., a Policy Manual as described in section I.(c)(1)(ii)(F)), and how they will coordinate their activities with the local, state and Federal law enforcement agencies;

(2) The types of activities that the HA police are expressly prohibited from undertaking.

(F) HA police departments funded under this program shall be guided by a policy manual (see below) that regulates, directs, and controls the conduct and activities of its personnel. All HA police officers must be trained at a minimum in the areas described in paragraph (2), below.

(1) An up-to-date policy manual, which contains the policies, procedures, and general orders that regulate conduct and describe in detail how jobs are to be performed, must either exist or be completed within 12 months of the execution of the grant agreement. Applicants must submit a plan and timetable for the implementation of training staff.

(2) Examples of areas that must be covered in the manual include but are not limited to: Use of force, resident contacts, response criteria to calls, pursuits, arrest procedures, prisoner transport procedures, reporting of crimes and workload, feedback procedures to victims, citizens complaint procedures, internal affairs investigations, towing of vehicle, authorized weapons and other equipment, radio procedures internally and with local police, training requirements, patrol procedures, scheduling of meetings with residents, record keeping and position descriptions on every post and assignment.

(G) If the HA police department collects officer activity information (which the Department recommends), a housing authority approved activity form must be used for the collection, analysis and reporting of activities by officers funded under this section. Computers and software may be included as an eligible item in support of this housing authority data collection activity.

(H) Applicants for funding of additional HA police officers must have car-to-car (or other vehicles) and portable-to-portable radio communications links between HA police officers and local law enforcement officers to assure a coordinated and safe response to crimes or calls for services. The use of scanners (radio monitors) is not sufficient to meet the requirements of this section. Applicants that do not have such links must submit a plan and timetable for the implementation of such communications links.

(I) HA police departments funded under this program that are not employing a community policing concept must submit a plan and timetable for the implementation of community policing.

(1) Community policing has a variety of definitions; however, for the purposes of this program, it is defined as follows: Community policing is a method of providing law enforcement services that stresses a partnership among residents,

police, government services, the private sector, and other local, state and Federal law enforcement agencies to prevent crime by addressing the conditions and problems that lead to criminal activity and the fear of this type of activity.

(2) This method of policing involves a philosophy of proactive measures, such as foot patrols, bicycle patrols, and citizen contacts. This concept empowers police officers at the beat and zone level and residents in neighborhoods in an effort to: reduce crime and fear of crime; assure the maintenance of order; provide referrals of residents, victims, and the homeless to social services and government agencies; assure feedback of police actions to victims of crime; and promote a law enforcement value system on the needs and rights of residents.

(J) HA police departments funded under this program that are not nationally or state accredited must submit a plan and timetable that may not exceed 24 months for such accreditation. Housing authorities may use either their state accreditation program, if one exists, or the Commission on Accreditation for Law Enforcement Agencies (CALEA) for this purpose.

(1) The law enforcement community developed a body of standards in 1981 against which law enforcement agencies could be evaluated. While some states have their own law enforcement accreditation program, the nationwide accreditation program is managed by the CALEA, which is located in Fairfax, VA. The purpose of accreditation is to reduce liability exposure of agencies and personnel, and to assure that law enforcement agencies meet a uniform body of standards.

(2) The accreditation concept emphasizes a voluntary, self-motivated approach by which organizations seek to achieve and maintain objectively verified high quality operations through periodic evaluations conducted by an independent, non-governmental body that has established standards for its "clientele". In simple terms, "to accredit" means to recognize or vouch for an agency as conforming to a body of standards related to a specific discipline—in this instance, law enforcement.

(3) The process for CALEA consists of formal application, mutual aid contract, an in-depth self assessment, an on-site assessment by Commission-selected practitioner assessors from outside the state of the requesting agency, and final Commission review and decision. Self-assessment enables an agency to establish proofs of compliance with standards specific to the agency to review its organization, management, operations, and administrative activities to determine if it believes it meets the requirements. Certain standards are mandatory based on health, life, safety, and importance to the community and the agency.

(4) Use of grant funds for accreditation activities is permitted.

(K) Expenditures for activities under this section may not be incurred until the grantee has met all the above requirements. In order to assist housing authorities to develop and administer relevant, fair, and productive contracts with local law enforcement agencies for the delivery of effective services to public housing residents, a sample contract for law enforcement services is provided with the application kit.

(2) Reimbursement of Local Law Enforcement Agencies for Additional Security and Protective Services

(i) Additional security and protective services to be funded under this program must be over and above the baseline services, as defined below, that the tribal, State or local government provides to applying HA.

(A) An applicant seeking funding for this activity must first establish a baseline by describing the current level of services (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding) and then demonstrate to what extent the funded activity will represent an increase over this baseline.

Baseline services are defined as those law enforcement services the locality is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract).

(ii) Communications and security equipment to improve the collection, analysis, and use of information about drug-related criminal activities in a public housing community, such as surveillance equipment (e.g., Closed Circuit Television (CCTV), software, cameras, monitors, components and supporting equipment), computers accessing national, tribal, State or local government security networks and databases, facsimile machines, telephone equipment, bicycles, and motor scooters may be eligible items if used exclusively in connection with the establishment of a law enforcement substation on the funded premises or scattered site developments of the HA.

(iii) If the local law enforcement agency collects officer activity information (which the Department recommends) for the housing authority, it must use a housing authority approved activity form for the collection, analysis and reporting of activities by officers funded under this section. Computers and software may be included as an eligible item in support of this housing authority data collection activity.

(iv) The Department encourages housing authorities that are funded under this program to promote the implementation of community policing. For additional background on community policing, see the discussion at section I.(c)(1)(ii)(I), above.

(v) Expenditures for activities under this section may not be incurred until the grantee and the local law enforcement agency execute a contract for the additional law enforcement services. In order to assist housing authorities to develop and administer relevant, fair, and productive contracts with local law enforcement agencies for the delivery of effective services to public and Indian housing residents a sample contract for law enforcement services is provided with the application kit.

(3) Physical Improvements to Enhance Security

(i) Physical improvements that are specifically designed to enhance security are permitted under this program. These improvements may include (but are not limited to) the installation of barriers, lighting systems, fences, surveillance equipment (e.g., Closed Circuit Television (CCTV), software, cameras, monitors, components and supporting equipment) bolts, locks; the landscaping or reconfiguration of common areas so as to discourage drug-related crime; and other physical improvements in public housing developments that are designed to enhance security and discourage drug-related activities.

(ii) An activity that is funded under any other HUD program, such as the modernization program at 24 CFR part 968, shall not also be funded by this program.

(iii) Funding is not permitted for physical improvements that involve the demolition of any units in a development.

(iv) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(v) Funding is not permitted for the acquisition of real property.

(vi) All physical improvements must also be accessible to persons with disabilities. For example, some types of locks, buzzer systems, doors, etc., are not accessible to persons with limited strength, mobility, or to persons who are

hearing impaired. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(4) Employment of Investigators

(i) Employment of one or more individuals is permitted under this program to:

(A) Investigate drug-related crime in or around the real property comprising any public housing development; and

(B) Provide evidence relating to any such crime in any administrative or judicial proceedings.

(ii) Investigators funded by this program must meet all relevant tribal, State or local government insurance, licensing, certification, training, bonding, or other similar requirements.

(iii) The applicant, the cooperating local law enforcement agency, and the investigator(s) are required, before any investigators are employed, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the investigators, their scope of authority, established policies, procedures, and practices that will govern their performance (i.e., a Policy Manual as described in section I.(c)(4)(v), below) and how they will coordinate their activities with the local, state and Federal law enforcement agencies; and

(B) The types of activities that the investigators are expressly prohibited from undertaking.

(iv) Under this section, reimbursable costs associated with the investigation of drug-related crime (e.g., travel directly related to the investigator's activities, or costs associated with the investigator's testimony at judicial or administrative proceedings) may only be those incurred by the investigator.

(v) Investigators funded under this program shall be guided by a policy manual (see below) that regulates, directs, and controls their conduct and activities. All investigators must be trained at a minimum in the areas described below in paragraph (B) of this section".

(A) An up-to-date policy manual, which contains the policies, procedures, and general orders that regulate conduct and describe in detail how jobs are to be performed, must either exist or be completed within 12 months of the execution of the grant agreement. Applicants must submit a plan and timetable for the implementation of training staff.

