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

FEDERAL RESERVE SYSTEM

12 CFR Part 262

Board of Governors, Rules of Procedure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is making technical amendments to its Rules of Procedure to update the citations to statutory and regulatory provisions.

EFFECTIVE DATE: August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Associate Secretary of the Board, Office of the Secretary, 202–452–3259. For the hearing impaired only, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) 202–452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 262

Administrative practice and procedure.

For the reasons set out in the summary, 12 CFR Part 262 is amended as follows:

PART 262—RULES OF PROCEDURE

1. The authority citation for Part 262 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 262.2 [Amended]

2. Section 262.2(b) is amended by revising "§ 261.6(a)" to read "§ 261.6(b)".

3. Section 262.3(a) is amended by revising "§ 261.4(d)" to read "§ 261.9(a)".

4. Section 262.3(c) is amended by revising "in the case of a foreign bank holding company, as defined in § 225.4(g) of this chapter," to read "in the case of foreign banking organization, as defined in § 211.23(a)(2) of this chapter,".

5. Section 262.3(j)(1)(ii) is amended by revising "12 U.S.C. 1828(c)(1)(6)" to read "12 U.S.C. 1828(c)(6)".

6. Section 262.3(j) is further amended by removing paragraphs (j) (3) and (4) and by revising paragraph (j)(2) to read as follows:

§ 262.3 Applications

* * * * *

(j) *Special procedures for certain applications.* * * *

(2) For special rules governing procedures for section 4 applications, refer to § 225.23 of this chapter.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89–18804 Filed 8–11–89; 8:45 am]
BILLING CODE 6210–01–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 574

[Docket No. 89–2323]

RIN 3068–AA80

Acquisition of Control of Insured Institutions

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is adopting a short-form application to be used by insured institutions for approval of routine reorganizations involving the creation of savings and loan holding companies. The purpose of the new application is to streamline the application process by limiting the required contents of routine reorganization applications to information that is necessary to enable the Board to make an informed decision on an application consistent with its statutory responsibilites.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Howard C. Bluver, Assistant Deputy Director, (202) 906–7504; Kevin A. Corcoran, Deputy Director for Corporate Transactions, (202) 906–6962; V. Gerard Comizio, Director, Corporate and Securities Division, (202) 906–6411; Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, (202) 906–6459, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Robyn Dennis, Financial Analyst, (202) 331–4572, Office of Regulatory Activities, Federal Home Loan Bank System, 801 17th Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 27, 1989 (54 FR 4043), the Board, in Resolution No. 89–40, proposed to adopt a new short-form application to be used by insured institutions to obtain approval of routine reorganizations involving the creation of savings and loan holding companies.[1] Written comments were solicited by the Board with the comment period ending March 28, 1989.

The Board invited commenters to address all aspects of the proposal, including whether certain information, documents, and certifications described in the proposal should be required in the new short-form application or whether certain individual items should be expanded, modified, or deleted in whole or in part.

The Board received a total of 3 comments in response to the proposal, all of which expressed support for the proposal. Of the comments received, two came from law firms that represent thrift institutions and one came from a national thrift trade organization. While each of the comments expressed support for the proposal, several suggested certain modifications in the information, documents, and certifications that should be required in the new short-form application. After carefully considering the issues raised by the commenters, the Board has determined to adopt the proposal with certain modifications.

[1] Also on January 27, 1989, in Resolution No. 89–32, the Board proposed certain amendments to its regulations to provide for the automatic approval of such applications on an expedited basis provided the proposed transaction satisfied certain specified conditions. After considering public comments on the proposed amendments, the Board adopted final regulations at 12 CFR 574.7 (a)(2) and (a)(3) that provide for the automatic approval of simple holding company reorganization applications subject to conditions substantially similar to those proposed by the Board in January 1989.

II. Routine Holding Company Reorganizations

During the past several years, the Board's staff has processed and approved a large number of applications by insured institutions to reorganize into holding company structures. As a result of its experience with simple reorganization applications, the Board is aware that such transactions usually do not present unusual structural issues or raise significant law or policy concerns. The reorganization is almost always accomplished through a reverse triangular merger transaction whereby an interim institution chartered under federal or state law is merged into the insured institution and each share of stock of the insured institution is exchanged for one share of stock of the new holding company.[2] Furthermore, the new holding company engages in no operations prior to consummation of the reorganization, and its only significant asset immediately after the transaction is its investment in the insured institution subsidiary. Shareholders of the insured institution generally have the opportunity to vote to approve or disapprove the reorganization and can exercise dissenters' rights of appraisal under applicable law if they do not vote in favor of the reorganization.

Because the reorganization involves the acquisition of control of an insured institution by the new holding company, an application to obtain prior approval must generally be filed pursuant to the Savings and Loan Holding Company Act of 1967 (the "Holding Company Act").[3] If the transaction is not one of a relatively narrow group that qualifies as an "exempt reorganization",[4] the appropriate application under current Board regulations is Application H-(e)1.[5] This application requires detailed and often voluminous information on, among other things, the proposed transaction, the financial and managerial resources of the applicant, the current business of the applicant, and the future prospects of the applicant. The application also requires the filing of detailed financial statements on both an historical and a pro forma basis and certain exhibits. The Board believes much of the information required in Application H-(e)1 is not necessary to enable the Board to make an informed decision on a simple reorganization application consistent with its congresisonally mandated responsibility to investigate the qualifications of a potential acquiror and prevent the acquisition of control of an insured institution under circumstances that might result in injury to the insured institution. *See* H.R. Rep. No. 997, 90th Cong., 1st Sess. (1967). Therefore, the Board is adopting new Application H-(e)1-S to be used solely by insured institutions seeking approval of simple reorganizations involving the creation of savings and loan holding companies.

III. Eligibility for use of Application H-(e)1-S

In order to be eligible to use Application H-(e)1-S, an insured institution must be proposing a holding company reorganization transaction that qualifies for automatic approval under 12 CFR 574.7 (a)(2) and (a)(3).[6] These regulations provide for automatic approval of such applications 45 calendar days after filing, as long as each condition specified in the regulations is satisfied.

IV. Contents of Application H-(e)1-S

The Board believes the following information, certifications and documents will enable the Board to make an informed decision consistent with its statutory responsibility in cases where routine reorganization applications are filed by insured institutions. Therefore, such information, certifications, and documents are required to be filed as part of the new Application H-(e)1-S:

1. A copy of the Registration Statement, including exhibits, filed or to be filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended ("Securities Act"), by the proposed holding company. If no such Registration Statement has been or will be filed, the applicant must provide a copy of any materials, including proxy statements, furnished or to be furnished to shareholders in connection with the reorganization, together with a brief description of the facts relied upon for concluding that an exemption from registration is available under the Securities Act.

2. Copies of the insured institution's most recent Community Reinvestment Act statement and examination report and any Community Reinvestment Act comments filed with the insured institution within the one year period preceding the filing of the application.

3. A certification that the proposed reorganization will have no effect on management interlocks compliance under the Depository Institutions Management Interlocks Act, 12 U.S.C. 3201-3207 (1982), the Savings and Loan Holding Company Act, 12 U.S.C. 1730a(i) (1982), or the regulations promulgated thereunder, 12 CFR 563f and 12 CFR 584.9.

4. A certification that the insured institution is eligible to file Application H-(e)1-S because the proposed reorganization transaction satisfies each of the conditions specified in 12 CFR 574.7(a)(2) and (a)(3).

5. For any officer or director of the insured institution who has served in such a capacity for less than a one year period on the date of the filing of the application, the biographical portion of the Board's Biographical and Financial Report on Form 1393.

6. Copies of any new or amended employment contracts to which the insured institution or the proposed holding company is or will be a party that are entered into as part of, or in connection with, the reorganization transaction, and information relating to salary increases, if any, to be effective upon consummation of the reorganization transaction.

7. In the event of the proposed officers, directors, or controlling shareholders of the proposed holding company owns 10 percent or more of a class of voting stock of a commercial bank, bank holding company, or other

---

[2] The shares of the new holding company issued to the former shareholders of the insured institution generally must be registered with the Securities and Exchange Commission ("SEC") under the Securities Act of 1933, as amended. Nevertheless, the SEC staff, in recognition of the fact that a simple reorganization presents relatively minimal risk to shareholders, has adopted a streamlined and expedited registration procedure for such transactions. SEC Staff Accounting Bulletin #50, which originally covered bank holding company formations only but is now applied to savings and loan holding company formations as well, permits a registrant to omit from the applicable registration statement audited financial statements and detailed statistical disclosure as long as certain conditions are satisfied. In addition, Instruction G to SEC Form S-4, which is the form utilized for most holding company formations, provides for the automatic effectiveness of the registration statement on the twentieth day after filing.

[3] The Holding Company Act prohibits any company, directly or indirectly, or acting in concert with one or more other persons, or through one or more subsidiaries, or through one or more transactions, from acquiring control of one or more insured institutions without first receiving prior written approval. 12 U.S.C. 1730a(e)(1)(B) (1982).

[4] Puruant to 12 U.S.C. 1730a(e)(1)(B)(ii) and 12 CFR 574.3(c)(1)(ii), an acquisition of control of an insured institution is exempt from the prior application requirement if the proposed transaction involves solely the acquisition of control of that institution by a newly formed company which is controlled by the same acquirors that have controlled the insured institution for the immediately preceding three years and entails no other transactions.

[5] 12 CFR 574.6(a)(1).

[6] *See* footnote 1 *supra*.

depository institution, information identifying the institution, the number of shares owned, and the percentage of outstanding shares owned. If no proposed officers, directors or controlling shareholders own such a percentage of shares, an affirmative statement to such effect should be provided.

8. The following information and documents, but only in the event that such information and documents are not included in the Registration Statement or other materials furnished pursuant to Item 1 above; provided however, that, to the extent such information and documents are included in the Registration Statement or other materials filed pursuant to Item 1 above, the applicant shall include a cross-reference sheet specifying the document and page number where such information and documents are located:

(a) The information required by Item 3 of Application H-(e)1 relating to information about controlling persons of the proposed holding company;

(b) The information required by Item 4 of Application H-(e)1 relating to the details of the proposed transaction;

(c) A statement as to the reasons for proposing the reorganization;

(d) The information required by Item 5 of Application H-(e)1 relating to fees, commissions, and expenses;

(e) The information required by Item 6 of Application H-(e)1 relating to regulatory approval;

(f) The information required by Item 11 of Application H-(e)1 relating to the board of directors and executive officers of the proposed holding company;

(g) A statement of capitalization as of a date no more than 90 days prior to the date of the filing of the application that shows the insured institution and the holding company on a historical basis, pro forma adjustments, if any, and the holding company on a pro forma basis;

(h) A description of the business intended to be done by the holding company for the twelve month period commencing with the filing of the Application;

(i) A description of the present dividend policy of the insured institution, and a description of the proposed dividend policy of the insured institution and the holding company subsequent to the reorganization;

(j) A copy of any contracts or agreements pursuant to which the reorganization is to be accomplished;

(k) A copy of the charter and bylaws of the holding company; and

(l) A copy of any opinions of counsel or revenue rulings received by the insured institution or the holding company in connection with the reorganization.

6. A consolidated business plan conforming to requirements set by the Principal Supervisory Agent ("PSA") for the Federal Home Loan Bank District in which the institution to be acquired is located.

The Board believes adoption of the new Application H-(e)1-S will further streamline the application process under 12 CFR Part 574 by limiting the required contents of routine reorganization applications to information that is necessary to enable the Board to make an informed decision on such an application consistent with its statutory responsibilities.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Holding companies, Savings and loan associations, Securities.

Accordingly, the Board hereby amends part 574, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

1. The authority citation for part 574 continues to read as follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a).

2. Amend § 574.6 by redesignating existing paragraphs (a)(2) through (a)(5) as the new paragraphs (a)(3) through (a)(6), respectively and by adding a new paragraph (a)(2) to read as follows:

§ 574.6 Procedural requirements.

(a) *Form of application or notice.*

* * *

(2) H-(e)1-S. Notwithstanding the provisions of paragraph (a)(1) of this section, an application filed under § 574.3(a) that satisfies each of the conditions for automatic approval specified in 12 CFR 574.7 (a)(2) and (a)(3) need only include the following information:

(i) A copy of the Registration Statement, including exhibits, filed or to be filed with the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended ("Securities Act"). If no such Registration Statement has been or will be filed, a copy of any materials, including proxy statements, furnished or to be furnished to shareholders in connection with the reorganization, should be provided, together with a brief description of the facts relied upon for concluding that an exemption from registration is available under the Securities Act;

(ii) Copies of the insured institution's most recent Community Reinvestment Act statement and examination report, and any Community Reinvestment Act comments filed with the insured institution within the one year period preceding the filing of the application;

(iii) A certification that the proposed reorganization will have no effect on management interlocks compliance under the Depository Institutions Management Interlocks Act, 12 U.S.C. 3201-3207 (1982), the Savings and Loan Holding Company Act, 12 U.S.C. 1730a(j) (1982), or the regulations promulgated thereunder, 12 CFR Part 563f and 12 CFR 584.9;

(iv) A certification that the insured institution is eligible to file Application H-(e)1-S because the proposed reorganization transaction satisfies each of the conditions specified in 12 CFR 574.7 (a)(2) and (a)(3);

(v) For any officer or director of the insured institution who has served in such a capacity for less than a one year period on the date of the filing of the application, the biographical portion of the Board's Biographical and Financial Report on Form 1393;

(vi) Copies of any new or amended employment contracts to which the insured institution or the proposed holding company is or will be a party that are entered into as a part of, or in connection with, the reorganization transaction, and information relating to salary increases, if any, to be effective upon consummation of the reorganization transaction;

(vii) In the event any of the proposed officers, directors, or controlling shareholders of the proposed holding company owns 10 percent or more of a class of voting stock of a commercial bank, bank holding company, or other depository institution, information identifying the institution, the number of shares owned, and the percentage of outstanding shares owned. If no proposed officers, directors, or controlling shareholders own such a percentage of shares, an affirmative statement to such effect should be provided;

(viii) The following information and documents, but only in the event that such information and documents are not included in the Registration Statement or other materials furnished pursuant to § 574.6(a)(2)(i); *Provided, However,* that to the extent such information and documents are included in the Registration Statement or other materials filed pursuant to

§ 574.6(a)(2)(i), the applicant shall include a cross-reference sheet specifying the document and page number where such information and documents are located:

(A) The information required by Item 3 of Application H–(e)1 relating to information about controlling persons of the proposed holding company;

(B) The information required by Item 4 of Application H–(e)1 relating to the details of the proposed transaction;

(C) A statement as to the reasons for proposing the reorganization;

(D) The information required by Item 5 of Application H–(e)1 relating to fees, commissions, and expenses;

(E) The information required by Item 6 of Application H–(e)1 relating to regulatory approval;

(F) The information required by Item 11 of Application H–(e)1 relating to the board of directors and executive officers of the proposed holding company;

(G) A statement of capitalization as of a date no more than 90 days prior to the date of the filing of the application that shows the insured institution and the holding company on a historical basis, pro forma adjustments, if any, and the holding company on a pro forma basis;

(H) A description of the business intended to be done by the holding company for the twelve month period commencing with the filing of the application;

(I) A description of the present dividend policy of the insured institution, and a description of the proposed dividend policy of the insured institution and the holding company subsequent to the reorganization;

(J) A copy of any contracts or agreements pursuant to which the reorganization is to be accomplished;

(K) A copy of the charter and bylaws of the holding company; and

(L) A copy of any opinions of counsel or revenue rulings received by the insured institution or the holding company in connection with the reorganization.

(vi) A consolidated business plan conforming to requirements set by the Principal Supervisory Agent for the Federal Home Loan Bank District in which the institution to be acquired is located.

* * * * *

3. Amend § 574.7 by revising the introductory text of paragraph (a)(2) to read as follows:

§ 574.7 Determination by the corporation.

(a) *Acquisition by a company.* * * *

(2) An application filed pursuant to § 574.6(a)(2) by an insured institution solely for the purpose of obtaining approval for the creation of a savings and loan holding company by such insured institution, and related applications for permission to organize an interim federal institution, for insurance of accounts, for Federal Home Loan Bank membership, and for merger with such interim institution, shall be deemed to be approved 45 calendar days after such applications are properly filed in accordance with the procedures set forth herein, unless, prior to such date: * * *

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89–18784 Filed 8–11–89; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–16–AD; Amdt. 39–6295]

Airworthiness Directives; McDonnell Douglas DC–9–80 (MD–80) Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes, which requires relocation of a number 2 engine pneumatic tube. This amendment is prompted by reports of chafing between the number 2 engine main fuel hose and a pneumatic tube, resulting in fuel and air leakage. This condition, if not corrected, could lead to a fire in the number 2 engine nacelle.

EFFECTIVE DATE: September 18, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications C1–L00 (54–60). This information may be examined at the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (213) 988–5245.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes, which requires relocation of a number 2 engine pneumatic tube, was published in the **Federal Register** on March 28, 1989 (54 FR 12644).

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

Commenters suggested that the proposed compliance time of 12 months be extended, due to the unavailability of required modification parts. The FAA concurs. Subsequent to the issuance of the proposal, the FAA verified that modification parts will not be available in sufficient quantity to support a compliance time of 12 months. In light of this, the FAA considers a compliance time of 18 months to be appropriate in allowing a more orderly, and timely, modification process of the U.S. fleet. The final rule has been revised accordingly.

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

There are approximately 596 McDonnell Douglas DC–9–80 (MD–80) series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. It is estimated that 361 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $72,200.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications

to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-80 (MD-80) series airplanes and Model MD-88 airplanes, as listed in McDonnell Douglas Service Bulletin 80-8, dated November 3, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent fire in the number 2 engine nacelle, accomplish the following:

A. Within 18 months after the effective date of this AD, relocate the number 2 engine starter shutoff valve pneumatic tube, in accordance with the accomplishment instructions in McDonnell Douglas MD-80 Service Bulletin 80-8, dated November 3, 1988.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

This amendment becomes effective September 18, 1989.

Issued in Seattle, Washington, on August 3, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-18910 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 89-75]

Amendment to the Customs Regulations Concerning Coastwise Transportation of Certain Articles by Vessels of India

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding India to the list of nations which permit vessels of the United States to transport certain articles specified in section 27, Merchant Marine Act of 1920, as amended, between their ports.

Customs has been furnished with satisfactory evidence that India places no restrictions on the transportation of certain specified articles by vessels of the U.S. between ports in that country. This amendment recognizes reciprocal privileges for vessels registered in India.

EFFECTIVE DATES: The reciprocal privileges for vessels registered in India became effective on March 13, 1989. This amendment effect August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Carrier Rulings Branch, (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883) (the Act), provides generally that no merchandise shall be transported by water, or by land and water, between points in the United States except in vessels built in and documented under the laws of the United States and owned by U.S. citizens. However, the 6th proviso of the Act, as amended, provides that, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that a foreign nation does not restrict the transportation of certain articles between its ports by vessels of the United States, reciprocal privileges will be accorded to vessels of that nation, and the prohibition against the transportation of those articles between points in the U.S. will not apply to its vessels.

Section 4.93(b)(1), Customs Regulations (19 CFR 4.93(b)(1)) lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of empty cargo vans, empty lift vans, and empty shipping tanks, § 4.93(b)(2), Customs Regulations (19 CFR 4.93(b)(2)), lists those nations found to extend reciprocal privileges to vessels of the U.S. for the transportation of equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and certain equipment for use with these barges; certain empty instruments of international traffic; and certain stevedoring equipment and material.

By letter dated March 9, 1989, The Department of State advised that the Government of India offers satisfactory evidence that India places no restrictions on the transportation of any of the articles listed in the Act by vessels of the U.S. between ports in India.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Secretary of State and the Embassy of India, it has been determined that India places no restrictions on the transportation of the articles specified in section 27 of the Merchant Marine Act of 1920, as amended (46 U.S.C. App. 883), by vessels of the United States between ports in that country. Therefore, appropriate reciprocal privileges are accorded to vessels registered in India as of March 13, 1989.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.* That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 4

Cargo vessels, Coastwise trade, Customs duties and inspection, Maritime carriers, Vessels.

Amendment to the Regulations

To reflect the reciprocal privileges granted to vessels registered in India, part 4, Customs Regulations (19 CFR part 4), is amended in the following manner:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority for part 4 continues to read in part as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, 46 U.S.C. App. 3;

* * * * *

Section 4.93 also issued under 19 U.S.C. 1322(a), 46 U.S.C. App. 883;

* * * * *

§ 4.93 [Amended]

2. Sections 4.93(b) (1) and (2), are amended by adding "India" in appropriate alphabetical order.

Dated: August 8, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-18880 Filed 8-11-89; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 4

[T.D. 89-76]

List of Nations Entitled to Special Tonnage Tax Exemption—Marshall Islands

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding the Republic of the Marshall Islands to the list of nations whose vessels are exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. The Department of State informed Customs that there is satisfactory evidence that no discriminatory duties of tonnage or impost are being imposed in ports of the Marshall Islands upon vessels belonging to citizens of the United States or on their cargoes.

EFFECTIVE DATE: The reciprocal privileges for vessels registered in the Marshall Islands became effective on April 5, 1989. This amendment is effective August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Hegland, Carrier Rulings Branch (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money," on all foreign vessels which enter United States ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that no discriminatory duties of tonnage or imposts are imposed by that foreign nation on United States vessels or their cargoes (46 U.S.C. 141). The President has delegated the authority to grant this exemption to the Secretary of the Treasury. Section 4.22, Customs Regulations (19 CFR 4.22) lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

On April 6, 1989, Customs received a communication from the Department of State advising that satisfactory evidence had been obtained from the Republic of the Marshall Islands that no discriminating duties of tonnage or impost are imposed or levied in ports of that country upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported into that country on United States vessels. An accompanying copy of a letter dated April 5, 1989, was also received from a representative of the Office of the Republic of the Marshall Islands certifying that the Government of the Republic of the Marshall Islands does not impose any discriminatory duties or imposts on U.S. vessels or their cargoes. Consequently, the Department of State recommended the addition of the Marshall Islands, effective April 5, 1989, to the list of nations whose vessels are exempted from the payment of tonnage tax and light money.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Finding

On the basis of the information received from the Department of State regarding the absence of discriminatory duties of tonnage or impost imposed on U.S. vessels in the ports of the Marshall Islands, it has been determined that the Marshall Islands should be added to the list of nations whose vessels are exempt from the payment of the special tonnage tax and light money.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

Amendment to the Regulations

Part 4, Customs Regulations (19 CFR Part 4), is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for Part 4 continues to read as follows and the specific authority for § 4.22 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624, and 46 U.S.C. App. 3;

* * * * *

Section 4.22 also issued under 46 U.S.C. App. 121, 128, 141;

* * * * *

§ 4.22 [Amended]

2. Section 4.22 is amended by inserting "Marshall Islands, Republic of" in appropriate alphabetical order, in the list of nations whose vessels are exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

Dated: August 8, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-18881 Filed 8-11-89; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 10

[T.D. 89-77]

Supplies and Equipment for Aircraft of Luxembourg

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adding Luxembourg to the list of nations whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. The Department of Commerce has advised that the Government of Luxembourg allows to American operators of U.S. registered aircraft substantially reciprocal exemptions from Customs duties and related taxes on aviation fuels purchased for use in international commercial aviation into and out of Luxembourg. Therefore, the U.S. will now extend reciprocal privileges to Luxembourg-registered aircraft with the notation limiting the privileges to withdrawals of aviation fuels.

EFFECTIVE DATE: The reciprocal privileges for aircraft registered in Luxembourg became effective on June 8, 1989. This amendment is effective August 14, 1989.

FOR FURTHER INFORMATION CONTACT: William Rosoff, Entry Rulings Branch, (202-566-5856).

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Traiff Act of 1930, as amended (19 U.S.C. 1309, 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin from Customs or internal-revenue custody without the payment of Customs duties and/or internal-revenue taxes, for use as supplies (including equipment), ground equipment, maintenance, or repair of the aircraft. This privilege is granted if the Secretary of Commerce finds, and advises the Secretary of the Treasury, that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to United States-registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those nations whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Deputy Assistant Secretary for Services of the Department of Commerce, International Trade Administration, has determined and advised the Customs Service by letter dated June 8, 1989, that Luxembourg accords aircraft of U.S. registry privileges with respect to exemptions from Customs duties and internal revenue taxes imposed by reason of the importation of aviation fuels purchased for use in international commercial aviation into and out of Luxembourg, in a manner that is substantially reciprocal to exemption privileges which the United States may provide under 19 U.S.C. 1309 and 1317, and under 26 U.S.C. 4221, for aviation fuels for use by foreign registered aircraft operating into and out of the United States.

Accordingly, corresponding privileges are extended to aircraft registered in Luxembourg and engaged in foreign trade, effective as of June 8, 1989.

Therefore, § 10.59(f) is being amended to add Luxembourg to the list of countries therein, with the notation, however, that the privileges are limited to withdrawals of aviation fuels.

The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations and Disclosure Law Branch.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

Inapplicability of the Regulatory Flexibility Act

This document is not subject to the provisions of 5 U.S.C. 603, 604, as added by section 3 of Public Law 96-354, the "Regulatory Flexibility Act." That Act does not apply to any regulations such as this for which a notice or proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*) or any other statute.

Executive Order 12291

This amendment does not meet the criteria for a major rule as defined in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Earl Martin, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE

1. The authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1498, 1508, 1623, 1624;

* * * * *

Section 10.59 also issued under 19 U.S.C. 1309, 1317;

* * * * *

§ 10.59 [Amended]

2. Section 10.59(f) is amended by inserting "Luxembourg" in appropriate alphabetical order in the column headed "Country", the number of this Treasury Decision in the next column headed "Treasury Decisions", and in the column headed "Exemptions if any, as noted-" add the words "Applicable only as to aviation fuels," opposite the listing for Luxembourg.

Dated: August 8, 1989.

Kathryn C. Peterson,

Chief, Regulations and Disclosure Law Branch.

[FR Doc. 89-18882 Filed 8-11-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7-R]

Freedom of Information Act Program

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This document revises 32 CFR part 286 and provides administrative amendments. It implements certain provisions of the Freedom of Information Reform Act of 1986, which required agency promulgation of regulations specifying a uniform schedule of fees and guidelines for determining waiver or reduction of such fees. This rule conforms with the Office of Management and Budget's (OMB) Uniform Freedom of Information Act Fee Schedule and Guidelines, and is published pursuant to the Freedom of Information Reform Act of 1986, section 854 of the National Defense Authorization Act for Fiscal Year 1987, as amended by the Defense Technical Corrections Act of 1987.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, Office of the Assistant Secretary of Defense (Public Affairs), Washington, DC 20301-1400, Telephone number (202) 697-1180.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286

Freedom of information.

Accordingly, 32 CFR Part 286 is revised to read as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General Provisions

Sec.
286.1 Purpose and applicability.
286.3 DoD public information.
286.5 Definitions.
286.7 Policy.

Subpart B—FOIA Reading Rooms

286.9 Requirements.
286.11 Indexes.

Subpart C—Exemptions

286.13 General provisions.
286.15 Exemptions.

Subpart D—For Official Use Only

286.17 General provisions.
286.19 Markings.
286.21 Dissemination and transmission.
286.23 Safeguarding FOUO information.
286.25 Termination, disposal and unauthorized disclosure.

Subpart E—Release and Processing Procedures

286.27 General provisions.
286.29 Initial determinations.
286.31 Appeals.
286.33 Judicial actions.

Subpart F—Fee Schedule

286.35 General provisions.
286.37 Collection of fees and fee rates.
286.39 Collection of fees and fee rates for technical data.

Subpart G—Reports

286.41 Reports control.
286.43 Annual report.

Subpart H—Education and Training

286.45 Responsibility and purpose.
Appendix A to Part 286—Unified Commands — Processing Procedures for FOI Appeals.
Appendix B to Part 286—Addressing FOIA Requests.
Appendix C to Part 286—Litigation Status Sheet.
Appendix D to Part 286—Other Reason Categories.
Appendix E to Part 286—Record of Freedom of Information (FOI) Processing Cost (DD Form 2086).
Appendix F to Part 286—Record of Freedom of Information (FOI) Processing Cost for Technical Information (DD Form 2086-1).
Appendix G to Part 286—DoD Freedom of Information Act Program Components.

Authority: Pub. L. 99-570, secs. 1801-1804; Pub. L. 99-661, sec. 2328; 5 U.S.C. 552.

Subpart A—General Provisions

§ 286.1 Purpose and applicability.

(a) *Purpose.* The purpose of this part is to provide policies and procedures for the Department of Defense (DoD) implementation of the Freedom of Information Act and DoD Directive 5400.7[1] (32 CFR part 285) and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program.

(b) *Applicability.* (1) This part applies to the Office of the Secretary of Defense (OSD) which includes for the purpose of this Regulation the Joint Staff, Unified Commands, the Military Departments, the Defense Agencies, and the DoD Field Activities (hereafter referred to as "DoD Components"), and takes precedence over all DoD Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at Appendix G to this part.

(2) The National Security Agency records are subject to the provisions of this part, only to the extent the records are not exempt under Pub. L. 86-36.

§ 286.3 DoD public information.

(a) *Public information.* The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed

[1] Copies may be obtained if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this part. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part or under the Privacy Act, when the request is from the subject of the records requested.

§ 286.5 Definitions.

As used in this part, the following terms and meanings shall be applicable.

Administrative appeal. A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

Agency record. (a) The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

(b) The following are not included within the definition of the word "record":

(1) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(2) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(3) Commercially exploitable resources and administrative tools by which records are created, stored, and retrieved, including but not limited to:

(i) Maps, charts, map compilation manuscripts, map research materials and data if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

(ii) Computer software, if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.)

(4) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(5) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(6) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(7) Information stored within a computer for which there is no existing computer program or printout.

(c) A record must exist and be controlled by the Department of Defense at the time of the request to be considered subject to this part. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

Appellate authority. The Head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

DoD component. An element of the Department of Defense, as defined in § 286.1(b), authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or appellate authority, and general counsel.

FOIA request. A written request for DoD records, made by a member of the public, that either explicitly or implicitly invokes the FOIA, 32 CFR part 285, this part, or DoD Component supplementing regulations or instructions.

Initial denial authority (IDA). An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

§ 286.7 Policy.

(a) *Compliance with the FOIA.* DoD personnel are expected to comply with the FOIA and this part in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental part published by the DoD Components.

(d) *Prompt action on requests.* When a member of the public complies with the procedures established in this part for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. When a Component has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude a Component from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. Requests by individuals for access to records about themselves are processed under the provisions of the respective Act cited in the request. Requests that cite both Acts or neither Act are processed under both Acts, using the fee provisions of the Federal Privacy Act and the time limits of the FOIA. If access is controlled by another Federal statute, follow the provisions of the controlling statute and § 286.15(a)(3). For further details, see DoD 5400.11–R.[2] Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

(e) *Use of exemptions.* Records that may be withheld under the exemptions outlined in Subpart C of this part shall be made available to the public when it is determined that no governmental interest will be jeopardized by their release. Determination of jeopardy to governmental interest is within the sole discretion of the Component, consistent with statutory requirements, security classification requirements, or other requirements of law.

(f) *Public domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Nonexempt records maintained in a DoD Component's Public Reading Room, or which can be made available in the Public Reading Room within a short time frame (15 minutes or less) are considered to be in the public domain. Exempt records released pursuant to this part or other statutory or regulatory authority, however, may be considered to be in the public domain only when

[2] Copies may be obtained at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this part. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, would be referred to the originating Agency for direct response to the requester. There is no obligation to create nor compile a record to satisfy an FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessment for direct search, review (in the case of commercial requesters), and duplication associated with the request shall be in accordance with § 286.35(b).

(h) *Description of requested record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined of this part. Components are not obligated to act on the request until the requester responds to the specificity letter § 286.7(h)(2). When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(5) The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

(i) *Referrals.* (1) A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. In cases where the Component receiving the request has reason to believe that the existence or nonexistence of the record may in itself be classified, that Component shall consult the DoD Component having cognizance over the record in question before referring the request. If the DoD Component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DoD Component originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) Whenever a record or a portion of a record is, after prior consultation, referred to another DoD Component or to a Government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the Department of Defense, if the record originated in the other DoD Component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(4) A DoD Component may refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have an equally valid interest in withholding the record as the DoD Component that created the record. In such situations, provide the record and a release recommendation on the record with the referral action. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

(5) Within the Department of Defense, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

(6) DoD Components that receive referred requests shall answer them in accordance with the time limits

established by the FOIA and this part. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

(7) Agencies outside the Department of Defense that are subject to the FOIA:

(i) A Component may refer an FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the Component must respond to the request.

(ii) A DoD Component shall not honor any FOIA request for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

(iii) Notwithstanding anything to the contrary in paragraph (i) of this section, a Component shall notify requesters seeking National Security Council (NSC) or White House documents that they should write directly to the NSC or White House for such documents. DoD documents in which the NSC or White House has a concurrent reviewing interest shall be forwarded to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), ATTN: Directorate For Freedom of Information and Security Review (DFOISR), which shall effect coordination with the NSC or White House, and return the documents to the originating agency after NSC review and determination. NSC or White House documents discovered in Components' files which are responsive to the FOIA request shall be forwarded to OASD(PA), ATTN: DFOISR, for subsequent coordination with the NSC or White House, and returned to the Component with a release determination.

(8) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(9) On occasion, the Department of Defense receives FOIA requests for Government Accounting Office (GAO) documents containing DoD information, either directly from requesters, or as referrals from the GAO. The GAO is outside the Executive Branch, and as such, all FOIA requests for GAO documents containing DoD information will be processed under the provisions of Security Review or Mandatory Declassification Review (MDR) Directives. Requests received in DoD for unclassified GAO reports containing DoD information shall be transferred to the GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877-1450. Requests received in the Department of Defense for classified GAO documents (or documents unidentifiable as to classification) shall be referred to the GAO, Office of Security and Safety, Washington, DC 20548. After internal review, the GAO shall refer the request and documents to Office of the Inspector General, Department of Defense (OIG, DoD) and that Component shall refer the action to the OASD(PA), ATTN: DFOISR, for processing under Security Review or MDR provisions.

(j) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $5.20 for each authentication.

(k) *Unified and Specified Commands.* (1) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 [3] it authorizes and requires the Unified Commands to process Freedom of Information (FOI) requests in accordance with DoD Directive 5400.7 and this part. The Unified Commands shall forward directly to the OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in Appendix A of this part.

(2) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with DoD Component Disposition instructions and schedules.

Subpart B—FOIA Reading Rooms

§ 286.9 Requirements.

(a) *Reading room.* Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of Subpart F of this part.

(b) *Material availability.* The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOIA reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(3) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

[3] See footnote 1 to § 286.1(a).

§ 286.11 Indexes.

(a) *"(a)(2)" Materials.* (1) Each DoD Component shall maintain in each facility prescribed in § 286.11(a), an index of materials described in § 286.11(b), that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this part.

(2) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the Federal Register an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart F of this part.

(3) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(b) *Other materials.* (1) Any available index of DoD Component material published in the Federal Register, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

(2) Although not required to be made available in response to FOIA requests or made available in FOIA reading rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

§ 286.13 General provisions.

(a) *General.* Records that meet the exemption criteria in § 286.15 may be withheld from public disclosure and need not be published in the Federal Register, made available in a library reading room, or provided in response to an FOIA request.

(b) *Jeopardy of government interest.* An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no jeopardy to government interest would be served by release. It is appropriate for DoD Components to use their discretionary authority on a case-by-case basis in the release of given records. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this part, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record. Further guidance on this issue may be found at § 286.13(a)(4) and § 286.29(h).

§ 286.15 Exemptions.

(a) *FOIA exemptions.* The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law.

(1) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as 32 CFR part 159a. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R,[4] section 2–204f., apply.

(2) *Number 2.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

(i) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iii) Lists of DoD personnel names and duty addresses (civilian and military) created primarily for internal, trivial, housekeeping purposes for which there is no legitimate public interest or benefit. This exemption is appropriate when it would impose an administrative burden to process the request, and the requester is not seeking the information for the benefit of the general public (see also paragraph (a)(6)(ii) of this section).

(3) *Number 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(i) National Security Agency Information Exemption, Public Law 86–36, section 6.

(ii) Patent Secrecy, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(iii) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(iv) Communication Intelligence, 18 U.S.C. 798.

(v) Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25.[5]

(vi) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(4) *Number 4.* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

[4] See footnote 2 to § 286.7(d).

[5] See footnote 1 to § 286.1(a).

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(iii) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(iv) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(vi) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), subpart 27.4. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (32 CFR part 250) (see paragraph (a)(3)(v) of this section).

(5) *Number 5.* Except as provided in paragraphs (a)(5) (ii) through (v) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), or within or among DoD Components.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions, or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(E) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(F) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, State, or military court, as well as records that qualify for the attorney-client privilege.

(G) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(ii) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this part.

(iii) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(6) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(i) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(A) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(B) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(ii) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. One example of such is lists of names and duty addresses of DoD personnel

(civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories. Release of such information could aid in the targeting of DoD employees and their families by terrorists (see also paragraph (a)(2)(iii) of this section). This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(iii) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11[6] (32 CFR part 286a).

(iv) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

(7) *Number 7.* Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

(i) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(A) Could reasonably be expected to interfere with enforcement proceedings.

(B) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(D) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(E) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(F) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(G) Could reasonably be expected to endanger the life or physical safety of any individual.

(ii) Examples include:

(A) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(B) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(iii) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500), is not diminished.

(iv) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11.

(v) Exclusions. Excluded from the above exemption are the following two situations applicable to the Department of Defense:

(A) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstance continues, treat the records or information as not subject to exemption 7. In such situation, the response to the requester will state that no records were found.

(B) Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to exemption 7, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7, the response to the requester will state that no records were found.

(8) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 286.17 General provisions.

(a) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

(b) *Prior FOUO application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(c) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA.

(d) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

[6] See footnote 1 to § 286.1(a).

(e) *Distribution statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 [7] shall bear that statement and shall not be marked FOUO.

§ 286.19 Markings.

(a) *Location of markings.* (1) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions * * * apply.

§ 286.21 Dissemination and transmission.

(a) *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 [8]. Release to the GAO is governed by DoD Directive 7650.1[9]. Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(b) *Transporting FOUO information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

(c) *Electrically transmitted messages.* Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP–121 (US Supp 1) for FOUO information.

§ 286.23 Safeguarding FOUO information.

(a) *During duty hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to nongovernmental personnel.

(b) *During nonduty hours.* At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Pub. L. 86–36 shall meet the safeguards outlined for that group of records.

§ 286.25 Termination, disposal and unauthorized disclosures.

(a) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. Chapter 33 as implemented by DoD Component instructions concerning records disposal.

(c) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the

[7] See footnote 1 to § 286.1(a).

[8] See footnote 1 to § 281.1(a).

[9] See footnote 1 to § 281.1(a).

FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

§ 286.27 General provisions.

(a) *Public information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the FOIA may be denied only when:

(i) The record is subject to one or more of the exemptions in subpart C of this part and the Government's interest will be jeopardized by its release.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

(2) Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B of this part.

(b) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interests as opposed to federal or foreign governments seeking information. Requests from private persons will be made in writing, and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements, and ensure better inter and intra-agency coordination. Components are under no obligation to establish procedures to receive hand delivered requests. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in paragraph (c) of this section.

(c) *Requests from Government officials.* Requests from officials of State, or local Governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

(d) *Privileged release to officials.* (1) Subject to DoD 5200.1–R, applicable to classified information, DoD Directive 5400.11, applicable to personal privacy, or other applicable law, records exempt from release under Chapter III of this Regulation may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, State or Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To Congress, in accordance with DoD Directive 5400.4.

(ii) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(iii) To other Federal Agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

(iv) To State and local officials, as determined by the head of a DoD Component or designee.

(2) DoD Components shall inform officials receiving records under the provisions of paragraph (d)(1) of this section that those records are exempt from public release under the FOIA and are privileged. DoD Components also shall advise officials of any special handling instructions.

§ 286.29 Initial determinations.

(a) *Initial denial authority.* (1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) The initial determination of whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this part is applicable and should be invoked.

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

(b) *Reasons for not releasing a record.* There are seven reasons for not complying with a request for a record:

(1) The request is transferred to another DoD Component, or to another federal agency.

(2) The request is withdrawn by the requester.

(3) The information requested is not a record within the meaning of the FOIA and this part.

(4) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(5) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this part or DoD Component supplementing regulations.

(6) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. (A "no record" determination is not considered a denial; therefore an appeal is not appropriate).

(7) The record is denied in accordance with procedures set forth in the FOIA and this part.