(B) Examples of areas that must be covered in the manual include but are not limited to: use of force, resident contacts, response criteria to calls, pursuits, arrest procedures, reporting of crimes and workload, feedback procedures to victims, citizens complaint procedures, internal affairs investigations, towing of vehicles, authorized weapons and other equipment, radio procedures internally and with local police, training requirements, patrol procedures, scheduling of meetings with residents, record keeping and position descriptions on every post and assignment.

(vi) If an investigator collects investigator activity information (which the Department recommends) for the housing authority, a housing authority approved activity form must be used for the collection, analysis and reporting of activities by investigators funded under this section. Computers and software may be included as an eligible item in support of this housing authority data collection activity.

(vii) Expenditures for activities under this section may not be incurred until the grantee has met all the above requirements.

(5) Voluntary Tenant Patrols

(i) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted under this program. Members must be volunteers and must be tenants of the development that the tenant (resident) patrol represents. Patrols established under this program are expected to patrol for drug-related criminal activity in the developments proposed for assistance, and to report these activities to the cooperating local law enforcement agency and relevant tribal, State and Federal agencies, as appropriate. Grantees are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this program. The cost of this insurance will be considered an eligible program expense.

(ii) The applicant, the cooperating local law enforcement agency, and the members of the tenant patrol are required, before putting the tenant patrol into effect and expending any grant funds, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the tenant patrol, the patrol's scope of authority, the established policies, procedures, and practices that will govern the tenant patrol's performance and how the patrol will coordinate its activities with the local law enforcement agency;

(B) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightstick, clubs, handcuffs, or mace in the course of their duties under this program;

(C) Initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the tenant patrol into effect); and

(D) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a HA's liability insurance.

(iii) Communication and related equipment eligible for funding under this program shall be equipment that is reasonable, necessary, justified and related to the operation of the tenant patrol and that is otherwise permissible under tribal, State or local law.

(iv) Under this program, bicycles, motor scooters and uniforms (caps and other all seasonal clothing items that identify voluntary tenant patrol members, including patrol t-shirts and jackets) to be used by the members of the tenant patrol are eligible items.

(v) Drug elimination grant funds may not be used for any type of financial compensation, such as any full-time wages or salaries for voluntary tenant patrol participants.

(6) Programs To Reduce the Use of Drugs

Programs that reduce the use of drugs in and around the premises of public housing developments, including drug abuse prevention, intervention, referral and treatment programs are permitted under this program. The program should facilitate drug prevention, intervention and treatment efforts, to include outreach to community resources and youth activities, and facilitate bringing these resources onto the premises, or providing resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises. Funding is permitted for reasonable, necessary and justified purchasing or leasing of vehicles (whichever can be documented as the most cost effective) for resident youth and adult education and training activities directly related to "Programs to reduce the use of drugs" under this section. Alcohol-related activities/programs are not eligible for funding under this program.

(i) *Drug prevention.* Drug prevention programs that will be considered for funding under this part must provide a comprehensive drug prevention approach for public housing residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in public housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of the applicant's housing developments, and the applicant must act to bring those available program components onto the premises. Funding is permitted for reasonable, necessary and justified program costs, such as meals, beverages and transportation, incurred only for training and education activities directly related to "drug prevention programs". Activities that should be included in these programs are:

(A) Drug education opportunities for public housing residents. The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract (in accordance with 24 CFR 85.36) with professionals to provide appropriate training or workshops. The professionals contracted to provide these services shall be required to base their services upon the needs assessment and program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public housing residents.

(B) Family and other support services. Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the development or the community for public housing families.

(C) Youth services. Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving public housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(D) Economic/educational opportunities for residents and youth. Drug prevention programs must demonstrate a capacity to provide public housing residents the opportunities for interaction with or referral to established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide public housing residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(ii) *Intervention.* The aim of intervention is to identify public housing resident drug users and assist them in modifying their behavior and in obtaining early treatment, if necessary. The applicant must establish a program with the goal of preventing drug problems from continuing once detected.

(iii) *Drug treatment.* (A) Treatment funded under this program shall be in or around the premises of the public housing developments proposed for funding.

(B) Funds awarded under this program shall be targeted towards the development and implementation of new drug referral treatment services and/or aftercare, or the improvement of, or expansion of such program services for public housing residents.

(C) Each proposed drug program should address the following goals:

(1) Increase resident accessibility to drug treatment services;

(2) Decrease criminal activity in and around public housing developments by reducing illicit drug use among public housing residents; and

(3) Provide services designed for youth and/or maternal drug abusers, e.g., prenatal and postpartum care, specialized counseling in women's issues, parenting classes, or other drug supportive services.

(D) Approaches that have proven effective with similar populations will be considered for funding. Programs should meet the following criteria:

(1) Applicants may provide the service of formal referral arrangements to other treatment programs not in or around the developments where the resident is able to obtain treatment costs from sources other than this program.

(2) Provide family and collateral counseling.

(3) Provide linkages to educational and vocational counseling.

(4) Provide coordination of services to appropriate tribal or local drug agencies, HIV-related service agencies, and mental health and public health programs.

(E) Applicants must demonstrate a working partnership with the Single State Agency or current tribal or State license provider or authority with drug program coordination responsibilities to coordinate, develop and implement the drug treatment proposal.

(F) The Single State Agency or authority with drug program coordination responsibilities must certify that the drug treatment proposal is consistent with the State treatment plan; and that the treatment service meets all State licensing requirements.

(G) Funding is not permitted for treatment of residents at any in-patient medical treatment programs and facilities.

(H) Funding is not permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(I) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g. methadone maintenance), rather than for immediate control of a disorder.

(7) Resident Management Corporations (RMCs), Resident Councils (RCs), and Resident Organizations (ROs)

Funding under this program is permitted for HAs to contract with RMCs and incorporated RCs and ROs to develop security and drug abuse prevention programs involving site residents. Such programs may include (but are not limited to) voluntary tenant patrol activities, drug education, drug intervention, youth programs, referral, and outreach efforts.

(8) Continuation of Current Program Activities

An applicant may apply to continue an existing activity funded under this program. The Department will evaluate an applicant's performance of the activity that the applicant wants to continue with additional funding under this NOFA. The Department will review and evaluate the applicant's conduct of the activity under the previous grant, including financial and program

performance; reporting and special condition compliance; accomplishment of stated goals and objectives under the previous grant; and program adjustments made in response to previous ineffective performance. Since this is a competitive program, HUD does not guarantee continued funding of any previously funded Drug Elimination Program Grant.

(9) PHA-Owned Housing

Funding may be used for the activities described in sections I.(c) (1) through (7) (Eligible activities) of this NOFA, to eliminate drug-related crime in housing owned by public housing agencies that is not public housing that is assisted under the United States Housing Act of 1937 and is not otherwise federally assisted (for example, housing that receives tenant subsidies under Section 8 is federally assisted and would not qualify, but housing that receives only state or local assistance would qualify), but only if they meet all of the following:

(i) The housing is located in a high intensity drug trafficking area designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988; and

(ii) The PHA owning the housing demonstrates, on the basis of information submitted in accordance with the requirements of sections I.(d)(1), below, of this NOFA, that drug-related activity, and the problems associated with such activity, at the housing has a detrimental affect on or about the housing. For the purposes of this NOFA "on or about" means: On the premises or immediately adjacent to the premises of the real property comprising the public or other federally-assisted housing.

As of February 1994 the following areas were confirmed by the Office of National Drug Control Policy Office, as designated high intensity drug trafficking areas:

—Washington, DC-Baltimore, MD which includes: Washington, DC, Alexandria, Arlington Cty, Fairfax Cty, Montgomery Cty, Prince George's Cty, Charles Cty, Anne Arundel Cty, Howard Cty, Baltimore Cty, and Baltimore, MD.
—New York City (and a surrounding area that includes Nassau Cty, Suffolk County, and Westchester Cty, New York, and all municipalities therein; and Union Cty, Hudson Cty, and Essex Cty, New Jersey, and all municipalities therein);
—Los Angeles (and a surrounding area that includes Los Angeles Cty, Orange Cty, Riverside Cty, and San Bernadino Cty, and all municipalities therein);
—Miami (and a surrounding area that includes Broward Cty, Dade County, and Monroe Cty, and all municipalities therein);
—Houston (and a surrounding area that includes Harris Cty, Galveston Cty, and all municipalities therein); and
—The Southwest Border (and adjacent areas that include San Diego and Imperial Cty, California, and all municipalities therein; Yuma Cty, Maricopa Cty, Pinal Cty, Pima Cty, Santa Cruz Cty, and Cochise Cty, Arizona, and all municipalities therein; Hidalgo Cty, Grant County, Luna County, Dona Ana Cty, Eddy Cty, Lea Cty, and Otero Cty, New Mexico, and all municipalities therein; El Paso Cty, Hudspeth Cty, Culberson Cty, Jeff Davis Cty, Presidio County, Brewster Cty, Pecos Cty, Terrell Cty, Crockett Cty, Val Verde Cty, Kinney Cty, Maverick Cty, Zavala Cty, Dimmit Cty, La Salle Cty, Webb County, Zapata County, Jim Hogg County, Starr County, Hildago Cty, Willacy Cty, and Cameron Cty, Texas, and all municipalities therein).

For further information on high intensity drug trafficking areas contact: Rich Yamamoto, at the Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500. Telephone number: (202) 395–6755.

(10) Ineligible Activities

Funding is not permitted for any of the activities listed below or those specified as ineligible elsewhere in this NOFA.

(i) Funding is not permitted for costs incurred before the effective date of the grant agreement, including, but not limited to, consultant fees for surveys related to the application or the actual writing of the application.

(ii) Funding is not permitted for the purchase of controlled substances for any purpose, including sting operations.

(iii) Funding is not permitted for compensating informants, including confidential informants.

(iv) Funding is not permitted for the purchase of law enforcement and/or any other vehicles, including cars, vans, buses, motorcycles, scooters, or motor bikes, except as specified in this NOFA.

(v) Funding is not permitted to purchase or lease any military or law enforcement clothing or equipment, such as, vehicles, uniforms, ammunition, firearms/weapons, military or police vehicles, protective vests, and any other supportive equipment, etc.

(vi) Drug elimination grant funds may not be used for any full-time wages or salaries for voluntary tenant patrol participants.

(vii) Funding is not permitted for the costs of leasing, acquiring, constructing or rehabilitating any facility space in a building or unit.

(viii) Funding is not permitted for organized fund raising, advertising, financial campaigns, endowment drives, solicitation of gifts and bequests, rallies, marches, community celebrations and similar expenses.

(ix) Funding is not permitted for the costs of entertainment, amusements, or social activities, and for the expenses of items such as meals, beverages, lodgings, rentals, transportation, and gratuities related to these ineligible activities. However, funding is permitted for reasonable, necessary and justified program costs, such as meals, beverages and transportation, incurred only for training, and education activities directly related to "drug prevention programs."

(x) Funding is not permitted for the costs (court costs, attorneys fees, etc.) related to screening or evicting residents for drug-related crime. However, investigators funded under this program may participate in judicial and administrative proceedings as provided in paragraph I.(c)(4)(i)(B) (Employment of Investigators) of this NOFA.

(xi) Although participation in activities with Federal drug interdiction or drug enforcement agencies is encouraged, the transfer of Drug Elimination Program funds to any Federal agency is not permitted.

(xii) Alcohol-related activities and programs are not eligible for funding under this program.

(xiii) Funding is not permitted under this NOFA for establishing councils, resident associations, resident organizations, and resident corporations since HUD funds these activities under a separate NOFA.

(xiv) Indirect costs as defined in OMB Circular A–87 are not permitted under this program. Only direct costs are permitted.

(xv) Funding is not permitted for any cash awards, such as scholarships, prizes, etc.

(xvi) Grant funds shall not be used to supplant existing positions or programs.

(d) Selection Criteria

HUD will review each application that it determines meets the requirements of this NOFA and assign points in accordance with the selection criteria. An application for funding under this program may be for one or more eligible activities.

An applicant may submit only one application under each Notice of Funding Availability (NOFA). Joint applications are not permitted under

this program with the following exception: housing authorities (HA) under a single administration (such as housing authorities managing another housing authority under contract or housing authorities sharing a common executive director) may submit a single application, even through each housing authority has its own operating budget.

The number of points that an application receives will depend on the extent to which the application is responsive to the information requested in the selection criteria. An application must receive a score of at least 80 points out of the maximum of 120 points that may be awarded under this competition to be eligible for funding.

After applications have been scored, Headquarters will rank the applications on a national basis according to two categories, either HAs with up to 1249 units, or HAs with 1250 or more units. Awards will be made in ranked order until all funds are expended. Any funding that cannot be awarded in one category will be awarded under the other category within the statutory limits.

HUD will select the highest ranking applications that can be fully funded. Applications with tie scores will be selected in accordance with the procedures in paragraph I. (e) (Ranking Factors). The terms "housing" and "development(s)" as used in the application selection criteria and submission requirements may include, as appropriate, housing described in section I. (c)(9) (PHA-Owned Housing), above, of this NOFA. Each application submitted for a grant under this NOFA will be evaluated on the basis of the following selection criteria:

(1) *First Criterion: The Extent of the Drug-Related Crime Problem in the Applicant's Development or Developments Proposed for Assistance.* (Maximum Points: 45) To permit HUD to make an evaluation on the basis of this criterion, an application must include a description of the extent of drug-related crime and/or problems associated with it, in the developments proposed for funding. An applicant must explain in what way a problem claimed to be associated with drug-related crime is a result of drug-related crime. The description should provide the following information:

(i) *Objective data.* The best available objective data on the nature, source, and frequency of the problem of drug-related crime and/or the problems associated with drug-related crime. This data may include (but not necessarily be limited to):

(A) The nature and frequency of drug-related crime and problems associated with drug-related crime as reflected by crime statistics and other data from Federal, tribal, State or local law enforcement agencies.

(B) Information from records on the types and sources of drug-related crime in the developments proposed for assistance.

(C) Descriptive data as to the types of offenders committing drug-related crime in the applicant's developments (e.g., age, residence, etc.).

(D) The number of lease terminations or evictions for drug-related criminal activity.

(E) The number of emergency room admissions for drug use or that result from drug-related crime (such information may not be available from police departments but only from fire departments or emergency medical services agencies).

(F) The number of police calls for service (not just drug-related) such as, officer-initiated calls, domestic violence calls, drug distribution complaints, found drug paraphernalia, gang activity, graffiti that reflects drugs or gang-related activity, vandalism, drug arrests, and abandoned vehicles.

(G) The number of residents placed in treatment for substance abuse.

(H) The school dropout rate and level of absenteeism for youth that the applicant can relate to drug-related crime. (If crime or other statistics are not available at the development or precinct level, the applicant may use other reliable, objective data including those derived from its records or those of RMCs, RCs or ROs).

(I) Where appropriate, the statistics should be reported both in real numbers, and as an annual percentage of the residents in each development (e.g., 20 arrests in a year for distribution of heroin in a development with 100 residents reflects a 20% occurrence rate). The data should cover the most recent one-year period (a one-year period ending within 3 months of the date of the application). If the data from the most recent one-year period is not used, an explanation must be provided. To the extent feasible, the data provided should be compared with data from a prior one-year period to show whether the current data reflects a percentage increase or decrease in drug-related crime and/or its associated problems during that prior period of time.

(J) A reduction in drug-related crime in developments where previous Drug Elimination grants have been in effect will not be considered a disadvantage to the applicant.

(K) If funding is being sought for housing owned by public housing agencies that is not public housing assisted under the United States Housing Act of 1937 and is not otherwise federally assisted, the application must demonstrate that the housing is located in a high intensity drug trafficking area designated pursuant to section 1005 of the Anti-Drug Abuse Act of 1988, and the application must demonstrate that drug-related activity, and the problems associated with it, at the housing has a detrimental affect on or about the real property comprising the public or other federally assisted low-income housing. For the purposes of this NOFA "on or about" means: on the premises or immediately adjacent to the premises of the real property comprising the public or other federally-assisted housing.

(ii) *Other data on the extent of drug-related crime.* To the extent that objective data as described above may not be available, or to complement that data, the assessment may use data from other sources that have a direct bearing on drug-related crime and/or the problems associated with it in the developments proposed for assistance under this program. However, if other relevant information is to be used in place of, rather than to complement, objective data, the application must indicate the reasons why objective data could not be obtained and what efforts were made to obtain it. Examples of these data include (but not necessarily be limited to):

(A) Resident and staff surveys on drug-related issues or on-site reviews to determine drug activity; and local government or scholarly studies or other research in the past year that analyze drug activity in the targeted developments.

(B) Vandalism cost and related vacancies attributable to drug-related crime.