(c) *Denial tests.* To deny a requested record that is in the possession or control of a DoD Component, it must be determined that the denial meets the following tests:

(1) The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in Subpart C of this part.

(2) The use of its discretionary authority is deemed unwarranted.

(d) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(e) *Response to requester.* (1) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

(4) The response to the requester should contain information concerning the fee status of the request, consistent the provisions of Subpart F this part.

(5) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this part. Merely referring to a classification or to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(f) *Extension of time.* (1) In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(i) The requested record is located in whole or in part at places other than the office processing the request.

(ii) The request requires the collection and evaluation of a substantial number of records.

(iii) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this part or should be released as a matter of discretion.

(2) The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component, or in accordance with regulations of the DoD Component, or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted.

(3) In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Components are reminded that the requester still retains the right to treat this delay as a defacto denial with full adminstrative remedies.

(4) As an alternative to the taking of formal extensions of time as described in paragraphs (f) (1), (2), and (3) of this section, the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(g) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that managers the records requested.

(h) *Records of non-U.S. Government source.* (1) When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of tbe record or information (also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552, Exemption (b)(4)) (subpart C, § 286.15(a)(4), this part and E.O. 12600), shall be notified promptly of that request and afforded reasonable time (e.g. 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under Exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(2) The coordination provisions of this paragraph apply to any non-U.S. Government record in the possession and control of the Department of Defense from multi-national organizations, such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD), or foreign governments. Coordination with foreign governments under the provisions of this paragraph shall be made through Department of State.

(i) *File of initial denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(j) *Special mail services.* Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(k) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts, except receipts for industrially-funded and non-appropriated funded activities. Components are reminded that the below account numbers must be preceeded by the appropriate disbursing office two digit prefix. Industrially-

funded and nonappropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(1) *Receipt Account 3210 Sale of Publications and Reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles.

(2) *Receipt Account 3210 Fees and Other Charges for Services, Freedom of Information Act.* This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

§ 286.31 Appeals.

(a) *General.* If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

(b) *Time of receipt.* An FOI appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time limits.* (1) The requester should be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt.

(d) *Delay in responding to an appeal.* (1) If additional time is needed due to the unusual circumstances described in § 286.29(f) the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 286.29(f) they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Response to the requester.* (1) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, at a minimum, shall include the following:

(i) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of this part.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(v) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* (1) Final refusal, involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components, ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Justice, ATTN: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530.

§ 286.33 Judicial actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and in this part.

(b) *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States Government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *Litigation status sheet.* FOIA managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C of this part provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the OASD(PA), ATTN: DFOISR, with an information copy to the General Counsel, Department of Defense, ATTN: Office of Legal Counsel. A revised Litigation Status Sheet shall be provided at each stage of the litigation.

Subpart F—Fee Schedule

§ 286.35 General provisions.

(a) *Authorities.* The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et. seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et. seq.); the Defense Authorization Act for FY 87, section 954 (Pub. L. 99–661), as amended by the Defense Technical Corrections Act of 1987 (Pub. L. 100–26).

(b) *Application.* (1) The fees described in this Subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 [10] (32 CFR Part 288) which does not supersede the collection of fees under the FOIA. Nothing in this Subpart shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552 (a)(4)(A)(vi)) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(2) The term "direct costs" means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed at § 286.37. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(3) The term "search" includes all time spent looking for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See paragraph (b)(5) of this section for the definition of review, and § 286.37(b)(2) for information pertaining to computer searches.

(4) The term "duplication" refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably useable by requesters. If it is not possible to provide copies which are clearly useable, the requester shall be notified that their copy is the best available and that the agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) The term "review" refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the

[10] See footnote 1 to § 286.1(a)

administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(c) *Fee restrictions.* (1) No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(2) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another Federal Agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(3) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(4) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½ x 11" or "11 x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout; however, might meet the terms of the restriction.

(5) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time.

(d) *Fee waivers.* (1) Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in paragraph (e) of this section when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

(2) When assessable costs for an FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(i) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government."

(A) *The subject of the request.* Components should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value will likely not contribute to public understanding of the operations or activities of the Department of Defense. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Department of Defense, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the Department of Defense.

(B) *The informative value of the information to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the Department of Defense. While the subject of a request may contain information which concerns operations or activities of the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Department of Defense must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the Department of Defense.

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertion work, or indigency are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(D) *The significance of the contribution to public understanding.* In

applying this factor, Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Components shall not make value judgments as to whether the information is important enough to be made public.

(ii) Disclosure of the information "is not primarily in the commercial interest of the requester."

(A) *The existence and magnitude of a commercial interest.* If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of paragraph (e) of this section, apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(B) *The primary interest in disclosure.* Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(4) Components are reminded that the above factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

(5) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00–$30.00).

(e) *Fee assessment.* (1) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(2) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(i) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the Component shall:

(A) Notify the requester that he should provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

(ii) Requesters must submit a fee declaration appropriate for the below categories.

(A) *Commercial.* Requesters must indicate a willingness to pay all search, review and duplication costs.

(B) *Educational or noncommercial scientific institution or news media.* Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(C) *All others.* Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iii) If the previous conditions are not met, then the request need not be processed and the requester shall be so informed.

(iv) In the situations described by paragraphs (e)(2) (i) and (ii), Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Component estimates exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(v) No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(vi) Where a Component estimates or determines that allowable charges that a

requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(vii) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and confirmed with respective Finance and Accounting Offices.

(viii) After all work is completed on a request, and the documents are ready for release, Components may request payment before forwarding the documents if there is no payment history on the requester, or if the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing). In the case of the latter, the provisions of paragraph (e)(2)(vii) of this section apply. Components may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(ix) When Components act under paragraphs (e)(2) (i) through (vii) of this section, the administrative time limits of the FOIA (i.e., 10 working days from receipt of initial requests, and 20 working days from receipt of appeals, plus permissible extensions of these time limits) will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(x) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request, or if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed $25.00 it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Commercial requesters.* Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought (see § 286.7(h)).

(i) The term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

(ii) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(4) *Educational institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought (see § 286.7(h)). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(5) *Non-commercial scientific institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought (see § 286.7(h)). The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in paragraph (e)(3) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) Components shall provide documents to requesters in paragraphs (e)(4) and (5) of this section for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(7) *Representatives of the news media.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 286.7 (h)).

(i) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though

not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

(ii) To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (e)(7)(i) of this section and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(8) *All other requesters.* Components shall charge requesters who do not fit into any of the above categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see § 286.7(h)). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Components are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined under paragraph (d) of this section (see also paragraph (e)(3)(ii)).

(f) *Aggregating requests.* Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period; however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

(g) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365).* The Debt Collection Act of 1982 (Pub. L. 97–365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

(h) *Computation of fees.* The fee schedule in this Subpart shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

§ 286.37 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of $250 (see § 286.35 (e)).

(b) *Search time.*—(1) *Manual search:*

Type and grade	Hourly rate ($)
Clerical—E9/GS8 and below	12
Professional—01–06/GS9–GS/GM15	25
Executive—07/GS/GM16/ES1 and above	45

(2) *Computer search.* Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph (b)(1) of this section) for the computer operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.

(c) *Duplication:*

Type	Cost per page (¢)
Pre-Printed material	02
Office copy	15
Microfiche	25
Computer copies (tapes or printouts)	(1)

[1] Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape).

(d) *Review time* (in the case of commercial requesters):

Type and grade	Hourly rate ($)
Clerical—E9/GS8 and below	12
Professional—01–06/GS9–GS/GM15	25
Executive—07/GS/GM16/ES1 and above	45

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

§ 286.39 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* (1) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this Section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absense of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full cost shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under § 286.37 for other types of information released under the FOIA.

(2) *Waiver.* Components shall waive the payment of costs required in paragraph (a)(1) of this section which are greater than the costs that would be required for release of this same information under § 286.37 if:

(i) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(ii) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(iii) The Component determines in accordance with § 286.35(d)(1), that such a waiver is in the interest of the United States.

(3) *Fee rates*—(i) *Search time*—(A) *Manual search:*

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below.	13.25
(Minimum charge)		[1] 8.30

[1] Professional and Executive (to be established at actual hourly rate prior to search. A minimum charge will be established at ½ hourly rates).

(b) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in § 286.39(a)(3)(i)(A)) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(ii) *Duplication:*

Type	Cost
Aerial photographs, specifications, permits, charts, blueprints, and other technical documents	$2.50
Engineering data (microfilm)—	
a. Aperture cards:	
(i) Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
(ii) Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
b. 35mm roll film, per frame	.50
c. 16mm roll film, per frame	.45
d. Paper prints (engineering drawings), each	1.50
e. Paper reprints of microfilm indices, each	.10

(iii) *Review time:*

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below.	13.25
(Minimum charge)		[1] 8.30

[1] Professional and Executive (to be established at actual hourly rate prior to review. A minimum charge will be established at ½ hourly rates).

(4) *Other technical data records:* Charges for any additional services not specifically provided paragraph (a)(3) of this section consistent with DoD Instruction 7230.7 shall be made by Components at the following rates:

1. Minimum charge for office copy (up to six images)	$3.50
2. Each additional image	.10
3. Each typewritten page	3.50
4. Certification and validation with seal, each	5.20
5. Handdrawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

§ 286.41 Reports control.

(a) *General.* The reporting requirement outlined in this subpart is assigned Report Control Symbol DD–PA(A)1365.

§ 286.43 Annual report.

(a) *Reporting time.* Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11[11]. The standard data elements are contained in DoD 5000.12–M [12].

(b) *Annual report content.* The following instructions and attached format shall be used in preparing the annual report:

(1) *Item 1*—(i) *Completed public requests.* Enter the total number of FOIA requests received and responded to during the reporting period.

(ii) *Completed reportable requests.* Enter the number of actions taken on a completed public request. To arrive at this figure, count the number of blocks checked in Item (b)(1)(i) of the Annual Report Worksheet (see paragraph (d) of this section) for each request processed.

(Note: This figure will be equal to or greater than Item (b)(1)(i)).

(iii) *Number of requests denied.* Enter the number of FOIA requests which were denied in whole or in part based on one or more of the nine FOIA exemptions.

(iv) *Other reason responses.* Enter the number of FOIA requests in which you were unable to provide the requested information based on an "Other Reason" response (See Item (b)(2)(iii) of

[11] See footnote 1 to § 286.1(a).

[12] See footnote 2 to § 286.7(d).

this section for an explanation of "Other Reason" responses).

(v) *Total.* Enter the sum of Items (b)(1)(iii) and (1)(iv) of this section.

(2) *Item 2*—(i) *Exemptions invoked on initial determinations.* Identify the exemption(s) claimed for each request that was denied in whole or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal or greater than that of Item (b)(1)(iii) of this section.

(ii) *"(b)(3)" statutes invoked on initial determinations.* Identify the statute(s) cited when you claimed a "(b)(3)" exemption. Cite the specific sections when invoking the Atomic Energy Act of 1954, or the National Security Act of 1947.

(iii) *Initial request other reason responses.* Identify the "other reason" response cited when responding to an FOIA request and enter the number of times each was claimed.

(A) *Transferred requests.* Enter the number of times a request was transferred to another DoD Component or Federal Agency for action.

(B) *Lack of records.* Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record.

(C) *Failure of requester to reasonably describe record.* Enter the number of times an FOIA request could not be acted on since the requester failed to reasonably describe the record(s) being sought.

(D) *Other failures by requester to comply with published rules and/or directives.* Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(E) *Request/appeal withdrawn by requester.* Enter the number of times a requester withdrew a request and/or appeal.

(F) *Not an agency record.* Enter the number of times a requester was provided a response indicating the requested information was not an agency record.

Total: Enter the sum of columns (b)(1) through (6). The total will be equal to or greater than Item (b)(1)(iv) of this section since more than one other reason response may be claimed.

(3) *Item 3—Initial denial authorities (IDAs by participation)*—(i) *Total IDAs authorized.* Enter the total number of IDA's at your activity.

(ii) *Individuals involved in adverse determinations.* Enter the name, grade, activity and title of each individual who signed a partial and/or total denial response and cite the number of instances of participation.

(4) *Item 4:* Number of appeals and results—*Number of Appeals.* Enter the disposition of appeals under the appropriate category and then the total.

(5) *Item 5*—(i) *Exemptions invoked on appeal determinations.* Identify the exemption(s) claimed for each appeal that is denied in whole or part. Since more than one exemption may be claimed when responding to a single appeal, this number will be equal to or greater than the total listed in Item (b)(4) of this section.

(ii) *Statutes invoked on appeal determinations.* Identify the statute(s) cited when you claimed a "(b)(3)" exemption.

(iii) *Other reasons cited on appeal determinations.* Identify the "other reason" response when responding to an appeal and enter the number of times each was claimed and the total.

(6) *Item 6—Participation of appellate authorities (those responsible for denials in whole or in part).* Enter the name, grade, activity, and title of each individual who signed a partial and/or total denial response and cite the number of instances of participation.

(7) *Item 7—Court opinions and action taken.* Briefly describe the results of each suit the Judge Advocate General and/or the General Counsel participated in during the calendar year. Provide a copy of each final court opinion or order.

(8) *Item 8—FOIA implementation rules or regulations.* List all changes or revisions of rules or regulations affecting the implementation of the FOIA Program, followed by the **Federal Register** reference (volume number, date, and page) that announces the change or revision to the public. Append a copy of each.

(9) *Item 9—FOIA instructional and educational efforts.* Report what training and/or seminars your activity has given or attended during this reporting period.

(10) *Item 10*—(i) *Cost of routine request.* Some reporting activities shall find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised so that costs are comprehensive to include a 25 percent overhead, yet are not duplicated elsewhere in the report.

(ii) *Personnel costs (civilian and military)*—(A) *Direct costs of personnel assigned FOIA duties based upon estimated payroll manyears by grade.* Personnel costs are reported in two ways. This section uses a manyear/wage type of costing by grade. To achieve this computation, identify those individuals who are primarily involved in the planning, program management and/or administrative handling of FOIA requests. Use DoD 7220.9–M [12] for military personnel and Office of Personnel Management salary table for civilian personnel to identify salaries.

Sample Computation:

Grade	Number of personnel	Salary	Percentage of time	Costs
0–5	1	$50,000	10	$5,000
0–1	1	21,000	30	6,000
GS–12	1	35,000	50	17,500
GS–5	1	18,000	50	to 9,000[1]

[1] To determine the manyear computation: Add the total percentages of time and divide the percentage by 100.

Sample Computation: Manyears=140 percent divided by 100=1.4 manyears.

(B) *Direct costs for other personnel involved in processing request not included above upon accumulation of total hourly data.* This section accounts for all other personnel (not reported above) who are involved in processing FOIA requests. Enter the total hourly cost for each area. Only search, review, and reproduction costs may be recouped from the requester. Review costs may only be recouped from commercial requesters. In the case of collections resulting from release of technical data, all reasonable costs for search and reproduction may be recouped (see § 286.37).

[12] See footnote 2 to § 286.7(d).

(1) Search time cost. This includes only those direct costs associated with time spent looking for material that is responsive to a request, including line-by-line identification of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(2) Classification review costs. This includes all direct costs incurred during the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(3) Coordination and approval/denial decision costs. This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(4) Correspondence and form preparation costs. This includes all costs involved in typing responses, filling out forms and/or logbooks, supplies, etc., to respond to an FOIA request.

(5) Other activity costs. This includes all other processing costs not covered above, such as processing time by the mail room.

Total Manhour Costs: Enter the sum of paragraphs (b)(10)(ii)(B) (*1*) through (*5*) of this section.

(C) *Application of overhead.* The overhead rate is 25 percent and includes the cost of supervision, space and administrative support. Add items 1 and 2, then multiply the sum by 25 percent.

(iii) *Other case related costs.* Using the fee schedule, enter the total amounts incurred in each area to process FOIA requests.

(iv) *Other operating costs.* Report all other costs which are easily identifiable, such as: per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

(v) *Summary.* The summary data provides a total cost figure for administering the FOIA Program and a recap of the fees collected.

(11) *Item 11*— (i) *Formal time extensions.* Enter the total number of instances in which it was necessary to seek a formal 10 working day time extension, because of:

(A) *Location.* The need to search for and collect the requested records from another activity, that was separate from the office processing the request.

(B) *Volume.* The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records indicated in a single request.

(C) *Consultation.* The need for consultation with another agency having substantial interest in the material requested.

(D) *Court involvement.* Where court actions were taken on the basis of exhaustion of administrative procedures because the department/activity was unable to comply with the request within the applicable time limits, and in which a court allowed additional time upon a showing of exceptional circumstances, provide a copy of each court opinion and court order containing such an extension of time.

(ii) *Total.* Enter the sum of items (b)(1) through (4) of this section.

(c) *Annual report format.*

ITEM 1

(A) Completed Public Requests	(B) Completed Reportable Requests	(C) Number of Requests Denied (Partial and Total)	(D) Number of "Other Reasons" Responses Made	(E) Total (C+D)

ITEM 2

A. Exemptions Claimed in Denial Letters:

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes Claimed Denial Letters:

List of "(b)(3)" Statutes Claimed	Number of Times Cited

C. "Other Reasons" Cited in Response to FOIA Requests	1	2	3	4	5	6	Total

ITEM 3.—DENIALS AND "OTHER REASON" RESPONSES

A. Total Number of IDAs Authorized to Sign Denial Letters

B. List of All Individuals Who Signed a Denial Response:

Name	Rank	Title	Number of Instances of Participation	
			Exemption	Other

ITEM 4

A. Number of Appeals Received and Action Taken:

(1) Granted in Full	(2) Granted in Part	(3) Denied in Full	(4) Total

ITEM 5

A. Exemptions Invoked on Appeal Determination:

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes Invoked on Appeal Determinations:

List of "(b)(3)" Statutes Invoked	Number of Times Cited

C. "Other Reasons" Cited on Appeal Determination	1	2	3	4	5	6	Total

ITEM 6

A. List of All Individuals Who Signed an Appeal Determination Response:

Name	Rank	Title	Number of Instances of Participation	
			Exemption	Other

Item 7

A. Court Opinions and Actions Taken, for example:

J.Q. Public v. *Department of the Army*, CMI No. 87-2600 (S.D. Cal.) On January 1, 1987, plaintiff filed suit seeking a CID investigation which was being reviewed by the United States Attorney for possible prosecution. Plaintiff is a former Army General attorney. Final order, May 1987, ordered release of majority of CID report of investigation.

ITEM 8

A. FOIA Implementation Rules or Regulations (Published During the Reporting Period):

Document Identification	Federal Register References		
	Number	Date	Page

ITEM 9

A. FOIA Instructional and Educational Efforts:

Course	Sponsor	Date	Hours

ITEM 10

	Cost
A. Cost of Routine Requests Processed: (Number of reportable requests X cost factor per request.)	$——
B. Personnel Costs (Civilian and Military):	
1. Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade.	
Total Manyears	
2. Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:	
a. Search Time Costs	
b. Classification Review and Excising Action Costs	
c. Coordination/Approval/Denial Decision Costs	
d. Correspondence and Form Preparation Costs	
e. Other Activity Costs	
Total Manhour Costs	
3. Application of Overhead (Subtotal 1+2)×25% overhead	
Total of Personnel Costs	
C. Other Case Related Costs:	
1. Computer	
2. Office Copy Reproduction	
3. Microfiche Reproduction	
4. Cost of Printed Records	
Total of Other Costs	
D. Other Operating Costs:	
1. Reporting Costs	
a. Operational	
b. User	
c. Overhead: (a+b)×25%	
2. Other Costs as Directed or Which can be Reasonably Ascertained	
Total Other Operating Costs (Subtotal 1+2)	
E. Summary:	
1. Total Costs of Sections 10A through 10D	
2. Amount Collected from Requesters during this Reporting Period:	
a. Search	
b. Copy	
c. Review	
d. Total Collected	

ITEM 11

A. Formal Time Limit Extension Taken:

(1) Location	(2) Volume	(3) Consultation	(4) Court Involvement

B. Total

(d) *Annual report worksheet.*

a. Action(s) Taken On Completed Public Requested

_____Granted in Full
_____Granted in Part
_____Denied

Other:
_____Transferred to:
_____
_____Lack of Records
_____Requester failed to reasonably describe the record
_____Requester failed to comply with established rules/directives
_____Requester withdrew request/appeal
_____Not an agency record

b. Completed Reportable Requests:_____
(Count the number of actions checked in a. and enter total)

c. Statutory FOIA Exemptions Invoked:_____
(Enter total number blocks checked below)
_____(b)(1)
_____(b)(2)
_____(b)(3)
_____(b)(4)
_____(b)(5)
_____(b)(6)
_____(b)(7)
_____(b)(8)
_____(b)(9)
d. List of (b)(3) Statutes Invoked:_____
_____
e. Name, Command And Title Of Initial Denial Authority: _____
_____
_____
f. Remarks: _____
_____
_____
_____

Subpart. H—Education and Training

§ 286.45 Responsibility and purpose.

(a) *Responsibility.* The Head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this part. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, and should provide a thorough understanding of the procedures outlined in this part.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

(c) *Scope and principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this part. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this part.

(2) Instruct personnel, who act in FOI matters, concerning the provisions of this part, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this part should be coordinated with the Director, Freedom of Information and Security Review, OASD(PA).

(e) *Uniformity of legal interpretation.* In accordance with DoD Directive 5400.7 the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

Appendix A to Part 286—Unified Commands; Processing Procedures for FOI Appeals

1. General

a. In accordance with DoD Directive 5400.7 and this part, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3.

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 and DoD Instruction 5400.10 [13] and to forward directly to the OASD(PA) all correspondence associated with the appeal of an initial denial for information under the provisions of the FOIA.

2. Responsibilities of commands

Unified Commanders in Chief shall:

a. Designate the officials authorized to deny initial FOI requests for records.

b. Designate an office as the point-of-contact for FOI matters.

c. Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

d. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of the Department of Defense, if required, is authorized.

e. Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

f. Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

g. Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

h. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the Assistant Secretary of Defense (Public Affairs), the Pentagon, Washington, DC 20301–1400.

i. Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

3. Fees for FOI requests

The fees charged for requested records shall be in accordance with Subpart F of this part.

4. Communications

Excellent communication capabilities currently exist between the OASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

5. Reporting requirements

a. The Unified Commands shall submit to the ASD(PA) an annual report. The instructions for the report are outlined in subpart G of this part.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD–PA(A)1365.

Appendix B to Part 286—Addressing FOIA Requests

1. General

a. The Department of Defense includes the Office of the Secretary of Defense and the Joint Staff, the Military Departments, the Unified Commands, the Defense Agencies, and the DoD Field Activities.

b. The Department of Defense does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOIA requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD component addresses for FOI requests

a. *Office of the Secretary of Defense and the Joint Staff.* Send all requests for records from the below listed offices to: Office of the Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedom of Information and Security Review, Room 2C757, The Pentagon, Washington, DC 20301–1400.

Executive Secretariat
Under Secretary of Defense (Policy)
Deputy Under Secretary of Defense (Policy)
Deputy Under Secretary of Defense (Planning & Resources)

[13] See footnote 1 to § 286.1(a).

Deputy Under Secretary of Defense (Trade Security Policy)
Under Secretary of Defense (Acquisition)
Assistant Secretary of Defense (Production & Logistics)
Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)
Assistant to the Secretary of Defense (Atomic Energy)
Director of Defense Research and Engineering
Director of Small and Disadvantaged Business Utilization
Director, Program Integration
Comptroller of the Department of Defense
Assistant Secretary of Defense (Force Management & Personnel)
Assistant Secretary of Defense (Health Affairs)
Assistant Secretary of Defense (International Security Policy)
Deputy Assistant Secretary of Defense (European & NATO Policy)
Deputy Assistant Secretary of Defense (Negotiations Policy)
Deputy Assistant Secretary of Defense (Nuclear Forces & Arms Control Policy)
Assistant Secretary of Defense (International Security Affairs)
Deputy Assistant Secretary of Defense (African Affairs)
Deputy Assistant Secretary of Defense (East Asian & Pacific Affairs)
Deputy Assistant Secretary of Defense (Inter-American Affairs)
Deputy Assistant Secretary of Defense (Near East & South Asian Affairs)
Deputy Assistant Secretary of Defense (Policy Analysis)
Defense Security Assistance Agency
Assistant Secretary of Defense (Legislative Affairs)
Assistant Secretary of Defense (Public Affairs)
Assistant Secretary of Defense (Program Analysis & Evaluation)
Assistant Secretary of Defense (Reserve Affairs)
Assistant to the Secretary of Defense (Intelligence Oversight)
General Counsel, Department of Defense
Director of Net Assessment
Director of Operational Test and Evaluation
Defense Advanced Research Projects Agency
Strategic Defense Initiative Organization
Defense Systems Management College
National Defense University
Armed Forces Staff College
Department of Defense Dependents Schools
Uniformed Services University of the Health Sciences

b. *Department of the Army.* Army records may be requested from those Army officials who are listed in 32 CFR Part 518, Appendix B. Send requests to the Army Freedom of Information and Privacy Act Division, Information Systems Command—Pentagon, ATTN: ASQNS–OP–F, Room 1146, Hoffman I, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301 for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records.

c. *Department of the Navy.* Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is an FOI request. Send requests to Chief of Naval Operations, Code OP–09B30, Room 5E521, Pentagon, Washington, DC 20350–2000, for records of the Headquarters, Department of the Navy, and to Freedom of Information and Privacy Act Office, Code MI–3, HQMC, Room 4327, Washington, DC 20308–0001, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

d. *Department of the Air Force.* Air Force records may be requested from the Commander of any Air Force installation, major command, or separate operating agency (ATTN: FOIA Office). For Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records, send requests to Secretary of the Air Force, ATTN: SAF/AADS(FOIA), Washington, DC 20330–1000.

e. *Defense Contract Audit Agency (DCAA).* DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, ATTN: CMR, Cameron Station, Alexandria, VA 22304–6178, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

f. *Defense Communications Agency (DCA).* DCA records may be requested from any DCA field activity or from its headquarters. Requesters should send FOI requests to Defense Communications Agency, Code H104, Washington, DC 20305–2000.

g. *Defense Intelligence Agency (DIA).* FOI requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: RTS–1B, Washington, DC 20340–3299.

h. *Defense Investigative Service (DIS).* All FOI requests for DIS records should be sent to the Defense Investigative Service, ATTN: V0020, 1900 Half St., SW., Washington, DC 20324–1700.

i. Defense Logistics Agency (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency, ATTN: DLA–XA, Cameron Station, Alexandria, VA 22304–6130.

j. *Defense Mapping Agency (DMA).* FOI requests for DMA records may be sent to the Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031–2137.

k. *Defense Nuclear Agency (DNA).* FOI requests for DNA records may be sent to the Defense Nuclear Agency, Public Affairs Office, Room 111, Washington, DC 20305–1000.

l. *National Security Agency (NSA).* FOI requests for NSA records may be sent to the National Security Agency/Central Security Service, ATTN: Q–43, Fort George G. Meade, MD 20755–6000.

m. *Office of the Inspector General, Department of Defense (IG, DoD).* FOI requests for IG, DoD records may be sent to the Department of Defense Office of the Inspector General, Assistant Inspector General for Investigations, ATTN: FOIA Coordinator, 400 Army Navy Drive, Arlington, VA 22202.

3. Other Addressees

Although the below organizations are OSD and Joint Staff Components for the purposes of the FOIA, requests may be sent directly to the addresses indicated.

a. *Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS).* Director, OCHAMPUS, ATTN: Freedom of Information Officer, Aurora, CO 80045–6900.

b. *Chairman, Armed Services Board of Contract Appeals (ASBCA).* Chairman, Armed Services Board of Contract Appeals, Hoffman II, 200 Stovall Street, Alexandria, VA 22332

c. *U.S. Central Command.* U.S. Central Command/CCAG, MacDill Air Force Base, FL 33608

d. *U.S. European Command.* Records Administrator, Headquarters, U.S. European Command/ECJ1–AR(FOIA), APO New York 09128

e. *U.S. Southern Command.* Attorney-Advisor (International), Headquarters U.S. Southern Command/SCSJA, APO Miami 34003–0007

f. *U.S. Pacific Command.* Administrative & Security Programs Division (J147A), Joint Secretariat, CINCPAC, Box 28, Camp H.M. Smith, HI 96861–5025

g. *U.S. Special Operations Command.* U.S. Special Operations Command, ATTN: Freedom of Information Officer, MacDill Air Force Base, FL 33608

h. *U.S. Atlantic Command.* Commander-in-Chief, Atlantic Command, Code J008, Norfolk, VA 23511

i. *U.S. Space Command.* Chief, Records Management Division, Directorate of Administration, United States Space Command, Peterson Air Force Base, CO 80914–5001

4. National Guard Bureau

FOI requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, (NGB–DAI), Pentagon, Room 2C362, Washington, DC 20310–2500.

5. Miscellaneous

If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Office of the Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedom of Information and Security Review, Room 2C757, The Pentagon, Washington, DC 20301–1400.

Appendic C to Part 286—Litigation Status Sheet

1. Case Number [1]
2. Requester
3. Document Title or Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number [1]
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)

[1] Number used by Component for reference purposes.

7. Court Action
   a. Court's Finding
   b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
   a. Date Complaint Filed
   b. Court
   c. Case File Number[1]
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

Appendix D to Part 286—Other Reason Categories

1. Transferred Requests

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one Component to another, or to another Federal Agency.

2. Lack of Records

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record

This category is specifically based on section 552(a)(3)(a) of the FOIA.

4. Other Failures by Requesters to Comply with Published Rules or Directives

This category is based on section 552(a)(3)(b) of the FOIA and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request Withdrawn by Requester

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

6. Not an Agency Record

This category covers situations where the information requested is not an agency record within the meaning of the FOIA and this part.

BILLING CODE 3810-01-M

APPENDIX E TO PART 286

RECORD OF FREEDOM OF INFORMATION *(FOI)* PROCESSING COST

Please read instructions on reverse before completing form.

1. REQUEST NUMBER	2. TYPE OF REQUEST *(X one)*		3. DATE COMPLETED *(YYMMDD)*
	a. INITIAL [ ]	b. APPEAL [ ]	

	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
4. CLERICAL HOURS *(E-9/GS-8 and below)*			
a. SEARCH		X $12.00 =	*
b. REVIEW/EXCISING			**
c. CORRESPONDENCE AND FORMS PREPARATION			
d. OTHER ACTIVITY			
5. PROFESSIONAL HOURS *(0-1 - 0-6/GS-9 - GS/GM-15)*	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. SEARCH		X $25.00 =	*
b. REVIEW/EXCISING			**
c. COORDINATION/APPROVAL/DENIAL			
d. OTHER ACTIVITY			
6. EXECUTIVE HOURS *(0-7/GS/GM-16/ES 1 and above)*	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. SEARCH		X $45.00 =	*
b. REVIEW/EXCISING			**
c. COORDINATION/APPROVAL/DENIAL			
7. COMPUTER SEARCH	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. MACHINE HOURS			*
b. PROGRAMMER/OPERATOR TIME		X =	
(1) Clerical		$12.00	*
(2) Professional		$25.00	*
8. OFFICE COPY REPRODUCTION	NUMBER (1)	RATE (2)	COST (3)
a. PAGES REPRODUCED		X .15 =	*
9. MICROFICHE REPRODUCTION	NUMBER (1)	RATE (2)	COST (3)
a. MICROFICHE REPRODUCED		X .25 =	*
10. PRINTED RECORDS	TOTAL PAGES (1)	RATE (2)	COST (3)
a. FORMS			*
b. PUBLICATIONS		X .02 =	*
c. REPORTS			*
11. COMPUTER COPY	NUMBER (1)	ACTUAL COST (2)	COST (3)
a. TAPE		X =	*
b. PRINTOUT			*
12. AUDIOVISUAL MATERIALS	NUMBER (1)	ACTUAL COST (2)	COST (3)
a. MATERIALS REPRODUCED		X =	*

13. *For FOI Office Use Only*

a. SEARCH FEES PAID		f. TOTAL COLLECTABLE COSTS	
b. REVIEW FEES PAID		g. TOTAL PROCESSING COSTS	
c. COPY FEES PAID		h. TOTAL CHARGED	
d. TOTAL PAID		i. FEES WAIVED/REDUCED *(X one)*	[ ] Yes [ ] No
e. DATE PAID *(YYMMDD)*			

* *Chargeable to all requesters after application of all waiver criteria.*

** *Chargeable only to commercial requesters.*

DD Form 2086, JUN 89 *Previous editions are obsolete.* 1015/158

APPENDIX E - continued

INSTRUCTIONS FOR COMPLETING DD FORM 2086

This form is used to record costs associated with the processing of a Freedom of Information request.

1. **REQUEST NUMBER** - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. **TYPE OF REQUEST** - Mark the appropriate block to indicate initial request or appeal of a denial.

3. **DATE COMPLETED** - Enter year, month and day, i.e., 870621.

4. **CLERICAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review / Excising - Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

5. **PROFESSIONAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search / Review / Excising, and Other Activity - See explanation above.

Coordination / Approval / Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

6. **EXECUTIVE HOURS** - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search / Review / Excising - See explanation above.

Coordination / Approval / Denial - See explanation above.

- Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category.

7. **COMPUTER SEARCH** - Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer / operator executing the search will be recorded as part of the computer search cost, and entered in the appropriate block.

- Multiply the total hours by the hourly rates and enter the cost figures. Computer search will be based on direct cost of the Central Processing Unit, input / output devices, and memory capacity of the actual computer configuration used.

8. **OFFICE COPY REPRODUCTION** - Enter the number of pages reproduced.

- Multiply by the rate per copy and enter cost figures.

9. **MICROFICHE REPRODUCTION** - Enter the number of microfiche copies reproduced.

- Multiply by the rate per copy and enter cost figures.

10. **PRINTED RECORDS** - Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms)*

Publications *(Include any type of bound document, such as directives, regulations, studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

- Multiply the total number of pages in each category by the rate per page and enter cost figures.

11. **COMPUTER COPY** - Enter the total number of tapes and/or printouts.

- Multiply by the actual cost per tape or printout and enter cost figures.

12. **AUDIOVISUAL MATERIALS** - Duplication cost is the actual cost of reproducing the material, including the wage of the person doing the work.

13. **FOR FOI OFFICE USE ONLY** -

Search Fees Paid - Enter total search fees paid by the requester.

Review Fees Paid - Enter total review fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month and day, i.e., 871024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Apply the appropriate waiver for the category of requester prior to inserting the final figure. Further discussion of chargeable fees is contained in Chapter VI of DoD Regulation 5400.7-R.

Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived / Reduced - Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or an "X" in the "No" block.

DD Form 2086 Reverse, JUN 89

APPENDIX F TO PART 286

RECORD OF FREEDOM OF INFORMATION *(FOI)* PROCESSING COST FOR TECHNICAL DATA

Please read instructions on reverse before completing form.

1. REQUEST NUMBER	2. TYPE OF REQUEST (X one)				3. DATE COMPLETED (YYMMDD)
		a. INITIAL		b. APPEAL	

4. CLERICAL HOURS *(E-9/GS-8 and below)*	TOTAL HOURS (1)		HOURLY RATE (2)			COST (3)
a. SEARCH						*
b. REVIEW / EXCISING						*
c. CORRESPONDENCE AND FORMS PREPARATION		X	$ 13.25	=		
d. OTHER ACTIVITY						
e. MINIMUM CHARGE			$ 8.30			
5. PROFESSIONAL HOURS *(0-1 - 0-6/GS-9 - GS/GM-15)*	TOTAL HOURS (1)		HOURLY RATE (2)			COST (3)
a. SEARCH						*
b. REVIEW / EXCISING		X	ACTUAL HOURLY RATE	=		*
c. COORDINATION / APPROVAL / DENIAL						
d. OTHER ACTIVITY						
e. MINIMUM CHARGE			1/2 HOURLY RATE			
6. EXECUTIVE HOURS *(0-7/GS/GM-16/ES 1 and above)*	TOTAL HOURS (1)		HOURLY RATE (2)			COST (3)
a. SEARCH						*
b. REVIEW / EXCISING		X	ACTUAL HOURLY RATE	=		*
c. COORDINATION / APPROVAL / DENIAL						
d. MINIMUM CHARGE			1/2 HOURLY RATE			
7. COMPUTER SEARCH	TOTAL HOURS (1)		HOURLY RATE (2)			COST (3)
a. MACHINE HOURS		X		=		*
b. PROGRAMMER / OPERATOR TIME						
- Clerical			$13.25 OR MINIMUM			*
- Professional			ACTUAL OR MINIMUM			*
8. REPRODUCTION	NUMBER (1)		RATE (2)			COST (3)
a. AERIAL PHOTOGRAPHS, SPECIFICATIONS, PERMITS, CHARTS, BLUEPRINTS, AND OTHER TECHNICAL DOCUMENTS			$ 2.50			*
b. ENGINEERING DATA *(Microfilm)*						
- Aperture cards						
-- Silver duplicate negative, per card			.75			*
-- When keypunched and verified, per card		X	.85	=		*
-- Diazo duplicate negative, per card			.65			*
-- When keypunched and verified, per card			.75			*
- 35 mm roll film, per frame			.50			*
- 16 mm roll film, per frame			.45			*
- Paper prints *(engineering drawings)*, each			1.50			*
- Paper reprints of microfilm indices, each			.10			*
c. AUDIOVISUAL MATERIALS *(Insert actual cost in block (2))*						*
d. OTHER TECHNICAL DATA RECORDS						
Charges for any additional services not specifically provided above shall be made by components at the following rates:						
- Minimum charge for office copy *(up to six images)*			$ 3.50			*
- Each additional image			.10			*
- Each typewritten page		X	3.50	=		*
- Certification and validation with seal, each			5.20			*
- Hand-drawn plots and sketches, each hour or fraction thereof			12.00			*

** Chargeable to all requesters.*

9. *For FOI Office Use Only*

a. SEARCH FEES PAID		d. TOTAL PAID		g. TOTAL PROCESSING COSTS				
b. REVIEW FEES PAID		e. DATE PAID *(YYMMDD)*		h. TOTAL CHARGED				
c. COPY FEES PAID		f. TOTAL COLLECTABLE COSTS		i. FEES WAIVED / REDUCED *(X one)*		YES		NO

DD Form 2086-1, JUN 89

1044/158

APPENDIX F - continued

INSTRUCTIONS FOR COMPLETING DD FORM 2086-1

This form is used to record costs associated with the processing of a Freedom of Information request for technical data.

1. **REQUEST NUMBER** – First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. **TYPE OF REQUEST** – Mark the appropriate block to indicate initial request or appeal of a denial.

3. **DATE COMPLETED** – Enter year, month and day, i.e., 870621.

4. **CLERICAL HOURS** – For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search – Time spent in locating from the files the requested information.

Review / Excising – Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation – Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity – Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

– Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

5. **PROFESSIONAL HOURS** – For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search / Review / Excising, and Other Activity – See explanation above.

Coordination / Approval / Denial – Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

– Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

6. **EXECUTIVE HOURS** – For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search / Review / Excising – See explanation above.

Coordination / Approval / Denial – See explanation above.

– Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category. Review costs are chargeable to the requester.

7. **COMPUTER SEARCH** – Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer / operator executing the search will be recorded as part of the computer search cost, and entered in the appropriate block.

– Multiply the total hours by the computer hourly rates and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input / output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

8. **REPRODUCTION** – Enter the number of pages or items reproduced.

– Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester. Reproduction cost for audiovisual material is the actual cost of reproducing the material, including the wage of the person doing the work.

9. **FOR FOI OFFICE USE ONLY** –

Search Fees Paid – Enter total search fees paid by the requester.

Review Fees Paid – Enter total review fees paid by the requester.

Copy Fees Paid – Enter the total of copy fees paid by the requester.

Total Paid – Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid – Enter year, month and day, i.e., 871024, the fee payment was received.

Total Collectable Costs – Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester. Further discussion of collectable costs is contained in Chapter VI, Section 3, DoD Regulation 5400.7-R.

Total Processing Costs – Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged – Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived / Reduced – Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or an "X" in the "No" block.

DD Form 2086-1 Reverse, JUN 89

BILLING CODE 3810-01-C

Appendix G to Part 286—DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/Joint Staff/Unified Commands, Defense Agencies, and the DoD Field Activities
Department of the Army
Department of the Navy
Department of the Air Force
Defense Communications Agency
Defense Contract Audit Agency
Defense Intelligence Agency
Defense Investigative Service
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency
Office of the Inspector General, Department of Defense

Dated: August 7, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-18764 Filed 8-11-89; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-3627-3]

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1989 and Beyond

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: This notice promulgates a revision of the gasoline and alcohol blend volatility regulations promulgated on March 22, 1989. The Reid vapor pressure (RVP) standard for northern New Mexico during the month of August is changed from 9.0 pounds per square inch (psi) to 9.5 psi. This revision is being made based on a reanalysis performed in response to a petition for modification of the regulations filed by Giant Industries, Inc.

EFFECTIVE DATE: These revisions are effective on August 14, 1989.

ADDRESS: Materials relevant to this rulemaking have been placed in Docket No. A-85-21. This docket is located at the Air Docket, Room M-1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:30 a.m. and 12:00 noon and between 1:30 p.m. and 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying docket materials.

FOR FURTHER INFORMATION CONTACT: John Cabaniss, Office of Mobile Sources (ANR-455), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 382-7647.

SUPPLEMENTARY INFORMATION: On June 8, 1989, Giant Industries Inc. ("Giant") submitted a petition for modification of the gasoline volatility regulations promulgated by the Environmental Protection Agency ("EPA" or "the Agency") on March 22, 1989. 54 FR 11868. Specifically, Giant's petition asks the Agency to revise the RVP standard for northern New Mexico (i.e., the area north of 34° latitude) for the month of August from 9.0 psi to 9.5 psi. Giant argued that EPA's action in promulgating a 9.0 psi standard for this month was inconsistent with its treatment of other areas for which voluntary RVP standards established by the American Society for Testing and Materials (ASTM) allow the use of both Class A and Class B RVP fuels during a month. Giant's petition states that while EPA's proposed volatility regulations would have required all such "dual-classification" areas to meet the more stringent RVP standard, in the final rule EPA "fine-tuned" its classifications so that such areas without ozone nonattainment problems would generally be required to meet the less stringent standard while those with ozone problems would be subject to the more stringent standard. Northern New Mexico, Giant claims, is the sole exception to this classification scheme, in that although ASTM allows both Class A and Class B fuel to be sold there in August and the area does not contain any ozone nonattainment areas, EPA's regulations impose the Class A RVP standard (9.0 psi) rather than the Class B standard (9.5 psi). Giant specifically notes that adjacent topographically and geographically comparable areas (Colorado, Utah and southern Nevada) that share northern New Mexico's fuel distribution area have been treated differently in this respect. Giant asserts that this inconsistency places it in a competitive disadvantage relative to others in the refining industry in terms of compliance with EPA's gasoline RVP specifications. The company also asserts that the costs of compliance are large for a small refiner such as Giant.

EPA has reviewed Giant's petition and has found that revision of the August standard is appropriate. Under the Agency's most recent analysis of ambient air quality data, no area in northern New Mexico is classified as a nonattainment area for ozone. Furthermore, a review of RVP standards adopted in the final rule for months in which the ASTM standards allow use of both Class A and Class B gasoline indicates that the Agency promulgated its Class B standard (9.5 psi) for all such months except for August in northern New Mexico. Therefore, the Agency has determined that it is appropriate to grant Giant's petition and to revise the August standard for northern New Mexico from 9.0 psi to 9.5 psi.

The Agency has determined that this action is not a "major" rule as defined in Executive Order (E.O.) 12291. Therefore, a regulatory impact analysis has not been prepared. This regulation was submitted to the Office of Management and Budget (OMB) for review under E.O. 12291. Any written comments from OMB any EPA responses to such comments have been placed in the rulemaking docket.

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, I certify that the regulatory revision promulgated in this notice will not have a significant adverse impact on a substantial number of small entities. The regulatory revision is, in fact, being made in response to the request of a small-sized regional refiner, and it is expected to result in monetary savings and other benefits to the requestor and similarly situated small entities. Therefore, a regulatory flexibility analysis has not been prepared.

This rulemaking does not include any new information collection requirements. Information collection requirements in the regulations promulgated on March 22, 1989, were approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2060-0178.

The Agency finds that there is "good cause" under the Administrative Procedure Act, 5 U.S.C. 553 (b) and (d), to promulgate this rule without prior notice and public comment and to make this rule effective immediately. "Good cause" exists because it is impracticable to provide for notice and comment, and to establish an effective date at least 30 days after publication, prior to the August 1989 period for which the regulatory revision has been requested. Furthermore, because this action establishes a less stringent RVP standard for northern New Mexico in August than the current regulatory standard and therefore "relieves a restriction," "good cause" exists within the meaning of 5 U.S.C. 553(d).

Authority for the action promulgated in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of an action of the Administrator

promulgating a control or prohibition under section 211 of the Act may be filed only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for judicial review of this action must be filed in that court on or before October 13, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: August 3, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for Part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. The table in § 80.27 is amended by revising the entry for "New Mexico North of 34° Latitude" to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

APPLICABLE STANDARDS [1]

State	May	June	July	Aug.	Sept.
*	*	*	*	*	
New Mexico north of 34° latitude.....	9.5	9.0	9.0	9.5	9.5
*	*	*	*	*	

[1] Standards are expressed in pounds per square inch (psi).

* * * * *

[FR Doc. 89-18834 Filed 8-11-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[FRL-3628-2]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: In a June 29, 1988 (53 FR 24454), notice, USEPA proposed to disapprove a request from the State of Wisconsin to revise the attainment status designation, at 40 *Code of Federal Regulations* (CFR) 81.350, for a sub-city area in the City of Green Bay, Brown County, Wisconsin, from secondary nonattainment to attainment relative to the former total suspended particulates (TSP) National Ambient Air Quality Standards (NAAQS). Under the Clean Air Act (CAA) and USEPA's transitional particulate matter policy (July 1, 1987, 52 FR 24682), TSP designations can continue to be changed if sufficient data are available to warrant such a change. USEPA will continue to process TSP redesignation requests because various regulatory provisions remain tied to the TSP attainment status.

USEPA is a disapproving Wisconsin's redesignation request because the Wisconsin Department of Natural Resources (WDNR) failed to provide sufficient evidence that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, permanent, and must have resulted in the decrease in ambient concentrations, (3) dispersion techniques were not responsible for the improvement in air quality. These redesignation criteria are contained in an April 21, 1983, memorandum entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, then Director, Office of Air Quality Planning and Standards (OAQPS), and a September 30, 1985, memorandum entitled "Total Suspended Particulate (TSP) Redesignations" from Gerald A. Emison, Director, OAQPS.

DATE: This final rulemaking becomes effective September 13, 1989.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (313) 886-6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. A sub-city area of Green Bay, Wisconsin, was designated as not attaining the secondary TSP standard. On July 23, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that the sub-city nonattainment area of Green Bay [1] be redesignated to attainment of the TSP NAAQS.

For areas designated nonattainment for TSP, a TSP State Implementation Plan (SIP) was required which satisfied the requirements of section 110(a) and Part D of the CAA, including assuring the attainment and maintenance of the TSP NAAQS. USEPA revised the particulate matter standard on July 1, 1987, (52 FR 24634) and eliminated the TSP ambient air quality standard. The revised standard is expressed in terms of particulate matter with nominal diameter of 10 micrometers or less (PM_{10}). USEPA will continue to process redesignations of areas from nonattainment to attainment for TSP in keeping with past policy, because various regulatory provisions such as new source review and prevention of significant deterioration are keyed to the attainment status of areas. The July 1, 1987, notice (page 24682, column 1) described USEPA's transition policy regarding TSP redesignations. According to USEPA's tarnsition policy, TSP redesignation requests are to be reviewed for compliance with USEPA's redesignation policies issued in memoranda on April 21, 1983, and September 30, 1985. These are: (1) The monitoring data must be representative of worst-case ambient concentrations, (2) emission reductions must be federally approved, must be permanent, and must have resulted in the decrease in ambient concentrations, (3) dispersion techniques must not be responsible for the improvement in air quality.

Based on these criteria USEPA proposed to disapprove Wisconsin's redesignation request on June 29, 1988, (53 FR 24454). Comments on this notice of proposed rulemaking were received from WDNR. Comments and USEPA's responses are provided below:

The WDNR comments addressed three basic points: (1) Misunderstanding

[1] The Green Bay sub-city secondary TSP nonattainment area is defined as follows:

North: Green Bay

West: Corner west Mason St. Ashland Ave., north to Mather St. West to Crocker Street, north on Crocker St. to Bylsby St., then to Green Bay.

South: Corner west Mason St., and Ashland Ave., east along west Mason St., and Irvin Ave.

East: Corner west Mason St., and Irvin Ave. north along Irvin Ave. to Green Bay.

of the requirements for approvable TSP redesignations, (2) the implementation of Reasonably Available Control Technology (RACT) for TSP in 1983, and (3) a request to act promptly on the Wisconsin PM_{10} SIP. A discussion of each item follows:

Misunderstanding of Requirements—As technical support for Wisconsin's redesignation requests, WDNR only submitted the Brown County monitoring data. WDNR received the impression that the monitoring data were all that was necessary from a July 1987 conference call between USEPA Region V and the Region V States.

WDNR misunderstood the requirements. The PM_{10} regulations published on July 1, 1987 (52 FR 24682), clearly state that "[redesignation] requests will continue to be reviewed during the transition period for compliance with USEPA's redesignation policies as issued in memoranda from the Director of the Office of Air Quality Planning and Standards, April 21, 1983, and September 30, 1985."

Implementation of RACT—According to WDNR, the requirement for a USEPA control strategy which has been fully implemented is fulfilled by the Wisconsin TSP RACT rules as approved by USEPA in 1983. USEPA disagrees because the RACT rules apply only in primary nonattainment areas. In the March 9, 1983, **Federal Register** notice (48 FR 9860), USEPA took no action on the RACT rules for secondary nonattainment areas in Brown (Green Day), Dane (Madison), Douglas, Kenosha (Kenosha), Manitowoc (Manitowoc), Marathon, Racine, Winnebago, and Wood Counties, because WDNR did not submit a plan for attainment and maintenance of the TSP NAAQS in these areas. The WDNR would have had to state specifically that all sources are in compliance with the 1972 SIP and note those specific federally enforceable emission decreases from mid-1970 emission levels which resulted in the change to attainment.

Wisconsin PM_{10} Committal SIP—WDNR urged prompt action on their PM_{10} committal SIP. An approved committal SIP would allow the redesignation of Green Bay without the information currently required under the transistion policy. This is because the transition policy applies to areas which are in transition from TSP to PM_{10} regulations. Once the committal SIP is approved, the PM_{10} Group Three Areas, of which Green Bay is a part, are no longer in transition. WDNR submitted their PM_{10} committal SIP on April 30, 1988. USEPA is proceeding with rulemaking. WDNR may formally request that USEPA redesignate Green Bay (and other Group Three Areas) concurrent with approval of the committal SIP.

Conclusion—USEPA is disapproving the redesignation request for a sub-city nonattainment area of Green Bay, Wisconsin, because the WDNR did not submit sufficient documentation to demonstrate that (1) the monitoring data were representative of worst-case ambient concentrations, (2) emission reductions were federally approved, permanent, and must have resulted in the decrease in ambient concentrations, (3) dispersion techniques were not responsible for the improvement in air quality.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1989. This action may not be challenged later in the proceedings to enforce its requirements. (See section 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: August 3, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89–18938 Filed 8–11–89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6844]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

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

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

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

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

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the

NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

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

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

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

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

§ 64.6 List of Eligible Communities.

State	Location	Community Number	Effective date authorization/cancellation of sale of Flood Insurance in community	Current Effective Map Date
Wyoming	Guernsey, Town of Platte County	560072	June 2, 1989, Emerg	Nov. 12, 1976.
South Dakota	McCook County, Unincorporated Areas	460280	do	—
Michigan	Au Gres, City of, Arenac County	260012	July 26, 1973, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.; June 1, 1989, Rein.	May 17, 1989.
Pennsylvania	York, Township of, York County	421032	August 1, 1973, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.; June 2, 1989, Rein.	May 17, 1989.
Utah	Carbon County, Unincorporated Areas	490032	November 27, 1974, Emerg.; November 15, 1979, Reg.; May 17, 1989, Susp.; June 7, 1989, Rein.	Nov. 15, 1979.
Pennsylvania	New Sewickley, Township of, Beaver County	422323	December 2, 1975, Emerg.; March 2, 1989, Reg.; March 2, 1989, Susp.; June 9, 1989, Rein.	Mar. 2, 1989.
Louisiana	Calvin, Village of, Winn Parish	220266	September 29, 1976, Emerg.; July 1, 1987, Reg.; July 1, 1987, Susp.; June 2, 1989, Rein.	July 1, 1987.
Tennessee	Winchester, City of, Franklin County	470056	May 9, 1975, Emerg.; July 2, 1980, Reg.; June 5, 1989, Withdrawn.	July 2, 1980.
Texas	Runge, City of, Karnes County	481120	June 12, 1989, Emerg	Apr. 25, 1975.
Kentucky	Brownsville, City of, Edmonson County	210236	June 13, 1989, Emerg	Oct. 8, 1976.
Oklahoma	Bethel Acres, Town of, Pottwatomie County	400346	June 16, 1989, Emerg	Dec. 21, 1976.
Texas	Cherokee County, Unincorporated Areas	480739	do	Dec. 27, 1989.
	Hood County, Unincorporated Areas	480356	May 11, 1979, Emerg.; October 18, 1988, Reg.; October 18, 1988, Susp.; June 16, 1989, Rein.	Oct. 18, 1988.
Maryland	Middletown, Town of, Frederick County	240162	December 21, 1978, Emerg.; October 23, 1981, Reg.; May 4, 1989, Susp.; June 27, 1989, Rein.	Oct. 23, 1981.
Kansas	Leona, City of, Doniphan County	200082	May 6, 1976, Emerg.; January 7, 1977, Reg.; June 5, 1989, Susp.; June 28, 1989, Rein.	Jan. 7, 1977.
Nebraska	Lodgepole, Village of, Cheyenne County	310038	July 1, 1975, Emerg.; September 27, 1985, Reg.; June 5, 1989, Susp.; June 28, 1989, Rein.	Sept. 27, 1985.
Texas	Seagraves, City of, Gaines County	480239	August 21, 1974, Emerg.; February 19, 1986, Reg.; September 2, 1988, Susp.; June 28, 1989, Rein.	Feb. 19, 1986.
Ohio	Fort Recovery, Village of, Mercer County	390395	June 30, 1976, Emerg.; May 1, 1987, Reg.; May 1, 1987, Susp.; June 21, 1989, Rein.	May 1, 1987.
	Florida, Village of, Henry County	390263	August 15, 1975, Emerg.; June 5, 1989, Reg.; June 5, 1989, Susp.; June 26, 1989, Rein.	Aug. 8, 1980.
	Gettysburg, Village of, Drake County	390686	March 18, 1976, Emerg.; January 4, 1985, Reg.; June 5, 1989, Susp.; June 26, 1989, Rein.	Jan. 4, 1985.
	Grand Rapids, Village of, Wood County	390585	February 19, 1975, Emerg.; May 2, 1983, Reg.; June 5, 1989, Susp.; June 26, 1989, Rein.	May 2, 1983.
	Hartford, Village of, Licking County	390331	December 29, 1976, Emerg.; August 10, 1979, Reg.; June 5, 1989, Susp.; June 26, 1989, Rein.	Aug. 10, 1979.
Kentucky	Radcliff,[3] City of, Hardin County	210366	July 6, 1989, Emerg.; July 6, 1989, Reg	—
Kansas	Alexander, City of, Rush County	200307	March 17, 1976, Emerg.; July 5, 1989, Withdrawn.	Feb. 14, 1975.
	Natoma, City of, Osborne County	200254	August 1, 1975, Emerg.; September 27, 1985, Reg.; June 5, 1989, Susp.; July 7, 1989, Rein.	Sept. 27, 1985.
South Dakota	Mission, City of, Todd County	460202	August 8, 1975, Emerg.; August 5, 1986, Reg.; June 19, 1989, Susp.; July 10, 1989, Rein.	Aug. 5, 1986.
Alabama	Greensboro, City of, Hale County	010336	March 19, 1975, Emerg.; August 19, 1985, Reg.; August 19, 1985, Susp.; July 10, 1989, Rein.	Aug. 19, 1985.
Nebraska	Platte Center, Village of, Platte County	310178	March 31, 1975, Emerg.; June 19, 1989, Susp.; July 10, 1989, Rein.	Dec. 20, 1974.
Pennsylvania	Liberty, Township of, Bedford County	421343	May 28, 1975, Emerg.; September 30, 1988, Reg.; September 30, 1988, Susp.; July 10, 1989, Rein.	Sept. 30, 1988.
Georgia	Eatonton, City of, Putnam County	130218	July 3, 1975, Emerg.; June 19, 1989, Reg.; June 19, 1989, Susp.; July 13, 1989, Rein.	June 19, 1989.
Kentucky	Knox County,[1] Unincorporated Areas	210131	July 29, 1975, Emerg.; May 17, 1989, Reg.; May 17, 1989, Susp.; July 5, 1989, Rein.	May 17, 1989.
Texas	White Oak,[1] City of, Gregg County	480841	July 7, 1989, Emerg	Aug. 22, 1975.
Michigan	Wise, Township of, Isabella County	260823	July 18, 1989, Emerg	—
Pennsylvania	Millville, Borough of, Columbia County	421545	September 6, 1974, Emerg.; June 19, 1989, Reg.; June 19, 1989, Susp.; July 14, 1989, Rein.	June 19, 1989.
Alabama	Dale County, Unincorporated Areas	010060	September 10, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.; July 18, 1989, Rein.	July 4, 1989.

State	Location	Community Number	Effective date authorization/cancellation of sale of Flood Insurance in community	Current Effective Map Date
	Moody, Town of, St. Clair County	010187	May 21, 1975, Emerg.; July 4, 1989, Reg.; July 4, 1989, Susp.; July 19, 1989, Rein.	July 4, 1989.
Pennsylvania	Evans City, Borough of, Butler County	420216	December 3, 1974, Emerg.; May 4, 1989 Reg.; May 4, 1989, Susp.; July 19, 1989, Rein.	May 4, 1989.
Texas	Olton, City of, Lamb County	480896	July 21, 1989, Emerg	Oct. 1, 1976.
Louisiana	Florien, Village of, Sabine Parish	220326	July 14, 1989, Emerg; July 14, 1989, Reg	Mar. 15, 1982.
Tennessee	Morgan County, Unincorporated Areas	470139	June 3, 1982, Emerg.; March 1, 1987, Reg.; March 4, 1988, Susp.; July 14, 1989, Rein.	Mar. 1, 1987.
Oklahoma	Okemah, City of, Okfuskee County	400429	August 1, 1977, Emerg.; August 1, 1987, Reg.; August 1, 1987, Susp.; July 24, 1989, Rein.	Aug. 1, 1987.
Ohio	Germantown,[1] Village of, Montgomery County	390411	January 16, 1975, Emerg.; July 2, 1981, Reg.; June 5, 1989, Susp.; July 17, 1989, Rein.	July 2, 1981.
Pennsylvania	Briar Creek, Township of, Columbia County	421548	August 8, 1975, Emerg.; June 19, 1989, Reg.; June 19, 1989, Susp.; July 25, 1989, Rein.	June 19, 1989.
Arkansas	Melbourne, City of, Izard County	050348	July 28, 1989, Emerg	Apr. 11, 1975.
North Carolina	Cedar Point,[2] Town of, Carteret County	370465	July 26, 1989, Emerg.; July 26, 1989, Reg	—
Louisiana	Winn Parish,[1] Unincorporated Areas	220369	July 24, 1989, Emerg.; July 24, 1989, Reg	June 5, 1985.
Ohio	Fairview Park, City of, Cuyahoga County	390108	June 24, 1975, Emerg.; February 4, 1983, Reg.; June 5, 1989, Susp.; July 26, 1989, Rein.	Feb. 4, 1983.
North Dakota	Velva, City of, McHenry County	380051	March 28, 1975, Emerg.; August 15, 1977, Reg.; July 4, 1989, Susp.; July 28, 1989, Rein.	Aug. 15, 1977
Pennsylvania	Huston, Township of, Centre County	421195	September 15, 1975, Emerg.; June 5, 1989, Reg.; June 5, 1989, Susp.; July 28, 1989, Rein.	June 5, 1989.
North Dakota	Grand Forks County, Unincorporated Areas	380033	May 13, 1974, Emerg.; May 1, 1986, Reg.; July 4, 1989, Susp.; July 31, 1989, Rein.	May 1, 1986.
California	Twentynine Palms, City of, San Bernardino County.	060734	July 27, 1989, Emerg; July 27, 1989, Reg	—
Texas	Marshall, City of,[1] Harrison County	480319	July 17, 1974, Emerg.; September 16, 1981, Reg.; September 16, 1981, Susp.; July 28, 1989, Rein.	Sept. 16, 1981.

[1] Declared Disaster Area.
[2] Adopted Carteret County's FIRM dated August 19, 1985, for floodplain management and insurance purposes.
[3] Adopted Hardin County's FIRM dated November 4, 1988 for floodplain management and insurance purposes.
[4] Adopted San Bernardino County's FIRM dated June 23, 1981, for floodplain management and insurance purposes.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current efffective map date
Region III			
Pennsylvania:			
Burnside, Borough of, Clearfield County	420298	July 17, 1989, suspension withdrawn	July 17, 1989.
Ferguson, Township of, Centre County	420260	do	July 17, 1989.
Londonderry, Township of, Bedford County	421345	do	July 17, 1989.
Penn, Township of, Clearfield County	421530	do	July 17, 1989.
South Franklin, Township of, Washington County	422563	do	July 17, 1989.
Walker, Township of, Centre County	421471	do	July 17, 1989.
West St. Clair, Township of, Bedford County	421354	do	July 17, 1989.
Region IV			
Georgia: Oconee County, Unincorporated Areas	130453	do	July 17, 1989.
Mississippi: Bolivar County, Unincorporated Areas	280011	do	July 17, 1989.
Region VI			
Texas: Denver City, City of, Yoakum County	480682	do	July 17, 1989.
Region VIII			
Colorado: Oak Creek, Town of, Routt County	080158	do	July 17, 1989.
Region X			
Idaho: Glenns Ferry, City of, Elmore County	160057	do	July 17, 1989.
Oregon:			
Crook County, Unincorporated Areas	410050	do	July 17, 1989.
Jefferson County, Unincorporated Areas	410101	do	July 17, 1989.
Madras, City of, Jefferson County	410103	do	July 17, 1989.
Prineville, City of, Crook County	410051	do	July 17, 1989.

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

Harold T. Duryee,
Administrator, Federal Insurance Administration.

Issued: August 9, 1989.

[FR Doc. 89-18943 Filed 8-11-89; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6845]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of

noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717. Federal Center Plaza, 500 C Street, Southwest, Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.** In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

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

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

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

§ 64.6 List of eligible communities.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II					
New York	Athens, Village of Greene County.	360285	April 24, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Cairo, Town of Greene County.	360286	October 3, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Catskill, Village of Greene County.	360287	May 13, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Claverack, Town of Columbia County.	360173	April 9, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Coxsackie, Town Greene County.	361115	December 12, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Coxsackie, Village of Greene County.	360288	November 15, 1974 Emerg.; December 2, 1983 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Athens, Town of Greene County.	361117	September 25, 1979 Emerg.; September 3, 1982 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Region III					
Pennsylvania	Manns Choice, Borough of Bedford County.	421325	March 2, 1977 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.

State	Location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Do	Napier, Township of Bedford County.	421348	January 20, 1978 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Sandy, Township of Clearfield County.	421191	July 9, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Snyder, Township of Jefferson County.	421735	September 15, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Washington, Township of Jefferson County.	422451	September 30, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Confluence, Borough of Somerset County.	422043	March 11, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Hopewell, Township of Bedford County.	421339	July 28, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Region IV					
Kentucky	Clay City, City of Powell County.	210195	March 22, 1976 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
North Carolina	Lee County Unincorporated Areas.	370331	October 4, 1978 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Richmond County Unincorporated Areas.	370348	September 6, 1985 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Sanford, City of Lee County	370143	June 26, 1978 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Region V					
Ohio	Auglaize County Unincorporated Areas.	390761	August 29, 1985 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Lynchburg, Village of Highland County.	390271	April 9, 1976 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Mercer County Unincorporated Areas.	390392	November 15, 1977 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Versailles, Village of Darke County.	390142	September 16, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Wapakoneta, City of Auglaize County.	390023	June 17, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Wisconsin	Boaz, Village of Richland County.	550357	November 28, 1975 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Region VI					
Arkansas	Stone County Unincorporated Areas.	050465	January 28, 1983 Emerg.; July 16, 1987 Reg.; September 6, 1989 Susp.	July 16, 1987	July 16, 1987.
Do	Cotter, City of Baxter County.	050011	July 2, 1975 Emerg.; June 30, 1976 Reg.; September 6, 1989 Susp.	June 30, 1976	June 30, 1976.
Iowa	Williamsburg, City of Iowa County.	190427	November 15, 1976 Emerg.; September 6, 1989 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Region IX					
Arizona	Pima County Unincorporated Areas.	040073	October 2, 1974 Emerg.; February 15, 1983 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989.
Do	Maui County Unincorporated Areas.	150003	September 18, 1971 Emerg.; July 1, 1981 Reg.; September 6, 1989 Susp.	September 6, 1989	September 6, 1989

Legend: For fourth column: Emerg.–Emergency; Reg.–Regular; Susp.–Suspension.

Harold T. Duryee, Administrator
Federal Insurance Administration.
Issued August 9, 1989.
[FR Doc. 89–18944 Filed 8–11–89; 8:45 am]
BILLING CODE 6718–21–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[Common Carrier Docket No. 87–75, FCC 89–185]

Provision of Aeronautical Services via the Inmarsat System

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this rulemaking proceeding, the Commission determined how international aeronautical mobile satellite services via the International Maritime Satellite Organization (Inmarsat) will be provided in the United States. The Commission concluded that the public interest requires that Inmarsat international aeronautical mobile satellite services be made available to users in the United States, and that such services are best suited for aircraft that are in international flight. The Commission further found that the form of U.S. participation in Inmarsat aeronautical services should not be through the competitive access/consortium mechanism that was originally proposed in the NPRM in this proceeding. The Commission concluded instead that the best means of both promoting competition in the provision of Inmarsat aeronautical services and achieving timely and effective U.S. entry into the world market would be to permit Comsat to be the U.S. provider of Inmarsat space segment capacity as ancillary to its role as U.S. Signatory and operating entity for Inmarsat maritime services.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joel Pearlman, International Policy Division, Common Carrier Bureau, (202) 632–3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in Common Carrier Docket No. 87–75, FCC 89–185, adopted May 31, 1989, and released August 4, 1989.

The full text of this Commission decision is available for inspection and

copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

The Commission initiated this proceeding on March 30, 1987, with the release of a Notice of Proposed Rulemaking, CC Docket No. 87-75 (52 FR 13481, 4/23/87). That NPRM requested comment on policy alternatives and related issues looking toward the establishment of a domestic structure by which U.S. entities may access Inmarsat space segment to provide aeronautical services.

The proceeding was initiated after the Commission denied applications of Comsat to provide Inmarsat aeronautical services as unlawful under the International Maritime Satellite Telecommunications Act (Maritime Satellite Act). The Maritime Satellite Act designates Comsat as the U.S. Signatory and operating entity within Inmarsat. However, based on the record then before it, the Commission concluded that Comsat's scope of authority under the Maritime Satellite Act is limited to the provision of maritime satellite services and that Comsat's role in Inmarsat could not be expanded to include exclusive provision of Inmarsat aeronautical services absent Congressional action.

In its NPRM, the Commission tentatively proposed a "competitive access" policy under which authorized U.S. entities would make their own arrangements with Inmarsat to obtain space segment capacity for the provision of aeronautical services. The Commission proposed to implement competitive access through a consortium which all U.S. service providers would be required to join. The consortium itself would not own or operate facilities or provide services to customers. These functions would be undertaken by consortium members. The consortium would serve as a second U.S. Signatory to Inmarsat in connection with aeronautical services and be responsible for fulfillment of each consortium member's obligations under the Inmarsat Convention and Operating Agreement. Comsat would continue to be the U.S. Signatory for maritime services. The Commission recognized that dual signatories would require amendments to the Inmarsat Convention and Operating Agreement, which require that each administration have only one signatory in the organization. Since this amendment process would take considerable time to implement, if achievable at all, the Commission proposed an interim arrangement in which Comsat, in its current capacity as the sole U.S. Signatory, would act as agent for the consortium to Inmarsat.

The comments that we received by the Commission in response to the consortium/competitive access proposal were mixed. Some parties believed that instituting the competitive access aspect of the proposal would weaken the U.S. vis-a-vis foreign competition; others believed that it is necessary to achieve competition among U.S. service providers. Comsat offered an alternative proposal under which it would provide customers access to Inmarsat space segment capacity for aeronautical services pursuant to flexible access and pricing arrangements, including options of on-demand service, monthly leased service, and capitalized leases. The consortium that was proposed to implement competitive access received both opposition and support from various parties. In addition, the NPRM generated several alternative proposals. There was virtually no support for the dual signatory aspect of the NPRM proposal.

Upon review of the record in the proceeding, the Commission concluded that the public interest requires that Inmarsat international aeronautical mobile satellite services be made available to users in the United States. It found that Inmarsat aeronautical services are best suited for aircraft that are in international flight as discussed above. It further found that the form of U.S. participation in Inmarsat aeronautical services should not be through the competitive access/consortium mechanism that it had proposed in the NPRM in this proceeding. The Commission concluded that it would not be in the public interest to adopt at this time a policy which provides direct investment in Inmarsat space segment capacity through a consortium of U.S. authorized aeronautical service providers. It reached this conclusion for several reasons. First, public interest benefits of the NPRM competitive access/consortium proposal were not clearly demonstrated by the record in this proceeding. Whatever theoretical benefits that may result from this approach were outweighed by the problems associated with it. Second, the complexities associated with creation of a consortium to implement competitive access would require extensive U.S. government oversight to ensure fulfillment of U.S. obligations under the Inmarsat agreements. The lack of support for the dual signatory aspect of the NPRM proposal would further complicate implementation of competitive access in a manner consistent with U.S. obligations. Absent giving signatory status to the consortium, a convoluted mechanism would have to be established to indirectly pass through Comsat as the U.S. Signatory the aeronautical-related capital costs and expense incurred by consortium members. Third, while the comments reflect support by several parties for a competitive access policy, there was no clear private sector commitment to participate in an aeronautical consortium. Fourth, the Commission believed that U.S. policy should be designed to ensure timely and effective U.S. entry into the international aeronautical satellite communications market in response to foreign competitors both in service and equipment areas. It concluded that this goal may be impeded if the U.S. embarks on creation of a cumbersome competitive access/consortium arrangement that will take time to structure, delay U.S. entry into the world market, and unnecessarily inhibit U.S. competitive posture.

The Commission concluded that the record failed to demonstrate that a competitive access scheme is necessary to achieve meaningful competition in the provision of Inmarsat aeronautical services. It concluded instead that the best means of both promoting competition in the provision of Inmarsat aeronautical services and achieving timely and effective U.S. entry into the world market would be to permit Comsat to be the U.S. provider of Inmarsat aeronautical space segment capacity as ancillary to its role as U.S. Signatory and operating entity for Inmarsat maritime services. This approach is fully consistent with the established institutional and operational requirements of the Inmarsat Convention and Operating Agreement. The U.S. will not have to seek any amendments to those documents or the Maritime Satellite Act. Neither will the Commission have to fashion and monitor complex arrangements between the U.S. Signatory and other U.S. aeronautical service providers in order to ensure fulfillment of U.S. obligations under the Inmarsat agreements. Finally, the Commission concluded that the Maritime Satellite Act does not bar it from adopting such a policy and authorizing Comsat to provide ancillary aeronautical space segment services as the U.S. operating entity in Inmarsat. I found that Comsat's provision of

Inmarsat aeronautical services will be ancillary to and supportive of its provision of maritime services and therefore permissible under the Maritime Satellite Act.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18885 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 25

[General Docket No. 84-1234, FCC 89-182]

Allocation of Spectrum and Establishment of Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; Policies and procedures; petitions for reconsideration, applications for review.

SUMMARY: This action affirms Commission and Common Carrier Bureau decisions made in four separate orders regarding licensing policies for the Mobile Satellite Service (MSS): Second Report and Order in General Docket No. 84-1234, 2 FCC Rcd 485 (1987), 52 FR 4017 (February 9, 1987); Declaratory Order, 2 FCC Rcd 2417 (1987), 52 FR 12911 (April 20, 1987); Order, 2 FCC Rcd 5647 (1987) ("August 13th Order"); and Global Land Mobile Satellite, Inc., et al., 2 FCC Rcd 5552 (1987) ("Dismissal Order"). This action denies petitions for reconsideration and applications for review filed by Global Land Mobile Satellite, Inc. (Global); joint petition by Aeronautical Radio, Inc. (Arinc), Aircraft Owners and Pilots Association (AOPA), Air Line Pilots Association (ALPA), Air Transport Association of America (ATA), Experimental Aircraft Association (EAA), Helicopter Association International (HAI), National Air Transportation Association (NATA), and Regional Airline Association (RAA) ("Aviation Parties"); Globesat Express; and Mobile Satellite Services, Inc.

EFFECTIVE DATE: May 31, 1989.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Geraldine Matise, (202) 634-1841.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in General Docket 84-1234, FCC 89-182, Adopted May 31, 1989 and released August 4, 1989.

The full text of this Commission decision is available for inspection and copying during the normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order*, the Commission addresses petitions for reconsideration and applications for review of the *Second Report and Order* and three Bureau orders in General Docket No. 84-1234. These four orders concerned the establishment of rules and policies for the Mobile Satellite Service (MSS) and applications to implement an MSS system.

2. In the *Second Report and Order* the Commission reached the following conclusions. First, only one domestic MSS system will be licensed for the first generation to use the entire allocated spectrum at L-band, 1545-1558.5/1646.5-1660 MHz. Second, the MSS license will be granted to a consortium comprised of all qualified applicants. Third, each applicant will demonstrate its financial qualifications by making a $5 million cash contribution into the consortium. The Commission directed the twelve applicants who had filed applications for MSS systems to amend their applications to comply with the adopted policies. Specifically, the Commission ordered the applicants to place their initial $5 million cash contribution in an escrow account by April 13, 1987, and, as a group, to develop a joint ownership structure. The ownership agreement and system proposal were to be filed as a joint amendment to their applications by July 27, 1987. On reconsideration, the Commission affirmed the consortium and financial qualification requirements. The Commission found that sufficient notice of both requirements had been provided and that the financial standard adopted (*i.e.*, $5 million cash contribution) was reasonable.

3. In a *Declaratory Order*, the Common Carrier Bureau concluded that other types of financial instruments were acceptable to demonstrate compliance with the financial qualification requirement. In addition to a cash deposit in an escrow account, applicants could secure unconditional letters of credit or performance bonds and submit evidence of these by the April 13th deadline. The Commission affirmed the Bureau's determination.

4. The Common Carrier Bureau issued another order on August 13, 1987 when the MSS applicants did not fully settle their differences by the July 27th deadline. Two groups of applicants filed two different amendments, and some applicants filed pleadings that questioned other's financial qualifications. The Bureau dismissed the two proposals, directed the applicants to demonstrate strict compliance with the financial qualification requirement, and extended the deadline for filing a joint amendment. The applicants were ordered to put their $5 million cash contributions into a central escrow account. The Commission affirmed the Bureau's action in dismissing the joint amendments because the applicants had not conformed with the proscribed requirements. The Commission also found the Bureau's directive that the $5 million cash contributions be put in a central escrow account consistent with the processing scheme established by the *Second Report and Order*.

5. Finally, eight applicants deposited $5 million each into a central escrow account. Global Land Mobile Satellite, Inc., Globesat Express and Mobile Satellite Service, Inc. did not contribute to this account. The Bureau dismissed their applications for failure to comply with Commission and Bureau orders. The Commission affirmed the Bureau's dismissal of the applications on the same grounds.

Ordering Clauses

6. Accordingly, *it is ordered* That the petitions filed by Global and the Aviation Parties for reconsideration of the *Second Report and Order* in General Docket No. 84-1234 are denied.

7. *It is further ordered* That the petition for reconsideration filed by Globesat and the application for review filed by MSSI of the *Declaratory Order* in this proceeding are denied.

8. *It is further ordered* That the petition for reconsideration filed by MSSI and the application for review filed by Global and Globesat of the August 13th Order in this proceeding are denied.

9. *It is further ordered* That Global's application for review of the Common Carrier Bureau's letter response to Global's request for clarification of the August 13th Order is denied.

10. *It is further ordered* That the petition for reconsideration filed by MSSI and the applications for review filed by Global and Globesat of the *Dismissal Order* in this proceeding are denied.

11. These actions are taken pursuant to sections 4(i), 303, 308, 309, and 405 of the Communications Act, as amended, 47 U.S.C. 154(i), 303, 308, 309, and 405.

List of Subjects in 47 CFR Part 25

Satellite radio communication, Satellites.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18887 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-264; RM-6160]

Television Broadcasting Services; Gosnell, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 46 to Gosnell, Arkansas, as that community's first local television service, reserved for educational use, in response to a petition for rule making filed by the Gosnell School District #6. Reference coordinates for Channel 46 at Gosnell are 35-53-13 and 89-57-18.

Although the Commission has imposed a freeze on TV allotments or applications therefor in specified metropolitan areas, pending the outcome of an inquiry into the use of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-264, adopted July 19, 1989, and released August 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments, is amended under Arkansas, by adding Gosnell, Channel 46.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18981 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-619; RM-5907, 6132, 6322]

Radio Broadcasting Services; Gosnell and Osceola, AR; Germantown and Ripley, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 230A to Gosnell, Arkansas, as that community's first local FM service, in response to a petition filed by Earl M. Hodges, d/b/a/ Mid-South Frequency Monitoring Service. Coordinates used for Channel 230A at Gosnell are 35-58-12, 89-57-40. This document also substitutes Channel 231C2 for Channel 232A at Germantown, Tennessee, and modifies the license for Station WEZI(FM) accordingly, and Channel 235A for Channel 231A at Ripley, Tennessee, at the request of Ardman Broadcasting Corporation of Tennessee, licensee of Station WEZI(FM). See 53 Fed. Reg. 3762, February 9, 1989. Coordinates used for Channel 231C2 at Germantown are 35-02-12, 89-47-10. Coordinates used for Channel 235A at Ripley are 35-47-58, 89-29-28. With this action, the proceeding is terminated.

DATES: Effective September 22, 1989; the window period for filing applications on Channel 230A at Gosnell, Arkansas, will open on September 25, 1989, and close on October 25, 1989.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 632-6302. Questions related to the window application filing process at Gosnell, Arkansas, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-619, adopted July 19, 1989, and released August 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended as follows: for Arkansas, add Gosnell, Channel 230A; for Tennessee, under Germantown, remove Channel 232A and add Channel 231C2, and under Ripley, remove Channel 231A and add Channel 235A.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-18888 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 210, 215, 216, 217, 225, 228, 229, 231 and 232

[FRA Docket No. RSEP-4, Notice No. 1]

[RIN 2130-AA50]

Amendments to Railroad Safety Regulations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing this final rule to conform its railroad safety regulations to the provisions of the Rail Safety Improvement Act of 1988, which extends FRA's jurisdiction under certain railroad safety statutes to include all "railroads," not just "common carriers engaged in interstate or foreign commerce by rail."

DATE: This rule is effective August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Mark H. Tessler, Office of Chief Counsel, FRA, Washington, DC 20590 (telephone: 202–366–0628).

SUPPLEMENTARY INFORMATION: FRA draws its railroad safety jurisdiction from two Federal statutory sources, the older safety statutes (Hours of Service Act, 45 U.S.C. 61–64b; Locomotive Inspection Act, 45 U.S.C. 22–34; Safety Appliance Acts, 45 U.S.C. 1 *et seq.;* the Accident Reports Act, 45 U.S.C. 38–43; and the Signal Inspection Act, 49 App. U.S.C. 26) and the Federal Railroad Safety Act of 1970, 45 U.S.C. 421 *et seq.* The Rail Safety Improvement Act of 1988 (RSIA) (Pub. L. 100–342, 102 Stat. 624), enacted on June 22, 1988, made certain basic changes to these statutes. Sections 13 through 17 of the RSIA amended the Safety Appliance Acts, Locomotive Inspection Act, Accident Reports Act, Hours of Service Act, and Signal Inspection Act to eliminate what had been bifurcated federal safety jurisdiction. The older safety laws generally applied to "common carriers engaged in interstate commerce by rail," while the newer Federal Railroad Safety Act of 1970 (Safety Act) applies to all "railroads." RSIA has made FRA's jurisdiction under the older safety laws coextensive with that under the Safety Act by deleting references to "common carrier engaged in interstate or foreign commerce," "carrier," and "common carrier" in the older safety statutes and substituting in their place "railroad" as defined by section 202(e) of the Safety Act. Section 7 of the RSIA amended the Safety Act to define railroad as "all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation." Rather than deleting the numerous references to "common carriers" in the regulations issued under the older safety statutes, these amendments provide a definition of "common carrier" that equates that term with "railroad" under the revised section 202(e) of the Safety Act.