(C) Information from schools, health service providers, residents and local, state, and Federal law enforcement agencies; and the opinions and observations of individuals having direct knowledge of drug-related crime and/or the problems associated with it concerning the nature and frequency of these problems in the developments proposed for assistance. (These individuals may include local, state and Federal law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.)

(iii) In awarding points, HUD will evaluate the extent to which the applicant has provided the above data that reflects a drug-related crime problem, both in terms of the frequency

and nature of the drug-related problems associated with drug-related crime in the developments proposed for funding as reflected by information submitted under paragraph (1) (i) (objective data), and (ii) (other data) of this section; and the extent to which such data reflects an increase in drug-related crime over a period of *one year* in the developments proposed for assistance. (Maximum Points Under Paragraphs (i) and (ii) of this Section: 20)

(iv) In awarding points, HUD will evaluate the extent to which the applicant has analyzed the data compiled under paragraphs (1) (i) and (ii) of this section, and has clearly articulated its needs for reducing drug-related crime in developments proposed for assistance. (Maximum Points: 5)

(v) In awarding points, HUD will evaluate and assign points between zero (0) and ten (10) according to the per capita incidence of robbery and homicide in their community relative to their per capita incidence on a nationwide basis. Data on robbery and homicide incidence were chosen because of the demonstrated relationship of a substantial portion of these crimes with drug abuse. The community data will be taken from the Uniform Crime Reports (UCRs) of the U.S. Department of Justice (FBI crime data) and will be at the city level, when available, or at the county level. The crime incidence data and the point values will be computed by HUD. (Maximum Points: 10)

(vi) In awarding points, HUD will evaluate and assign points between zero (0) and ten (10) according to the per capita incidence of drug arrests. In instances where the Department of Justice records do not contain community submission data, points will be assigned based on state metropolitan and nonmetropolitan averages relevant to such areas. (Maximum Points: 10)

(2) *Second Criterion: The Quality of the Plan To Address the Crime Problem in the Public or Indian Housing Developments Proposed for Assistance, Including the Extent to Which the Plan Includes Initiatives That Can Be Sustained Over a Period of Several Years.* (Maximum Points: 35) In assessing this criterion, HUD will consider the following factors:

(i) To permit HUD to make an evaluation on the basis of this criterion, an application must include the applicant's plan for addressing drug-related crime and/or its associated problems. This means a narrative description of the applicant's activities for addressing drug-related crime and/or its associated problems in each of the developments proposed for assistance under this part must be included in the application. The activities eligible for funding under this program are listed in section I.(c) of this NOFA, above, although the applicant's plan must include all of the activities that will be undertaken to address the problem, whether or not they are funded under this program. If the same activities are proposed for all of the developments that will be covered by the plan, the activities do not need to be described separately for each development. Where different activities are proposed for different developments, these activities and the developments where they will take place must be separately described. The description of the plan in the application must include (but not necessarily be limited to) the following information:

(A) A narrative describing each activity proposed for Drug Elimination Program funding in the applicant's plan, any additional relevant activities being undertaken by the applicant (e.g., a drug treatment program for residents funded by an agency other than HUD), and how all of these activities interrelate. The applicant should specifically address whether it plans to implement a comprehensive drug elimination strategy that involves management practices, enforcement/law enforcement techniques (such as community policing), and a combination of drug abuse prevention, intervention, referral, and treatment programs. In addition, the applicant should indicate how its proposed activities will complement, and be coordinated with, current activities.

(*1*) If grant amounts are to be used for contracting security guard personnel services in public housing developments the application must describe how the requirements of section I.(c)(1)(i) (Employment of Security Personnel) of this NOFA will be met.

(*2*) If grant amounts are to be used for HA police officers the application must describe how the requirements of section I.(c)(1)(ii) (HA Police Departments) of this NOFA will be met.

(*3*) If grant amounts are to be used for reimbursement of local law enforcement agencies for additional security and protective services the application must describe how the requirements of section I.(c)(2) (Reimbursement of Local Law Enforcement Agencies) of this NOFA will be met.

(*4*) If grant amounts are to be used for physical improvements in public housing developments proposed for funding under section I.(c)(3) (Physical Improvements) of this NOFA the application must discuss how these improvements will be coordinated with the applicant's modernization program, if any, under 24 CFR part 968.

(*5*) If grant amounts are to be used for employment of investigators the application must describe how the requirements of section I.(c)(4) (Employment of Investigators) of the NOFA will be met.

(*6*) If grant amounts are to be used for voluntary tenant patrols the application must describe how the requirements of section I.(c)(5) (Voluntary tenant patrol) of this NOFA will be met.

(*7*) If grant amounts are to be used for a prevention, intervention or treatment program to reduce the use of drugs in and around the premises of public and Indian housing developments as provided in I.(c)(6) (Programs to Reduce the Use of Drugs) of this NOFA, the application must discuss the nature of the program, how the program represents a prevention or intervention strategy, and how the program will further the HA's strategy to eliminate drug-related crime and/or its associated problems in the developments proposed for assistance.

(B) The anticipated cost of each activity in the plan, a description of how funding decisions were reached (cost analysis), and the financial and other resources (including funding under this program, and from other resources) that may reasonably be expected to be available to carry out each activity.

(C) An implementation timetable that includes tasks, deadlines, cost and persons responsible for implementing (beginning, achieving identified milestones, and completing) each activity in the plan.

(D) The role of tenants, and RMCs, RCs, and ROs (where these organizations exist) in planning and developing the application for funding and in implementing the applicant's plan. The application must provide the name of the RMC or incorporated RC or RO that will develop any security and drug abuse prevention programs under section I.(c)(7) (RMCs, RCs, and ROs) of this NOFA involving site residents.

(E) The role of any other entities (e.g., tribal, local and State governments, community organizations and federal agencies) in planning and carrying out the plan. This can be shown, for example, by providing letters of support or commitment from governmental or private entities of the financial or other resources (e.g., staff or in-kind resources) that they agree to provide.

(F) The resources that the applicant may reasonably expect to be available at the end of the grant term to continue the plan, and how they will be allocated to

plan activities that can be sustained over a period of years.

(G) A discussion of how the applicant's plan will serve to provide training and employment or business opportunities for lower income persons and businesses located in, or substantially owned by persons residing within the area of the section 3 covered project (as defined in 24 CFR part 135) in accordance with 24 CFR 961.26(d) and 24 CFR 961.29(b)(4). HAs are encouraged to hire qualified residents in all positions.

(H) Program evaluation. The plan must specifically discuss how the activities funded under this program will be evaluated by the applicant, so that the program's progress can be measured. The evaluation may also be used to modify activities to make them more successful or to identify unsuccessful strategies. The evaluation must identify the types of information the applicant will need to measure the plan's success (e.g., tracking changes in identified crime statistics); and indicate the method the applicant will use to gather and analyze this information.

(ii) In assessing this criterion, HUD will consider the quality and thoroughness of an applicant's plan in terms of the information requested in section I.(d)(2)(i), "Quality of the plan," of this NOFA, including the extent to which:

(A) The applicant's plan clearly describes the activities that are being proposed by the applicant, including those activities to be funded under this program and those to be funded from other sources, and indicates how these proposed activities provide for a comprehensive approach to eliminate drug-related crime and/or its associated problems (as described under the first criterion, section I.(d)(1), "The extent of the drug-related crime problem" of this NOFA, above) in the developments proposed for funding. (Maximum Points: 10)

(B) The applicant's plan provides a budget narrative (with cost analysis) for each activity and describes the financial and other resources (under this program and other sources) that may reasonably be expected to be available to carry out each activity. (Maximum Points: 4)

(C) The applicant's plan is realistic in terms of time, personnel, and other resources, considering the applicant's timetable for beginning and completing each component of the plan and the amount of funding requested under this program and other identified resources available to the applicant. (Maximum Points: 3)

(D) As described in the plan, tenants, and RMCs/RCs/ROs, where they exist, are involved in planning and developing the application for funding and in implementing the applicant's plan. (Maximum Points: 4)

(E) As described in the plan, other entities (e.g., tribal, local and state governments and community organizations) are involved in planning and carrying out the applicant's plan. (Maximum Points: 3)

(F) The plan includes activities that can be sustained over a period of years and identifies resources that the applicant may reasonably expect to be available for the continuation of the activities at the end of the grant term. (Maximum Points: 4)

(G) The applicant's plan will serve to provide training and employment or business opportunities for lower income persons and businesses located in, or substantially owned by persons residing within the area of the section 3 covered project (as defined in 24 CFR part 135) in accordance with 24 CFR 961.26(d) and 24 CFR 961.29(b)(4). (Maximum Points: 3)