Because these amendments do no more than mirror statutory changes, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553 (b)(3)(B). Public comment is unnecessary because, in making these technical amendments to give effect to the new statute, FRA is not exercising discretion in a way that could be informed by public comment. As a consequence, FRA is proceeding directly to a final rule. For similar reasons, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the relevant provisions of the RSIA since its enactment on June 22, 1988, more than 30 days prior to the effective date of this rule.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-major under Executive Order 12291 and non-significant under DOT policies and procedures. This rule will not have any direct or indirect economic impact because it will not alter the manner in which any existing substantive or procedural regulation is enforced. The cost of complying with existing substantive regulations is not being increased. The rule merely contains a regulatory formulation of FRA's amended statutory authority and, therefore, preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts on small units of government, business, or other organizations.

Paperwork Reduction Act

There are no information collection requirements contained in this final rule.

Environmental Impact

FRA has concluded that this final rule will have no significant impact on the environment.

Federalism Implications

This final rule will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

List of Subjects in 49 CFR Parts 210, 215, 216, 217, 225, 228, 229, 231, and 232

Railroad safety.

Therefore, in consideration of the foregoing, Parts 210, 215, 216, 217, 225, 228, 229, 231, and 232, Title 49, Code of Federal Regulations are amended as follows:

PART 210—[AMENDED]

1. Part 210 is amended as follows:

A. The authority citation for Part 210 continues to read as follows:

Authority: Sec. 17, Pub. L. 92–574, 86 Stat 1234 (42 U.S.C. 4916); sec. 1.49(o) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(o).

B. Section 210.3(a) is revised to read as follows:

§ 210.3 Applicability.

(a) Except as provided in paragraph (b) of this section, the provisions of this part apply to the total sound emitted by moving rail cars and locomotives (including the sound produced by refrigeration and air conditioning units that are an integral element of such equipment), active retarders, switcher locomotives, car coupling operations, and load cell test stands, operated by a railroad as defined in 45 U.S.C. 22, under the conditions described in this part and in 40 CFR Part 201.

* * * * *

PART 215—[AMENDED]

2. Part 215 is amended as follows:

A. The authority citation for Part 215 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 215.5(f) is revised to read as follows:

§ 215.5 Definitions.

* * * * *

(f) "Railroad" means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not

connected to the general railroad system of transportation.

* * * * *

PART 216—[AMENDED]

3. Part 216 is amended as follows:

A. The authority citation for Part 216 continues to read as follows:

Authority: 45 U.S.C. 431, 432, and 438, as amended; 45 U.S.C. 22–34, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

B. Section 216.1(a)(2) is revised to read as follows:

§ 216.1 Application.

(a) * * *

(2) Locomotive subject to the Locomotive Inspection Act, as amended (45 U.S.C. 22–34).

PART 217—[AMENDED]

4. Part 217 is amended as follows:

A. The authority citation for Part 217 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49(m).

B. Section 217.3(b)(2) is revised to read as follows:

§ 217.3 Application.

* * * * *

(b) * * *

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

PART 225—[AMENDED]

5. Part 225 is amended as follows:

A. The authority citation for Part 225 continues to read as follows:

Authority: 45 U.S.C. 38, 42 and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (m).

B. Section 225.1 is amended by removing the third sentence which reads "Although this part is issued under the authority of both Acts, reliance is primarily based upon the authority of the Federal Railroad Safety Act because of its broader scope."

PART 228—[AMENDED]

6. Part 228 is amended as follows:

A. The authority citation for Part 228 continues to read as follows:

Authority: 45 U.S.C. 61–64b, as amended; 45 U.S.C. 437 and 438, as amended; Pub. L. 100–342; 49 App. U.S.C. 1655(e), as amended; and 49 CFR 1.49 (d) and (m).

B. Section 228.3 is revised to read as follows:

§ 228.3 Application.

(a) Except as provided in paragraph (b), this part applies to all railroads.

(b) This part does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

C. Section 228.5 is revised to read as follows:

§ 228.5 Definitions.

As used in this part:

(a) "Administrator" means the Administrator of the Federal Railroad Administrator or any person to whom he delegated authority in the matter concerned.

(b) "Carrier," "common carrier," and "common carrier engaged in interstate or foreign commerce by railroad" mean "railroad" as that term is defined below.

(c) "Employee" means an individual employed by the common carrier who (1) is actually engaged in or connected with the movement of any train, including a person who performs the duties of a hostler, (2) dispatches, reports, transmits, receives, or delivers orders pertaining to train movements by the use of telegraph, telephone, radio, or any other electrical or mechanical device, or (3) is engaged in installing, repairing or maintaining signal systems.

(d) "Railroad" means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

PART 229—[AMENDED]

7. Part 229 is amended as follows:

A. The authority citation for Part 229 continues to read as follows:

Authority: 45 U.S.C. 22–34, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. Section 229.3 is revised to read as follows:

§ 229.3 Applicability.

(a) Except as provided in paragraph (b), this part applies to all standard gage railroads.

(b) This part does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

C. Section 229.5 is amended by revising paragraph (c), redesignating paragraph (1) as paragraph (m) and adding a new paragraph (1) as follows:

§ 229.5 Definitions.

* * * * *

(c) "Carrier" means "railroad," as that term is defined below.

* * * * *

(1) "Railroad" means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

* * * * *

PART 231—[AMENDED]

8. Part 231 is amended as follows:

A. The authority citation for part 231 continues to read as follows:

Authority: 45 U.S.C. 2, 4, 6, 8, 10, and 11–16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. Section 231.0 is revised to read as follows:

§ 231.0 Applicability and penalties.

(a) Except as provided in paragraph (b), this part applies to all standard gage railroads.

(b) This part does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

(c) As used in this part, "carrier" means "railroad," as that term is defined below.

(d) "Railroad" means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-

haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

(e) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

PART 232—[AMENDED]

9. Part 232 is amended as follows:

A. The authority citation for part 232 continues to read as follows:

Authority: 45 U.S.C. 1, 3, 5, 6, 8–12, and 16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c) and (g).

B. Section 232.0 is revised to read as follows:

§ 232.0 Applicability and penalties.

(a) Except as provided in paragraph (b), this part applies to all standard gage railroads.

(b) This part does not apply to:

(1) A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

(c) As used in this part, "carrier" means "railroad," as that term is defined below.

(d) "Railroad" means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

(e) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $250 and not more than $10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense.

Issued in Washington, DC, on August 7, 1989.

Susan M. Coughlin,

Acting Administrator.

[FR Doc. 89–18906 Filed 8–11–89; 8:45 am]

BILLING CODE 4910-06-M

Federal Highway Administration

49 CFR Part 383

[FHWA Docket No. MC–89–13]

RIN 2125–AB68

Commercial Driver's License Program; Limited Waiver For State of Alaska

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The State of Alaska has sought, and the FHWA hereby grants, a waiver from compliance with certain provisions of 49 CFR part 383 for drivers in isolated sections of Alaska. The limited waiver granted by the FHWA extends to those commercial motor vehicle (CMV) operators in the State of Alaska who operate exclusively over roads that meet *both* of the following criteria.

(1) Such roads are not connected by land highway or vehicular way to the land-connected State highway system; and

(2) Such roads are not connected to land highway or vehicular way with an average daily traffic volume greater than 499.

With respect to drivers satisfying the above criteria, the FHWA grants Alaska a waiver from the following specific portions of 49 CFR part 383:

(1) The specifications in subpart H for knowledge test procedures and methods;

(2) All requirements for driving skills tests; and

(3) The requirement for a photograph on the commercial driver's license (CDL) in § 383.153(a)(4).

CDLs issued pursuant to this waiver must restrict the driver from operating a CMV over roads other than those specified above, and must also carry a restriction so that the license is not valid for use in CMVs outside the State of Alaska.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Office of Motor Carrier Standards, (202) 366–4009, or Mr. Paul L. Brenan, Office of the Chief Counsel, (202) 366–1352, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: In the preamble to the final rule on commercial driver testing and licensing standards (53 FR 27632, July 21, 1988), the FHWA noted "the existence [in Alaska] of many localities that, although physically detached from the State highway network and from driver testing facilities, still have CMVs and operators subject to this final rule * * * The waiver process as prescribed in the Act and in 49 CFR 383.7 would be the most appropriate forum * * * for this specific local problem."

Accordingly, on January 10, 1989, the State of Alaska petitioned the FHWA for a waiver from selected provisions of 49 CFR part 383 for drivers operating exclusively in areas that are so remote as to be connected neither to the land-connected State highway system, nor to any highway or vehicular way with an average daily traffic volume greater than 499. The State's petition cited the practical obstacles that would prevent driver applicants from bringing representative vehicles from remote areas to test sites, given the vast distances, inhospitable terrain, and lack of highway connectivity so prevalent in the State. The petition contained further evidence supporting the waiver request.

In a notice of petition and request for comment published in the **Federal Register** on April 28, 1989 (at 54 FR 18311), the FHWA found that the Alaska petition had merit, and proposed to grant this waiver subject to limitations regarding the provisions to be waived, the class of drivers covered, and the restrictions to be placed upon the licenses affected.

Having received no comments on its proposal, the FHWA hereby determines that this waiver, exactly as proposed, is not contrary to the public interest and does not diminish the safe operation of CMVs.

The waiver pertains only to the following provisions of 49 CFR Part 383:

(1) *Knowledge Tests.* For the class of drivers covered, the State is waived from the requirement that the knowledge tests meet the standards for testing procedures and methods contained in subpart H of part 383. However, knowledge tests fulfilling the content requirements of subpart G continue to be required of *all* applicants.

(2) *Skills Tests.* For the class of drivers covered, the State is permitted to omit the driving skills test.

(3) *Photo License.* For the class of drivers covered, the State is waived from § 383.153(a)(4), and no photograph of the driver is required.

To be exempted from the above provisions of 49 CFR part 383, drivers must operate *exclusively* over roads that meet *both* of the following criteria:

(1) Such roads are not connected by land highway or vehicular way to the land-connected State highway system; and

(2) Such roads are not connected to any highway or vehicular way with an average daily traffic volume greater than 499.

In addition, any commercial license issued under the terms of this proposed waiver must carry two restrictions:

(1) Holders may not operate CMVs over roads other than those specified above; and

(2) The license is not valid for CMV operation outside the State of Alaska.

The April 28, 1989 notice of petition contained the rationale for specific provisions of this waiver and included as an appendix the test of the petition filed by the State of Alaska on January 10, 1989.

When the promulgation of all requirements of the Act is completed, FHWA intends to amend the regulation to reflect this waiver.

Authority: Title XII of Pub. L. 99-570, 100 Stat. 3207-170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

Issued on August 7, 1989.

R.D. Morgan,

Executive Director.

[FR Doc. 89-18989 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018-AB30

Export of American Alligators Harvested in 1989 Through 1991 Harvest Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animal and plant species. As a general rule, exports of animals and plants listed on Appendix II of the Convention may occur only if a Scientific Authority has advised a permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws enacted for their protection. Based on documentation presented for consideration by the Convention Parties in 1983, the United States Fish and Wildlife Service (Service) has determined that the American alligator is listed on Appendix II for reasons of similarity in appearance under Article II.2(b) of the Convention as well as the potential threat to the species survival under Convention Article II.2(a).

On February 28, 1989, the Service published a notice (54 FR 8365) proposing to grant export approval for legally taken American alligators, alligator meat, parts, and products from previously approved States, plus the addition of Alabama and Mississippi, for the 1989–1991 harvest seasons.

This document announces the final findings and rule by the U. S. Scientific Authority and Management Authority that approves the export of alligators harvested during the 1989–1991 taking seasons from certain States previously approved for such export for the 1986–1988 harvest seasons plus the addition of Alabama and Mississippi. This rule also stipulates that management procedures previously established for this species be continued.

DATED: August 14, 1989.

ADDRESSES: Please send correspondence concerning this rule to the Office of Scientific Authority; U.S. Fish and Wildlife Service, Mailstop 725–Arlington Square, 18th and C Streets NW, Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, at the Office of Scientific Authority, Room 725, Arlington Square, 4401 North Fairfax Drive, Arlington, VA, or at the Office of Management Authority, Room 430, Arlington Square, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Scientific Authority Finding—Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Room 725, ARLSQ, 18th and C Streets NW., Washington, DC 20240, telephone (703) 358–1708.

Management Authority Findings—Mr. Ronald Singer, Office of Management Authority, U.S. Fish and Wildlife Service, Room 400, ARLSQ, 18th and C Streets NW., Washington, DC 20240, telephone (703) 358–2095.

SUPPLEMENTARY INFORMATION: Beginning in 1977, the Service has employed the rule making process to develop and issue decisions on the export of certain species under the Convention. The reason for this approach is that it is more effective to issue general decisions on the export of all specimens harvested in a given State and season than to issue such decisions separately for each permit application. This is true especially for Convention Appendix II species that are frequently exported, such as the American alligator. On September 2, 1986, (51 FR 31130) and August 15, 1988, (53 FR 30682) the Service published rules granting export approval for American alligators (*Alligator mississippiensis*) from specified States for the 1986–1988 harvest seasons.

On February 28, 1989, the Service published a notice (54 FR 8365) proposing to continue such export approval for the 1989–1991 harvest seasons from these same States plus the addition of Alabama and Mississippi. The purpose of this announcement and rule is to allow the export of legally taken American alligators (hides, meat, parts, and products) for the 1989–1991 harvest years from previously approved States plus the addition of Alabama and Mississippi.

Scientific Authority Findings

Article IV of CITES requires that an export permit for any specimen of a species included in Appendix II shall only be granted when certain findings have been made by the Scientific Authority and Management Authority of the exporting country. The Scientific Authority must advise "that such export will not be detrimental to the survival of that species" before an export permit

can be granted by the Management Authority.

The American alligator is listed in Appendix II to respond both to problems of potential threat to the survival of American alligators (Convention Article II.2(a)) and its similarity in appearance to other crocodilians that are threatened with possible extinction (Convention Article II.2(b)).

The marking of all hides harvested with specified tags and the marking and documentation of shipments of meat and parts, required prior to the issuance of export permits by the Service, is considered sufficient to address the issue of identification due to the similarity in appearance between American alligators and other listed species (see Management Authority findings for export program and tag specifications).

Inasmuch as the alligator is also listed because of a potential threat to its survival, the Service must determine if exports will not be detrimental to the survival of the American alligator itself.

Guidelines developed for Scientific Authority advice on exports of American alligators under the provisions of Convention Article II.2(a), are summarized as follows:

A. Minimum requirements for biological information:

(1) Information on the condition of the population, including trends (the method of determination to be a matter of State choice), and population estimates where such information is available;

(2) Information on total harvest of the species;

(3) Information on distribution of harvest; and

(4) Habitat evaluation.

B. Minimum requirements for a management program:

(1) There should be a controlled harvest, methods and seasons to be a matter of choice by the State of origin;

(2) All hides, meat, and parts should be registered and marked; and,

(3) Harvest level objectives should be determined annually by the State of origin.

The Service's Office of Scientific Authority finds that current information on population status, management, and harvest reviewed concerning all the States in question, fully support a finding that the export of alligators taken in accordance with Service-approved State regulations during the 1989–1991 harvest seasons will not be detrimental to the survival of the species in the States receiving export approval. Tagging of hides and the sealing and marking of meat and parts by Service-approved States of origin, and documentation of shipments by the U.S. Management Authority provide assurance that export will not reduce the effectiveness of the Convention in controlling trade in other species of crocodilians. Documents containing information that provided the basis for the Service's findings are available for public inspection at the Office of Scientific Authority (address given above).

Management Authority Findings

Exports of Appendix II species are to be allowed under the Convention only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws enacted for the protection of the involved species. The Service, therefore, must be satisfied that alligator hides, meat, parts, or products were not obtained in violation of State or Federal law in order to allow export. Evidence of legal taking for American alligator is provided by Service-approved State hide tagging and container sealing and marking programs. The Service annually contracts for the manufacture and delivery of special Convention animal hide tags for export-approved States to apply to legally taken animal skins.

In a **Federal Register** notice, published on April 24, 1986 (51 FR 15548), the Service announced the introduction, use, and protection of a US–CITES tag symbol. This symbol appears on every Service-supplied export tag to provide further evidence of legal export for certain Convention Appendix II listed species.

Guidelines developed for Management Authority findings on State American alligator export programs, slightly modified from the 1986–1988 rule, under provisions of Convention Article IV.2 (b), are summarized as follows:

(1) Current State alligator trapping and tagging, meat and parts processing, and shipping regulations must be on file with the Office of Management Authority (OMA);

(2) Sample reporting forms, export tag, meat and parts packing seal, parts tag, and description of standard meat/parts container must be on file with OMA;

(3) The export tag must be durable, permanently locking, and must show U.S.-CITES logo, State of origin, season of take, species, and be serially unique;

(4) The export tag, meat seal, and parts tag must be applied by the State to all hides, meat, or parts, within a minimum time after take or processing, as specified by State law, and such time should be as short as possible to minimize movement of untagged hides, meat, or parts;

(5) The tags or seals must be permanently attached to the hide or container, as mandated by Service-approved State programs;

(6) All alligator harvesters and processors must be registered by the State of origin;

(7) All hide, meat, and parts dealers must be registered by the State of origin;

(8) All State-registered alligator harvesters, processors, and dealers must make available their alligator harvest and commerce data to the State on at least an annual basis, as specified by the State;

(9) State-registered alligator dealers and licensed harvesters authorized by the State to attach export tags to the hides, in a program approved by the Service, must account for all tags received and must return unused tags to the State within a specified time after the harvest period closes;

(10) Fully manufactured alligator hide products may be exported from the United States when the State-applied Convention export tags, removed from hides contained in the manufactured products, are surrendered to the Service prior to export; and

(11) Alligator meat and parts may be exported from the United States in State-standard containers that are sealed and marked in accordance with the State's export program, as approved by the Service.

The Service's Office of Management Authority has reviewed the alligator export tagging programs of certain previously approved States and the new States (Alabama and Mississippi), and has found that these programs fully meet the guidelines listed above. Documents containing information that provided the basis for the Service's findings are available for public inspection at the Office of Management Authority (address given above).

The Service hereby approves exports of 1989–1991 harvested alligators, hide, meat, and parts in the States receiving export approval on the grounds that both Scientific Authority and Management Authority export requirements are satisfied.

Multi-year Findings

The Service has monitored existing State programs for the American alligator in most of the previously approved States for many years and expects that these States will continue to satisfy Convention requirements. To ensure that Service-approved States maintain successful export programs and that export is not detrimental to the survival of the species, the Service plans to continue annual monitoring of State

management and export marking programs through evaluation of State program information and export reports from U.S. ports. Annual State program reports must be available to the Office of the Management Authority (address given above) no later than May 31 of each year.

States seeking for the first time to establish a regular harvest program for alligators should begin working with the Service early enough in order to develop their alligator programs and then apply for Convention export approval no later than January 2 of the year they plan to initiate such a program.

Public Comment

No comment was received from any source concerning this rule.

This rule is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 et seq.). The primary author is Mr. S. Ronald Singer, Office of Management of Authority, U.S. Fish and Wildlife Service.

Note: The Department had previously determined that the export of alligators of various States taken in the 1986–1988 harvest seasons was not a major Federal action that would significantly affect the quality of expects that these States will continue to satisfy Convention requirements. To ensure that Service-approved States maintain successful export programs and that export is not detrimental to the survival of the species, the Service plans to continue annual monitoring of State management and export marking programs through evaluation of State program information and export reports from U.S. ports. Annual State program reports must be available the Office of the Management Authority (address given above) no later than May 31 of each year.

States seeking for the first time to establish a regular harvest program for alligators should begin working with the Service early enough in order to develop their alligator programs and then apply for Convention export approval no later than January 2 of the year they plan to initiate such a program.

This rule extends export approval for the same States that were approved for export in previous years and extends this approval for the 1989–1991 harvest seasons.

The findings announced in this notice are effective immediately. It is the Service's opinion that a delay in the effective date of the regulations after this final rulemaking is published could adversely impact the species by preventing the international marketing of the hides and meat (where commercial harvest is an important part of the State conservation programs) thereby reducing the incentive for takers or dealers to comply with State requirements in the approved States. The Service, therefore, finds that "good cause" exists, within the terms of U.S.C.(d)(3) of the Administrative Procedure Act, for these regulations to take effect immediately under 5 U.S.C.(d)(1).

Public Comment

No comment was received from any source concerning this rule.

This rule is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 et seq.). The primary author is Mr. S. Ronald Singer, Office of Management of Authority, U.S. Fish and Wildlife Service.

Note: The Department had previously determined that the export of alligators of various States taken in the 1986–1988 harvest seasons was not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act, therefore, the preparation of an Environmental Impact Statement was not required (49 FR 1058). Because these proposed findings do not significantly differ from the prior export findings, the previous determination not to prepare an Environmental Impact Statement on export of alligators taken during the 1986–1988 harvest seasons in certain States (51 FR 31130) remains appropriate. The Department had also previously determined that such harvest was not a major rule under Executive Order 12291 and did not have a significant economic affect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Because the existing rule treats exports on a State-by-State basis and proposes to approve export in accordance with a State management/export program, the rule will have little effect on small entities in and of itself. This rule does not contain any information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 50 CFR Part 23

Wildlife, Imports, Exports, Plants (agriculture), Endangered and threatened wildlife, Endangered and threatened plants, Animals, Fish, Transportation, Marine mammals, Forests and forest products, Foreign officials, Treaties, and Foreign trade.

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, the Service proposes to amend part 23 of title 50, Code of Federal Regulations, as set forth below:

PART 50—[AMENDED]

1. The authority citation for 50 CFR part 23 is revised to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna an Flora, TIAS 8249; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531).

Subpart F—Export of Certain Species

2. In § 23.57 revise paragraph (a) and (b) as follows:

§ 23.57 American alligator (Alligator mississippiensis).

* * * * *

(a) 1979–1991 harvest (wild and capitive bred for each year unless noted).

	AL	FL	GA	LA	MS	SC	TX
1979	–	+	–	+	–	–	–
1980	–	+	–	+	–	–	–
1981	–	+	–	+	–	–	–
1982	–	+	–	+	–	–	–
1983	–	+	–	+	–	–	–
1984	–	+	–	+	–	–	+
1985	–	+	–	+	–	–	+
1986	–	+	–	+	–	–	+
1987	–	+	–	+	–	–	+
1988	–	+	+	+	–	+	+
1989	+	+	+	+	+	+	+
1990	+	+	+	+	+	+	+
1991	+	+	+	+	+	+	+

Legend: + export approved; – export not approved.

(b) Condition on export:

(1) Each hide must be clearly identified by a durable, permanently locking Convention export tag bearing a legend showing the U.S. CITES logo, State of origin, species, season of take, a unique serial number, and be attached by the State under conditions approved by the Service.

(2) Fully manufactured hide products may be exported from the United States when State-applied export tags, removed from hides contained in the products, are surrendered to the Service prior to export.

(3) Meat from legally harvested and tagged alligators shall be packed in State-uniform containers, permanently sealed and labeled as required by State law. Bulk meat containers shall be marked with a State "parts tag" or "bulk meat tag" permanently attached indicating, at a minimum, State of origin, year of take, species, original hide export tag number, weight of meat in the container, and identification of State licensed processor or packer.

(4) Large individual parts shall have a "parts tag" permanently attached, while smaller parts may be packed with a "parts tag" permanently attached to the sealed package. "Parts tags" shall supply the same information as described for such tags used to mark alligator meat.

(5) Alligator skulls shall carry a "parts tag" and also by physically marked with the number of the original U.S.-CITES export tag used for the hide of that individual, and other markings, as required by State law.

Dated: July 10, 1989.

Susan Recce Lamson,

Acting Assistant Secretary for Fish and Wildlife.

[FR Doc.89-18909 Filed 8-13-89; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 54, No. 155
Monday, August 14, 1989

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

Federal Home Loan Bank Board

12 CFR Part 584

[89-2179]

Transactions With Affiliates; Extension of Time Period for Board Action on Outstanding Proposal

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; extension of time period for Board action.

SUMMARY: Pursuant to its regulatory review procedures, *see* Board Res. No. 88-269, 53 FR 13156 (April 21, 1988), the Federal Home Loan Bank Board ("Board") hereby gives notice that it is extending the time period for possible action by the Board or any successor agency on the following outstanding proposed regulation as outlined in **SUPPLEMENTARY INFORMATION**. The Board is taking this action in order to allow adequate time for consideration of a number of complex issues raised by this proposal. It is not soliciting additional comments on this proposal.

DATE: October 10, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Hoyle, Paralegal, Specialist, (202) 906-7135, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552 or the appropriate contact persons listed in the referenced **Federal Register** document.

SUPPLEMENTARY INFORMATION: Although the comment period on the proposal on Transactions with Affiliates, adopted by the Board on June 2, 1988; 53 FR 21838 (June 10, 1988), has been closed for more than six months, the Board still has the proposal under active consideration for possible further action. The Board is hereby extending the time for possible final action by the Board or any successor agency on this proposal until sixty days after the enactment of the legislation currently pending regarding the regulation of the thrift industry.

The Board notes that this action does not constitute a representation that the Board or any successor agency will take final action with respect to this proposal, only that it may do so within this extension of time. Moreover, this action carries no implication whatsoever with respect to the Board's view of the merits of the proposal.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-18785 Filed 8-11-89; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-108-AD]

Airworthiness Directives; McDonnell Douglas Model DC 10-30, -30F, -40, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC 10-30, -30F, -40, and KC-10A (Military) series airplanes, which currently requires that all landing gear brakes be inspected for wear, replaced if the wear limit prescribed in the existing AD are not met, and modification of short piston sleeve brakes to long piston sleeves brakes. This action would require that all long piston sleeve brakes be modified, and that all landing gear brakes be inspected for wear and replaced if the new wear limits prescribed in this amendment are not met. This proposal is prompted by further testing and analysis of the brakes, which revealed that the wear limits specified in the existing AD and the long piston sleeve brakes are inadequate to provide enough brake mass to accomplish a maximum energy rejected takeoff (RTO) stop. This condition, if not corrected, could result in the loss of the landing gear brake effectiveness.

DATE: Comments must be received no later than October 2, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-108-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Manager, Service Changes, Mail Code 73-30. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Edward S. Chalpin, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-131L, FAA, Northwest Mountain Region, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5335.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to

Docket Number 89–NM–103–AD." The post card will be date/time stamped and returned to the commenter.

Discussion: On September 16, 1988, the FAA issued AD 88–16–02R1, Amendment 39–6034 (53 FR 37542; September 27, 1988), to repure that all landing gear brakes be inspected for wear and replaced if the wear limit prescribed in that AD were not met, and that all short piston sleeve brakes be modified. That action was prompted by testing and analysis of the brakes, which revealed that existing brake wear limits and short piston sleeve brakes are inadequate to provide enough brake mass to accomplish a maximum energy rejected takeoff (RTO) stop. This condition, if not corrected, could result in the loss of the landing gear brake effectiveness.

Since issuance of that AD, additional dynamometer testing showed that piston unporting can occur at speeds higher than previously estimated. These tests provided information that had been previously extrapolated and estimated in determining brake wear limits, design lives, and characteristics. Unporting of the pistons would render the brake unusable. Consequently, the FAA has determined that a revision of the brake wear limits to a more stringent dimension is needed, and, as final action, installation of extra-long piston sleeves in the brakes with an adjusted wear limit is warranted.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 32–218, dated March 17, 1989, which describes procedures for inspection of all landing gear brakes for a prescribed wear limit and modification of landing gear brakes by replacing existing long piston sleeves with extra-long sleeves.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of all landing gear brakes for wear and replacement if the new wear limits are not met, and modification of main landing gear brakes to replace long piston sleeves with extra-long piston sleeves, in accordance with the service bulletin previously described.

There are approximately 160 Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes of the affected design in the worldwide fleet. It is estimated that 128 airplanes of U.S. registry would be affected by this AD, that it would take approximately 19 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. There is no cost for the modification parts. Based on this figures, the total cost impact of the AD on U.S operators is estimated to be $97,280.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 88–16–02R1, Amendment 39–6034 (53 FR 37542; September 27, 1988), with the following new airworthiness directive.

McDonnell Douglas: Applies to Model DC–10–30, –30F, –40, and KC–10A (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the loss of main landing gear brake effectiveness, accomplish the following:

A. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), replace all Goodyear/Loral Systems brakes, part number 5000758–2, –3, and –5 with Goodyear/Loral Systems brakes, part number 5000758–4, –6, or –10. The maximum brake wear limit is 0.75 inch.

B. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), inspect the brakes for wear. Any brake that is worn more than 0.75 inch must be replaced, prior to further flight, with one within this limit. These limits must be maintained until the requirements of paragraphs D. and E., or F. and G., below, are accomplished.

C. Within 90 days after October 14, 1988 (effective date of Amendment 39–6034), incorporate the 0.75 inch brake wear limit into the FAA-approved maintenance inspection program.

D. Within 30 days after the effective date of this amendment, inspect the brakes for wear. Any brake worn more than 0.50 inch must be replaced, prior to further flight, with one within this limit.

E. Within 30 days after the effective date of this amendment, incorporate the 0.50 inch brake wear limit into the FAA-approved maintenance inspection program.

F. Within 180 days after the effective date of this amendment, modify and replace all Goodyear/Loral Systems brakes, part numbers 5000758–4, –6, or –10, or any brake modified in accordance with AD 88–16–02R1, Amendment 39–6034, paragraphs C.2. or D.2., with new extra-long piston sleeves and dust seal boots, and reidentify them as –4R, –6R, and –10R assemblies, respectively, in accordance with Douglas Aircraft Company DC–10 Service Bulletin Number 32–218, dated March 17, 1989. For Goodyear/Loral Systems part numbers 5000758–4R, –6R, and –10R, the maximum brake wear limit is 0.90 inch.

G. When the modifications required by paragraph F., above, are accomplished, incorporate the 0.90 inch brake wear limit in the FAA-approved maintenance inspection program.

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

Note—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Douglas Aircraft Company, P.O. Box 1771, Long Beach, California 90801, ATTN: Manager, Service Changes, Mail Code 73–30. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on August 3, 1989.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 39-18911 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ASW-29]

Airworthiness Directives; Sikorsky Model S-61 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthness directive (AD) that would require a one-time inspection and measurement of each bifilar attachment bolt installation for clearance and a one-time inspection for cracks around each bifilar attachment hole in the main rotor upper hub plate on Sikorsky Model S-61 series helicopters. The proposed AD is needed to detect a cracked main rotor upper hub plate, which could result in the loss of the helicopter.

DATE: Comments must be received on or before September 28, 1989.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Rules Docket, Office of the Assistant Chief Counsel, FAA, Fort Worth, Texas 76193-0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Room 158, Building 3B, Forth Worth, Texas. Comments must be marked: Docket No. 89-ASW-29.

Comments may be inspected at the above location between the hours of 8:00 a.m. and 4:30 p.m. weekdays, except federal holidays.

The AD-related material may be obtained from Sikorsky Aircraft Division of United Technologies Corporation, Commercial Customer Service Department, 6800 Main Street, Stratford, CT 06601-1381.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7113.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket No. 89-ASW-29. The postcard will be date/time stamped and returned to the commenter.

The FAA has received reports of cracks occurring in Sikorsky S-61 main rotor upper hub plates starting from the bifilar attachment bolt hole. The cause of the cracking is attributed to improper clearance between the bifilar lug and main rotor hub. The excessive clearance which is beyond the recommended drawing clearance allows the bifilar attachment bolt to preload the upper hub plate walls, thereby causing premature cracking in the hub attachment hole. Since this condition is likely to exist or develop on other helicopters of the same type design. The proposed AD would require a one-time inspection for clearance of the bifilar to upper plate attachment and a one-time inspection of the main rotor upper hub plate for cracks which start from any of the five bifilar attachment bolt holes on Sikorsky Model S-61 series helicopters.

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

The FAA has determined that this proposed regulation would only involve 32 aircraft at an approximate cost of $240 per aircraft for the initial bifilar lug clearance check and $60 per aircraft for the inspection for cracking around the five bifilar attachment holes. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Adminsitration proposes to amend § 39.13 of the Federal Aviation Regulations as follows:

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. Section 39.13 is amended by adding the following AD:

Sikorsky Aircraft: Applies to Sikorsky Model S-61 series helicopters certificated in any category, equipped with Part Number (P/N) S6110-23300 main rotor head. (Docket No. 89-ASW-29.)

Compliance is required within the next 150 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent possible failure of the main rotor hub upper plate, which could result in the loss of the helicopter, accomplish the following:

(a) Conduct a one-time inspection of the main rotor head, P/N S6110-23300, installed with a bifilar assembly, P/N S6112-23039, as follows:

(1) Remove main rotor fairing to provide access to the upper hub arms.

(2) Loosen the bifilar attachment bolt (NAS630-84) and nut (EB108) a minimum of two turns, one bolt at a time.

(3) Using a 0.010-inch feeler gage or equivalent, insert tip of feeler gage between washer stackup and bifilar lug. Accomplish this check on both sides of lug.

(i) If tip of feeler gage does not contact shank of attachment bolt, washer stackup and lug clearance are acceptable. Torque attachment nut to 1,690 inch-pounds.

(ii) If tip of feeler gage contacts shank of attachment bolt, reshim bifilar support assembly to provide a 0.000 to 0.004 inch clearance. Torque attachment nut to 1,690 inch-pounds.

Note: The S-61 maintenance manual contains shimming instructions.

(4) Repeat the requirements of paragraphs (a)(2) and (3) individually on the four remaining hub arms for each bifilar support assembly attachment hardware.

(5) Reinstall main rotor fairing.

(b) Conduct a visual inspection for cracks in area of the five main rotor hub upper plate arm bifilar attachment bolt holes. Conduct a visual inspection for cracks on the outside surfaces of each of the five hub arms, adjacent to the bifilar attachment holes. The rotor head does not require disassembly for these inspections.

(1) If a crack indication is found by the visual inspection, clean immediate area and reinspect using a dye penetrant or equivalent inspection method.

(2) If a crack is verified, remove main rotor hub assembly prior to further flight and replace with an airworthy component.

(c) Upon request, an alternate means of compliance which provides an equivalent level of safety to the requirements of this AD may be used when approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7118.

(d) Upon submission of substantiating data by an owner or operator through an FAA Aviation Safety Inspector, the manager of the Boston Aircraft Certification Office may adjust the compliance time specified in this AD.

Note: Sikorsky Aircraft Co. Alert Service Bulletin No. 61810-46, dated February 7, 1989, pertains to this AD.

Issued in Fort Worth, Texas, on August 4, 1989.

James D. Erickson,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-18912 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

[Docket No. 90390-9090]

Countervailing Duties

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of proposed rulemaking and extension of time for public comments.

SUMMARY: The International Trade Administration is extending the time for the submission of comments on regulations codifying the methodology used to determine the existence and value of countervailable subsidies.

DATE: Written comments will be considered if received not later than September 5, 1989.

ADDRESS: Address written comments (10 copies) to Eric I. Garfinkel, Assistant Secretary for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Comments should be addressed: Attention: Notice of Proposed Rulemaking/Amendments to Countervailing Duty Regulations. Each person submitting a comment should include his or her name and address, and give reasons for any recommendation.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Deputy Chief Counsel for Import Administration, Office of the Chief Counsel for Import Administration, (202) 377-1411.

SUPPLEMENTARY INFORMATION: On May 31, 1989 (54 FR 23366), the International Trade Administration ("ITA") published a Notice of Proposed Rulemaking and Request for Public Comments concerning the promulgation of regulations codifying the methodology used to determine the existence and value of countervailable subsidies. The deadline for public comments, as clarified in a subsequent notice of June 16, 1989 (54 FR 25658), was July 31, 1989.

As the July 31 deadline drew near, the ITA received many oral, and some written, requests for an extension of time in which to submit comments. The amount of additional time sought varied from a few days to two months. Although our initial inclination was to deny such requests, because of the importance of these regulations, the broad interest in them which was shown, and the many useful comments we have received, we have concluded that it would be in the best interests of the ITA and the public to grant a limited extension of the public comment period. Accordingly, we are extending the public comment period until September 5, 1989.

We extend our appreciation to those persons who met the original July 31 deadline. So that they might not be disadvantaged, those persons who already submitted comments on the proposed rules may have until September 5, 1989, in which to submit additional comments. Any person submitting additional comments should indicate whether such comments are a supplement to, or a substitute for, that person's original submission. In this regard, comments submitted in connection with this rulemaking are available for public inspection in the ITA's Central Records Unit, Room B-099.

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18872 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

TRIN 0960-AB96

[Regulations No. 4 and 16]

Disability Insurance and Supplemental Security Income; Mental Disorders in Children

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed amendments revise the medical criteria for evaluating mental disorders of children under age 18 for the disability programs in title II and title XVI of the Social Security Act. The revisions reflect advances in medical knowledge, treatment and methods of evaluating mental disorders in children and will provide up-to-date medical criteria for use in the evaluation of disability claims based on childhood mental disorders.

DATE: To be sure that your comments are considered, we must receive them no later than October 13, 1989.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone 301-965-1759.

SUPPLEMENTARY INFORMATION: We are proposing a revision of the mental disorders listings for children. The medical criteria for evaluating mental disorders in children are found in 112.00 of Part B of the Listing of Impairments in

Appendix 1 of Subpart P of Part 404 of title 20 of the Code of Federal Regulations (CFR). Appendix 1 is divided into Part A and Part B. The criteria in Part A apply mainly to evaluating impairments of adults, but may be applied in evaluating impairments in children under age 18 if the disease process has a similar effect on adults and children. Part B of Appendix 1 contains medical criteria for the evaluation of impairments of children under age 18, where the criteria in Part A do not give appropriate consideration to the particular disease process in childhood. Part B was initially included only in Appendix 1 of Subpart I of Part 416 in 1977, subsequent to the enactment of the Supplemental Security Income Program. While Part B applies mainly to claims by children for Supplemental Security Income benefits based on disability under title XVI, it also applies to some claims for disability insurance benefits under title II. In recodifying the title II and title XVI disability regulations on August 20, 1980 (45 FR 55566), we took the medical criteria used in making disability determinations out of Part 416 and placed them only in Appendix 1 of Subpart P of Part 404. This was done to eliminate repetition in the regulations, since the medical criteria contained in Appendix 1 to apply to both the title II and title XVI disability programs. (See 20 CFR 404.1525 and 416.925.)

The proposed revisions serve several purposes. The medical terms used to describe the major mental disorders of childhood and their characteristics and symptoms have been updated to conform to the nomenclature currently used widely by psychiatrists, psychologists, and other mental health professionals. Terminology in the listings is based on that used in the third edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM III) published by the American Psychiatric Association (APA) in 1980. This edition gives a common basis for communication, which is particularly important in evaluating medical reports used in determining disability. The DSM III-Revised, which was published in May 1987 and after these evaluation criteria were developed, does not differ in its applicable terminology.

The proposed listings are also more specifically related to distinct types of mental disorders. Thus, fewer disorders are included under the same listing than are grouped together under the current listings. The result is an increase in the number of listings from four to nine. In the proposed listings, the organization of mental disorders is based on the DSM III which provides a realistic organization in terms of the common characteristics of the mental disorders that are evaluated under a particular listing. The more recently published DSM III-Revised does not differ in its organization.

Since the body of knowledge on the characteristics, treatment and management of mental disorders in children is constantly evolving, the Social Security Administration (SSA) will provide for the ongoing evaluation of the medical criteria for evaluating mental disorders in children to ensure that the criteria reflect the most up-to-date knowledge on those disorders.

The evaluation of mental disorders in children will not require the use of the Psychiatric Review Technique Form (PRTF), as is currently required for the evaluation of adult disorders. The PRTF was designed to assist adjudicators through the sequential evaluation process in adult claims involving mental disorders, which can include assessment of the residual functional capacity. Since evaluation of title XVI disabled child cases and some title II cases involves only a consideration as to whether the claimant is actually engaged in substantial gainful activity or has an impairment which meets or equals a listed impairment and does not consider whether the claimant has the ability to work, utilization of the PRTF in these cases would be unnecessary and inappropriate. Therefore, we are also proposing amendment to §§ 404.1520a and 416.920a to reflect that the PRTF will only be required in evaluating the severity of mental impairments in adults age 18 and over and in children under age 18 where the disease process has a similar effect on adults and younger persons.

The following is a summary of the proposed listings.