(H) The applicant has developed an evaluation process to measure the success of the plan. (Maximum Points: 4)

(3) *Third Criterion: The Capability of the Applicant To Carry Out the Plan.* (Maximum Points: 20) In assessing this criterion, HUD will consider the following factors:

(i) The extent of the applicant's administrative capability to manage its housing developments, as measured by its performance with respect to operative HUD requirements under the ACC or ACA and the Public Housing Management Assessment Program at 24 CFR part 901. In evaluating administrative capability under this factor, HUD will also consider, and the application must include in the form of a narrative discussion, the following information:

(A) Whether there are any unresolved findings from prior HUD reports (e.g. performance or finance), reviews or audits undertaken by HUD, the Inspector General, the General Accounting Office, or independent public accountants;

(B) Whether the applicant is operating under court order; and,

(C) If applicable, the progress made by a troubled HA in achieving goals established under a Memorandum of Agreement (MOA) executed with HUD. (Maximum Points under paragraph (3)(i)(A)(B) and (C) of this section: 3)

(ii) The application must discuss the extent to which the applicant has implemented effective screening procedures to determine an individual's suitability for public housing (consistent with the requirements of 42 U.S.C. 3604(f), 24 CFR 100.202, 29 U.S.C. 794 and 24 CFR 8.4 which deal with individuals with disabilities); implemented a plan to reduce vacancies; implemented eviction procedures in accordance with 24 CFR 966, subpart B, and section 503 of NAHA; or undertaken other management actions to eliminate drug-related crime and/or its associated problems in its developments. (Maximum Points: 2)

(iii) The application must identify the applicant's participation in HUD grant programs (such as CGP, CIAP, youth sports, child care, resident management, Drug Elimination Program grants, etc.) within the preceding three years, and discuss the degree of the applicant's success in implementing and managing these grant programs. (Maximum Points: 5)

(iv) The Field Office shall evaluate the extent of the applicant's success, effort, or failure in implementing and managing an effective program under previous Drug Elimination grants (preceding three years). Successful and effective management of previous Drug Elimination grant program(s), will result in up to 10 extra points. Evidence of an unjustified failure to make adjustments to an ineffective program will result in a deduction of up to 10 points. This evaluation will be based upon HUD's Line of Credit Control System (LOCCS) reports, PHDEP performance and financial reports, and HUD reviews. (Maximum Points: Plus (+) 10 or Minus (−) 10 Points)

(4) *Fourth Criterion: The Extent to Which Tenants, the Local Government and the Local Community Support and Participate in the Design and Implementation of the Activities Proposed To Be Funded Under the Application.* (Maximum Points: 20) In assessing this criterion, HUD will consider the following factors:

(i) The application must include a discussion of the extent to which community representatives and local, State and Federal government officials are actively involved in the design and implementation of the applicant's plan, as evidenced, by descriptions of planning meetings held with community representatives and local government officials, letters of commitment to provide funding, staff, or in-kind resources, or written comments on the applicants planned activities. (Maximum Points: 7)

(ii) The application must discuss the extent to which the relevant governmental jurisdiction has met its law enforcement obligations under the Cooperation Agreement with the

applicant (as required by the grantee's Annual Contributions Contract with HUD). The application must also include a certification by the Chief Executive Officer (CEO) of a State or a unit of general local government in which the developments proposed for assistance are located that the locality is meeting its obligations under the Cooperation Agreement with the HA, particularly with regard to law enforcement services. If the jurisdiction is not meeting its obligations under the Cooperation Agreement, the CEO should identify any special circumstances relating to its failure to do so. Whether or not a locality is meeting its obligations under the Cooperation Agreement with the applicant, the application must describe the current level of law enforcement services being provided to the developments proposed for assistance. (Maximum Points: 5)

(iii) The extent to which development residents (tenants), and an RMC, RC or RO, where they exist, are involved in the planning and development of the grant application and plan strategy, and support and participate in the design and implementation of the activities proposed to be funded under the application. The application must include a summary of each written resident and resident organization comment, as required by 24 CFR 961.18, and the applicant's response to and action on these comments. If there are no resident or resident organization comments, the applicant must provide an explanation of the steps taken to encourage participation, even though they were not successful. (Maximum Points: 3)

(iv) The extent to which the applicant is already undertaking, or has undertaken, participation in local, State, or Federal anti-drug related crime efforts (such as Operation Weed and Seed, coordinated by the U.S. Department of Justice, or Operation Safe Home) or is successfully coordinating its law enforcement activities with local, State or Federal law enforcement agencies. (Maximum points: 5)

(e) Ranking Factors

(1) Each application for a grant award that is submitted in a timely manner to the local HUD Field Office with delegated public housing responsibilities or, in the case of IHAs, to the appropriate Office of Native American Programs, and that otherwise meets the requirements of this NOFA.

(2) An application must receive a score of at least 80 points out of the maximum of 120 points that may be awarded under this competition to be eligible for funding.

(3) After applications have been scored, Headquarters will rank the applications on a national basis according to two categories, either HAs with up to 1,249 units, or HAs with 1,250 or more units. Awards will be made in ranked order until all funds are expended. Any funding that cannot be awarded in one category will be awarded under the other category within the statutory limits.

(4) In the event that two eligible applications receive the same score, and both cannot be funded because of insufficient funds, the application with the highest score in Selection Criterion 3 "The Capability of the Applicant to Carry Out the Plan" will be selected. If Selection Criterion 3 is scored identically for both applications, the scores in Selection Criteria 1, 2, and 4 will be compared in this order, one at a time, until one application scores higher in one of the factors and is selected. If the applications score identically in all factors, the application that requests less funding will be selected.

(5) All awards will be made to fund fully an application, except as provided in paragraph I.(b)(4) (Reduction of Requested Grant Amounts and Special Conditions).

(f) General Grant Requirements

The following requirements apply to this program:

(1) Grantees are required to use grant funds under this program in accordance with this NOFA, 24 CFR part 961, 24 CFR part 85, applicable statutes, HUD regulations, Notices, Handbooks, OMB circular, grant agreements/amendments, and the grantee's approved plan, budget (SF–424A), budget narratives and timetable.

(2) *Applicability of OMB Circular and HUD fiscal and audit controls.* The policies, guidelines, and requirements of this NOFA, 24 CFR 961, 24 CFR part 85, and OMB Circular A–87 apply to the acceptance and use of assistance by grantees under this program; and OMB Circular Nos. A–110 and A–122 apply to the acceptance and use of assistance by private nonprofit organizations (including RMCs, RCs and ROs). In addition, grantees and subgrantees must comply with fiscal and audit controls and reporting requirements prescribed by HUD, including the system and audit requirements under the Single Audit Act, OMB Circular No. A–128 and HUD's implementing regulations at 24 CFR part 44; and OMB Circular No. A–133.

(3) *Cost Principles.* Specific guidance in this NOFA, 24 CFR part 961, 24 CFR part 85, OMB Circular A–87, other applicable OMB cost principles, HUD program regulations, Notices, HUD Handbooks, and the terms of grant/special conditions and subgrant agreements will be followed in determining the reasonableness and allocability of costs. All costs must be reasonable, necessary and justified with cost analysis. PHDEP Funds must be disbursed by the grantee within seven calendar days after receipt of drawdown. Grant funds must be used only for Drug Elimination Program purposes. Direct costs are those that can be identified specifically with a particular activity or function in this NOFA and cost objectives in OMB Circular A–87. Indirect cost are not permitted in this program. Administrative requirements for Drug Elimination Program grants will be in accordance with 24 CFR part 85. Acquisition of property or services shall be in accordance with 24 CFR 85.36. All equipment acquisitions will remain the property of the grantee in accordance with 24 CFR 85.32. ONAP procurement standards are in 24 CFR part 905.

(4) *Grant Staff Personnel.* (i) All persons or entities compensated by the grantee for services provided under a Drug Elimination Program grant must meet all applicable personnel or procurement requirements and shall be required as a condition of employment to meet all relevant State, local and federally-recognized Indian tribal government, insurance, training, licensing, or other similar standards and requirements.

(ii) Compensation for personnel (including supervisory personnel, such as a grant administrator or drug program coordinator, and support staff, such as counselors and clerical staff) hired for grant activities is permitted and may include wages, salaries, and fringe benefits.

(iii) All grant personnel must be necessary, reasonable and justified. Job descriptions must be provided for all grant personnel. Excessive staffing is not permitted.