112.00 Preface

We are proposing several significant additions to the preface to the mental disorders listings for children under age 18. Proposed Introduction, 112.00A of the preface explains the basic approach used in the listings that follow. It explains that most the listings use a new dual approach which divides each listing into two paragraphs: the first paragraph (the A paragraph) describes the characteristics necessary to substantiate the existence of the mental disorder, while the second paragraph (the B paragraph) describes the applicable restrictions and functional limitations which result from the disorder in children.

In 112.00B of the preface, Need for Medical Evidence, we describe the need for medical evidence to substantial the existence of a medically determinable impairment.

In 112.00C of the preface, Assessment of Severity, we describe in detail the multiple factors in the paragraph B criteria of most listings which pertain to functional limitations and restrictions in various age groups in children. This significant revision in the mental disorders listings has been introduced because mental health professionals consider such factors particularly important in evaluating mental disorders of children. It should be noted that although the items in paragraph B are identical for most listings, the number of items required varies for particular listings.

In 112.00D of the preface, Documentation, we discuss the evidence needed to document mental disorders in children.

In 112.00E, Effect of Hospitalization of Residential Placement, and 112.00F, Effects of Medication, we also include new information relating to mental disorders in children. This material explains that evaluation of mental disorders must include consideration of the fact that medications, hospitalizations, or other highly structured living arrangements may minimize the overt indications of severe chronic mental disorders without necessarily affecting the functional limitations imposed by the disorder. The proposed 112.00F also acknowledges that medications may sometimes produce side effects that add to the functional limitations resulting from mental disorders in children.

112.01 Category of Impairments—Mental

112.02 Organic Mental Disorders

Paragraph A of proposed listing 112.02 contains nine characteristics of these disorders. Proposed paragraph B contains the restrictions or functional limitations used to assess the severity to these disorders.

Mental disorders do not manifest themselves in the same way in children of different ages. Therefore, the proposed paragraph B criteria provide for the assessment of impairment severity for two age groups—age 1 to attainment of age 3 and age 3 to attainment of age 18.

The criteria used to assess impairment severity in the age group of 1 to attainment of age 3 are based upon functional deficits in the following areas: gross and fine motor development, cognitive-communicative function, and social functioning. The

criteria in the age group of 3 to attainment of age 18 use functional deficits in the following areas to assess impairment severity: Cognitive/communicative function; social functioning; personal/behavioral function; and concentration, persistence and pace. To fulfill the requirements of listing 112.02 for either age grouping, it must be demonstrated that the child has functional deficits or restrictions in one of the areas to the degree specified in the paragraph B criteria.

112.03 Psychotic Disorders

The proposed listing groups psychotic conditions that are more closely related than in the current listing. Affective disorders are to be evaluated under proposed listing 112.04. Paragraph A has been revised and the proposed paragraph B has been introduced as discussed in listing 112.02.

112.04 Affective Disorders

In the current organization of the mental disorders listings, affective disorders are evaluated under listing 112.03 (Psychoses of Infancy and Childhood) or listing 112.04 (Functional Nonpsychotic Disorders). The new listing which we are proposing now relates exclusively to affective disorders. In paragraph A of the proposed listing, we describe the characteristics of affective disorders in more detail than they are described in the current listings 112.03 and 112.04. We are introducing paragraph B in the manner previously described for proposed listing 112.02.

112.05 Mental Retardation

Listing 112.05 essentially remains the same with the addition of a fourth criterion. This new criterion, proposed paragraph D, provides for separate assessment of children with an IQ of 60–69 without any coexisting physical or mental impairment but who experience either marked impairment in social functioning or marked impairment in personal/behavioral function.

112.06 Anxiety-Related Disorders

In the organization of the current listings, anxiety-related disorders are grouped with similar mental disorders in a single listing (112.04). Proposed listing 112.06 exclusively covers disorders related to anxiety. Items 3, 4 and 6 in paragraph A of this proposed listing are similar to items covered in the current listing. Four additional items have been added to better identify various characteristics of these disorders. Proposed paragraph B has been introduced as discussed in proposed listing 112.02, but three of the requirements listed in paragraph B must be satisfied for the listing requirements to be fulfilled in listing 112.06.

112.07 Disorders with Physical Manifestations

These disorders are currently evaluated with other nonpsychotic disorders under listing 112.04. This proposed listing relates specifically to nonpsychotic disorders with physical manifestations. Proposed paragraph A adds more detailed characteristic patterns of these disorders to the two now in paragraphs A and E of the current listing 112.04. Proposed paragraph B has been added in the manner previously discussed for proposed 112.02, but three of the requirements listed in paragraph B must be satisfied for the listing requirements to be fulfilled in listing 112.07.

112.08 Personality Disorders

These disorders are currently evaluated under listing 112.04. The proposed listing is a reference listing which refers the evaluator to listing 12.08 of the adult mental disorders listings in part A of the Listing of Impairments. Since personality disorders do not usually manifest themselves until later childhood, the adult mental disorder listing is a more appropriate indicator of disability.

112.09 Autism and Other Pervasive Developmental Disorders

These disorders currently are evaluated under listings 112.02, 112.03, or 112.05 based on the individual case factors. In the proposed listing, paragraph A describes the characteristics of autism or other pervasive developmental disorders. Proposed paragraph B has been added in the manner previously discussed for proposed listing 112.02.

Autism in children is well recognized as a specific, discrete mental disorder and presents its manifestations differently from that which is found in adults. Therefore, a separate listing for children is being proposed.

112.10 Developmental and Emotional Disorders of Infancy (birth to attainment of age 1)

The developmental and emotional evaluation of infants requires special consideration; therefore, a new listing is proposed which more accurately evaluates functional loss in all infants of this age group. The proposed listing is divided into four paragraphs which describe specific criteria which are indicative of severe functional loss in infants.

Other Changes

We are also proposing a technical amendment to listing 12.05D, in Part A of Appendix 1 (adult listings), pertaining to the evaluation of mental retardation and autism in order to clarify that either disorder requires two of the functional limitations to satisfy the listing.

Executive Order 12291

The additional program costs for title XVI will be as follows:

	Fiscal years					Total
	1989	1990	1991	1992	1993	
Program cost ($ in millions)	$4	$10	$16	$22	$27	$79
Admin. Savings			Negligible			3
Additional recipients	2,000	3,000	4,000	6,000	7,000	

The title II program and administrative costs will be negligible. In addition, the Medicaid/Medicare program and administrative costs will be negligible until fiscal years 1992 and 1993 when Federal costs will increase to $3 million per year. Therefore, the Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations do not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because they affect only a small number of disability claimants under title II and title XVI of the Social Security Act.

Paperwork Reduction Act of 1980

These proposed regulations impose no additional reporting or recordkeeping

requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance; 13.807, Supplemental Security Income Program)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors and disability insurance

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income.

Dated: April 5, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: May 26, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, Part 404, Subpart P, and Part 416, Subpart I, of Chapter III of Title 20, Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950 ____)

1. The authority citation for Part 404, Subpart P continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302; sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2), 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1797 1801, and 1808.

2. Section 404.1520a is amended by revising the second sentence of paragraph (a) to read as follows:

§ 404.1520a Evaluation of mental impairments.

(a) * * * In addition, in evaluating the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 where the disease process has a similar effect on adults and younger persons, a special procedure must be followed by us at each level of administrative review. * * *

* * * * *

Appendix 1 to Part 404—[Amended]

3. Part A of Appendix 1 (Listing of Impairments) of Subpart P is amended by revising the introductory text of paragraph D of listing 12.05 to read as follows:

A valid verbal, performance, or full scale IQ of 60 to 69, inclusive, or in the case of autism, gross deficits of social and communicative skills, with either condition resulting in two of the following:

4. Part B of Appendix 1 (Listing of Impairments) of Subpart P is amended by revising 112.00, Mental and Emotional Disorders, to read as follows:

112.00 Mental Disorders

A. *Introduction:* The structure of the mental disorders listing for children under age 18 parallels the structure for the mental disorders listings for adults but is modified to reflect the presentation of mental disorders in children. The listings for mental disorders in children are arranged in 9 diagnostic categories: Organic mental disorders (112.02); psychotic disorders (112.03); affective disorders (112.04); mental retardation (112.05); anxiety-related disorders (112.06); disorders with physical manifestation (112.07); personality disorders (112.08); autism and other pervasive developmental disorders (112.09); and developmental and emotional disorders of infancy (112.10).

There are significant differences between the listings for adults and the listings for children. There are disorders found in children that have no real analogy in adults, hence the differences in the diagnostic categories for children. The presentation of mental disorders in children, particularly the very young child, may be subtle and of a character different from the signs and symptoms found in adults. For example, a finding such as an infant's failure to mold or bond with the parent(s) has grave prognostic implications and serves as a finding comparable in severity to the findings that mark mental disorders in adults.

The activities appropriate to children such as learning, growing, playing, maturing, and school adjustment are also different from the activities appropriate to the adult and vary widely in the different childhood stages.

Each listing begins with an introductory statement that describes the syndrome or syndromes addressed by the listing. This is followed (except in listings 112.05, 112.08 and 112.10) by clinical findings (paragraph A criteria), which, if satisfied, lead to an assessment of functional limitations (paragraph B criteria). An individual will be found to have a listed impairment when the criteria of both paragraphs A and B of the listed impairment are satisfied.

The purpose of the criteria in paragraph A is to substantiate medically the presence of a particular mental disorder. Specific signs and symptoms under any of the listings 112.02 through 112.10 cannot be considered in isolation from the description of the mental disorder contained at the beginning of each listing category. Impairments should be analyzed or reviewed under the mental category(ies) indicated by the clinical findings.

Paragraph A of the listings is a composite of clinical findings which are used to substantiate the existence of a disorder and may or may not be appropriate for children at specific developmental stages. However, a range of clinical findings is included in the listings so that no age group is excluded. For example, in listing 112.02A7, emotional lability and crying would be inappropriate criteria to apply to infants and young children; whereas in 112.02A1, developmental arrest, delay or regression, are appropriate criteria for infants and young children. Whenever the adjudicator decides that the requirements of paragraph A of a particular mental listing are satisfied, then that listing should be applied regardless of the age of the child to be evaluated.

The purpose of the paragraph B criteria is to describe functional limitations which are applicable to children. Standardized tests of social or cognitive function and adaptive behavior are frequently available and appropriate for the evaluation of children and, thus, such tests are included in the paragraph B functional parameters. The functional restrictions in paragraph B must be the result of the mental disorder which is manifested by the clinical findings in paragraph A.

We have not included separate C criteria for listings 112.03 and 112.06 as are found in the adult listings because, for the most part, we do not believe that categories like residual schizophrenia or agoraphobia are commonly found in children. However, in individual cases where these disorders are found in children and are comparable to the severity and duration found in adults, the adult 12.03C and 12.06C critiera may be used for evaluation of the cases.

The structure of the listings for Mental Retardation (112.05), Personality Disorders (112.08) and Developmental and Emotional Disorders of Infancy (112.10) is different from that of the other mental disorders. Listing 112.05 (Mental Retardation) contains four criteria, any one of which, if satisfied, will result in a finding that the child's impairment meets the listing. Listing 112.08 (Personality Disorders) is a reference listing referring the evaluator to listing 12.08 of the adult listings. Listing 112.10 (Developmental and Emotional Disorders of Infancy) contains four criteria, any one of which, if satisfied, will result in a finding that the infant's impairment meets the listing.

B. *Need for Medical Evidence:* The existence of a medically determinable impairment of the required duration must be established by medical evidence consisting of signs, symptoms and/or laboratory, psychological or developmental test findings. Psychiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation, development and contact with reality as described by an appropriate medical source. Symptoms are complaints presented by the child. Signs and symptoms generally cluster together to constitute recognizable clinical syndromes (mental disorders) described in paragraph A of the listings. These findings may be intermittent or continuous depending on the nature of the disorder.

C. *Assessment of Severity:* In childhood cases, as with adults, severity is measured according to the functional limitations imposed by the medically determinable mental impairment. However, the range of functions used to assess impairment severity for children varies at different stages of

maturation. The criteria address age-appropriate functional limitations for each age group in some or all of the following areas: motor function, cognitive/communicative function, social function and personal/behavioral function. In most functional areas two separate methods of documenting the required level of severity are: use of standardized tests (where appropriate test instruments are available) and use of clinical findings. The use of standardized tests is the preferred method of documentation if such tests are available.

Newborn and young infants (birth to attainment of age 1) have not developed sufficient personality differentiation to permit formulation of appropriate diagnoses. We have, therefore, assigned listing 112.10 for Developmental and Emotional Disorders of Infancy for the evaulation of mental disorders of such children. Severity of these disorders is based on measures of development in motor, cognitive/communicative and social functions.

In defining the severity of functional limitations, two different sets of paragraph B criteria corresponding to two separate age groupings have been established, in addition to the individual infant listing 112.10. These age groupings are: infants and toddlers (age 1 to attainment of age 3) and children (age 3 to attainment of age 18). However, the following discussion on the age-appropriate areas of function is broken down into four age groupings, i.e., infants and toddlers (age 1 to attainment of age 3), preschool children (age 3 to attainment of age 6), primary school children (age 6 to attainment of age 12) and adolescents (age 12 to attainment of age 18). This was done to better explain the age group variances in disease manifestations and methods of evaluation.

1. *Infants and toddlers (age 1 to attainment of age 3).* In this age group, impairment severity is assessed in three areas: motor development, cognitive/communicative function, and social function. In infancy, much of what we can discern about mental function comes from observation of the degree of fine and gross motor function. Developmental delay as measured by a good developmental milestone history confirmed by medical examination is critical. If the delay is such that the infant or toddler has not achieved motor development generally acquired by children no more than one-half the child's chronological age, the criteria are satisfied.

Cognitive/communicative function is measured using one of several standardized infant scales. Appropriate tests for the measure of such function are discussed in 112.00D; care should be taken to avoid reliance on screening devices, which are not considered to be sufficiently reliable instruments, although such devices may provide some relevant data.

For infants and toddlers, alternative criteria covering disruption in communication as measured by their capacity to use simple verbal and nonverbal structures to communicate basic needs is provided.

Social function in infants and toddlers is measured in terms of the development of relatedness (i.e., bonding, stranger anxiety, etc.) and attachment to animate or inanimate objects. Criteria are provided that use standard social maturity scales or alternative criteria that describe marked impairment in socialization in terms of separation anxiety, withdrawal and failure to develop appropriate response to external stimuli.

2. *Prescrhool children (age 3 to attainment of age 6).* For the age groups including preschool children through adolescents, the functional areas used to measure severity are: cognitive/communicative function, social function, and personal/behavioral function. After 36 months, motor function is no longer felt to be a primary determinant of mental function, although, of course, any motor abnormalities should be documented and evaluated. In the preschool years and beyond, cognitive function can be measured by standardized tests of intelligence although the appropriate instrument may vary with age. A primary criterion for limited cognitive function is a valid verbal, performance, or full scale I.Q. of 69 or less. The listings also provide alternative criteria consisting of tests of language development of bizarre speech patterns.

Social function is measured by relationships with parents, other adults, and peers.

Personal/behavioral function may be measured by a standardized test of adaptive behavior or by careful description of serious maladaptive or avoidant behaviors.

3. *Primary school children (age 6 to attainment of age 12).* The measures of function here are similar to those for preschool-age children except that the test instruments may change and the capacity to function in the school setting supplements information in the cognitive and social parameters. Scores which are at least two standard deviations below the age-appropriate norm on standardized measures of academic achievement represent a marked impairment in function. As described in 112.00D, Documentation, school records are an excellent source of information concerning function and standardized testing and should always be sought for school-age children.

4. *Adolescents (age 12 to attainment of age 18).* Functional criteria parallel to those for primary school children are provided for this age group. It should be remembered, however, that mental disorders in adolescence may more closely resemble those of adults than children. Therefore, if, based on the description of the disorder by the clinician, the adjudicator believes the medical criteria of Part B do not apply, the adult listing criteia will be used.

Again, the same three general areas of function as in the primary school group (cognitive/communicative, social, and personal/behavioral) are measures of severity for this age group. Testing instruments appropriate to adolescents should be used. Comparable clinical findings of disruption of social function must consider the capacity to form appropriate, stable and lasting relationships. If information is available about cooperative working relationships in school or at part or full-time work, or about the ability to work as a member of a group, it should be considered when assessing the child's social and/or personal/behavioral functioning. Markedly impoverished social contact, isolation, withdrawal, or inappropriate or bizarre behavior under the stress of socializing with others also constitutes comparable clinical findings.

The intent of the functional criterion described in paragraph B2d common to the listings, i.e., deficiencies of concentration, persistence or pace resulting in failure to complete work-like tasks in a timely manner is to identify the school-age child age 6 to attainment of age 18 who cannot adequately function in school because of a mental impairment. Although grades and the need for special education placement are relevant factors which must be considered in reaching a decision under paragraph B2d, they are not conclusive. There is too much variability from school district to school district in the expected level of grading and in the criteria for special education placement to justify reliance solely on these factors.

Where "marked" is used as a standard measuring the degree of limitation, except as defined in 112.00C3, it means more than moderate but less than extreme. A marked limitation may arise when several activities or functions are impaired or even when only one is impaired, as long as the degree of limitation is such as to interfere seriously with the ability to function independently, appropriately, and effectively. When standardized tests are used as the measure of functional parameters, a valid score that is two standard deviations below the norm for the test will be considered a marked restriction.

D. *Documentation:* The presence of a mental disorder in a child must be documented on the basis of reports from acceptable sources of medical information. See §§ 404.1513 and 416.913. Description of functional limitations may be available from these sources and may be supplemented by reports from parents or other concerned adults who aware of the child's activities of daily living, social functioning, and ability to adapt to different settings and expectations.

For very young infants, it may be very difficult to document the presence or severity of a mental disorder. Therefore, with the exception of some genetic diseases and catastrophic congenital anomalies, it may be necessary that some cases be held until the child attains 3 months of age in order to obtain adequate observation of behavior or emotional affect. This period would be extended in cases of premature infants proportionately to the degree of prematurity.

For very young infants and toddlers, programs of early intervention involving occupational, physical and speech therapists, nurses, social workers, and special educators, are a rich source of data. They can provide the developmental milestone evaluations and records on the fine and gross motor functioning of an infant. This information is valuable and can complement the medical examination by a physician. The report of an interdisciplinary team which contains the evaluation and signature of an acceptable medical source can be considered acceptable medical evidence rather than supplemental data.

In children with mental disorders, particularly those requiring special placement, school records are a rich source of data, and the required reevaluations at specified time periods can provide the longitudinal data needed to trace impairment progression over time.

In some cases where the treating source(s) lack expertise in dealing with mental disorders of children, it may be necessary to obtain evidence from a psychiatrist or psychologist with experience and skill in the diagnosis and treatment of mental disorders as they appear in children. In these cases, however, every effort should be made to obtain the records of treating sources, since these records will help establish a longitudinal picture that cannot be established through a single purchased examination.

For purposes of these childhood mental disorders listings, standardized psychological testing indicates the use of a psychological test that has appropriate characteristics of validity, reliability, and norms, administered individually by a psychologist or psychiatrist qualified by training and experience to perform such an evaluation. Psychological tests are best considered as a set of tasks or questions designed to elicit particular behaviors when presented in a standardized manner.

The salient characteristics of a good test are: 1) validity, i.e., the test measures what it is supposed to measure, as determined by appropriate methods; 2). reliability, i.e., the consistency of results obtained over time with the same test and the same individual; and 3) appropriate normative data, i.e., individual test scores must be comparable to test data from other individuals or groups of a similar nature, representative of that population.

Identical IQ scores obtained from different tests do not always reflect a similar degree of intellectual functioning. In this connection, it must be noted that on the WISC–R, for example, IQ's of 69 and below are characteristic of approximately the lowest 2 percent of the general population. In instances where other tests are administered, it would be necessary to convert the IQ score(s) to the corresponding percentile rank in the general population in order to determine the actual degree of impairment reflected by the IQ score(s).

In cases where more than one IQ is customarily derived from the test administered, i.e., where verbal, performance, and full-scale IQ's are provided as on the WISC–R, the lowest of these is used in conjunction with listing 112.05.

Tests meeting the above requirements are acceptable and encouraged for the determination of the conditions contained in the childhood mental disorders included in the listings. The psychiatrist or psychologist administering the test must have a sound technical and professional understanding of the tests and be able to evaluate the research documentation related to the intended application of the test.

In conjunction with clinical examinations, sources may report the results of screening tests, i.e., tests used for gross determination level of functioning. These tests do not have high validity and reliability and are not considered appropriate primary evidence for disability determinations. These screening instruments may be useful in uncovering potentially severe impairments, but must be supplemented by the use of formal, standardized psychological testing for the purposes of a final disability determination where such tests are required and available.

Where reference is made to developmental milestones, this is defined as the achievement of a particular mental or motor skill at an age-appropriate level, i.e., the skills achieved by an infant or young child sequentially and within a given time period in the motor and manipulative areas; in general understanding and social behavior; in self-feeding, dressing, and toilet training; and in language. This is sometimes expressed as a developmental quotient (DQ), or the relation between developmental age and chronological age as determined by specific standardized measurements and observations. Such tests include, but are not limited to, the Cattell Infant Intelligence Scale, the Bayley Scales of Infant Development, the Gesell Developmental Screening Test, and the Revised Stanford-Binet. Formal tests of the achievement of developmental milestones are generally used in the clinical setting for determination of the developmental status of infants and toddlers.

Formal psychological tests of cognitive achievement are generally in use for preschool children, for primary school children, and for adolescents except for those instances noted below.

Exceptions to formal standardized psychological testing, when required, may be considered when a psychologist or psychiatrist who is qualified by training and experience to perform such an evaluation is not readily available. In such instances, appropriate historical, social, medical and other information must be reviewed in arriving at a determination.

Exceptions may also be considered in the case of ethnic/cultural minorities where the native language or culture is not principally English-speaking. In such instances, psychological tests which are culture-free, such as the Leiter International Performance Scale or the Scale of Multi-Culture Pluralistic Assessment (SOMPA) may be substituted for the preceding standardized tests. Any required tests must be administered in the child's principal language.

"Neuropsychological testing" refers to the administration of standardized tests which are reliable and valid with respect to assessing impairment in brain functioning. It is intended that the psychologist or psychiatrist using these tests will be able to evaluate the following functions: attention/concentration, problem solving, language, memory, motor, visual-motor and visual-perceptual, laterality and general intelligence (if not previously obtained).

E. *Effect of Hospitalization or Residential Placement:* As with adults, children with mental disorders may be placed in a variety of structured settings outside the home as part of their treatment. Such settings include, but are not limited to, psychiatric hospitals, developmental disabilities facilities, residential treatment centers and schools, community-based group homes and workshop facilities. The reduced mental demands of such structured settings may attenuate overt symptomatology and superficially make the child's level of adaptive functioning appear better than it is. Therefore, the capacity of the child to function outside highly structured settings must be considered in evaluating impairment severity.

On the other hand, there may be a variety of causes for placement of a child in a structured setting which may or may not be directly related to impairment severity and functionable ability. Placement in a structured setting in and of itself does not equate with a finding of disability. The severity of the impairment must be compared with the requirements of the appropriate listing.

F. *Effects of Medication:* Attention must be given to the effect of medication on the child's signs, symptoms and ability to function. While psychoactive medications may control certain primary manifestations of mental disorder, e.g., hallucinations, impaired attention, restlessness or hyperactivity, such treatment may or may not affect the functional limitations imposed by the mental disorder. In cases where overt symptomatology is attenuated by the psychoactive medications, particular attention must be focused on the functional limitations which may persist. These functional limitations must be considered in assessing impairment severity.

Psychotropic medicines used in the treatment of some mental illnesses may cause drowsiness, blunted affect, or other side effects involving other body systems. Such side effects must be considered in evaluating overall impairment severity.

112.01 Category of Impairments, Mental

112.02 Organic Mental Disorders: Psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests, including psychological or neuropsychological tests, demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and associated impairment of functional abilities.

The required levels of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Demonstration of a deficit or loss of specific cognitive abilities or affective changes as medically documented by the persistence of at least one of the following:

1. Developmental arrest, delay or regression; or

2. Disorientation to time and place; or

3. Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or

4. Perceptual or thinking disturbance (e.g., hallucinations, delusions); or

5. Disturbance in personality; or

6. Disturbance in mood; or

7. Emotional liability (e.g., explosive temper outbursts, sudden crying, etc.); or

8. Impairment of impulse control (e.g., disinhibited social behavior); or

9. Impairment of cognitive function as demonstrated by neuropsychological assessment; and

B. Select the appropriate age group to evaluate the severity of the impairment:

1. For infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the following:

a. Gross or fine motor development 50 percent or less of the anticipated developmental norm documented by:

(1) An appropriate standardized test; or

(2) Clinical findings (see 112.00C of the preface); or

b. Cognitive/communicative function 50 percent or less of the anticipated developmental norm as documented by:

(1) An appropriate standardized test; or

(2) Clinical findings of equivalent cognitive/communicative abnormality such as the inability to use simple verbal or nonverbal behavior to communicate basic needs or concepts; or

c. Social function 50 percent or less of the anticipated developmental norm documented by:

(1) An appropriate standardized test; or

(2) Clinical findings of an equivalent abnormality of social functioning as exempified by serious inability to achieve age-appropriate autonomy as manifested by excessive clinging or extreme separation anxiety; or

d. A score of 65 percent or less of the anticipated developmental norm in two or more areas covered by a., b., or c. as measured by an appropriate standardized test or the appropriate clinical findings.

2. For children (age 3 to attainment of age 18), resulting in at least one of the following:

a. Marked impairment in age-appropriate cognitive/communicative function as documented by clinical examination and supported, if necessary, by the results of appropriate standardized psychological tests, or for children under age 6, by appropriate tests of language and communication; or

b. Marked impairment in age-appropriate social functioning as documented by history and clinical examination and supported, if necessary, by the results of appropriate standardized tests; or

c. Marked impairment in personal/behavioral function as evidenced by:

(1) Marked restriction of age-appropriate activities of daily living as documented by history and clinical examination and supported by, if necessary, appropriate standardized psychological tests; or

(2) Persistent serious maladaptive behaviors destructive to self, others, animals or property requiring protective intervention; or

d. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete work-like tasks in a timely manner.

112.03 Psychotic Disorders: Characterized by a marked disturbance of thinking, feeling, and behavior. Occasionally psychotic disorders of adolescene must be more appropriately assessed under listing 12.03 of Part A of Appendix 1 because the medical criteria of this Part do not apply.)

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, for at least six months, either continuous or intermittent, of one or more of the following:

1. Delusions or hallucinations; or

2. Catatonic or other grossly disorganized behavior; or

3. Incoherence, loosening of associations, illogical thinking, or poverty of content of speech, with one of the following:

a. Blunt affect; or

b. Flat affect; or

c. Inappropriate affect; or

4. Emotional withdrawal and/or isolation; and

B. Resulting in at least one of the appropriate age-group criteria in paragraph B of 112.02.

112.04 Affective Disorders: Characterized by a disturbance of mood, accompanied by a full or partial manic or depressive syndrome. Mood refers to a prolonged emotion that colors the whole psychic life; it generally involves either depression or elation.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented persistence, either continuous or intermittent, of one of the following:

1. Depressive syndrome associated with at least four of the following:

a. Anhedonia, apathy or pervasive loss of interest in almost all activities; or

b. Appetite disturbance with change in weight or failure to make expected weight gains; or

c. Sleep disturbance (e.g., insomnia or hypersomnia); or

d. Psychomotor agitation, psychomotor retardation or hypoactivity; or

e. Fatigue or loss of energy; or

f. Feelings of worthlessness, self-reproach, or guilt; or

g. Difficulty concentrating or thinking; or

h. Recurrent thoughts of death, suicidal ideation, wishes to be dead, or suicide attempt; or

i. Hallucinations, delusions, or paranoid thinking; or

2. Manic or hypomanic syndrome associated with at least three of the following:

a. Increased activity or physical restlessness; or

b. Increased talkativeness or pressure of speech; or

c. Flight of ideas or subjectively experienced racing thoughts; or

d. Inflated self-esteem; or

e. Decreased need for sleep; or

f. Easy distractibility; or

g. Involvement in activities that have a high probability of painful consequences which are not recognized; or

h. Hallucinations, delusions, or paranoid thinking; or

3. Bipolar or cyclothymic syndrome with a history of episodic periods manifested by the full symptomatic picture of both manic and depressive syndromes (and currently characterized by either or both syndromes); and

B. Resulting in at least one of the appropriate age-group criteria in paragraph B of 112.02.

112.05 Mental Retardation: Characterized by significantly subaverage general intellectual functioning with deficits in adaptive behavior initially manifested in the developmental period. The scores specified below refer to those obtained on the WISC–R, and are used only for reference purposes. Scores obtained on other standardized and individually administered tests are acceptable, but the numerical values obtained must indicate a similar level of intellectual functioning. See 112.00D.

The required level of severity for this disorder is met when the requirements in A, B, C, or D are satisfied.

A. Achievement of a pattern of developmental milestones generally acquired by children no more than one-half the child's chronological age; or

B. A valid performance, verbal or full scale IQ of 59 or less; or

C. A valid performance, verbal or full scale IQ of 60 to 69 inclusive and a physical or other mental impairment imposing additional and significant limitation of function; or

D. A valid performance, verbal or full scale IQ of 60 to 69 inclusive and one of the following:

1. Marked impairment in social functioning; or

2. Marked impairment in personal/behavioral function.

112.06 Anxiety-Related Disorders: In these disorders, anxiety is either the predominant clinical feature or is experienced if the individual attempts to master symptoms; e.g., confronting the dreaded object or situation in a phobic disorder, attempting to go to school in a separation anxiety, or confronting strangers or peers in avoidant disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of at least one of the following:

1. Excessive anxiety manifested when the child is separated, or separation is threatened, from a parent or parent surrogate; or

2. Excessive and persistent avoidance of strangers; or

3. Generalized persistent anxiety or worry; or

4. A persistent irrational fear of a specific object, activity or situation which results in a compelling desire to avoid the dreaded object, activity or situation; or

5. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

6. Recurrent obsessions or compulsions which are a source of marked distress; or

7. Recurrent and intrusive recollections of a traumatic experience, including dreams, which are a source of marked distress; and

B. Resulting in at least three of the appropriate age-group criteria in paragraph B of 112.02.

112.07 Disorders with Physical Manifestations: Manifested by physical symptoms for which there is no demonstrable organic etiology or known physiological cause.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of at least one of the following:

1. A persistent and serious disturbance of eating habits, accompanied by marked and unrealistic anxiety concerning appearance resulting in weight loss, emaciation, or other serious physical sequelae; or

2. Persistent and recurrent involuntary, repetitive, rapid, purposeless motor movements affecting multiple muscle groups with multiple vocal tics; or

3. Persistent nonorganic disturbance in one of the following:

a. Vision; or

b. Speech; or

c. Hearing; or

d. Use of a limb; or

e. Movement and its control (e.g., coordination disturbance, psychogenic seizures, akinesia, dyskinesia); or

f. Sensation (diminished or heightened); or

g. Digestion or elimination; or

4. Unrealistic interpretation of physical signs or sensations associated with the fear or belief that one has a serious disease or injury, which persists despite medical reassurance; and

B. Resulting in at least three of the appropriate age-group criteria in paragraph B of 112.02.

112.08 Personality Disorders: Evaluate under 12.08 of Part A of Appendix 1.

112.09 Autism and Other Pervasive Developmental Disorders: Autism is a pervasive disorder characterized by significant social and communication deficits originating in the developmental period. Other pervasive developmental disorders are characterized by failure to develop age-appropriate social relationships, language disorders, ritualistic and compulsive behavior and, in most cases, retardation in intellectual development. Onset of the illness is in early childhood.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of the following:

1. For autism, at least two of the following:

a. Pervasive lack of responsiveness to other people; or

b. Gross deficits in language development; or

c. Bizarre responses to various aspects of the environment (e.g., resistance to change, peculiar interest in or attachments to animate or inanimate objects); or

2. For pervasive disorders, at least three of the following:

a. Sudden excessive anxiety manifested by such symptoms as free-floating anxiety, catastrophic reactions to everyday occurrences, inability to be consoled when upset, unexplained panic attacks; or

b. Constricted or inappropriate affect, including lack of appropriate fear reactions, unexplained rage reactions, and extreme mood lability; or

c. Resistance to change in the environment (e.g., upset if dinner time is changed), or insistence on doing things in the same manner every time (e.g., putting on clothes always in the same order); or

d. Oddities of motor movement, such as peculiar posturing, peculiar hand or finger movements, or walking on tiptoe; or

e. Abnormalities of speech, such as question-like melody, monotonous voice; or

f. Hyper- or hypo-sensitivity to sensory stimuli, e.g., hyperacusis; or

g. Self-mutilation, e.g., biting or hitting self, head banging; and

B. Resulting in at least one of the appropriate age-group criteria in paragraph B of 112.02.

112.10 Developmental and Emotional Disorders of Infancy (Birth to attainment of age 1): Developmental or emotional disorders of infancy are evidenced by a deficit or lag in the areas of motor, cognitive/communicative, or social functioning. These disorders may be related either to organic or to functional factors or to a combination of these factors.

The required level of severity for these disorders is met when the requirements of A, B, C, or D are satisfied.

A. Cognitive/communicative functioning 50 percent or less of the anticipated developmental norm as documented by appropriate clinical findings (e.g. infants 0–6 months, markedly diminished variation in the production or imitation of sounds and severe feeding abnormality, such as problems with sucking, swallowing, or chewing) supported, if necessary, by a standardized test; or

B. Motor development 50 percent or less of the anticipated developmental norm documented by appropriate clinical findings, supported, if necessary, by a standardized test; or

C. Apathy, over-excitability or fearfulness demonstrated by marked impairment in one of the following:

1. Response to visual stimulation; or

2. Response to auditory stimulation; or

3. Response to tactile stimulation and positioning and environment; or

D. Failure to sustain social interaction on an ongoing, reciprocal basis as evidenced by:

1. Inability to participate in vocal exchanges, visual exchange and motoric gestural exchanges (including facial expressions) by 6 months; or

2. Failure to communicate basic emotional states such as a wish for closeness, desire to explore objects or people, or protest or anger by 9 months; or

3. Failure to attend to the caregiver's voice or face and/or to explore an inanimate object for a period of time appropriate to the infant's age.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

5. The authority citation for Part 416, Subpart I continues to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631(a) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383(a) and (d)(1), and 1383b; secs. 2, 5 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

6. Section 416.920a is amended by revising the second sentence of paragraph (a) to read as follows:

* * * * *

§ 416.920a Evaluation of mental impairments.

(a) * * * In addition, in evaluating the severity of mental impairments for adults (persons age 18 and over) and in persons under age 18 where the disease process has a similar effect on adults and younger persons, a special procedure must be followed by us at each level of administrative review. * * *

[FR Doc. 89–18763 Filed 8–11–89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3627–8]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to reduce volatile organic compound emissions associated with production of golf balls at the Acushnet Company Plant A facility in Acushnet, Massachusetts. The intended effect of this action is to propose approval of a source specific RACT determination made by the Commonwealth of Massachusetts in accordance with the commitments of its approved 1982 Ozone Attainment Plan. This action is being taken under Section 110 of the Clean Air Act.

DATES: Comments must be received on or before September 13, 1989. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESS: Comments may be mailed to Louis F. Gitto, Director, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region I, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the U.S. Environmental Protection

Agency, Region I, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Protection, Division of Air Quality Control, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene, (617) 565-3244; FTS 835-3244

SUPPLEMENTARY INFORMATION: On February 4, 1988 and February 16, 1989, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a proposed revision to its State Implementation Plan (SIP) for the Acushnet Company Plant a facility in Acushnet, Massachusetts. The revision includes reasonably available control technology (RACT) determinations for the balata and surlyn golf ball manufacturing processes and the miscellaneous and clean up processes associated with the manufacturing of these golf balls. The uncontrolled potential emissions of these processes are greater than 100 tons per year (TPY) and are not covered by an EPA published Control Technique Guideline (CTG) document.

Massachusetts submitted a regulation, 310 CMR 7.18(17), requiring RACT on all such non-CTG sources as part of its approved 1982 Ozone Attainment Plan (48 FR 51480). In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the 100 TPY individual RACT determinations to EPA for incorporation into the Massachusetts SIP as a source-specific SIP revision. This revision includes DEQE's RACT plan for Acushnet's Plant A which consists of a Conditional Plan Approval, an Administrative Order and other enforceable documents issued by the DEQE to impose RACT on the balata and surlyn golf ball manufacturing processes and on the miscellaneous and clean up processes associated with the manufacture of these golf balls. The DEQE has calculated that a reduction in VOC emissions from a pre-RACT 1982 level of 296 TPY to a post-RACT level of 74 TPY results from imposing RACT on Acushnet's Plant A facility. Although the Conditional Plan Approval and Administrative order issued by the DEQE are currently fully enforceable by that agency under State law, the formal SIP revision submitted by the DEQE to EPA must consist of the Plan Approval amended as specified in this notice before EPA will undertake final rulemaking approving it as RACT and incorporating it into the SIP.

The RACT control plan, requires that Acushnet meet the following emission limitations by June 1, 1986 (these limits are listed in Table II of the RACT Plan):

	Tons VOC/Million Balata Balls Processed
Balata Golf Balls:	
Center washing	0.0000
Center patching	0.0434
Cover annealing	0.4500
Cover rinsing	0.0000
Painting	2.1537
Subtotal	2.6471
Surlyn Golf Balls:	
Painting	0.5348
Miscellaneous:	
Clean-up and printing	0.1000

According to the DEQE's RACT plan, the VOC emission reductions, at Acushnet's Plant A facility, have been achieved by requiring the following:

Balata Golf Ball Production

(a) Elimination of the naphtha/isopropanol center washing,

(b) Installation of a Freon Imersion Dryer,

(c) Elimination of the acetone rinsing, and

(d) Improvement of the paint transfer efficiency.[1]

Surlyn Golf Ball Production

(a) Reduction in the number of paint coats from three to two and reduction of the VOC content of paint, and

(b) Improvement of the paint transfer efficiency.[2]

Miscellaneous emissions

Reduction in clean-up solvents

The DEQE's RACT plan also specifies the VOC content of the coatings that can be used at this facility to produce balata and surlyn golf balls. These coating specifications, in pounds of VOC per gallon of coating and pounds of VOC per gallon of solids as applied, are contained in a confidential table (Table III) of DEQE's RACT plan. Acushnet is allowed to change the Table III formulations only with DEQE's approval and only if the new formulations do not exceed the emission rates in tons per million golf balls listed in Table II of the RACT plan. Additionally, the production capacity is limited to a specific total number of golf balls processed per year. These limitations are contained in a confidential table (Table I) of the DEQE's RACT plan.

The DEQE's RACT plan also requires that the number of golf balls processed will be recorded by automatic golf ball counters. DEQE's RACT plan requires that records be kept on a weekly basis.

[1] Transfer efficiency is usually measured by the amount of paint that reaches the object to be coated. However, this transfer efficiency is measured by a minimum number of ball coats per gallon which is monitored by inventorying the gallons of paint used and by automatic golf ball counters.

[2] See note 1 above.

DEQE's RACT plan requires that VOC usage, cleaning solvent usage, paint usage, golf ball production quantities, inventory and paint disposal records, and the disposal and air emission records for balata ball center patching and cover annealing operations are to be reported quarterly. Those reports must demonstrate compliance. Additionally, the DEQE's RACT plan describes the compliance averaging period as the 4 or 5 week production cycles of the facility.

Amendments Required for Final EPA Approval

The DEQE's RACT plan's emission limits are not acceptable to EPA as RACT, as currently drafted. Acushnet paints each type of golf ball with different types of paints, the production cycle for processing these golf balls is 4-5 weeks, and the emission limits are expressed in tons per million golf balls for each painting process. These limitations are not acceptable because such limits do not meet EPA's Emission Trading Policy (51 FR 43814) nor EPA's enforcement criteria. Therefore, EPA is requiring that DEQE's RACT plan for the Acushnet Company Plant A be amended to specify emission rates in pounds of VOC per gallon of coating (minus water and photochemically nonreactive solvents) for each painting and process associated with the production of golf balls, before EPA will take final action on this SIP revision. Additionally, EPA is requiring the DEQE to calculate the percent reduction achieved by comparing the coatings used in 1982 (and their associated VOC per gallon content) versus those used in 1987. This percent reduction will be reported in the final rulemaking notice on this RACT determination.

EPA has reviewed DEQE's RACT plan consisting of the Conditional Plan Approval, the Administrative Order, other documents issued to Acushnet and other supporting public and confidential material submitted by the DEQE. EPA generally concurs with the DEQE's determination for reducing VOCs at Acushnet Company Plant A. However, EPA believes that this RACT determination is not enforceable as written because of the way the emission limits and percent reduction are expressed, the failure to include a compliance date for each condition, the inadequacy of the recording and reporting requirements, and the compliance averaging time.