(iv) PHA–IHA staff employees shall be compensated with grant funds only for work performed directly for PHDEP grant-related activities and shall document the time and activity involved in accordance with 24 CFR 85.20.

(5) *Term of Grant.* The grant project (FY 1994 PHDEP grant) must be completed within, and shall not exceed, 24 months from the date of execution of the grant agreement, unless an extension and grant amendment (HUD Form 1044) is approved by the local Field Office. After the award of the grant the maximum extension allowable for any

project period is 6 months. Any funds not expended at the end of the grant term shall be remitted to HUD.

(6) *Duplication of Funds.* To prevent duplicate funding of any activity, the grantee must establish controls to assure that an activity or program that is funded by other HUD programs, such as modernization or CIAP, or programs of other Federal agencies, shall not also be funded by the Drug Elimination Grant Program.

The grantee must establish an auditable system to provide adequate accountability for funds which it has been awarded. The applicant has the responsibility to ensure there is no duplication of funding sources.

(7) *Sanctions.* (i) HUD may impose sanctions if the grantee:

(A) Is not complying with the requirements of 24 CFR part 961 or of other applicable Federal law;

(B) Fails to make satisfactory progress toward its drug elimination goals, as specified in its plan and as reflected in its performance and financial status reports under § 961.28;

(C) Does not establish procedures that will minimize the time elapsing between drawdowns and disbursements;

(D) Does not adhere to grant agreement requirements or special conditions;

(E) Proposes substantial plan changes to the extent that, if originally submitted, would have resulted in the application not being selected for funding;

(F) Engages in the improper award or administration of grant subcontracts;

(G) Does not submit reports; or

(H) Files a false certification, for example, those listed under section I.(d) of this NOFA.

(ii) HUD may impose the following sanctions:

(A) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee;

(B) Disallow all or part of the cost of the activity or action not in compliance;

(C) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(D) Require that some or all of the grant amounts be remitted to HUD;

(E) Condition a future grant and elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance;

(F) Withhold further awards for the program or

(G) Take other remedies that may be legally available.

(8) *Notification.* After completion of the ranking and environmental reviews as required by 24 CFR 961.15(d), HUD will send written notification to all applicants of whether or not they have been selected.

(9) *Grant Agreement.* After an application has been approved, HUD and the applicant shall enter into a grant agreement (Form HUD–1044) setting forth the amount of the grant and its applicable terms, conditions, financial controls, payment mechanism/schedule, and special conditions, including sanctions for violation of the agreement.

II. Application Process

(a) Application Kit

An application kit may be obtained and assistance provided, from the local HUD Category A or B Field Office or other Field Office with delegated public housing responsibilities over an applying public housing agency (PHA), or from the Office of Native American Programs (ONAP) having jurisdiction over the Indian housing authority (IHA) making an application, or by calling HUD's Resident Initiatives Clearinghouse, telephone 1–800–578–3472 (DISC). The application package contains information on all exhibits and certifications required under this NOFA.

(b) Application Submission

Applications are due on or before Friday, July 29, 1994, at 3:30 p.m., local time. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. Applications (original and two copies) must be physically received by the deadline at the local HUD Category A or B Field Office or other Field Office with delegated public housing responsibilities over the applying PHA Attention: Director, Public Housing Division, or, in the case of IHAs, to the local HUD Field Office Attention: Administrator, Office of Native American Programs with jurisdiction over the applying IHA, as appropriate. It is not sufficient for an application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. Applications received after the deadline will not be considered.

III. Checklist of Application Submission Requirements

To qualify for a grant under this program, the application submitted to HUD shall include, in addition to those requirements listed under section I.(d) (Selection Criteria) of this NOFA, including the plan to address the problem of drug-related crime in the developments proposed for funding, at least the following items:

(a) Applicant Data Form

The applicant must complete the required information for database entry. The form is provided in the application kit.

(b) Application for Federal Assistance

Standard Form SF–424. The SF–424 is the face sheet for the application. The form is provided in the application kit. The assurance form must be attached to the SF–424.

(c) SF–424A (Budget Information)

With budget narrative(s) attached that describes each major activity proposed for funding, e.g., employment of security personnel (security guards and HA police officers), reimbursement of local law enforcement services, physical improvements, employment of investigators, voluntary tenant (resident) patrols, drug prevention, intervention, and treatment programs to reduce the use of drugs). The form(s) must be attached to the SF–424A. The form is provided in the application kit.

(d) Applicants Must Verify Its Unit Count With the Local HUD Field Office Prior To Submitting the Application

Applicants must compute the maximum grant award amount for which they are eligible (eligible dollar amount per unit x (times) number of units listed in the housing authority low-rent operating budgets (form HUD–52564) for housing authority fiscal year ending March 31, June 30, September 30, or December 31, 1993 and compare it with the dollar amount requested in the application to make certain the amount requested does not exceed the permitted maximum grant award.

(e) Certifications and Assurances (Assurance Must Be Attached to SF–424)

Applications must include (forms are provided in the application kit):

(1) A certification that the applicant will maintain a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1988, 24 CFR Part 24, Subpart F. (Applicants may submit a copy of their most recent drug-

free workplace certification, which must be dated within the past year.)

(2) A certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities generally prohibit recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan.

(3) If applying for drug treatment program funding, a certification by the applicant that the applicant has notified and consulted with the relevant local tribal commission, Single State Agency or other local authority with drug program coordination responsibilities concerning its application; and that the proposed drug treatment program has been reviewed by the relevant local tribal commission, Single State Agency or other local authority and is consistent with the tribal or State treatment plan.

(4) A certification (the certification is provided in the application kit) by the Chief Executive Officer (CEO) of a State or a unit of general local government in which the developments proposed for assistance are located that:

(i) Grant funds provided under this program will not substitute for activities currently being undertaken on behalf of the applicant by the jurisdiction to address drug-related crime and/or its associated problems;

(ii) Any reimbursement of local law enforcement agencies for additional security and protective services to be provided under section I.(c)(2) of this NOFA meet the requirements of that section.

(5) A certification from the chief of the local law enforcement agency:

(i) If the application is for employment of security guard personnel, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the provider of the security personnel in accordance with the requirements of sections I.(c)(1) (Employment of security guard personnel) of this NOFA;

(ii) If the application is for employment of investigators, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the investigators, in accordance with the requirements of sections I.(c)(4) (Employment of investigators) of this NOFA;

(iii) If the application is for voluntary tenant (resident) patrol funding, that the law enforcement agency has entered into, or will enter into, an agreement with the applicant and the voluntary tenant patrol, in accordance with the requirements of sections I.(c)(5) (voluntary tenant (resident) patrol) of this NOFA.

(6) A certification by the RMC, RC or RO, or other involved resident group where an RMC, RC or RO do not exist, that the residents participated in the preparation of the grant application with the applicant, and that the applicant's description of the activities that the resident group will implement under the program is accurate and complete.

(g) HUD Form 2880, Applicant Disclosures

The form is provided in the application kit.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies relate to items that:

(i) Are not necessary for HUD review under selection criteria/ranking factors; and

(ii) Cannot be submitted after the submission due date (application deadline) to improve the quality of the applicant's program proposal.

(c) An example of a curable technical deficiency would be the failure of an applicant to submit a required assurance, budget narrative, certification, applicant data form, summaries of written resident comments, incomplete forms such as the SF–424 or lack of required signatures, appendixes and documentation referenced in the application or a computational error based on the use of an incorrect number(s) such as incorrect unit counts. These items are discussed in the application kit and samples, as appropriate, are provided.

(d) An example of a non-curable defect or deficiency would be a missing SF–424A (Budget Information).

V. Other Matters

(a) Nondiscrimination and Equal Opportunity

The following nondiscrimination and equal opportunity requirements apply:

(1) The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR Part 11;

(2) The Indian Civil Rights Act (ICRA) (Title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that "no Indian tribe in exercising powers of self-government shall * * * deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." The Indian Civil Rights Act applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases where an IHA has been established by exercise of tribal powers of self-government.

(3) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(4) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(5) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(6) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(b) Environmental Impact

Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) in accordance with 24 CFR part 50.20(p). However, prior to an award of grant funds, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(c) Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government and, therefore, the provisions of this rule do not have "federalism implications" within the meaning of the Order. The rule implements a program that encourages HAs to develop a plan for addressing the problem of drug-related crime, and makes available grants to HAs to help them carry out their plans. As such, the program would help HAs combat serious drug-related crime problems in their developments, thereby strengthening their role as instrumentalities of the States. In addition, further review under the Order is unnecessary, since the rule generally tracks the statute and involves little implementing discretion.

(d) Family Impact

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this rule have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. This rule would implement a program that would encourage HAs to develop a plan for addressing the problem of drug-related crime, and to make available grants to help HAs to carry out this plan. As such, the program is intended to improve the quality of life of public and Indian housing development residents, including families, by reducing the incidence of drug-related crime.

(e) Section 102 HUD Reform Act—Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(f) Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

(g) Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

(h) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless

the recipient has made an acceptable certification regarding lobbying.

Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage.

Authority: Sec. 5127, Public Housing Drug Elimination Act of 1988 (42 U.S.C. 11901 et seq.); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 24, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix: Listing of HUD Regional Offices, Category A and B Field Offices, and Other Field Offices With Delegated Public Housing Responsibilities, and Offices of Indian Programs

Note: The below information was confirmed by local Field Offices February 18, 1994.

Region I

Jurisdictions: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Boston, Massachusetts Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Boston Regional Office, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Room 375, Boston, MA 02222–1092, (617) 565–5234, TDD Number: (617) 565–5453, Office hours: 8:30 a.m.–5 p.m. local time

Hartford, Connecticut Office—Category A Office

Office of the Manager, HUD—Hartford Office, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4522, TDD Number: (203) 240–4665, Office hours: 8 a.m.–4:30 p.m. local time

Manchester, New Hampshire Office—Category B Office

Office of the Manager, HUD—Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New Hampshire 03101–2487, (603) 666–7681, TDD Number: (603) 666–7518, Office hours: 8 a.m.–4:30 p.m local time

Providence, Rhode Island Office—Category B Office

Office of the Manager, HUD—Providence Office, 330 John O. Pastore Federal Building, U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02903–1785, (401) 528–5351, TDD Number: (401) 528–5364, Office hours: 8 a.m.–4:30 p.m. local time

Region II

Jurisdictions: New York, New Jersey.

New York RegionaL Office.

Regional Administrator, Regional Housing Commissioner, HUD—New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500, TDD Number: (212) 264–0927, Office hours: 8:30 a.m.–5 p.m. local time

Buffalo, New York Office—Category A Office

Office of the Manager, HUD—Buffalo Office, Lafayette Court, 5th Floor, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755, TDD Number: Number not available, Office hours: 8:00 a.m.–4:30 p.m. local time

Newark, New Jersey Office—Category A Office

Office of the Manager, HUD—Newark Office, Military Park Building,60 Park Place, Newark, New Jersey 07102–5504,(201) 877–1662, TDD Number: (201) 645–6649,Office hours: 8:30 a.m.–5 p.m. local time

Region III

Jurisdictions: Pennsylvania, Washington DC, Maryland, Delaware, Virginia, West Virginia

Philadelphia, Pennsylvania Regional Office

Regional Administrator, HUD—Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, TDD Number: (215) 597–5564, Office hours: 8 a.m.–4:30 p.m. local time

Washington, DC Office—Category A Office

Office of the Manager, HUD—Washington Office, 820 First Street N.E. Washington, DC 20002–4502, (202) 275–9200, TDD Number: (202) 275–0967, Office hours: 8:00 a.m.–4:30 p.m. local time

Baltimore, Maryland Office—Category A Office

Office the Manager, HUD—Baltimore Office, 10 South Howard Street, 5th Floor, Baltimore, Maryland 21201–2505, (410) 962–2520, TDD Number: (410) 962–0106, Office hours: 8:00 a.m.–4:30 p.m. local time,

Pittsburgh, Pennsylvania Office—Category A Office

Office of the Manager, HUD—Pittsburgh Office, Old Post Office Courthouse Building, 700 Grant Street, Pittsburgh, Pennsylvania 15219–1939, (412) 644–6428, TDD Number: (412) 644–5747, Office hours: 8 a.m.–4:30 p.m. local time.

Richmond, Virginia Office—Category A Office

Office of the Manager, HUD—Richmond Office, The 3600 Centre, 3600 West Broad Street, P.O. Box 90331, Richmond, Virginia 23230—0331, (804) 278–4507, TDD Number: (804) 278–4501, Office hours: 8 a.m.–4:30 p.m. local time

Charleston, West Virginia Office—Category B Office

Office of the Manager, HUD—Charleston Office, 405 Capitol Street, Suite 708, Charleston, West Virginia 25301–1795, (304) 347–7000, TDD Number: (304) 347–5332 Office hours: 8:00 a.m.–4:30 p.m. local time

Region IV

Jurisdictions: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Caribbean, Virgin Islands.

Atlanta, Georgia Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Atlanta Regional Office, Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (404) 331–5136, TDD Number: (404) 730–2654, Office hours: 8 a.m.–4:30 p.m. local time

Birmingham, Alabama Office—Category A Office

Office of the Manager, HUD—Birmingham Office, 600 Beacon Parkway West, Suite 300, Birmingham, Alabama 35209–3144, (205) 290–7617, TDD Number: (205) 290–7624, Office hours: 7:45 a.m.–4:30 p.m. local time

Louisville, Kentucky Office—Category A Office

Office of the Manager, HUD—Louisville Office, 601 West Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251, TDD Number: Number not available

Jackson, Mississippi Office—Category A Office

Office of the Manager, HUD—Jackson Office, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, Mississippi 39269–1096, (601) 965–4773, TDD Number: (901) 601–4171, Office hours: 8 a.m.–4:45 p.m. local time

Greensboro, North Carolina Office—Category A Office

Office of the Manager, HUD—Greensboro Office, 2306 West Meadowview Road Greensboro, North Carolina 27407 (919) 547–4000 TDD Number: 919–547–4055 Office hours: 8:00 a.m.–4:45 p.m. local time

Caribbean Office—Category A Office

Office of the Manager, HUD—Caribbean Office, New San Office Building, 159 Carlos East Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–6121, TDD Number: Number not available, Office hours: 8 a.m.–4:30 p.m. local time

Columbia, South Carolina Office—Category A Office

Office of the Manager, HUD—Columbia Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592, TDD Number: Number not available, Office hours: 8 a.m.–4:45 p.m. local time

Knoxville, Tennessee Office—Category A Office

Office of the Manager, HUD—Knoxville Office, John J. Duncan Federal Building, 710 Locust Street, S.W., Knoxville, Tennessee 37902–2526, (615) 549–4384, TDD Number: (615) 545–4379, Office hours: 7:30 a.m.–4:15 p.m. local time

Nashville, Tennessee Office—Category B Office

Office of the Manager, HUD—Nashville Office, 251 Cumberland Bend Drive, Suite 200, Nashville, Tennessee 37228–1803, (615) 736–5213, TDD Number: (615) 736–2886, Office hours: 7:45 a.m.–4:15 p.m. local time

Jacksonville, Florida Office—Category A Office

Office of the Manager, HUD—Jacksonville Office, 301 West Bay Street, Suite 2200, Jacksonville, Florida 32202–5121, (904) 232–2626, TDD Number: (904) 232–1241, Office hours: 7:45 a.m.–4:30 p.m. local time

Region V

Jurisdictions: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Chicago, Illinois Regional Office

Regional Administrator, Regional Housing Commissioner, Ralph H. Metcalfe Federal Building, HUD—Chicago Regional Office, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353–5680, TTD Number: (312) 353–7143, Office hours: 8:15 a.m.–4:45 p.m. local time

Chicago, Illinois—Office of Native American Programs

Administrator, HUD—Chicago Office of Native American Programs, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886–4532, TDD Number: (312) 353–7143, Office hours: 8:15 a.m.–4:45 p.m. local time

Detroit, Michigan Office—Category A Office

Office of the Manager, HUD—Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592, (313) 226–7900, TDD Number: Number not available, Office hours: 8 a.m.–4:30 p.m. local time

Indianapolis, Indiana Office—Category A Office

Office of the Manager, HUD—Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204–2526, (317) 226–6303, TDD Number: Number not available, Office hours: 8 a.m.–4:45 p.m. local time

Grand Rapids, Michigan Office—Category B Office

Office of the Manager, HUD—Grand Rapids Office, 2922 Fuller Avenue, N.E., Grand Rapids, Michigan 49505–3499, (616) 456–2100, TDD Number: Number not available, Office hours: 8 a.m.–4:45 p.m. local time