DEQE's RACT plan must be amended, as indicated below before EPA will take final action to approve it as a SIP revision. As now drafted, EPA would

have to disapprove the RACT plan. The Plan Approval must be amended to include:

(1) Emission limits and percent reduction achieved in pounds of VOC per gallon of coating (minus water and photochemically nonreactive solvents) for each painting process and other processes associated with the manufacture of golf balls.

(2) A requirement that the emission limits cannot increase.

(3) The final compliance date for each process. These compliance dates must not go beyond December 31, 1987.

(4) The recordkeeping requirements needed to determine compliance with a pounds of VOC per gallon of coating (minus water and photochemically nonreactive solvents) emission limitation, including the following:

a. Gallons of coatings used,

b. Weight and volume of each coating's solids, photochemically reactive and nonreactive solvents and water;

c. Densities of the coatings and photochemically reactive and nonreactive solvents; and

d. Pounds of VOC per gallon of solids.

A copy of the recordkeeping forms must be included in the formal SIP submittal. The records must also be reported, on at least a quarterly basis for the first 4–8 quarters of continuous compliance, and must be specified in the final plan approval.

(5) The test method, Reference Method 24 (40 CFR Part 60) with 60 minute bake time for compliance testing. This test method must be specified in the Plan Approval.

Additionally, DEQE's formal submittal must include the following background information to recalculate the percent reduction Acushnet has achieved:

a. The pounds of VOC per gallon of coating used in 1982

b. The pounds of VOC per gallon of coating used in 1987 on the same processes reported for 1982; and

c. The percent reduction achieved for each process.

These amendments must be incorporated into the final Plan Approval that is issued to Acushnet Company Plant A and formally submitted as a revision for EPA's final approval and incorporation into the SIP. If DEQE's final Plan Approval submission does not incorporate the amendments that are outlined in this notice, EPA will withdraw this proposed approval action and take action to disapprove DEQE's SIP revision request. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this notice.

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Massachusetts and submitted formally to EPA for incorporation into the SIP.

Proposed Action

EPA is proposing to approve the DEQE's proposed RACT determination for Acushnet Company Plant A's, golf ball production processes. Final EPA approval is contingent upon the DEQE amending its Plan Approval, as indicated in this notice, prior to their formal submittal to EPA for incorporation into the SIP. If DEQE's final Plan Approval does not incorporate the requirements outlined in this notice, EPA will withdraw this proposed approval action and take action to disapprove DEQE's SIP revision request.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: August 4, 1989.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 89–18939 Filed 8–11–89; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL 3628–5]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This revision would constitute a temporary relaxation from Wisconsin's volatile organic compound (VOC) reasonably available control technology (RACT) regulations for Tecumseh Products Company (TPC) in Tecumseh, Wisconsin. This action is taken in response to an August 27, 1987, submission from the State of Wisconsin.

USEPA today is proposing to approve this as a SIP revision because (1) the TPC facility is located in an ozone attainment area, and (2) approval of the relaxation will not affect the maintenance of the ozone standards.

DATE: Comments on this revision and on the proposed USEPA action must be received by September 13, 1989.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Ulylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

Comments on this proposed rule should be addressed to: (Please submit submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ulyaine E. McMahan, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On August 27, 1987, the Wisconsin Department of Natural Resources (WDNR) submitted a proposed

temporary relaxation from the RACT limits until July 15, 1988, for the VOC emissions from TPC's four coating lines. These operations are located at TPC's Lawson Engine Division in Calumet County, Tecumseh, Wisconsin. Calumet County has been designated as an attainment/unclassifiable area for ozone under Section 107(d) of the Clean Air Act (See 40 CFR 81.350).

History of the Variance

TPC currently operates four coating lines at its Lawson Engine Division in Tecumseh, Wisconsin, which are subject to the control requirements contained in Section NR 154.13(4)(m) and the compliance schedule contained in Section NR 154.13(12)(c) Wisconsin Administrator Code. These rules limit the VOC content of extreme performance coatings applied to miscellaneous metal parts and products to 3.5 pounds of VOC per gallon of coating, excluding water, by August 1, 1983. USEPA approved these rules as meeting RACT requirements under Part D of the Clean Air Act for non-attainment areas on January 11, 1980 (45 FR 2319), and June 21, 1982(47 FR 26611). Wisconsin chose to extend these RACT requirements to sources located in attainment areas as well and, thereby, created accommodative SIPs for these areas[1]. In lieu of the requirements mentioned above, WDNR has submitted a temporary relaxation from RACT until July 15, 1988, as a revision to Wisconsin SIP.

On August 27, 1987, the WDNR issued a variance for the facility, subject to the following conditions.

1. By August 31, 1987, at least 85 percent (by volume) of all coatings applied per day by TPC shall be high solids coatings meeting the applicable RACT limitation of 3.5 pounds VOC per gallon of coating, excluding water, delivered to a coating applicator. TPC shall maintain and make available to the Department upon request records demonstrating that this requirement is met, including:

a. The volume of each coating applied per day (gallons per day).

b. The VOC content of each coating applied (pound VOC per gallon applied, excluding water), determined from:

(1) The density of each coating (pound coating per gallon coating applied).

(2) The weight percent solids in each coating applied.

(3) The weight percent VOC in each coating applied.

c. The total volume of all coatings applied per day (gallons per day).

d. The total volume of RACT compliance coating applied.

e. The daily volume percentage of RACT compliance coating applied.

2. Tecumseh Products Company shall certify to the Department by September 8, 1987, that the requirements contained in condition 1. above were met.

3. By July 15, 1988, all coatings applied by Tecumseh Products Company shall meet the limitation of 3.5 pounds VOC per gallon of coating, excluding water, delivered to a coating applicator. Records shall be maintained and made available to the Department upon request demonstrating final compliance, including:

a. For each high solids coating applied, the VOC content (pound VOC per gallon applied, excluding water) determined from:

(1) The coating density (pound coating per gallon coating applied).

(2) The weight percent solids applied.

(3) The weight percent VOC applied.

b. For each water-based coating applied, or coating applied which is reduced with 1,1,1 trichloroethane or methylene chloride, the VOC content (pound VOC per gallon applied, excluding water) determined from:

(1) The solvent density (pound VOC per gallon solvent applied).

(2) The volume percent solids applied.

(3) The volume percent VOC applied.

(4) The volume percent water, 1,1,1 trichloroethane, and methylene chloride applied.

4. TPC shall certify to the Department by July 22, 1988, that the requirements contained in condition 3, above, were met.

5. The Department may modify or rescind this variance approval because of failure of TPC to comply fully with the conditions of this approval, or for other reasons which justify modification or recision of the approval.

These limits would allow TPC to continue to use the coatings currently used on these lines.

The variance issued by WDNR extends the compliance date to July 15, 1988. As discussed further below, USEPA's policy provides that where a source in an attainment area is subject to RACT under an accommodative SIP, and that source seeks a compliance date extension, the source must either demonstrate that its compliance schedule is as expeditious as practicable and will not adversely effect the maintenance demonstration for the area, or the area will lose the accommodative SIP for the duration of the variance.

Compliance Date Extension

In order for an area to retain its accommodative SIP, the State must demonstrate that it is implementing RACT as expeditiously as practicable and that the area's maintenance demonstration will not be adversely affected. Here, the extension will not affect the maintenance demonstration because it merely allows the source to continue to emit at historical levels under which the area was able to demonstrate attainment and maintenance. However, WDNR has not provided a demonstration rebutting the possibility that other similar sources were able to comply in timely fashion. In fact, WDNR's own review indicated that at least two other sources have been able to comply using low solvent coatings. See "RACT Variance Review", Wisconsin Department of Natural Resources, May 8, 1987, page 4, attached to the TSD for this notice. In addition, WDNR has not provided an adequate evaluation of other means of compliance (e.g., add-on control) which may be more expeditious than the proposed control strategy. Thus, the State has not demonstrated that TPC's compliance is expeditious.

This rulemaking relaxes a stationary source RACT emission limitation in an area that has been designated as attainment/unclassified for ozone. Originally, this RACT limitation was imposed by the State, not to satisfy an ozone nonattainment SIP planning requirement, but rather to allow the State to have an accommodative SIP. This compliance date extension if approved, will remove the original basis for the accommodative SIP of Calumet County for as long as the relaxation is in place (i.e., until July 15, 1988). This means that all new major VOC sources and major modifications in this county must comply with all PSD pre-construction monitoring requirements until that date. Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas—all sources wishing to locate in nonattainment areas must continue to comply with the State's federally approved Part D new source

[1] An accommodative ozone SIP for areas classified as attainment/unclassifiable requires RACT-level controls on existing sources, in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required on new major sources in attainment/unclassifiable area under USEPA's Prevention of Significant Deterioration (PSD) regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas.

review program. USEPA assumes that the State would prefer to have this revision approved and cancel the accommodative SIP for the duration of the variance. If the State does not wish to have a variance approved on this basis, it should so indicate during the public comment period for this notice.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: 42 U.S.C. 7401–7642.

Dated: January 22, 1988.

Frank M. Covington,

Acting Regional Administrator.

Note: This document was received by the Office of the Federal Register on August 9, 1989.

[FR Doc. 89–18937 Filed 8–11–89; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–344, RM–6674]

Radio Broadcasting Services; Rosamond, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of P. Dale Ware, seeking the allotment of FM Channel 228A to Rosamond, California, as that community's first local broadcast service. Coordinates used for Channel 228A at Rosamond are 34–56–56 and 118–14–07.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Harry P. Warner, Esq., Law Offices of Harry P. Warner, 6455 Hayes Drive, Los Angeles, CA 90048.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–344 adopted July 18, 1989, and released August 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M. Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18982 Filed 8–11–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–333, RM–6678]

Radio Broadcasting Services; Camarillo, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Golden Bear Broadcasting, Inc., licensee of Station KZTR–FM, Channel 240A, Camarillo, California, seeking the substitution of FM Channel 240B1 for Channel 240A and modification of its license accordingly. Coordinates for this proposal are 34–13–21 and 119–13–48.

DATES: Comments must be filed on or before September 29, 1989, and reply comments on or before October 16, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Roger J. Metzler, Esq., McQuaid, Bedford, Brayton, Clausen & Metzler, 650 California Street, Suite 800, San Francisco, CA 94108.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–333, adopted July 19, 1989, and released August 8, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18890 Filed 8–11–89; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–341, RM–6775]

Radio Broadcasting Services; Warrenton, NC, Alberta, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Warrenton Broadcasting Corporation seeking the substitution of Channel 297C2 for Channel 297A at Warrenton, North Carolina, the modification of its construction permit for Station WVRS(FM) to specify the higher powered channel, and the substitution

of Channel 276A for unoccupied but applied for Channel 299A at Alberta, Virginia. Channel 297C2 can be allotted to Warrenton, North Carolina, with a site restriction of 29.3 kilometers (18.2 miles) northeast to avoid a short-spacing to Station WFXC, Channel 296A, Durham, North Carolina, and to the application of Station WKZL, Channel 298C, Winston-Salem, North Carolina. The coordinates for this allotment are North Latitude 36–34–11 and West Longitude 77–54–16. Channel 276A can be allotted to Alberta, Virginia, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 36–51–48 and West Longitude 77–53–00. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 296C2 at Warrenton or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David M. Hunsaker, Putbrese, Hunsaker & Ruddy, 6800 Fleetwood Road, Suite 100, P.O. Box 539, McLean Virginia 22101 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–341, adopted July 19, 1989, and released August 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18983 Filed 8–11–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–343, RM–6761]

Radio Broadcasting Services; Dresden, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Valley View Broadcasting, Inc., proposing the allotment of Channel 236A to Dresden, Tennessee, as that community's first local FM service. A site restriction of 3.4 kilometers (2.1 miles) south of the city is required. The coordinates are 36–15–39 and 88–42–29.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jerrold Miller, Esquire, Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–343, adopted July 19, 1989, and released August 9, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18984 Filed 8–11–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–342, RM–6740]

Radio Broadcasting Services; Monahans, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Rusk Corporation, proposing the substitution of Channel 271C for Channel 271C1 at Monahans, Texas, and modification of the license for Station KWES(FM) to specify operation on the higher class co-channel. The proposed transmitter site location is 42.6 kilometers (26.1 miles) north of Monahans, at coordinates 31–57–55 and 102–46–10.

DATES: Comments must be filed on or before October 2, 1989, and reply comments on or before October 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Nancy L. Wolf, Esquire, Dow, Lohnes & Albertson, 1255 23rd Street, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–342, adopted July 19, 1989, and released August 9, 1989. The full text of

this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–18985 Filed 8–11–89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

Office of the Secretary

48 CFR Part 970

Acquisition Regulation

AGENCY: Department of Energy (DOE).

ACTION: Notice of proposed rulemaking (NOPR).

SUMMARY: The DOE proposes to amend 48 CFR part 970, Management and Operating (M&O) Contracts, of the Department of Energy Acquisition Regulation (DEAR). Changes are proposed to DEAR subsections 970.3102–2(i) and 970.5204–4 to conform with Federal Acquisition Regulation (FAR), subsection 31.205–6, Compensation for Personal Services, and 29.401–6, New Mexico Gross Receipts and Compensating Tax. Also, DEAR subsection 970.5204–16, Payments and Advances, is proposed to be amended to specify a 90-day interval for the contractor to notify the Contracting Officer, after the contractor knew or should have known of any claims based upon liabilities of the contractor to third parties arising out of the performance of the contract.

DATE: September 13, 1989.

ADDRESS: Comments should be addressed to: Gwen Cowan, Business and Financial Policy Division (MA–422), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Gwen Cowan, Business and Financial Policy, Division (MA–422), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Washington, DC 20585, (202) 586–8159.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Paperwork Reduction Act
D. National Environmental Policy Act
E. Review Under Executive Order 12612
F. Public Hearing

I. Background

Under section 644 of the DOE Organization Act, Public Law 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984, (49 FR 11992, March 28, 1984), 48 CFR Chapter 9.

The purpose of this rulemaking is:

(1) To revise the DEAR to implement changes to conform with FAR 31.205–6(g)(2)(i) and to be consistent with contractor legal requirements to adhere to the provisions of certain labor laws. FAR 31.205–6(g)(2)(i) was revised to delete the provision disallowing severance payments which are in addition to early or normal retirement payments. However, severance payments will still be required to meet the remaining criteria for severance pay as well as the test of overall reasonableness of compensation.

(2) To revise the DEAR to conform with FAR 29.401–6. FAR 29.401–6 was added to eliminate double taxation of Government cost-reimbursable contractors which purchase tangible personal property to be used in performing services, title to which passes to the United States upon delivery of the property to the contractor by the vendor. This agreement is effective only when the clause, at FAR 52.229.10, State of New Mexico Gross Receipts and Compensating Tax, is included in each cost-reimbursement contract. Failure to include the clause in each cost-reimbursement contract means that the government reimburses the contractor the gross receipts tax paid to a vendor for purchased tangible personal property, and reimburses the contractor for its own gross receipts tax, which includes the tax already paid on purchased property (double taxation).

(3) To revise DEAR 970.4204–16, Payments and Advances, to include a 90-day interval for the contractor to notify the Contracting Officer of claims based upon liabilities of the contractor to third parties arising out of the performance of the contract. The contractor will be required to give notice of such claims in writing to the Contracting Officer within 90 days after the contractor knew or should have known about such claims from the claimant, and takes whatever action may be required to protect the contractor's and the Government's interest during this 90 day period.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive Order, entitled "Federal Regulations," requires that certain regulations be reviewed by the Office of Management and Budget (OMB) prior to their promulgation. OMB Bulletin 85–7 exempts all but certain types of procurement regulations from such review. This proposed rule does not involve any of the topics requiring prior review under the bulletin and is, accordingly, exempt from such review.

B. Review Under the Regulaory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities; the costs of goods or services or other direct economic factors. It will not have significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) does not apply because this proposed rule does not impose additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

D. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having a significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. *et seq.*, 1976), or the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508), and the DOE guidelines (10 CFR part 1021), and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

E. Review Under Executive Order 12612

The Department has concluded that this proposed rule does not involve issues which are expected to have a substantial direct effect on traditional state functions or their institutional interest and thus the "federalism" assessment requirements of Executive Order 12612, (52 FR 41685, October 30, 1987) do not apply.

F. Public Hearing

DOE has concluded that this rule does not involve a substantial issue of fact or law and that it should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, the DOE does not propose to hold a public hearing on this rule.

List of Subjects in 48 CFR Part 970

Government Procurement; Management and Operating Contracts.

For the reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, on August 2, 1989.

Berton J. Roth,

Deputy Assistant Secretary for Procurement and Assistance Management.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), and Sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

970.3102–2 [Amended]

2. Subsection 970.3102–2(i), Severance Pay, is amended by removing the last sentence of paragraph (i)(2)(i).

3. Subsection 970.5204–4, New Mexico Gross Receipts and Compensating Tax is added as follows:

970.5204–4 New Mexico Gross Receipts and Compensating Tax.

When the clause at FAR 52.229–10(b) is used replace the phrase "Allowable Cost and Payment clause" with "Allowable Costs and Fixed Fee clause," or, if it is different, the title of the clause addressing allowable costs.

4. In the clause in subsection 970.5204–16, paragraph (f)(iv)(B) is revised to read as follows:

970.5204–16 Payments and advances.

* * * * *

(f) * * *

(iv) * * *

* * * * * *

(B) Claims, together with reasonable expenses identical thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided, that such claims are not known to the contractor on the date of the execution of the release; and provided further, that the contractor gives notice of such claims in writing to the Contracting Officer within 90 days after the contractor knew, or should have known, about such claims, and takes whatever action may be required to protect the Contractor's and the Government's interest during this 90 day period; and

* * * * *

FR Doc. 89–18969 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

Notices

Federal Register
Vol. 54, No. 155
Monday, August 14, 1989

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

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Meetings of the Committee on Rulemaking

ACTION: Notice of public meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of meetings of the Committee on Rulemaking of Administrative Conference of the United States.

COMMITTEE: Committee on Rulemaking

DATE: Wednesday, September 13, 1989 at 4:30 p.m.

LOCATION: Library of the Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC

AGENDA: The committee will meet to discuss possible recommendations on the subject of the indexing and disclosing of agency adjudications, and their use as precedent.

PUBLIC PARTICIPATION: The committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Kevin L. Jessar, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Dated: August 7, 1989.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 89–18959 Filed 8–11–89; 8:45 am]

BILLING CODE 6110–01–M

COMMISSION ON CIVIL RIGHTS

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 10:00 a.m. to 11:15 a.m. and reconvene from 2:00 p.m. to 4:00 p.m., on August 21, 1989, at Seagate Centre, 401 Jefferson Avenue, Room 219, Toledo, Ohio. The purpose of the meeting is to announce the release of the summary report of a two-day community forum held in December 1988 on the status of race relations in Toledo.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald C. Prock, or Farella E. Robinson, Civil Rights Analyst of the Central Regional Division (816) 426–5253, (TDD 816/436–5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 7, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89–18960 Filed 8–11–89; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census
Title: 1990 Census of Agriculture Tests
Form Number: 89–A1 thru 89–AXX
Type of Request: New Collection
Burden: 24,684 hours
Number of Respondents: 51,800
Avg Hours Per Response: 48 minutes
Needs and Uses: This a multi-procedural test of the report form for the 1992 Census of Agriculture, and will be used by the Bureau of the Census to determine content, wording, and format of the report form to be used in the National Agriculture Census.
Affected Public: Farms
Fequency: One time only
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–18896 Filed 8–11–89; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

Peter Walaschek et al.; Related Party Order

In the Matter of: Peter Walaschek, Marzellenstrasse, 5000 Cologne, Federal Republic of Germany, and Chemco, Siegburger Strasse 223, 5000 Cologne 21, Federal Republic of Germany, and Colimex, Mozartstrasse 7, 5000 Cologne 1, Federal Republic of Germany.

On February 24, 1989, I issued an order denying Peter Walaschek permission to apply for or use any export license until August 26, 1998. 54 FR 8582 (March 1, 1989). The order was based on Walaschek's August 26, 1988 conviction for violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (Supp. 1989)) (the Act).

The Act provides that any person related through affiliation, ownership, control, or position of responsibility to a person who has been denied export privileges because of his conviction for violating the Act may also be denied export privileges. On March 15, 1989, I notified Chemco and Colimex, two West German companies, that I had received

information that they were related to Walaschek through affiliation, ownership, control, or position of responsibility. I also advised them that, after consulting with the Director, Office of Export Enforcement, I intended to deny them permission to apply for or use any export license, including any general license, because of their relationship with Walaschek, as provided by the Act and § 770.15(h) of the Export Administration Regulations (15 CFR Parts 768–789, as amended, 54 FR 4004–4006 (January 27, 1989)) (the Regulations).

My notification to Chemco and Colimex also advised them of their right to request a hearing or to submit written comments concerning their relationship with Walaschek. Although both companies received that notice, neither one requested a hearing or filed any comments concerning any of the matters set forth in the notice.

Accordingly, I hereby find that Chemco, Siegburger Strasse 223, 5000 Cologne 21, Federal Republic of Germany, and Colimex, Mozartstrasse 7, 5000 Cologne 1, Federal Republic of Germany, are related to Peter Walaschek, a person denied all U.S.-export privileges until August 26, 1998, through affiliation, ownership, control, or position of responsibility. The order of February 24, 1989 denying Walaschek permission to apply for or use any export license, including any general license, is hereby amended to read as follows:

Ordered

I. All outstanding individual validated licenses in which Peter Walaschek or either of the related persons, Chemco or Colimex, appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Walaschek's, Chemco's and Colimex's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, or in any general license are hereby revoked.

II. Until August 26, 1998, Peter Walaschek, Marzellenstrasse, 5000 Cologne, Federal Republic of Germany, and the related persons, Chemco, Siegburger Strasse 223, 5000 Cologne 21, Federal Republic of Germany, and Colimex, Mozartstrasse 7, 5000 Cologne 1, Federal Republic of Germany, are denied the privilege of applying for or using any export license, including, but not limited to, any individual validated license, bulk license or general license, issued under or authorized by the Act and the Regulations. Pursuant to this order, Walaschek and the related persons, Chemco and Colimex, may not participate in any export license-related activity, including any participation: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license, or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any other firm, corporation or business organization related to Walaschek by affiliation, ownership, control or position of responsibility may also be subject to the provisions of this order.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to U.S.-origin commodities and technical data which are subject to the denial of export privileges set forth herein, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Walaschek or the related persons, Chemco and Colimex, or whereby Walaschek or the related persons, Chemco and Colimex, may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly, in any manner or capacity: (a) Apply for, obtain, transfer, or use any export license, Shipper's Export Declaration, bill of lading or any other export control document relating to any export, reexport, transshipment or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for Walaschek or the related persons, Chemco and Colimex, or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States. These prohibitions apply only to those commodities and technical data which are subject to the Act and the Regulations.

V. This order is effective immediately and shall remain in effect until August 26, 1998.

A copy of this order shall be delivered to Walaschek and to the related persons, Chemco and Colimex. This order shall be published in the **Federal Register**.

Dated: August 7, 1989.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 89-18961 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-307-801; C-307-802]

Preliminary Determination of Sales at Less Than Fair Value and Alignment of Countervailing Duty Investigation; Aluminum Sulfate from Venezuela

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

ACTION: Notice.

SUMMARY: We preliminarily determine that aluminum sulfate from Venezuela is being, or is likely to be, sold to the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of aluminum sulfate from Venezuela as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by October 18, 1989. At the request of petitioner, we are also aligning the countervailing duty investigation of aluminum sulfate from Venezuela with this investigation. The final determination in that investigation will also be issued by October 18, 1989.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins, Kimberly Hardin, or Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1756, 377–8371, or 377–3965, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that aluminum sulfate from Venezuela is being, or is likely to be, sold to the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation (54 FR 17802, April 25, 1989), the following events have occurred. On May 15, 1989, the ITC determined that there is a reasonable indication that imports of aluminum sulfate from Venezuela are materially injuring a regional industry in the United States (USITC Pub. 2189, May 1989).

On May 10, 1989, the Department presented Section A of the antidumping questionnaire to Sulfates del Orinoco, C.A. (SULFORCA), which accounted for a substantial portion of exports from Venezuela to the United States during the period of investigation. The response to section A of the questionnaire was received on May 25, 1989. On May 31, 1989, petitioner alleged that SULFORCA's home market sales were at prices which were below its cost of production. This allegation was amended on June 23, 1989. We have not yet determined whether the allegation provides a sufficient basis for initiating a cost investigation. On June 13, 1989, SULFORCA informed the Department that it would not be responding to the remaining portions of the sales questionnaire or to any cost questionnaire if one is issued.

On July 20, 1989, petitioner filed a request for alignment of the countervailing duty and antidumping duty final determinations. Pursuant to section 705(a)(1) of the Act, we are aligning the countervailing duty and antidumping duty final determinations.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumptions on or after that date will be classified solely according to the appropriate HTS item number. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive of the scope of our investigation.

The product covered by this investigation is aluminum sulfate from Venezuela, liquid and dry, currently provided for under HTS item number 2833.22.00.00.

Period of Investigation

The period of investigation is August 1, 1988 through March 31, 1989.

Fair Value Comparisons

To determine whether sales of aluminum sulfate from Venezuela to the United States were made at less than fair value, we compared the United States price to the foreign market value. We used best information available as required by section 776(c) of the Act for the reasons stated in the "Case History" section of this notice.

United States Price

As best information available, we used petitioner's estimate of U.S. price, as provided in the petition, which is based on a delivered price per ton of aluminum sulfate imported from Venezuela. This price is set forth in a contract between a U.S. customer and SULFORCA, the Venezuelan supplier named in the petition. U.S. price was adjusted to account for inland freight from the liquification site in Puerto Rico to the customer, liquification cost in Puerto Rico, inland freight to the liquification site in Puerto Rico, Puerto Rican excise taxes, ocean freight and insurance.

Foreign Market Value

As best information available, we used petitioner's estimate of foreign market value (FMV) which is based on an f.o.b. plant price quote dated March 10, 1989. Petitioner made no adjustment to FMV.

Verification

Since SULFORCA did not furnish a complete response to the questionnaire, we will not conduct a verification.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of aluminum sulfate from Venezuela, as defined in the "Scope of Investigation" section of this notice that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Venezuela exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
SULFORCA	96.30
All others	96.30

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after our final determination, if affirmative.

Public Comment

In accordance with § 353.38 of the Commerce Department's antidumping duty regulations published in the **Federal Register** of March 28, 1989 (54 FR 12742) (to be codified as 19 CFR 353.38) and § 355.38 of the Commerce Department's countervailing duty regulations published in the **Federal Register** of December 27, 1988 (54 52361) (to be codified as 19 CFR 355.38), case briefs in at least ten copies must be submitted to the Assistant Secretary by September 15, 1989, and rebuttal briefs by September 20, 1989. In accordance with § 353.38(b) of the Department's antidumping duty regulations and § 355.38(b) of the Department's countervailing duty regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in their case or rebuttal briefs at 10:00 a.m. in the antidumping duty investigation and 2 p.m. in the countervailing duty investigation on September 22, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in

the hearing must submit a request to the Assistant Secretary for Import Administration, Room B099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18876 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-062]

Animal Glue and Inedible Gelatin From West Germany; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from a manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping finding on animal glue and inedible gelatin from West Germany. The review covers one manufacturer/exporter of this merchandise to the United States, G. Conradt & Sohn (Conradt), and the period December 1, 1987 through November 30, 1988. There were no known shipments of this merchandise to the United States by Conradt during the period, and there are no known unliquidated entries. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Room B-099, 14th Street & Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 546) the final results of its last administrative review of the antidumping finding on animal glue and inedible gelatin from West Germany. A manufacturer/exporter, Conradt, requested in accordance with 19 CFR 353.53a(a) (1988) that we conduct an administrative review. We published a notice of initiation on January 31, 1989 (54 FR 4871). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after the date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of West German animal glue and inedible gelatin. During this review period such merchandise was classifiable under item numbers 455.4000 and 455.4200 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS items 3503.00.20 and 3506.10.10. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Conradt, and the period December 1, 1987, through November 30, 1988. There were no known shipments of this merchandise to the United States by Conradt during the period, and there are no known unliquidated entries.

Conradt requested revocation from the finding based on no shipments since 1976. Pursuant to § 353.25 of the Department's antidumping regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.25), we preliminarily determine that Conradt does not qualify for revocation, because the absence of shipments can no longer be used as the basis of revocation.

Preliminary Results of Review

As a result of our review, we preliminarily determine the margin to be:

Manufacturer/exporter	Period	Margin (percent)
Conradt	12/1/87-11/30/88	[1] 67

[1] No shipments during the period; margin from the last period in which there were shipments.

Interested parties may request disclosure and/or an administrative protective order within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Prehearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such comments or at a hearing.

Further, as provided for by § 353.22(c)(10) of the Department's regulations, a cash deposit of estimated antidumping duties of 67 percent shall be required for Conradt. For any shipments from the six remaining known manufacturers and/or exporters and the one known third-country reseller not covered in this review, the cash deposit will be the same as the rates published in the final results of the last administrative review for each of these firms (49 FR 13565, April 5, 1984). For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1988, and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required.

Thes cash deposit requirements apply to all shipments of West German animal glue and inedible gelatin entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18867 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-05-M

[A-580-603]

Brass Sheet and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 17, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from the Republic of Korea. The review covers one manufacturer/exporter of this merchandise to the United States and the period August 22, 1986 through December 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. At the request of the respondent, we held a hearing on April 21, 1989. Based on the comments received, we have changed the final results from those presented in the preliminary results of review.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 11258) the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip from the Republic of Korea (52 FR 1215, January 12, 1987). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Tariff Act").

Scope of the Review

Imports covered by this review are shipments of brass sheet and strip. During the review period, such merchandise was classifiable under item 612.3900 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") items 7409.21.00 and 7409.29.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter, Poongsan Metal Corporation ("Poongsan"), of brass sheet and strip from the Republic of Korea and the period August 22, 1986 through December 31, 1987.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the request of Poongsan, the respondent, we held a hearing on April 21, 1989. We received comments from Poongsan and the petitioners (American Brass, Hussey Copper, The Miller Company, North Coast Brass and Copper, Olin Corporation, Revere Copper Products, International Association of Machinists and Aerospace Workers, the AFL-CIO, Mechanics Educational Society of America (Local 56), and the AFL-CIO/CLC).

The Department notes that Poongsan did not provide currency identifiers on its computer tapes. As a result, we read the prices in the home market as Korean won and, for certain U.S. sales, we read "other merchandise processing fee" and "other harbor maintenance fee" as Korean won. Since Poonsan has subsequently identified certain figures as being in U.S. dollars, for these final results we have moved the decimal point so that the prices can be read in dollars.

Analysis of Poongsan's Comment

Comment 1: Poongsan argues that the Department should use the sales to its related distributor in the calculation of foreign market value because these prices are generally higher than those prices to unrelated parties in the home market.

Department's Position: We were unable to determine wehter or not Poongsan's prices to its related distributors were comparable to those prices to unrelated parties in the home market. Furthermore, we found that Poongsan sells at two different levels of trade in the home market. That is, it sells to related distributors and to unrelated OEMs. Section 353.58 of the Commerce Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 355.58) states that we will calculate foreign market value and United States price based on sales at the same commercial level of trade. As a result, we compared the price to the OEMs in the United States to the price of the OEMs in the home market.

Analysis of the Petitioners' Comments

Comment 1: The petitioners argue that the Department unreasonably calculated differences in merchandise adjustments based on average 18-month variable costs rather than average quarterly variable costs for alloy 70/30. Using quarterly variable cost data to calculate difference in merchandise adjustments for alloy 70/30 is consistent with the differences in merchandise adjustments involving sales of 85/15 and 90/10. In addition, quarterly variable costs should be used in the final analysis because it is this information that most accurately reflects the variable costs of producing the merchandise actually sold. Using the average 18-month variable costs unreasonably distorts and understates the margin.

Department's Position: We determined that the 18-month variable costs were reasonable because there we no marked fluctuations in the quarterly data, and the difference in using the average 18-month variable costs versus the average quarterly costs for alloy 70/30 would have had a *de minimis* effect on the margin. For alloy 85/15 and 90/10, we did use the average quarterly variable costs because Poongsan did not provide the 18-month variable costs.

Comment 2: The petitioners argue that the Department improperly determined the date of sale on certain U.S. transactions where the metal price was fixed after the fabrication price. Using the date the metal price was fixed affects the Department's selection of contemporaneous sales of merchandise for comparison purposes. Therefore, the Department should make the necessary corrections.

Department's Position: We agree. Based on the information provided, the total fixed price for certain U.S. transactions was not established until the metal price was set. Therefore, we have made the changes to the dates of sale for those transactions where the metal price was fixed after the date of the fabrication price and we have changed the home market model matches accordingly.

Comment 3: The petitioners argue that the Department in applying its 90/60 day contemporaneous sale rule in selecting home market sales for comparison purposes, erroneously compared a U.S. sale made on October 28, 1987, with home market sales made on July 27, 1987, and a U.S. sale made on November 17, 1987, with a home market sale made on August 7, 1987.

Department's Position: We disagree. In applying the 90/60 day rule for selecting contemporaneous home market sales for comparison purposes, the Department used monthly weighted-average home market prices, not the price of an individual home market transaction. The 90/60 day guideline in such a case means that foreign market

values three months prior to or two months after the month in which the U.S. sale was made may be used, with preference being given to the former.

Comment 4: The petitioners argue that the Department erred by allowing Poongsan's home market warranty expense as a circumstance of sale adjustment because it was allocated across all home market sales and not just the alloys used for comparison purposes. Second, Poongsan has failed to distinguish between those warranty expenses incurred on sales to its related distributor and those warranty expenses incurred on sales to unrelated OEMs. For these reasons the Department should reject Poongsan's home market warranty expense claim.

Department's Position: We disagree. In the absence of any evidence that warranty expenses vary by grade or between various distributors and OEMs, and because Poongsan does not account for warranty expenses by alloy or customer, we find Poongsan's method of calculating this expense to be reasonable.

Comment 5: The petitioners argue that the Department should deduct the amount of the antidumping duties to be paid by Poongsan's affiliate in the United States because it is the importer of record. Petitioners further argue that this downward adjustment will achieve the price equilibrium intended by section 353.55 (now section 353.26) of the Commerce regulations.

Department's Position: Section 353.26 of the Commerce regulations provides that in calculating the United States price, the Department will deduct any amount of antidumping duties that are reimbursed to the producer or reseller. In this case, the petitioners have not alleged that antidumping duties are being reimbursed, and there is no evidence on the record that an agreement to reimburse those duties exists. Absent evidence of reimbursement, the Department has no authority to make such an adjustment to U.S. price.

As a protection against such reimbursement, § 353.26 also requires that importers provide the Customs Service a certificate of nonreimbursement prior to liquidation of entries. If that certificate is not provided, the Customs Service will decrease the United States price by the calculated amount of antidumping duties, and thus, will liquidate the entry at twice the antidumping duty rate.

Comment 6: The petitioners argue that the Department's selection of best information available for after sale warehousing expense in the United States rewards Poongsan for failing to report this expense properly. The petitioners further argue that the Department should calculate the amount of poongsan's after sale warehousing expense on a per pound basis by dividing the total expense by the total pounds sold on an f.o.b. Pan Metal (Poongsan's affiliate) warehouse basis. Poongsan argues that the Department correctly used the best information available for calculating the amount of after sale warehousing expenses. They further argue that petitioners' approach would arbitrarily and grossly overstate warehousing costs because it is inferential in nature and substantially distorts the amount of product actually stored.

Department's Position: Because Poongsan did not provided the information necessary to allocate the expense, and because the petitioners' suggested use of best information available is reasonable, we have recalculated the after sale warehousing expense on a per pound basis.

Comment 7: The petitioners contend that Poongsan's cash deposit rate should be applied to "all other" exporters and not just to new exporters as stated in our preliminary notice. Petitioners claim that this would simplify the process.

Department's Position: While simpler in some respects, applying Poongsan's rate to "all others" and not just to "new shippers" would not be in accordance with the Department's longstanding practice. (See our *Final Results of Administrative Review; Certain High Capacity Pagers from Japan*, 51 FR 16681, May 7, 1986, *Sugar and Syrups from Canada*, 51 FR 20322, June 4, 1986, and *Pig Iron from Canada*, 51 FR 42277, November 24, 1986.) Moreover, in this proceeding Poongsan is the only known exporter and, hence, to our knowledge the "all other" rate has not been applied to any other shipper.

Final Results of the Review

As a result of our review of the comment received and the correction of certain clerical errors, we have determined that a margin of 7.34 percent exists for Poongsan Metal Corporation for the period August 22, 1986 through December 31, 1987.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions for each exporter directly to the Customs Service. Individual differences between United States price and foreign market value may vary from the percentages stated above. Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposited of estimated antidumping duties based on the above margin shall be required. For any future entries of this merchandise from a new exporter, not covered in this administrative review, whose first shipments occurred after December 31, 1987, and who is unrelated to any reviewed firm, a cash deposit of 7.34 percent shall be required.

These deposit requirements are effective for all shipments of Korean brass sheet and strip entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22.

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18871 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-614-502]

Low-Fuming Brazing Copper Rod and Wire from New Zealand; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from a manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand. The review covers one manufacturer/exporter of this merchandise to the United States, McKechnie Bros. (N.Z.) Ltd. ("McKechnie"), and the period December 1, 1986 through November 30, 1987. The review indicates the existence of dumping margins.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4195/2923.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 21504) the final results of its last administrative review of the antidumping duty order on low-fuming brazing copper rod and wire from New Zealand (50 FR 49740, December 4, 1985). McKechnie requested in accordance with 19 CFR 353.53a(a) (1988) that we conduct an administrative review. We published a notice of initiation on January 27, 1988 (53 FR 2262). The Department has now conducted that review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number (s).

Shipments covered by this review are low-fuming brazing copper rod and wire principally of copper and zinc alloy ("brass") of varied dimensions in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated. During the review period such merchandise was classifiable under item numbers 612.6205, 612.7220, and 653.1500 of the *Tariff Schedules of the United States Annotated.* This merchandise is currently classifiable under HTS item numbers 7407.21.50, 7408.11.60, 7408.19.00, 7408.21.00, 7408.22.50, 7408.29.50, 8311.10.00, 8311.20.00, 8311.30.60, and 8311.90.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers one manufacturer/exporter of this merchandise to the United States, McKechnie, and the period December 1, 1986 through November 30, 1987.

United States Price

In calculating United States price, the Department used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the c.i.f. price to unrelated purchasers in the United States. We made adjustments for ocean freight and marine insurance. Additionally, we added the assessed amount of U.S. countervailing duty attributable to export subsidies to the United States price. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, the Department used home market or third-country price, both as defined in section 773 of the Tariff Act.

Home market price was based on the packed, free-on-railhead price to unrelated purchasers in the home market with adjustments where applicable for inland freight and U.S. commissions. We made further adjustments where applicable for differences in credit, the physical characteristics of the merchandise, and packing between the home market and U.S. merchandise. No other adjustments were claimed or allowed.

Third-country price was based on packed c.i.f. price to various purchasers in Canada. We made adjustments where applicable for ocean freight and marine insurance. We made further adjustments where applicable for differences in commissions, credit, the physical characteristics of the merchandise and packing between the third-country and U.S. merchandise. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists for the review period:

Manufacturer/Exporter: McKechnie.
Time Period: 12/01/86–11/30/87.
Margin (Percent): 1.68.

Interested Parties may request disclosure within five days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 45 days after the date of publication, or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751 (a)(2) of the Tariff Act, a cash deposit of estimated antidumping duties of 1.68 percent shall be required for McKechnie. For any future entries of this mechandise form a new exporter, not covered in this or prior administrative reviews, whose first shipment occurred after November 30, 1987, a cash deposit of 1.68 shall be required. These cash deposits are effective for all shipments of low-fuming brazing copper rod and wire, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's Regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742 (to be codified at 19 CFR 353.22)).

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89–18874 Filed 8–11–89; 8:45 am]

BILLING CODE 3510-DS-M

[A–588–028]

Roller, Chain, Other Than Bicycle, From Japan; Revocation in Part of Antidumping Finding

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

ACTION: Notice of revocation in part of antidumping finding.

SUMMARY: On January 23, 1989, the Department of Commerce published the final results of antidumping duty administrative review and intent to revoke in part on the antidumping finding on roller chain, other than bicycle, from Japan. At the time of publication the Department had been ordered by the Court of International Trade ("the Court") not to revoke the finding with respect to Tsubakimoto pending a decision on the matter before the Court (*U.S.T. Inc. and Tsubakimoto Chain Company v. United States,* Court No. 86–08–00993, Order dated February 4, 1988). Because the Court dismissed the case on May 15, 1989, the Department of Commerce is proceeding with revocation with respect to Tsubakimoto.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Edward F. Haley or Robert Marenick,

Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On January 23, 1989, the Department of Commerce ("the Department") published the final results of antidumping duty administrative review and intent to revoke in part on the antidumping finding on roller chain other than bicycle, from Japan (54 FR 3099). That notice stated that if the Department's intent to revoke in part was finalized, it would apply to all unliquidated entries of this merchandise manufactured and exported by Tsubakimoto and entered, or withdrawn from warehouse, for consumption on or after September 1, 1983, the date of its tentative determination to revoke with respect to this firm (48 FR 39673). At the time of publication of its intent to revoke in part, the Department has been ordered by the Court of International Trade not to revoke the finding with respect to Tsubakimoto pending a decision on the matter before the Court.

On May 15, 1989, the Court dismissed *U.S.T. Inc, and Tsubakimoto Chain Company v. United States*, Court No 86–08–00993, thereby allowing the Department to proceed with revocation in part of the antidumping finding on roller chain, other than bicycle, with respect to Tsubakimoto.

Revocation in Part of Antidumping Finding

For the reasons set forth in the final results of administrative review and intent to revoke in part, the Department, is revoke the antidumping finding on roller chain, other than bicycle, from Japan with respect to Tsubakimoto. This partial revocation applied to all unliquidated entries to this merchandise manufactured and exported by Tsubakimoto and entered, or withdrawn from warehouse, for consumption on or after September 1, 1983. The Department will instruct the Customs Service not to assess antidumping duties on entries on or after September 1, 1983.

Because the tentative revocation was published prior to the effective date of the Commerce Regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.25) this notice and revocation in part are being published in acordance with sections 19 CFR 353.54 (1988) of the Department's Regulations.

Dated: August 4, 1989

Lisa B. Barry,

Acting Assistant Secretary for Import Administration

[FR Doc. 89–18873 Filed 8–11–89; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–057]

Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from one manufacturer/exporter and the petitioner, the Department of Commerce ("the Department") has conducted an administrative review of the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada. The review covers one manufacturer and/or exporter of this merchandise and the period September 1, 1987 through December 31, 1988. This firm, Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. (formerly Fortress Allatt Ltd.) ("Allatt"), provided inadequate and untimely responses to the Department's requests for information. Therefore, we used the best information available for this firm. As a result of the review, we have preliminarily determined to assess antidumping duties equal to the rate found during the fair value investigation as best information available for this firm.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Chip Hayes, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–8312/2923.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 1752) the final results of its last administrative review on the antidumping finding on replacement parts for self-propelled bituminous paving equipment from Canada (42 FR 41811, September 7, 1977). On May 8, 1989, the Department published in the **Federal Register** an amendment to the final results of administrative review (54 FR 19581). One manufacturer and/or exporter and the petitioner requested, in accordance with § 353.53a(a) of the Commerce Regulations (1988), that we conduct an administrative review. We published a notice of initiation on December 5, 1988 (53 FR 48951). That notice indicated that the period of review was September 1, 1987 through August 31, 1988. Subsequently, we amended the period of review to include all sales through December 31, 1988. The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Allatt provided inadequate and untimely responses to the Department's requests for information. The firm's initial questionnaire response failed to provide information on either sales of identical or similar merchandise in third-countries or information for constructed value for those parts that had no similar home market sales. It then failed to provide a timely response to a follow-up request for this information and information regarding freight charges for parts sold directly to customers, for parts sold from warehouses, commissions on sales to the United States and warehouse and selling expenses in the United States.

Accordingly, we have used the best information available. As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the rate found during the fair value investigation as best information available for this firm.

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of replacement parts for self-propelled bituminous paving equipment, excluding attachments and parts for attachments, from Canada. During the review period, such merchandise was classifiable under items 652.1540, 652.1825, 652.3530, 678.5097, 680.2500,

680.3300, 685.9026, 685.9500, 686.8040, 688.1800, 712.4900, and 773.2500 of the *Tariff Schedules of the United States Annotated*. This merchandise is currently classifiable under HTS items 4016.93.10, 7315.11.00, 7315.89.50, 7315.90.00, 8336.50.00, 8479.99.00, 8481.20.00, 8482.10.10, 8483.90.90, 8539.29.20, 8544.20.00, 8544.41.00, 8544.51.80, 8544.60.20, 9015.30.40. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of this merchandise to the United States and the period September 1, 1987 through December 31, 1988.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 30.61 percent exists for Allatt Paving Equipment Division of Ingersoll-Rand Canada Inc. for the period September 1, 1987 through December 31, 1988.

Interested parties may request disclosure whithin 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Pre-hearing briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.22(c)(10) of the new Commerce Regulations (published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22)), a cash deposit of estimated antidumping duties based on the above margins shall be required for this firm. For any shipments from the remaining known manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the final results of the last administrative review for each of these firms (May 8, 1989, 54 FR 19581). For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipment occurred after December 31, 1988, and who is unrelated to any reviewed firm or any other previously reviewed firm, a cash deposit of 1.39 percent shall be required. Because cash deposit rates assigned as best information available are not used for new exporters, we use the highest rate found in the last published review. These deposit requirements are effective for all shipments of Canadian replacement parts for self-propelled bituminous paving equipment entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the new Commerce Regulations.

Dated: August 4, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18869 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-803]

Postponement of Final Antidumping Duty Determination and Postponement of Antidumping Duty Public Hearing; Certain Small Business Telephone Systems and Subassemblies Thereof From Korea

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

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondents in the antidumping duty investigations to postpone the final determination, as permitted by section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)).

Based on this request, we are postponing our final determination as to whether sales of small business telephone systems and subassemblies thereof from Korea have occurred at less than fair value not later than December 18, 1989. We are also postponing our public hearing in the antidumping duty investigation until November 16, 1989.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Brad Hess at (202-377-3773), or Louis Apple at (202-377-1769), Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On August 3, 1989, we published a preliminary determination of sales at less than fair market value of this merchandise. This notice stated that if the investigation proceeded normally, we would make our final determination by October 10, 1989.

On July 28, and August 2, 1989, respondents requested a postponement of the final determination in the antidumping duty investigation until not later than December 18, 1989, the 135th day after publication of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act (19 U.S.C. 1673d(a)(2)(A)). These respondents account for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the subject merchandise under investigation request a postponement of the final determination following a preliminary affirmative determination we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are postponing the date of the final antidumping duty investigation until not later than December 18, 1989.

Public Comment: In accordance with § 353.38 of the Department's regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.38), if requested we will hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination in the antidumping duty investigation at 9:30 a.m. on November 16, 1989, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed.

Ten copies of the business proprietary version and five copies of the public version of case briefs must be submitted to the Assistant Secretary by November 9, 1989. Ten copies of the business proprietary version and five copies of the public version of rebuttal briefs must be submitted to the Assistant Secretary by November 14, 1989.

An interested party may make an affirmative presentation at the public hearings only on arguments included in

that party's case brief, and may make a rebuttal presentation only on arguments in that party's rebuttal brief. Written arguments should be submitted in accordance with section 353.38 of the Commerce Department's regulations published in the Federal Register on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.38), and will be considered only if received within the time limits specified in this notice.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 735(d) of the Act. This notice is published pursuant to section 735(d) of the Act.

Dated: August 7, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18877 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-05-M

[A-307-701]

Final Results of Antidumping Duty Administrative Review; Solid Urea From the Union of Soviet Socialist Republics

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 25, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on solid urea from the Union of Soviet Socialist Republics. The review covers one manufacturer/exporter of this merchandise to the United States, Soyuzpromexport ("SPE"), and the period January 2, 1987 through June 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Based on our analysis, the final results are the same as those presented in the preliminary results of review.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph E. Downey or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1989, the Department of Commerce ("the Department") published in the Federal Register (54 FR 17805) the preliminary results of its administrative review of the antidumping duty order on solid urea from the Union of Soviet Socialist Republics (53 FR 2636, July 14, 1987). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of solid urea from the Union of Soviet Socialist Republics. During this review period such merchandise was classifiable under item 480.3000 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under Harmonized Tariff Schedule ("HTS") item 3102.10.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, SPE, and the period January 1, 1987 through June 30, 1988. There were no known shipments of this merchandise to the United States by SPE during the period and there are no known unliquidated entries.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. We received no comments. The final results are the same as those presented in our preliminary results of review. The Department has determined that the following margin exists for the period January 2, 1987 through June 30, 1988:

Manufacturer/Exporter	Margin/Percent
SPE	*44.80

* No shipments during the period; margin from the last period in which there were shipments.

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties shall be required on all entries of this merchandise based on the above margin.

These deposit requirements are effective for all shipments of solid urea from the USSR entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's new regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.22).

Dated: August 4, 1989

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18870 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-429-601]

Final Results of Antidumping Duty Administrative Review; Solid Urea From the German Democratic Republic

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 25, 1989, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on solid urea from the German Democratic Republic. The review covers one manufacturer/exporter of this merchandise to the United States, Chemie Export-Import ("Chemie"), and the period January 2, 1987 through June 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results. We received no comments. Based on our analysis, the final results are the same as those presented in the preliminary results of review.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 1989, the Department of Commerce ("the Department") published in the Federal Register (54 FR 17805) the preliminary results of its administrative review of the antidumping duty order on solid urea from the German Democratic Republic (53 FR 2636, July 14, 1987). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of solid urea from the German Democratic Republic. During this review period such merchandise was classifiable under item 480.3000 of the Tariff Schedules of the United States Annotated. This merchandise is

currently classifiable under Harmonized Tariff Schedule ("HTS") item 3102.10.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of this merchandise to the United States, Chemie, and the period January 2, 1987 through June 30, 1988. There were no known shipments of this merchandise to the United States by Chemie during the period and there are no known unliquidated entries.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. We received no comments. The final results are the same as those presented in our preliminary results of the review. The Department has determined that the following margin exists for the period January 2, 1987 through June 30, 1988:

Manufacturer/Exporter: Chemie.

Margin/Percent: 44.80*.

As provided for in section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties shall be required on all entries of this merchandise based on the above margin.

This deposit requirement is effective for all shipments of East German solid urea entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1671(a)(1)) and § 353.22 of the Department's new regulations (54 FR 12742, March 28, 1989) (to be codified at 19 CFR 353.22).

Dated: July 27, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-18868 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-05-M

[A-337-602]

Standard Carnations from Chile; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner and three respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on standard carnations from Chile. The review covers four producers/exporters of this merchandise to the United States and the period November 3, 1986 through February 29, 1988. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties using the margin from the antidumping duty order as best information otherwise available.

We used the best information for these firms because Coexflor, Flores de Chile, and Sociedad Agricola provided inadequate responses to our requests for information and Agricola Longotoma did not respond to our antidumping questionnaire.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Laurie A. Lucksinger, Office of Antidumping Duty Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 8939) the antidumping duty order on standard carnations from Chile. The Floral Trade Council, the petitioner, and three respondents requested in accordance with 19 CFR 353.53a(a) (1988) that we conduct an administrative review.
(15083). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of standard carnations from Chile. During the review period such merchandise was classifiable under item 192.21 of the Tariff Schedules of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under HTS item 0603.10.90. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers four producers and/or exporters of standard carnations from Chile to the United States and the period November 3, 1986 through February 29, 1988.

Preliminary Results of the Review

Three firms submitted inadequate responses to the Department's request for information: Coexflor, Flores de Chile, and Sociedad Agricola. The three responses and supplemental responses were inadequate because they did not provide the sale-specific data we requested. In their original responses, the three firms provided aggregate home market and/or United States sales data. In a supplemental questionnaire we requested that they provide sale-specific data and the charges associated with each sale. The supplemental responses did not provide sale-specific data but again aggregated all sales. Therefore, we were unable to analyze the individual sales to the United States and to determine the appropriate foreign market value for our dumping analysis. Agricola Longotoma failed to respond to our antidumping questionnaire. For all four firms we relied on the best information otherwise available for purposes of assessment and cash deposit of estimated antidumping duty. As best information otherwise available we used the highest rate in the antidumping duty order.

As a result of our review, we preliminarily determine that the following margins exist for the period November 3, 1986 through February 29, 1988:

Producer/Exporter	Margin (Percent)
Agricola Longotoma	28.78
Coexflor	28.78
Flores de Chile	28.78
Sociedad Agricola	28.78

Interested parties may request disclosure within 5 days of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to

* No shipments during the period; margin from the last period in which there were shipments.

issues in those comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required on shipments of standard carnations from Chile by the companies under review. For any future entries of this merchandise from a new producer and/or exporter, not covered in this review or in the original investigation, whose first shipments occurred after February 29, 1988, and who is unrelated to the reviewed firms or any firm which was subject to the original investigation, a cash deposit of 28.78 percent shall be required.

These deposit requirements are effective for all shipments of standard carnations from Chile entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of our antidumping regulations published in the **Federal Register** on March 28, 1989 (54 FR 12742) (to be codified at 19 CFR 353.22).

Dated: August 7, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18875 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-402]

Lime From Mexico; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Administrative Review and Intent To Revoke Countervailing Duty Order

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

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty administrative review and intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce has received information sufficient to warrant initiation of a changed circumstances administrative review of the countervailing duty order on lime from Mexico. Based on this information, we preliminarily determine that the U.S. lime industry would not be materially injured or threatened with material injury if the countervailing duty order on lime from Mexico were revoked. Therefore, we intend to revoke this countervailing duty order. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: August 24, 1988.

FOR FURTHER INFORMATION CONTACT: Paul McGarr or Ilene Hersher, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On September 11, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 35672) a notice of final affirmative countervailing duty determination and countervailing duty order on lime from Mexico. At the time the countervailing duty order was issued, Mexico was not entitled to an injury test under U.S. and international law. Countervailing duties were imposed upon this merchandise, which was and remains duty free, without a determination that these entries were injuring the relevant domestic industry.

On August 24, 1986, Mexico acceded to the General Agreement on Tariffs and Trade ("GATT"). Consistent with our earlier positions in *Certain Fasteners from India; Final Results of Administrative Review and Partial Revocation of Countervailing Duty Order* (47 FR 44129; October 6, 1982) and *Carbon Steel Wire Rod from Trinidad and Tobago; Preliminary Results of Administrative Review and Tentative Determination to Revoke Countervailing Duty Order* (50 FR 19561; May 9, 1985), the Department has concluded that it lacks the authority under Article VI of the GATT and section 303(a)(2) of the Tariff Act of 1930, as amended ("the Tariff Act"), to levy countervailing duties on duty-free imports from Mexico absent a determination regarding injury to the domestic industry.

On January 31, 1989, in order to fulfill our international obligations, the United States Trade Representative ("USTR") requested that the U.S. International Trade Commission ("ITC") conduct an investigation pursuant to Section 332 of the Tariff Act to assess whether (1) an industry in the United States would be materially injured, or would be threatened with material injury, or (2) the establishment of an industry in the United States would be materially retarded, if the Department were to revoke the outstanding countervailing duty order on lime from Mexico. On July 10, 1989, the ITC submitted to USTR its report on the "Conditions of Competition Between U.S. and Mexican Lime in the United States Market" (Investigation No. 332-271).

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments from Mexico of calcium oxide (CaO), commonly called quicklime or lime, and calcium hydroxide [$Ca(OH)_2$], commonly called hydrated lime or hydrate. Through 1988, such merchandise was classifiable under item numbers 512.1100 and 512.1400 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item numbers 2520.20.00, 2522.10.00 and 2522.30.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Initiation, Preliminary Results of Review and Intent to Revoke

The Government of Mexico's accession to the GATT, the international obligations that we incurred which require an affirmative determination of injury to a domestic industry prior to levying countervailing duties on duty-free imports of lime from Mexico, and the ITC's investigation of the "The Conditions of Competition Between U.S. and Mexican Lime in the United States Market" are changed circumstances sufficient to warrant initiation of a review. Further, because of our international obligations and the information in the ITC's report, we conclude that expedited action is warranted and are combining the notices of initiation and preliminary results of changed circumstances administrative review.

As a result of our review of the record developed in the ITC's investigation, we preliminarily determine that the United States lime industry would not be materially injured or threatened with material injury, nor would the establishment of an industry be materially retarded, by reason of imports of lime from Mexico if the countervailing duty order covering those imports were revoked. Further, we preliminarily determine that the Southwestern United States lime industry would not be materially injured or threatened with material injury, nor would the establishment of an industry be materially retarded, if the countervailing duty order were revoked. For these reasons, and in view of our international obligations not to levy countervailing duties on duty-free imports from GATT-member countries in the absence of an affirmative injury determination, we preliminarily determine that there is a reasonable basis to believe that the requirements for revocation based on changed circumstances are met.

Therefore, we intend to revoke the countervailing duty order on lime from Mexico effective August 24, 1986. The current requirements for the cash deposit of estimated countervailing duties will remain in effect until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday following. Rebuttal briefs and rebuttals to written comments, limited to issues in those comments, must be filed not later than 37 days after the date of publication. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This initiation of review, administrative review, intent to revoke and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and §§ 355.22 (h)(1) and (h)(4) and 355.25 (d)(1) and (d)(3) of the Commerce Regulations published in the **Federal Register** on December 27, 1988 (53 FR 52306) (to be codified at 19 CFR 355.22 and 355.25).

Dated: August 7, 1989.

Lisa B. Barry,

Acting Assistant Secretary for Import Administration.

[FR Doc. 89-18878 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will meet on August 28 through September 1, 1989, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC, to discuss snapper/grouper, large pelagics, bluefish, shark, king and Spanish mackerel, habitat, and other fishery management issues. The Council's Finance, Executive, Advisory Panel, Scientific and Statistical, and Law Enforcement Committees also will meet.

A detailed agenda will be available to the public on or about August 11, 1989. For more information contact Carrie R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Dated: August 8, 1989.

Richard H. Schaefer,

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

[FR Doc. 89-18879 Filed 8-11-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Amendment to the Notice of Intent (NOI) To Prepare an Environmental Impact Statement for the Realignment of Mountain Home AFB, ID

On February 8, 1989, the Department of the Air Force published a notice of intent document in the **Federal Register** (54 FR 6256). Please add the following:

To accommodate the move of the 35 TTW and associated assets from George AFB, California to Mountain Home AFB, Idaho, additional air-to-ground gunnery range and associated airspace will be required at Saylor Creek Weapons Range. The exact size of new airspace and air-to-ground range expansion is still under study and will be included in the Mountain Home AFB, ID Realignment Environmental Impact Statement (EIS). As part of the range expansion, some lands managed by the Bureau of Land Management (BLM) will need to be withdrawn for Air Force use and some private and state lands will need to be acquired. The anticipated total acquisition will represent approximately 1,500,000 acres. Where compatible and possible, land use will remain as it is now. However, some weapons impact areas for the air-to-ground ranges will be designated for sole (exclusive) Air Force use.

The proposal for additional airspace requirements includes lowering the floor of the existing military operating areas (MOAs) to 10,000 feet mean sea level (MSL) for subsonic flight training over Nevada and Oregon, and possibly extending the boundary of Paradise MOA further south. The proposal for supersonic flight operations includes the proposed Owyhee MOA and the expanded Saylor Creek Range, all in the state of Idaho. Supersonic flight operations are a desirable capability for all modern fighter aircraft. Supersonic operations and associated impacts will be evaluated within the context of the EIS for the Mountain Home AFB Realignment and Saylor Creek Expansion.

Since the EIS includes a proposed land withdrawal, the Bureau of Land Management (BLM) will be a cooperating agency for the EIS. This may require BLM land use plans to be amended and updated to cover the expanded range area. All issues involved in the range and airspace expansion will be addressed in the EIS.

The range and airspace expansion were not included in the original notice of intent because the requirements associated with these expansions were being evaluated.

We plan to hold additional scoping meetings. Specific dates and times will be announced in the local media.

Questions concerning this proposal, additional scoping, or the draft EIS may be directed to: Captain Wilfred Cassidy, HQ TAC/DEEV, Langley AFB, VA 23665-5542, Telephone (804) 764-4430.

Written comments should be submitted by August 31, 1989.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89-18941 Filed 8-11-89; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

August 8, 1989.

The USAF Scientific Advisory Board Division Advisory Group (AG) for Munitions Systems Division (MSD) will meet on 30 and 31 August 89 from 8:00 am to 5:00 pm and on 1 September 89 from 8:00 am to 3:00 pm at Eglin AFB, FL 32542, in Building 1.

The purpose of this meeting is to receive classified briefings and hold classified discussions on future tactical missile developments. This meeting will involve discussions of classified defense matters listed in section 552(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–18927 Filed 8–11–89; 8:45 am]

BILLING CODE 3910–01–M

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Office of the Secretary of the Air Force

BG Noah E. Loy

Air Staff

BG Graham E. Shirley

Air Force Systems Command

BG Frederick A. Fiedler, Mr. Dennis M. Ring

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 89–18931 Filed 8–11–89; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Office of the Secretary

Office of Administrative Law Judges: Designation of Jurisdiction; American Printing House for the Blind, Inc., Louisville, KY

AGENCY: Department of Education.

ACTION: Notice of designation of jurisdiction to Office of Administrative Law Judges.

SUMMARY: The Secretary designates the Office of Administrative Law Judges (OALJ) as the forum to hear the appeal of the American Printing House for the Blind (APHB) of a program determination letter (PDL) issued by the Assistant Secretary for the Office of Special Education and Rehabilitative Services (Assistant Secretary). In the PDL issued on March 23, 1989, the Assistant Secretary found that during the audit period (July 1, 1982–June 30, 1987) APHB misspent funds awarded under 20 U.S.C. 101 *et seq.* by including building depreciation in the cost of manufacturing and distributing educational materials for the blind to public and private nonprofit institutions and agencies. The PDL requested that APHB restore $250,370 in the form of credits for brailled materials to the affected agencies and institutions, or alternatively, refund the disallowed amount to the Department of Education (Department). On April 21, 1989, APHB appealed the PDL disallowance and requested a hearing on the matter.

FOR FURTHER INFORMATION CONTACT: Honorable John Cook, Senior Judge, OALJ, 400 Maryland Avenue, SW (Room 3053, FOB–6), Washington, DC 20202–3727, Telephone: (202) 732–5162.

SUPPLEMENTARY INFORMATION: Section 451(a) of the General Education Provisions Act (GEPA), 20 U.S.C. 1234(a), was extensively amended by the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law No. 100–297, section 3501, 102 Stat. 349–357 (1988). Pursuant to the Amendments and final implementing regulations (54 FR 19512, May 5, 1989, to be codified at 34 CFR Part 81), the OALJ has jurisdiction to conduct the following proceedings under an applicable program of the Department:

(1) Recovery of funds hearings pursuant to section 452 of GEPA.

(2) Withholding hearings.

(3) Cease and desist hearings.

(4) "Other proceedings designated by the Secretary".

The Department has the authority to designate the OALJ to hear the APHB's appeal under GEPA, as amended, and its implementing regulations, because an applicable program is any Department of Education program except those under the Higher Education Act and the Impact Aid statutes. *See* section 460(2) of GEPA, 20 U.S.C. 1234i, and 34 CFR 81.2. Thus, the program established pursuant to 20 U.S.C. 101 *et seq.* for the APHB is an applicable program and audit appeals concerning the program may be designated by the Department to the OALJ.

The Secretary has determined that designation of this appeal to the OALJ pursuant to section 451(a)(4) of GEPA would facilitate an orderly administrative review according to procedures recently established by the Hawkins-Stafford Amendments and implementing regulations. Designation will afford APHB the same procedures that are available to grantees of most programs administered by the Department.

Under the authority of section 451(a)(4) of GEPA, as amended (20 U.S.C. 1234(a)(4)) and 34 CFR 81.3 of the regulations, the Secretary designates the OALJ as the forum to hear APHB's appeal of the PDL issued by the Assistant Secretary on March 23, 1989. The OALJ is to review this appeal in accordance with the final regulations codified at 34 CFR part 81.

(Catalog of Federal Domestic Assistance Number not applicable)

Dated: August 8, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89–18923 Filed 8–11–89; 8:45 am]

BILLING CODE 4000–01–M

Meeting of the Executive Committee of the National Assessment Governing Board

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: August 23, 1989.

TIME: 10:00 a.m. until adjournment.

LOCATION: U.S. Department of Education, National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202–7583.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, U.S. Department of Education, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202–7583. Telephone: (202) 732–1824.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the

General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title 2III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 21988 (Pub. L. 100–297); (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on August 23, 1989 from 10:00 a.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The proposed agenda includes delineation of items for the agenda of other matters pertaining to the Executive Committee's responsibilities.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, Mary E. Switzer Building, 330 C Street, SW., Room 4060, Washington, DC from 8:30 a.m. to 5:00 p.m.

Bruno V. Manno,

Acting Assistant Secretary.

[FR Doc. 89–19146 Filed 8–11–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent to Award Grant to Walter Stark

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14(e), it is making a financial assistance award under Grant Number DE–FG01–89CE15370 to Walter Stark.

SCOPE: The funding for this grant will allow the grantee to design, construct and test a pre-production prototype of his dehumidification system for use in high humidity areas.

The purpose of this project is to increase dehumidification performance of a vapor compression system by using an air-to-air heat exchanger. It is anticipated that this process will attain a 20% energy reduction.

ELIGIBILITY: Based on receipt of an unsolicited application, eligibility of this award is being limited to Walter Stark. This project represents a unique idea for which a competitive solicitation would be inappropriate. This is a project with high technical merit, representing an innovative technology which has a strong possibility of allowing for future reduction in the nation's energy consumption.

The term of this grant shall be 24 months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis Morgan, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Arnold A. Gjerstad,

Acting Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–18971 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award Intent to Award Grant To Tubemasters, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE–FG01–89CE15445 to Tubemasters, Inc.

SCOPE: The funding for this grant will further define three basic areas necessary to the development and fabrication of four prototypes of the invention which automates the process of retubing power plant condensors: (1) Design, (2) build and assembly, and (3) test and documentation. It encompasses two hydraulic and two pneumatic units complete with test facilities for valid evaluation.

ELIGIBILITY: Based on receipt of an unsolicited application, eligibility of this award is being limited to Tubemasters, Inc., who has high qualifications in this specialized field of technology. The project has high technical merit representing an innovative technology which has a strong possibility of allowing for future reduction in the Nation's Energy Consumption.

The term of this grant shall be two years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Calvin Lee, MA–453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89–18972 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate; Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7 (b)(2), it intends to award on a noncompetitive basis a cooperative agreement to Georgia Institute of Technology to support efforts on exploratory research and technology transfer leading to a new generic materials technology based on spherical ceramic shells for thermal insulation. The cooperative agreement is to be effective September 1, 1989. The estimated amount is $522,000.

PROCUREMENT REQUEST NO.: 05–89CE90052.000

PROJECT SCOPE: The primary objective of this cooperative agreement is to develop a foundation for a new high temperature insulation technology. This project will contribute to the DOE mission in energy conservation by providing an insulation capability not available today, not likely to be available by other methods at high temperatures and with potential to enable substantial energy conservation in furnaces in both industry and buildings. Georgia Institute of Technology has exclusive domestic capabilities to perform this research a. follow-on commercialization efforts. Eligibility for this award is, therefore, restricted to Georgia Institute of Technology.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene E. Hoffman, Energy Research and Development, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831–8600, 615–576–0735.

Issued in Oak Ridge, Tennessee, on July 26, 1989.

Robert E. Lynch,

Acting Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89–18970 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES89-32-000, et al.]

Utilicorp United Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Utilicorp United Inc.

[Docket No. ES89-32-000]

August 2, 1989.

Take notice that on July 28, 1989, UtiliCorp United Inc. ("Applicant") file an application with the Federal Energy Regulatory Commission ("Commission"), pursuant to section 204 of the Federal Power Act, seeking authority to issue up to and including $50 million of unsecured notes in a private placement and for exemption from the competitive bidding and negotiated placement requirements.

Comment date: August 28, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Northern Consolidated Power, Inc.

[Docket No. QF89-299-000]

August 2, 1989.

On July 21, 1989, Northern Consolidated Power, Inc. (Applicant) of 5 Post Oak Park, Suite 1400, Houston, Texas 77027, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in North East, Pennsylvania. The facility will consist of two combustion turbine generating units, two waste heat recovery boilers and an extraction/condensing steam turbine generating unit. Steam produced by the facility will be sold to Welch Food, Inc. for process uses, and for process chilling and freezing. The maximum net electric power production capacity will be 79.9 MW. The primary energy source will be natural gas. The facility will commence operation in July 1, 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Electric Power Co.

[Docket No. ER89-571-000]

August 4, 1989

Take notice that on July 27, 1989, Southwestern Electric Power Company (SWEPCO) tendered for filing a proposed amendment, dated July 2, 1989, to its contract for the sale of electric power and energy to the City of Hope, Arkansas and operation of a new delivery point located in Hempstead County, Arkansas which will, for the first time, directly interconnect SWEPCO and Hope. SWEPCO proposes an effective date of July 15, 1989, therefore, requests waiver of the 60-day notice requirement.

Copies of the filing were served on Hope and the Arkansas Public Service Commission.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Vermont Electric Power Co.

[Docket No. ER89-522-000]

August 4, 1989

Take notice that on July 26, 1989, Vermont Electric Power Company (Vermont) tendered for filing revised pages to the New York—NEPOOL Transfer Limits—1988 Summer report which was included as an exhibit in the June 27, 1989 filing in this docket.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Exchange, Inc.

[Docket No. ER89-580-000]

August 4, 1989.

Take notice that Portland General Exchange, Inc. (PGX) on August 1, 1989 tendered for filing Long-Term Sale and Exchange Agreements with the Cities of Glendale and Burbank. Under the Agreements, PGX will provide Glendale 20 MW annually and Burbank 10 MW annually, beginning September 16, 1988 and ending September 30, 2012. PBX states that the rate for this sale is based on competitive market conditions in the Southwest. PGX and Glendale and PGX and Burbank also will exchange 20 MW and 10 MW, respectively, over the period beginning September 16, 1988 and ending February 1992. During the months of June, July, August, and September, PGX will make capacity and energy available to Glendale and Burbank up to 10 on-peak hours per day. During November, December, January, and February, Glendale and Burbank will make capacity and energy available to PGX.

PGX states that the reason for the proposed Sale and Exchange Agreements is to provide to Glendale and Burbank power and power services needed by them, at a reasonable price.

PGX requests an effective date of September 16, 1988 and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served on the City of Glendale the City of Burbank, and the Oregon Public Utility Commission.

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Connecticut Light and Power Co.

[Docket No. FA87-65-000]

August 4, 1989.

Take notice that on April 28, 1989 Connecticut Light and Power Company (CP&L) tendered for filing its refund report in compliance with the Commission's order issued on April 10, 1989.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Canal Electric Co.

[Docket No. ER89-570-000]

August 4, 1989.

Take notice that on July 26, 1989 Canal Electric Company (Canal) tendered for filing a Power Contract (the "Power Contract) between itself and Commonwealth Electric Company and a Martha's Vineyard Capacity Acquisition Commitment (the Commitment). The Power Contract implements the terms of the Capacity Acquisition Agreement (FERC Rate Schedule No. 21) and the Commitment. The Power Contract is an agreement among the parties for the sale by Canal and the purchase by Commonwealth of capacity and related energy to be produced by two (2) 1660 KW leased generator sets, located at a site on Martha's Vineyard, an island in Duke's County, Massachusetts, for the time period August 1, 1989 through September 30, 1989 and continuing thereafter from month to month at Commonwealth's option. Canal has requested that the Commission's notice requirements with respect to the Power Contract and the Commitment be waived pursuant to § 35.11 of the Commission's regulations in order to allow the tendered Power Contract to become effective as of August 1, 1989.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Company of Colorado

[Docket No. ER89-575-000]

August 4, 1989.

Take notice that Public Service Company of Colorado (PSCo) on July 28, 1989, tendered for filing a proposed change in its FERC Electric Service Tariff. PSCo states that the proposed changes are Supplements to PSCo's Power Purchase Agreements

(Agreement) with the City of Burlington, Towns of Center and Julesburg, Colorado (Burlington, Center or Julesburg, Customers), dated: February 19, 1974, as amended; May 6, 1976; and September 5, 1978, as amended on file with the Commission under PSCo's FERC Rate Schedule Nos. 15, 17 and 20 for Burlington, Center and Julesburg.

PSCo indicates that the proposed changes are to reflect, in the rates charged to Burlington, Center of Julesburg, those components of new Power Purchase Agreements that differ from the superseded Agreements, as more fully set forth in the filing.

PSCo states that copies of the filing were served upon all parties to the Agreement and affected state commissions.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this document.

9. Utah Power & Light Co. PacificCorp; PC/UP&L Merging Corp.

[Docket No. ER89-573-000]

August 4, 1989.

Take notice that on June 1, 1989, Utah Power & Light Company tendered for filing a Second Amendment Notice of Succession which included a small number of tariffs that were inadvertently omitted from the January 9, 1989 filing. Also included in this filing is a list of tariffs that have been filed by the Merged Company since January 9 which have been given Pacific Power and/or Utah Power designations.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Co. of New Mexico

[Docket No. ER89-577-000]

August 4, 1989.

Take notice that on July 31, 1989, Public Service Co. of New Mexico (PNM) tendered for filing the Special Delivery Agreement for Federally Allocated Salt Lake City Integrated Projects Power and Energy between PNM and Southwestern Public Service Company (SPS). The agreement provides for PNM to furnish delivery service to SPS such that certain SPS customers can utilize their allocations of long-term firm power and energy from the Salt Lake City Area Integrated Projects. Delivery service is contingent on the availability of the 345 kV transmission line from Bernalillo Algodones Switchyard to Blackwater Station and the Blackwater AC-DC-AC Converter. When PNM is unable to deliver energy to SPS simultaneously with Western's deliveries to PNM, PNM will bank this energy and deliver it at a later date.

PNM is requesting a waiver of the Commission's notice requirements and is requesting that the Agreement be accepted for filing to be effective October 1, 1989.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison of New York, Inc.

[Docket No. ER89-579-000]

August 4, 1989.

Take notice that on July 31, 1989, Consolidated Edison of New York, Inc. (Con Edison) tendered for filing agreements dated April 29, 1988 (and amendments thereto) and March 10, 1989 providing for delivery by Con Edison of power and energy for the Power Authority of the State of New York (NYPA) to NYPA's public and economic development customers in Con Edison's electric service area. Under the agreements, Con Edison will continue to deliver power and energy to NYPA's customers under the terms specified therein and without change to the currently-effective rates for delivery service.

Con Edison also filed revisions to its implementing tariff provisions (FERC Schedule Nos. 42 and 76) to change the references in the tariffs to service provided under the March 10, 1989 delivery agreement. Con Edison is also proposing to amend FERC Schedule No. 76 in respect of delivery service rendered to NYPA customers with on-site generating equipment. The changes would allow customers to pay only twenty-five percent of interconnection costs prior to commercement of service, change a provision regarding payment of reinforcement costs, and add a requirement for payment of $0.25 per-kilowatt-per-month for customers with induction-type generators. Con Edison is requesting that these latter changes be put into effect as of June 26, 1989.

A copy of this filing has been served on NYPA and the New York State Public Service Commission.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corp.

[Docket No. ER88-615-000]

August 4, 1989.

Take notice that on June 30, 1989, Allegheny Power Service Corp., on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, filed information in response to requests by the Staff concerning the initial filing in this docket on September 19, 1988.

Copies of the filing have been served upon American Municipal Power-Ohio, Inc., the Maryland Public Service Commission, the Ohio Public Utilities Commission, the Pennsylvania Public Utility Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and Elkem Metals Company.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Yankee Atomic Electric Co.

[Docket No. EL87-21-005]

August 4, 1989.

Take notice that on July 24, 1989, Yankee Atomic Electric Company (Yankee Atomic) submitted for filing, an amendment to the Power Contracts under which it sells electricity for resale to ten New England utilities, to eliminate the equity reopener provision, in compliance with the Commission's Opinion No. 285-B in this docket.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Power & Light Co.

[Docket No. ER89-572-000]

August 4, 1989.

Take notice that on July 28, 1989, Wisconsin Power & Light Company (WPL) tendered for filing an amendment to the wholesale power agreement dated July 18, 1989, between the City of Wisconsin Dells and WPL. WPL states that this amendment revises the previous agreement between the two parties which was dated November 1, 1979, and is designated Rate Schedule No. 125 by the Commission.

The purpose of this amendment is to lengthen the notice period required for termination.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the City of Wisconsin Dells and the Wisconsin Public Service Commission.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

15. Boston Edison Co.

[Docket No. ER89-574-000]

August 4, 1989.

Take notice that on July 28, 1989, Boston Edison Company (Edison) tendered for filing supplemental Exhibit A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Tariff, Original Volume No. III, Non-firm Transmission

Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, May 1, 1989.

Edison states that it has served the filing on Braintree and the Massachusetts Department of Public Utilities.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service

[Docket No. ER89-552-000]

August 4, 1989.

Take notice that on July 14, 1989, Central Vermont Public Service Corporation (Central Vermont) tendered for filing the following items in accordance with the agreement between Central Vermont and the Vermont Electric Generation and Transmission Cooperative, Inc.:

Exhibit 1 Revenue Comparison setting forth the forecast and actual revenue for 1988

Exhibit 2 Cost Report computing the forecast costs for 1988

Exhibit 3 Cost Report computing the actual costs for 1988

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

17. Tucson Electric Power Co.

[Docket No. ER89-741-000]

August 4, 1989.

Take notice that July 27, 1989, Tucson Electric Power Company (Tucson) tendered as an amendment to its original filing on May 30, 1989 for filing Revised Attachments A and B and Attachment C to an agreement entitled "1989 Short Term Power Sale Agreement Between Tucson Electric Power Company (Tucson) and Arizona Public Service Company (APS)", (hereinafter the "Agreement"). The primary purpose of the Agreement is to establish the terms and conditions for the sale of firm capacity and associated energy by Tucson and APS for the period June 1, 1989 through November 30, 1989 filing is to file revised cost support information for the system demand charge (Revised Attachment A) and the energy charge (Revised Attachment B) under the Agreement.

Tucson again requests an effective date of June 1, 1989, and therefore again request waiver of the Commission's notice requirements.

Tucson states that copies of this filing were served upon APS.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

18. Public Service Co. of New Mexico

[Docket No. ER89-576-000]

August 4, 1989.

Take notice that on July 31, 1989, Public Service Company of New Mexico (PNM) tendered for filing the Delivery Service to El Paso Electric Company on behalf of Holloman Air Force Base Letter Agreement between PNM and El Paso Electric Company (EPE). The Letter Agreements provides for PNM to furnish delivery service to EPE such that Holloman Air Force Base, a customer of EPE, can utilize its allocation of long-term firm power and energy from the Salt Lake City Area Integrated Projects.

PNM is requesting a waiver of the Commission's notice requirements and is requesting that the Letter Agreement be accepted for filing to be effective as of October 1, 1989.

Copies of the filing have been served upon EPE and the New Mexico Public Service Commission.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

19. San Diego Gas & Electric Co.

[Docket No. ER89-578-000]

August 4, 1989.

Take notice that on July 31, 1989, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, the Interchange Agreement (Agreement) between SDG&E and Turlock Irrigation District (Turlock) including Service Schedules A, B, and C.

SDG&E requests waiver of the Commission's prior notice requirements and an effective date of August 1, 1989 for this Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Turlock.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

20. Portland General Electric Co.

[Docket No. ER89-581-000]

August 4, 1989.

Take notice that Portland General Electric Company (PGE) on August 1, 1989, tendered for filing a Services Agreement with Portland General Exchange, Inc. (PGX) for coordination services. Under the Agreement, PGE will provide PGX scheduling, dispatching, and power accounting, daily shaping, reserves, storage, economy energy, and delivery services. Rates for these services are generally based on cost of service. The Agreement includes a 30 MW firm power sale and a 30 MW thermal unit displacement firm power sale. PGE states that the rate for this sale is based on the price of other firm power available in the region, PGE's incremental cost of production, and the cost of transmission.

PGE states that the reason for the proposed Services Agreement is to allow it to recover a portion of the fixed costs associated with certain power products and services available on its system during times when those services and products are not needed to serve its system load.

PGE requests an effective date of September 15, 1988 and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on PGX, and the Oregon Public Utility Commission.

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Co.

[Docket No. ER89-582-000]

August 4, 1989.