Minneapolis-St. Paul, Minnesota Office—Category A Office

Office of the Manager, HUD—Minneapolis-St. Paul Office, 220 2nd Street South, Bridge Place Building, Minneapolis, Minnesota 55401–2195, (612) 370–3000, TTD Number: (612) 370–3186, Office hours: 8 a.m.–4:30 p.m. local time

Cincinnati, Ohio Office—Category B Office

Office of the Manager, HUD—Cincinnati Office, Federal Office Building, Room 9002, 550 Main St., Cincinnati, Ohio 45202–3253, (513) 684–2884, TDD Number: (513) 684–6180, Office hours: 8 a.m.–4:45 p.m. local time

Cleveland, Ohio Office—Category B Office

Office of the Manager, HUD—Cleveland Office, Renaissance Building, 1375 Euclid Avenue, Fifth Floor, Cleveland, Ohio 44115–1815, (216) 522–4065, TTD Number: Number not available, Office hours: 8 a.m.–4:40 p.m. local time

Columbus, Ohio Office—Category A Office

Office of the Manager, HUD—Columbus Office, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737, TDD Number: Number not available, Office hours: 8:30 a.m.–4:45 p.m. local time

Milwaukee, Wisconsin Office—Category A Office

Office of the Manager, HUD—Milwaukee Office, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Suite 1380, Milwaukee, Wisconsin 53203–2289, (414) 291–3214, TDD Number: Number not available, Office hours: 8 a.m.–4:30 p.m. local time

Region VI

Jurisdictions: Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Fort Worth, Texas—Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas, 76113–2905, (817) 885–5401, TDD Number: (817) 885–5447, Office hours: 8 a.m.–4:30 p.m. local time

Houston, Texas Office—Category B Office

Office of the Manager, HUD—Houston Office, Norfolk Tower, 2211 Norfolk, Suite 200, Houston, Texas 77098–4096, (713) 653–3274, TDD Number: Number not available, Office hours: 7:45 a.m.–4:30 p.m. local time

San Antonio, Texas Office—Category A Office

Office of the Manager, HUD—San Antonio Office, Washington Square, 800 Dolorosa Street, San Antonio, Texas 78207–4563, (512) 229–6800, TDD Number: (512) 229–6885, Office hours: 8 a.m.–4:30 p.m. local time

Little Rock, Arkansas—Category A Office

Office of the Manager, HUD—Little Rock Office, TCBY Tower, 425 West Capitol Avenue, Little Rock, Arkansas 72201–3488, (501) 324–5931, TDD Number: (501) 324–5931, Office hours: 8 a.m.–4:30 p.m. local time

New Orleans, Louisiana Office—Category A Office

Office of the Manager, HUD—New Orleans Office, Fisk Federal Building, Suite 3100, 1661 Canal Street, New Orleans, Louisiana 70112–2887, (504) 589–7200, TDD Number: Number not available, Office hours: 8 a.m.–4:30 p.m. local time

Oklahoma City, Oklahoma Office—Category A Office

Office of the Manager, HUD—Oklahoma City Office, Alfred P Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, Oklahoma 73102–3202, (405) 231–4181, TDD Number: (405) 231–4891, Office hours: 8 a.m.–4:30 p.m. local time

Oklahoma City, Oklahoma—Office of Native American Programs

Administrator, HUD—Oklahoma City Office of Native American Programs, Alfred P Murrah Federal Building, 200 N.W. 5th Street, Oklahoma City, OK 73102–3201, (405) 231–4102, TDD Number: (405) 231–4891, Office hours: 8 a.m.–4:30 p.m. local time

Albuquerque, New Mexico Office—Category C Office

Office of the Manager, HUD—Albuquerque Office, 625 Truman Street N.E., Albuquerque, NM 87110–6472, (505) 262–6463, TDD Number: (505) 262–6463, Office hours: 7:45 a.m.–4:30 p.m. local time

Region VII

Jurisdictions: Iowa, Kansas, Missouri, Nebraska.

Kansas City, Kansas—Regional Office

Regional Administrator, Regional Housing Commissioner, Kansas City Regional Office, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406, (913) 551–5462, TDD Number: (913) 551–6972, Office hours: 8 a.m.–4:30 p.m. local time

Omaha, Nebraska Office—Category A Office

Office of the Manager, HUD—Omaha Office, 10909 Mill Valley Road, Omaha, Nebraska 68154–3955, (402) 492–3100, TDD Number: (402) 492–3183, Office hours: 8 a.m.–4:30 p.m. local time

St. Louis, Missouri Office—Category A Office

Office of the Manager, HUD—St. Louis Office, 1222 Spruce Street, St. Louis, Missouri 63103–2836, (314) 539–6583, TDD Number: (314) 539–6331, Office hours: 8 a.m.–4:30 p.m. local time

Des Moines, Iowa Office—Category B Office

Office of the Manager, HUD—Des Moines Office, Federal Building, 210 Walnut Street, Room 239, Des Moines, Iowa 50309–2155, (515) 284–4512, TDD Number: (515) 284–4728, Office hours: 8 a.m.–4:30 p.m. local time

Region VIII

Jurisdictions: Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Denver, Colorado—Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Denver Regional Office, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, (303) 672–5248, TDD Number: (303) 672–5248, Office hours: 8 a.m.–4:30 p.m. local time

Denver, Colorado—Office of Native American Programs

Administrator, HUD—Denver Office of Native American Programs, First Interstate Tower North, 633 17th Street, Denver, CO 80202–3607, (303) 672–5467, TDD Number: (303) 672–5248, Office hours: 8 a.m.–4:30 p.m. local time

Region IX

Jurisdictions: Arizona, California, Hawaii, Nevada, Guam, American Samoa.

San Francisco, California—Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—San Francisco Regional Office, Philip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752, TDD Number: (415) 556–8357, Office hours: 8:15 a.m.–4:45 p.m. local time

Honolulu, Hawaii Office—Category A Office

Office of the Manager, HUD—Honolulu Office, 7 Waterfront Plaza, 500 Ala Moana Boulevard, room 500, Honolulu, Hawaii 96813–4918, (808) 541–1323, TDD Number: (808) 541–1356, Office hours: 8 a.m.–4 p.m. local time

Los Angeles, California Office—Category A Office

Office of the Manager, HUD—Los Angeles Office, 1615 West Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122, TDD Number: (213) 251–7038, Office hours: 8 a.m.–4:30 p.m. local time

Sacramento, California Office—Category B Office

Office of the Manager, HUD—Sacramento Office, 777 12th Avenue, Suite 200, P.O. Box 1978, Sacramento, California 96814–1997, (916) 551–1351, TDD Number: (916) 561–1367, Office hours: 8 a.m.–4:30 p.m. local time

Phoenix, Arizona Office—Category B Office

Office of the Manager, HUD—Phoenix Office, Two Arizona Center, Suite 1600, 400 North 5th Street, Phoenix, Arizona 85004–2361, (602) 261–4434, TDD Number: (602) 379–4461, Office hours: 8 a.m.–4:30 p.m. local time

Phoenix, Arizona—Office of Native American Programs

Administrator, HUD—Phoenix Office of Native American Programs, Two Arizona Center, Suite 1650, Phoenix, Arizona 85004–2361, (602) 379–4156, TDD Number: (602) 379–4461, Office hours: 8:15 a.m.–4:45 p.m. local time

Region X

Jurisdictions: Alaska, Idaho, Oregon, Washington.

Seattle, Washington—Regional Office

Regional Administrator, Regional Housing Commissioner, HUD—Seattle Regional Office, Seattle Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, (206) 220–5101, TDD Number: (206) 220–5185, Office hours: 8 a.m.–4:30 p.m. local time

Seattle, Washington—Office of Native American Programs

Administrator, HUD—Seattle Office of Native American Programs, Seattle Federal Office Building, 909 First Avenue, Suite 200, Seattle, WA 98104–1000, (206) 220–5270, TDD Number: (206) 220–5185, Office hours: 8 a.m.–4:30 p.m. local time

Portland, Oregon Office—A

Office of the Manager, HUD—Portland Office, 520 S.W. 6th Avenue, Portland, Oregon 97203–1596, (503) 326–2561, TDD Number: (503) 326–3656, Office hours: 8 a.m.–4:30 p.m. local time

Anchorage, Alaska Office—Category A Office

Office of the Manager, HUD—Anchorage Office, University Plaza Building, 949 East 36th Avenue, Suite 401, Anchorage, Alaska 99508–4399, (907) 271–4170, TDD Number: (907) 271–4328

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