Take notice that on August 1, 1989, New England Power Company (NEP) tendered for filing amendments to its FERC Electric Tariff, Original Volume No. 1, Primary Service for Resale, constituting a new rate referred to as the W-11 rate. NEP states that the proposed rate would increase base rates by approximately $113.4 million. NEP states that the W-11 rate reflects the entry into service of a new generating unit, Seabrook 1, as of March 1, 1990. NEP also proposes an interim rate increase referred to as the W-11(a) rate, which is designed to recover the revenues required by NEP during the 1990 test year assuming Seabrook 1 is not in service, and which would increase base rates by $91.2 million. NEP proposes an effective date of October 1, 1989 for both the W-11 and W-11(a) rates, but requests that both rates be suspended until January 1, 1990 and that NEP be permitted to bill Rate W-11(a) on an interim basis until Seabrook 1's in-service date and to defer billing Rate W-11 until that date.

NEP states that its filing also includes a surcharge, to become effective on the in-service date of Seabrook 1 and to remain effective for five years, to collect certain amounts specified in a settlement in Docket Nos. ER83-647-000, ER85-687-001, *et al.*, and ER88-66-000. NEP further states that its filing includes separate surcharges for the recovery

from affiliated customers of costs associated with certain nondispatchable conservation and load management programs, as provided in a settlement in Docket Nos. ER88-630-000, *et al.*, voted upon favorably at the Commission's July 26, 1989 session.

NEP has proposed the W-11 and W-11(a) rates under the incremental cost rate design methodology contained in the partial settlement approved by the Commission on July 11, 1989 in Docket Nos. ER88-640-000, *et al.*

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

22. Hennepin Energy Resource Co.,

[Docket Nos. EC89-15-000 and EL89-41-000]

August 4, 1989.

Take notice that on July 12, 1989, Hennepin Energy Resource Co. Limited Partnership (Hennepin), tendered for filing with the Federal Energy Regulatory Commission (Commission) a petition for a declaratory order. In its petition, Hennepin requests an order of the Commission (1) authorizing the sale and leaseback of its qualifying small power production facility, located in Minneapolis, Minnesota; (2) disclaiming jurisdiction over the proposed Owner Trustee and Owner Participant exempting them from regulation as public utilities; (3) confirming the applicability of Hennepin's initial rate schedule to sales of electricity by Hennepin to NSP after the sale and leaseback is completed; and (4) certifying that the proposed change in ownership will not result in a loss of QF status for the facility.

Comment date: August 18, 1989, in accordance with Standard Paragraph E at the end of this notice.

23. Connecticut Light and Power Co.

[Docket No. ER89-586-000]

August 7, 1989.

Take notice that on August 2, 1989, the Connecticut Light and Power Company (CP&L) tendered for filing proposed Sales Agreements with Respect to Slice-of-System Units, for a five-year sale of entitlements in a group of units representative of CL&P's generating system, for service to Canal Electric Company, Montaup Electric Company, New England Power Company, UNITIL Power Corp., and the Massachusetts Wholesale Electric Company, (collectively "Buyers").

CL&P states that the Sales Agreements provide for sales of capacity and energy from CL&P's Slice-of-System Units (the Units) during the period November 1, 1989 to October 31, 1994. CL&P states that the rates for the proposed service are based on cost-of-service formulas. CL&P requests that the Commission permit the Sales Agreements to become effective on November 1, 1989.

CL&P states that a copy of the Sales Agreements have been mailed or delivered to Buyers.

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

24. Western Massachusetts Electric Co.

[Docket No. ER89-585-000]

August 7, 1989.

Take notice that on August 2, 1989, Western Massachusetts Electric Company (WMECO) tendered for filing as a rate schedule, a transmission service, transformation, and distribution agreement between WMECO and UNITIL Power Corp.

WMECO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule to become effective September 1, 1989.

WMECO states that copies of this rate schedule have been mailed or delivered to each of the parties.

WMECO further states that the filing is in accordance with section 35 of the Commission's Regulations.

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

25. El Paso Electric Co.

[Docket No. ER89-584-000]

August 7, 1989.

Take notice that on August 1, 1989, El Paso Electric Company (EPE) tendered for filing an Interruptible Transmission Service Agreement under which EPE has agreed to provide Holloman Air Force Base (Holloman) with interruptible transmission service for Holloman's allocation of power from the Western Area Power Administration (WAPA). Service under the agreement is to commence on the later of (a) October 1, 1989 when the agreement providing for Holloman's WAPA allocation becomes effective or (b) the commercial operation date of Arizona Interconnection Project. EPE requests that this filing be assigned an effective date of October 1, 1989, 60 days from the date of filing. If the Arizona Interconnection Project is not in commercial operation on that date, EPE requests the Commission to suspend the filing until the date when the project does enter commercial operation.

PNM has agreed with EPE to perform certain delivery and coordination services for the parties in a letter agreement which is attached to the agreement, as Appendix A and which is to be separately filed with this Commission by PNM.

The term of the agreement is five years, with a provision for an extension to ten years by mutual agreement. The agreement is to terminate however, in the event either the PNM/EPE letter agreement or the agreement providing for Holloman's WAPA allocation terminates.

EPE states copies of the filing have been served on Holloman and the New Mexico Public Service Commission.

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this notice.

26. Craven County Wood Energy Limited Partnership

[Docket No. ER89-583-000]

August 7, 1989.

Take notice that on August 1, 1989, Craven County Wood Energy Limited Partnership (the "Craven County Partnership"), whose address is 100 Clinton Square, Suite 400, Syracuse, NY 13202-1049, filed with the Federal Energy Regulatory Commission ("Commission") a Proposed Initial Rate Schedule and Application for Waivers of Commission Regulations under the Federal Power Act, pursuant to Commission Rule 207(a)(2).

The Craven County Partnership, a Delaware Limited Partnership, has succeeded to the ownership of an alternative energy generating facility located in Craven County, North Carolina. This project has been certified as a qualifying small power production facility within the meaning of section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA) under the ownership of Carolina Cogeneration Company, Inc.[1] The Craven County proposes to complete construction of, and own and operate [2] a 45 MW turbine, which will utilize biomass (primarily wood waste) as the primary energy source for the facility. Capacity and associated energy produced by the facility will be purchased by Carolina Power & Light (CP&L), pursuant to an avoided cost contract between Carolina's Cogeneration Company, Inc., the Craven County Partnership's predecessor in interest, and CP&L.

[1] *Carolina Cogeneration Co., Inc.*, Docket No. QF84-91-002, 28 FERC ¶ 62,082 (1984).

[2] Operation of the facility will be contracted to HYDRA-CO Operations, Inc., a wholly-owned subsidiary of HYDRA-CO. Enterprises, Inc.

The Craven County Partnership has requested Commission approval of this initial rate filing for sales from this facility to CP&L and waiver of the requirement that rate schedules be filed nor more than one hundred twenty (120) days prior to the date when service is to commence. The Craven County Partnership will commence sales upon completion of the facility, now scheduled for November 1, 1990. Commission rules provide for waiver of this requirement when the rate schedule is predicated upon construction of new facilities.

The Craven County Partnership also has requested waiver by the Commission of the rate regulatory, accounting and reporting regulations under the Federal Power Act with respect to its ownership, operation, and sales of capacity and associated energy from the qualifying facility located in Craven County, North Carolina. The Craven County Partnership also seeks waivers for this facility which will allow it to file only the minimum information necessary to satisfy the statutory requirements concerning property disposition, authorization of otherwise proscribed interlocking directorates, and limitation of the information necessary to be filed regarding the issuance of securities and assumption of liabilities to require only notice and approval of the Commission prior to undertaking such action.

Comment date: August 21, 1989, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-18952 Filed 8-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-460-000 and CP89-1851-000]

Pacific Gas Transmission Co. and Altamont Gas Transportation Project; Intent To Prepare a Joint Draft Environmental Impact Report/Statement for the Proposed PGT/PG&E Pipeline Expansion Project and Altamont Pipeline Project and Requests for Comments on Its Scope and Cooperating Agency Status

August 8, 1989.

Introduction

On January 23, 1989, and July 21, 1989, Pacific Gas Transmission Company (PGT) and Altamont Gas Transportation Project (Altamont), respectively, filed applications before the Federal Energy Regulatory Commission (FERC) in the above-referenced dockets, under section 7(c) of the Natural Gas Act, for authorization to construct certain facilities and transport Canadian natural gas to various local gas distribution companies and utilities in southern California. PGT's proposal also involves transporting gas for customers in the Pacific Northwest. Each customer to be served by the proposed pipelines would be responsible for securing gas supplies from producers in Canada which PGT or Altamont would then transport. Neither PGT nor Altamont would own the gas transported through their respective systems.

PGT would receive the gas at the United States/Canadian border at Kingsgate, British Columbia, from Alberta Natural Gas Company, Ltd. for transportation to points of interconnection with Northwest Pipeline Corporation (Northwest) at Stanfield, Oregon and with Pacific Gas and Electric Company (PG&E) at Malin, Oregon. Northwest would deliver the gas to customers in the Pacific Northwest and intermountain region, while PG&E would deliver gas to customers within the State of California. Altamont would receive gas from an expanded NOVA Corporation of Alberta (NOVA) system at the border near Wild Horse, Alberta, for transportation to a point of interconnection with Northwest and Kern River Gas Transmission Company (Kern River) at Opal, Wyoming. The proposed Kern River System would then deliver the gas to southern California.[1]

PGT/PG&E Expansion Project

PGT proposes to construct seven 36- and 42-inch diameter pipeline loops, for a total of 430 miles, extending from Kingsgate through the States of Idaho, Washington, and Oregon at a cost of $946 million.[2] The expansion would enable PGT to transport up to an additional 710 million cubic feet per day (MMcf/d) of natural gas. PG&E would construct 415 miles of 36-inch-diameter pipeline loop, in 5 segments, from the Oregon-California border to a point near Panoche Station, California, thereby increasing its system capacity by 600 MMcf/d. (See table 1 and figure 1.)[3] In addition to the pipeline facilities, PGT and PG&E propose to make minor modifications at 17 of their existing compressor stations. Additional compression (22,500 horsepower) would be required at the Brentwood Compressor Station. PG&E filed an application with the California Public Utilities Commission (CPUC) on April 14, 1989, to construct its proposed facilities. Although PG&E is not regulated by the FERC, PGT's and PG&E's proposals are being considered together as one project known as the PGT/PG&E Expansion Project for the purposes of environmental review. The PGT/PG&E Expansion Project is scheduled for construction in early 1992, with an operational date of November 30, 1993.

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[1] The environmental impacts associated with the proposed Kern River pipeline were analyzed in the Mojave/Kern River/El Dorado Environmental Impact Statement issued by the FERC in December 1987. The Kern River pipeline would extend 837 miles between Opal, Wyoming and Bakersfield, California, and involve the installation of 36,200 housepower of new compression facilities.

[2] A pipeline loop is a segment which is constructed parallel and adjacent to an existing pipeline.

[3] Figures 1 and 2, and the appendix are not printed in the **Federal Register**, but are available from the FERC's Division of Program Management, Public Reference Section, telephone (202) 357-8118.

TABLE 1.—PGT/PG&E EXPANSION PROJECT FACILITY LOCATIONS

Proposed facilities	Pipe diameter (inches)	Length (miles)	State	County
PGT				
Loop 1	42	20.5	ID	Boundary.
Loop 2	42	35.0	ID	Bonner, Kootenai.
			WA	Spokane.
Loop 3	42	18.2	WA	Whitman.
Loop 4	42	30.0	WA	Walla Walla.
Loop 5	36	134.3	OR	Umatilla, Morrow, Gilliam, Sherman, Wasco, Jefferson. Jefferson, Crook, Deschutes, Klamath.
Loop 7	36	96.4	OR	Klamath.
Bend Comp. Sta.			OR	Deschutes.
PG&E				
Loop 8	36	82.3	CA	Modoc, Siskiyou, Shasta.
Loop 9	36	93.4	CA	Shasta, Tehama, Glenn.
Loop 10	36	36.2	CA	Colusa, Yolo.
Loop 11	36	77.4	CA	Yolo, Solano, Sacramento, Contra Costa.
Loop 12	36	120.3	CA	Contra Costa, Alameda, San Joaquin, Stanislaus, Merced, Fresno.
Brentwood Comp. Sta.			CA	Contra Costa.

Altamont Project

The Altamont proposal was developed by a consortium of western Canadian gas producers including Amoco Canada Petroleum Company Ltd., Petro-Canada Inc. and Shell Canada Ltd. The Altamont pipeline would receive natural gas at the Alberta-Montana border from NOVA and transport it across Montana and Wyoming for delivery to Kern River near Opal, Wyoming. The pipeline's daily design capacity would enable firm delivery service of approximately 700 MMcfd of natural gas at Opal. To accomplish this, Altamont proposes to construct 620 miles of 30-inch-diameter pipeline, 6 compressor stations, 1 meter station, and related appurtenant facilities including pipeline scraper launchers and receivers, mainline valves, and a microwave communications system. (See table 2 and figure 2.) [4] Overall, the proposed route parallels existing linear facilities (roads, railroads, existing pipelines) or utility corridors for about 50 percent of its length. Construction is proposed to commence in June 1993 and be completed for an in-service date of November 1, 1993. The proposed facilities are estimated to cost $580 million.

TABLE 2.—Altamont Gas Transportation Project Geographical Distribution of Facilities

State and County	Miles of Pipe [1] (approximate)	Compressor Station (CS) Number and Horsepower (HP) [2]
Montana	305	
Hill	49	CS 1—44,333 hp.
Chouteau	63	
Fergus	31	CS 2—10,743 hp.
Judith Basin	25	
Wheatland	38	
Golden Valley	8	
Stillwater	44	CS 3—10,622 hp.
Carbon	47	
Wyoming	315	
Big Horn	70	CS 4—10,323 hp.
Washakie	31	
Hot Springs	20	
Fremont	111	CS 5—9,819 hp.
Sublette	3	
Sweetwater	55	CS 6—9,224 hp.
Lincoln	25	
Total	620	95,064 hp.

[1] All pipe to be 30-inch outside diameter.
[2] All compressors to be centrifugal-type units with gas powered drivers. Horsepower listed is site-rated to account for anticipated elevations and ambient temperatures.

General Construction Procedures

The proposed facilities would be designed, constructed, and operated in accordance with all applicable regulations, including: 49 CFR Part 192—Transportation of Natural and Other Gas by Pipeline, Minimum Federal Safety Standards; 18 CFR Part 2.69—Guidline to be Followed by Natural Gas Pipeline Companies in the Planning, Clearing, and Maintenance of Rights-of-Way; and other applicable Federal, state, and local regulations and permit requirements.[4] [5]

Construction would begin with right-of-way (ROW) clearing and grading. Pipeline loops in or adjacent to existing ROWs, such as those proposed by PGT and PG&E, would generally require less clearing and grading. Rotary-wheeled ditching machines, backhoes, or rippers, would be used to excavate a sufficiently deep trench. For buried pipelines, the U.S. Department of Transportation (DOT) requires a minimum of 30 inches of cover in normal soils and 18 inches in consolidated rock. In populated areas, this increase to 36 and 24 inches of cover, respectively. Blasting would be required when areas of consolidated rock are encountered.

After trenching, the pipe would be strung along the ROW, bent to conform with the bottom of the trench, and welded and radiographically inspected in compliance with the DOT's Minimum Federal Safety Standards. Before being emplaced in the trench, the pipe would be coated to inhibit corrosion. The pipe would then be placed in the trench and the trench would be backfilled with the excavated material. Select backfill would be used where the trench was excavated in rock. The ROW would be restored to near-original contours, and reseeded, limed, fertilized, and mulched in accordance with the company's erosion control and revegetation plan. In general, construction at any one place along the pipelines would take 6 to 8 weeks between the initial land disturbance and the end of restoration. Construction at new or existing compressor station locations would be concurrent with the pipeline construction.

The methods of crossing streams and rivers would vary according to specific characteristics such as width, depth, flow, riverbed geology and environmental sensitivity. As a general rule, stream and river crossings would be constructed by opening a trench in the river bottom with a backhoe or dragline. Impacts could be minimized by

[4] See footnote 3.
[5] Because PG&E is not regulated by the FERC, 18 CFR Part 2.69 is not applicable to PG&E's proposed facilities.

constructing during low flow periods. Special procedures may be warranted at crossing that are environmentally sensitive (e.g., in scenic areas, upstream of public water intakes, in or near critical wildlife of fishery habitat).

Land Requirements

PGT and PG&E would construct their pipeline loops adjacent to their existing pipelines in most locations. On private land, ROW widths range between 15 and 100 feet. Many of the existing easements contain a provision for the installation of a second pipeline. Where the existing ROW is 100 feet wide, no new permanent ROW would be required. However, PGT and PG&E are requesting an additional 30 feet of temporary construction ROW. South of milepost (MP) 923.8 (the beginning of Loop 12), PG&E proposes to acquire between 20 and 50 feet of additional permanent easement and between 15 and 40 feet of temporary construction ROW. The loops would be installed on or adjacent to the existing ROWs for all but approximately 96 miles. In the areas where the loops would deviate from the existing ROW, the width of the construction ROW would very between 75 and 105 feet, while the new permanent ROW would be maintained at between 50 and 75 feet, respectively.

On Federal land, the existing easements do not have provisions for an additional pipline. Existing ROW widths range between 50 feet and 100 feet. However, PGT and PG&E propose to place the loops on the Federal ROW granted as part of the Alaska Natural Gas Transmission System (ANGTS).[6] The total width of the two ROWs generally varies between 76 and 106 feet. In addition, the companies request between 40 and 75 feet of temporary ROW.

In addition to the pipeline ROW, PGT and PG&E would require 4 acres for the expansion of the Bend Compressor Station (MP 472.8) located in Deschutes National Forest in Oregon, and 22 acres for the additional compressors at the Brentwood Compressor Station (MP 923.8) located in Contra Costa County, California.

Altamont proposes to acquire a 100-foot-wide construction ROW, of which approximately 50 feet would be maintained as permanent easement. The six new compressor stations would require 8 to 10 acres each, while the meter station would be sited on a 2-acre plot. Additional temporary work space may be required at major river, road or railroad crossing, or where similar obstacles are encountered. Overall, the proposal would directly affect an estimated 7,580 acres of Federal, state and private lands during construction and 3,620 acres during operation.

Notice of Intent

On June 13, 1989, the FERC and the CPUC entered into a Memorandum of Understanding to combine their efforts to prepare an Environmental Impact Report/Statement (EIR/EIS) in accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) for the proposed PGT/PG&E Expansion Project. Recognizing then that the application for Altamont was to be filed with the FERC in July 1989 (and is now in fact filed) the respective staffs of the FERC and the CPUC agreed to include the Altamount Project into a single EIR/EIS covering both projects. The rationale for this is that the Altamount Project is an alternative to the PGT/PG&E Expansion Project.

Notice is hereby given that the staff of the FERC has determined that approval of either of these projects would be a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 380.6(a)(3) of the FERC's Rules of Practice and Procedure (18 CFR 380.6(a)(3)), and EIS will be prepared. Similarly, the staff of the CPUC has determined that an EIR, as required by CEQA, will be prepared. This notice serves as the Notice of Intent required by NEPA. The FERC will be the lead Federal agency and the CPUC will be the lead agency for the State of California for the preparation of the joint EIR/EIS. Other states with environmental laws similar to NEPA and CEQA may ultimately designate a lead state agency to coordinate their efforts directly with the FERC as a cooperating agency. The EIR/EIS will be prepared by an environmental consultant under contract to the CPUC and the joint supervision of both the FERC and the CPUC. The contractor procurement process has begun with the issuance of a Requst For Proposal (RFP) by the CPUC on July 10, 1989. It is expected that the contractor will be selected by late August or early September 1989 and scoping meetings will be conducted during the week of September 18, 1989.

Outline of Preliminary Environmental Issues

The EIR/EIS will address significant environmental concerns that have been and will be identified by the FERC and CPUC staffs, the environmental contractor, intervenors, other Federal and state agencies, and individuals who respond to this notice. These issues may include, but are not limited to:

Land Use
- —Impact on homes, future development, and public recreation areas.
- —Impact on National Forests, nature preserves, parks, and other public interest areas. (See tables 3 and 4.)
- —Use of existing transmission corridors.

Aesthetics
- —Effect of appearance of ROW and aboveground facilities on residential and scenic areas.

Pipeline Safety
- —Possibility of pipeline rupture.

Cultural Resources
- —Effect of the project on properties listed on or eligible for the National Register of Historic Places.

Water Resources
- —Effects of construction on potable water supplies and regional water quality.

Wildlife
- —Impact on fisheries.

Impact on state and federally listed threatened or endangered species.

Vegetation
- —Impact on wetlands.
- —Short- and long-term effects of clearing, revegetating, and maintaining the ROWs.

Soils & Geology
- —Erosion control and revegetation.
- —Effect on crop and timber production.
- —Effects of geologic hazards.

Air & Noise
- —Impact of new compressor stations and modifications to existing compressor stations on air quality and noise levels.

Alternatives
- —Pipeline route variations designed to avoid environmentally sensitive areas.
- —Alternative pipeline system designs.

Specific mitigating measures will also be considered in the EIR/EIS. After comments from this notice are received and analyzed, and the various issues are investigated, the FERC and CPUC staffs will publish a Draft EIR/EIS.

[6] In March 1976, the U.S. Dept. of the Interior issued the Final EIS for the ANGTS. ROW grants to cross Federal lands in Idaho, Washington, and Oregon were issued to PGT on July 22, 1985 and appear to remain operational.

TABLE 3.—PGT/PG&E EXPANSION PROJECT—POTENTIALLY SENSITIVE AREAS ON OR NEAR (WITHIN 0.5 MILE *) THE PROPOSED ROUTE

Loop 1 (MPs 0.0–20.9)	
Kaniksu National Forest.	Boundary Co., ID.
Moyie River (8 crossings).	Boundary Co., ID
Loop 2 (MPs 72.7–108.3)	
Kaniksu National Forest.	Bonner and Kootenai Cos., ID
Loop 4 (MPs 225.3–255.6)	
Wallula Habitat Mgmt. Unit.	Walla Walla Co., WA
Loop 5 (MPs 277.4–410.2)	
John Day River/ Canyon.	Gilliam and Sherman Cos., OR
Oregon Trail	Morrow Co., OR
Crooked River Nat. Grasslands.	Jefferson Co., OR
Loop 6 (MPs 410.2–505.8)	
Crooked River Nat. Grasslands.	Jefferson Co., OR
Deschutes National Forest.	Deschutes and Klamath Cos., OR
Lava River Caves State Park *.	Deschutes Co., OR
Loop 7 (MPs 505.8–612.5)	
Deschutes National Forest.	Klamath Co., OR
Winema National Forest.	Klamath Co., OR
Loop 8 (MPs 612.5–694.8)	
Modoc National Forest.	Modoc Co., CA
Long Bell Game Preserve.	Modoc and Siskiyou Cos., CA
Shasta National Forest.	Siskiyou and Shasta Cos., CA
Mayfield Ice Caves	Siskiyou Co., CA
Pit River (Lake Britton).	Shasta Co., CA
Pacific Crest Trail	Shasta Co., CA
Lassen National Forest.	Shasta Co., CA
Loop 9 (MPs 694.9–793.3)	
Lassen National Forest.	Shasta Co., CA
Noble Emigrant Trail	Shasta Co., CA
Sacramento River NWR.	Tehama Co., CA
Sacramento River	Tehama Co., CA
Loop 11 (MPs 846.4–923.9)	
Jepson Prairie Preserve.	Solano Co., CA
Sacramento River	Solano and Sacramento Cos., CA
San Joaquin River	Contra Costa Co., CA
Loop 12 (MPs 923.8–1044.0)	
San Luis State Rec. Area.	Merced Co., CA
Los Banos Creek St. Rec. Area.*.	Merced Co., CA.

*As proposed, these areas would not be crossed but are within 0.5 mile of the route.

Table 4.—Altamont Gas Transportation Project Potentially Sensitive Areas on or Near the Proposed Route

Upper Missouri National Wild and Scenic River Corridor, Chouteau County, MT (MP 69)
Crow Indian Reservation, Carbon County, MT (MP 288)*
Wind River Indian Reservation, Fremont County, WY (MP 470)*
South Pass area, Fremont County, WY (MP 530)
Seedskadee National Wildlife Refuge, Sweetwater County, WY (MP 592)*

*As proposed, these areas would not be crossed but are within 0.5 mile of the route.

Cooperating Agencies

The following Federal agencies are requested to indicate whether they wish to be cooperating agencies in the preparation of the EIR/EIS and to designate one lead office per agency:

Advisory Council on Historic Preservation
Department of Agriculture
  Soil Conservation Service
  U.S. Forest Service
Department of Commerce
  National Oceanic and Atmospheric Administration
Department of Defense
  U.S. Army Corps of Engineers
Department of Energy
  Office of Fossil Energy
Department of the Interior
  U.S. Fish and Wildlife Service
  U.S. Geological Survey
  National Park Service
  Bureau of Land Management [7]
  Bureau of Reclamation
Department of State
Department of Transportation
  Federal Highway Administration
  Federal Railroad Administration
Environmental Protection Agency

These or any other Federal, state, and local agencies desiring cooperating agency status should send a request describing how they would like to be involved to Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission. The request should reference Docket Nos. CP89–460–000 and CP89–1851–000 and should be received by September 8, 1989. An additional copy of the request should be sent to the FERC project managers identified at the end of this notice. Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agencies. Cooperating agencies are also welcome to suggest format and content modifications to facilitate ultimate adoption of the EIR/EIS; however, the lead agency will decide what modifications will be adopted in light of production constraints.

[7] In a letter to the FERC staff dated February 3, 1989, the California State Office of the BLM indicated that it would be a cooperating agency and would act as the lead BLM office for the purposes of coordinating NEPA compliance and for administering decisions involving PGT's and PG&E's extisting ROW grants.

Comment and Scoping Procedure

Joint public scoping meetings will be conducted by the FERC and the CPUC. At present, scoping meetings are planned for Antioch, California, Bend, Oregon, and Spokane, Washington on September 18, 19, and 20, respectively, for the PGT/PG&E Expansion Project with concurrently held meetings in Riverton, Wyoming and Billings, Montana on September 18 and 19, 1989, respectively, for the Altamont project. The final dates, locations, and format of the meetings will be identified in a subsequent **Federal Register** notice. Requests to hold scoping meetings at other locations will be considered on the basis of the rationale provided to support additional meetings.

The scoping meetings are primarily intended to obtain input from state and local government and the public. Federal agencies have formal channels for input into the NEPA process (including separate meetings where appropriate) on an interagency basis. Federal agencies are expected to coordinate their comments through the lead Federal agency and not use the scoping meetings for this purpose.

A copy of this notice has been distributed to Federal, State, and local agencies, public interest groups, and parties to the proceeding before both the FERC and CPUC. Comments are requested to help identify significant issues or concerns related to the proposed actions, to determine the scope of the issues (including alternatives) that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments recommending that the EIR/EIS address specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before September 8, 1989, reference Docket Nos. CP89–460–000 and CP89–1851–000, and should be addressed to: Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Copies of all comments should also be sent to the FERC project managers at the same address:

Ms. Lauren O'Donnell (PGT/PG&E Expansion Project)

Mr. Laurence J. Sauter (Altamont Project)

The EIR/EIS will be mailed to Federal, State, and local agencies, public interest groups, interested individuals, newspapers, libraries, and parties to the proceedings. A 45-day comment period will be allotted for review and comment on the Draft EIR/EIS. After these comments are reviewed, any significant new issues investigated, and modifications made to the Draft EIR/EIS, a Final EIR/EIS will then be published by the staff and distributed. The Final EIR/EIS will contain the FERC and CPUC staffs' responses to comments received on the Draft EIR/EIS.

Additional information, including maps of limited areas of the proposed routes, may be obtained from Ms. Lauren O'Donnell at (202) 357–8874, Mr. Laurence J. Sauter, Jr. at (202) 357–8205, or Mr. Clyde Murley, Project Manager, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102, at (415) 557–4027.

Mailing Lists

Organizations and individuals receiving this Federal notice have been selected to ensure public awareness of these projects and public involvement in the review process under both NEPA and CEQA. The EIR/EIS will be sent automatically to addressees on the FERC's and CPUC's official service lists for these projects, and to the appropriate Federal agencies and State clearinghouses. However, to reduce printing and mailing costs and related logistical problems, the EIR/EIS will only be distributed to those other organizations, local agencies and individuals who return the attached appendix to this notice, preferably within 90 days.[8]

Linwood A. Watson, Jr.

Acting.

[FR Doc. 89–18897 Filed 8–11–89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10660-001]

Arnold J. Wise; Surrender of Preliminary Permit

August 8, 1989.

Take notice that Arnold J. Wise, Permittee for the proposed Cape Fear Locks and Dams Nos. 1, 2, & 3 Hydro Project No. 10660, has requested that its preliminary permit be terminated. The permit was issued on December 27, 1988, and would have expired November 30, 1991. The project would have been located on the Cape Fear River near Fayettsville, Bladen County, North Carolina. The Permittee cites that the proposed project is not economically feasible as the basis for the surrender request.

The Permittee filed the request on June 21, 1989, and the preliminary permit for Project No. 10660 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18898 Filed 8–11–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-16-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 7, 1989.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 2, 1989, tendered for filing, to its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheet:

Proposed to be effective August 1, 1989

Second Alternate Twenty-seventh Revised Sheet No. 205

Algonquin states that pursuant to section 7 of Rate Schedule F–4, it is filing Second Alternate Twenty-seventh Revised Sheet No. 205 to concurrently track rate changes made by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern") in the service underlying Algonquin's Rate Schedule F–4, as set forth in Texas Eastern's Interim PGA filing dated July 28, 1989. The rate change represents a further decrease of 20.80 cents per MMBtu in the commodity charge from that originally filled for in Docket No. TM89–14–20–000 for a total decrease of 22.00 cents per MMBtu.

Algonquin notes that copies of this filing were served upon the affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18898 Filed 8–11–89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-25-002]

Black Marlin Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

August 7, 1989.

Take notice that on July 31, 1989, Black Marlin Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

1st Revised Sheet No. 220

Black Marlin asserts that such revised tariff sheet is being submitted in compliance with § 250.16(d)(2) and contains revisions to Black Marlin's shared operating personnel and procedures regarding complaints.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by August 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18953 Filed 8–11–89; 8:45 am]

BILLING CODE 6717-01-M

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[8] See footnote 3.

[Docket No. MT88-29-005]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

August 7, 1989.

Take notice that on July 31, 1989, Florida Gas Transmission Company (FGT) tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

2nd Revised Sheet No. 52D
1st Revised Sheet No. 57I

FGT asserts that such revised tariff sheet is being submitted in compliance with § 250.16(d)(2) and contains revisions to FGT's shared operating personnel and procedures regarding complaints.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by August 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commision and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18954 Filed 8-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-59-003]

Northern Natural Gas Co.; Filing

August 7, 1989.

Take notice that on July 31, 1989, Northern Natural Gas Company (Northern) filed revised Schedule D1, 06, WP 1 detailing unpaid accruals older than three years and providing justification for inclusion of such accruals in Account 191.

Northern states that this filing is made pursuant to Letter Orders issued December 30, 1988 and July 14, 1989.

Northern requests approval to continue recognition of these unpaid accruals over three years old as purchased gas costs in its rates in compliance with § 154.305(f) of the Commission's regulations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, and 385.211 (1988)]. All such protests should be filed on or before August 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18955 Filed 8-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-136-004]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

August 7, 1989.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on July 31, 1989, tendered for filing proposed changes to its FERC Gas Tariff.

Northern states that this filing is being submitted pursuant to the terms and conditions set forth in the Commission's order issued on July 14, 1989 in the above proceeding. An effective date of May 1, 1989 has been requested for this filing.

Northern further states that copies of this filing were served upon Northern's customers, parties to this proceeding and all interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such protests should be filed on or before August 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary,

[FR Doc. 89-18900 Filed 8-11-89; 8:45 am]

BILLING CODE 6717-01-M

Northern Natural Gas Co.; Division of Enron Corp.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

August 7, 1989.

Take notice that on July 31, 1989, Northern Natural Gas Company, Division of Enron Corp., tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

3rd Revised Sheet No. 52f.19
3rd Revised Sheet No. 52f.20

Northern asserts that such revised tariff sheets is being submitted in compliance with § 250.16(d)(2) and contains revisions to Northern's shared operating personnel and procedures regarding complaints.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed by August 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-18956 Filed 8-11-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-215-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 7, 1989.

Take notice that on July 31, 1989, Southern Natural Gas Company (Southern) tendered for filing certain tariff sheets with a proposed effective date of September 1, 1989.

Southern states that the proposed tariff filing is being made in compliance

with the terms of the Stipulation and Agreement in *Bear Creek Storage Company*, Docket No. RP89–58, and the Commission's order approving the Stipulation. Southern further states that the proposed tariff sheets reflect an overall reduction in Southern's rates of approximately $5.6 million annually based on the flowthrough of the reduction in rates charged to Southern by Bear Creek Storage Company in accordance with the terms of the aforesaid Stipulation and Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before August 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18901 Filed 8–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT88–26–004]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Order No. 497

August 7, 1989.

Take notice that on July 31, 1989, Transwestern Pipeline Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet:

3rd Revised Sheet No. 30F
3rd Revised Sheet No. 30G
2nd Revised Sheet No. 34F
3rd Revised Sheet No. 34F

Transwestern asserts that such revised tariff sheet is being submitted in compliance with § 250.16(d)(2) and contains revisions to Transwestern's shared operating personnel and procedures regarding complaints.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed by August 21, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18957 Filed 8–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–138–003]

United Gas Pipe Line Co.; Compliance Filing

August 7, 1989.

Take notice that on July 31, 1989, United Gas Pipe Line Company (United) submitted for filing the following tariff sheets and workpapers in response to the Commission's July 20, 1989 Letter Order (July 20, 1989 Order) in RP88–27 *et al.*

Effective April 1, 1989.

Substitute Second Revised Sheet No. 4–G1
Substitute Second Revised Sheet No. 4–H
Substitute Second Revised Sheet No. 4–I
Substitute Second Revised Sheet No. 4–J
Substitute Second Revised Sheet No. 4–K
Substitute Original Sheet No. 4–L

United states that the filing will be served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such protests should be filed on or before August 14, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18902 Filed 8–11–89; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP89–147–004]

United Gas Pipe Line Co.; Compliance Filing

August 7, 1989.

Take notice that on July 31, 1989, United Gas Pipe Line Company (United) submitted for filing the following tariff sheets and certain workpapers with narrative descriptions in response to the Commission's July 21, 1989 Letter Order (July 21, 1989 Order) in this proceeding. The Tariff Sheets and workpapers are also consistent with the Commission's July 20, 1989 Order (July 20, 1989 Order) in Docket No. RP88–27 *et al.*

Effective May 1, 1989:

Second Substitute Original Sheet No. 4–M
Second Substitute Original Sheet No. 4–N
Second Substitute Original Sheet No. 4–O
Second Substitute Original Sheet No. 4–P
Second Substitute Original Sheet No. 4–Q
Substitute Original Sheet No. 4–Q1
Second Substitute Original Sheet No. 4–R

United states that the filing will be served upon all parties listed on the official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such protests should be filed on or before August 14, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89–18903 Filed 8–11–89; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Special Research Grant Program Notice 89–7A; Global Survey of Carbon Dioxide in the Ocean

AGENCY: Department of Energy, (DOE).

ACTION: Amendment to Special Research Grant Notice (SRGN) 89–7: Global Survey of Carbon Dioxide in the Ocean (published in the **Federal Register** on Thursday, July 20, 1989, Vol. 54, No. 138).

SUMMARY: This announcement amends the Special Research Grant Notice 89–7: Global Survey of Carbon Dioxide in the Ocean (**Federal Register**/Vol. 54, No.

138, published on Thursday, July 20, 1989). This amendment extends the application submittal dates to October 18, 1989 for all provisions of SRGN–89–7.

According to the current schedule for the first U.S. World Ocean Circulation Experiment Hydrographic Program, the first cruise will be in the Pacific Ocean and will include two hydrographic sections. The sections will be along 150° W, from 60° N to 70° S, and along 90° W, from 15° N to 70° S. The duration of the cruise will be approximately 140 days at sea, and it will not start before October 1990, rather than January 1990 as previously indicated. Because of this change in the FY 1990–91 schedule, the deadline for grant applications for at-sea CO_2 measurements and replicate total carbon dioxide (CO_2) analyses by precision manometry at land-based laboratories is extended to October 18, 1989. Although other cruises will occur in FY 1991 and beyond, the schedule for those cruises is tentative at this time. All other provisions of SRGN–89–7 are as originally announced.

Any organization which has already submitted an application in response to SRGN–89–7 can request that the application be returned for revision and resubmission.

ADDRESS: Completed applications referencing Program Notice 89–7 should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, Office of Energy Research, ER–64, Room G–232, Washington, DC 20545.

FOR FURTHER INFORMATION CONTACT: Dr. Ari Patrionos, Carbon Dioxide Research Program, Office of Health and Environmental Research, ER–74, Washington, DC 20545, (301) 353–3213.

Issued in Washington, DC, on August 2, 1989.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 89–18976 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 89–32–NG]

Gulf Energy Marketing Co.; Order Granting Blanket Authorization to Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order granting blanket authorization to export national gas to Mexico.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notices that it has issued an order granting Gulf Energy Marketing Company (Gulf Energy) blanket authorization to export natural gas from the United States to Mexico. The order issued in ERA Docket No. 89–32–NG authorizes Gulf Energy to export up to 105 Bcf of domestic gas for short-term and spot market sales over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 2, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–18973 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–43–NG]

Natural Gas Clearinghouse; Application to Amend and Extend Blanket Authorization to Import and Export Natural Gas

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of application to amend and extend blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on July 11, 1989, of an application filed by Natural Gas Clearinghouse (NGC) for blanket authorization to amend and extend its existing blanket authorization to import Canadian natural gas. Specifically, NGC requests blanket authorization to import up to 600 Bcf of gas, including liquefied natural gas (LNG), from Canada, Mexico, and other countries, and to export up to 130 Bcf of gas, including LNG, to Mexico, Canada, and other countries, over a two-year term beginning on the date of first delivery of imported or exported natural gas or LNG. NGC intends to utilize existing pipeline and LNG facilities for the processing and transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than September 13, 1989.

FOR FURTHER INFORMATION CONTACT: Frank Duchaine, Office of Fuels Programs, Office of Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: NGC, a Colorado general partnership, and the successor in interest to Natural Gas Clearinghouse Inc., holds an existing two-year blanket authorization to import up to 1 Bcf per day of Canadian gas through October 31, 1989. This authorization was issued in ERA Docket No. 87–39–NG (DOE/ERA Opinion and Order No. 198, October 20, 1987). If NGC is granted the authority requested in this docket, such authorization will supersede its existing authorization on the effective date of issuance of a final order here, provided the order is issued prior to the expiration date of its existing authorization.

Under the import authority sought, NGC contemplates purchasing natural gas from a variety of foreign suppliers and reselling those supplies to various purchasers, including local distribution companies, pipelines, and commercial and industrial end-users. Under the export authority sought, NGC proposes to secure natural gas from a variety of domestic suppliers and resell the gas to customers outside the United States. NGC would import and export natural gas and LNG both for its own account as well as for the accounts of others.

NGC states that currently it is negotiating arrangements to export natural gas to Canada and Mexico, but is requesting the flexibility to enter into agreements for the importation and exportation of natural gas and LNG to Canada and Mexico as well as other similarly situated countries. NGC asserts that the specific terms of each import and export arrangement would be negotiated on an individual basis at market responsive prices.

In support of its application, NGC asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term

nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. With regard to the proposed exports, NGC states that the exported volumes would be incremental to the needs of current purchasers and that the sale of the gas would benefit domestic producers as well as result in a reduction of the current excess domestic natural gas supply, generate income, and reduce the U.S. trade deficit.

NGC requests expedited treatment of its application. A decision on NGC's request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issue determined to be appropriate in a particular case. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority, and on the domestic need for gas the applicant proposes to export. As noted above, the applicant asserts that import and export arrangements transacted under the requested authority will be competitive, and that there is no current need for domestic gas that would be exported under the proposed short-term arrangements. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that the approval of this application may permit the import or export of natural gas or LNG at any international border point where existing transmission or processing facilities are located.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, Fossil Energy, Room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., e.d.t. September 13, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of NGC's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 2, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–18974 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 89–23–NG]

Washington Natural Gas Co.; Order Granting Authorization to Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order granting authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Washington Natural Gas Company (Washington Natural) authorization to import natural gas from Canada. The order issued in FE Docket No. 89–23–NG authorizes Washington Natural to import up to 25,000 MMBtu (24,038 Mcf) per day of natural gas over a 15-year period from November 1, 1989, to October 31, 2004.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 568–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 7, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–18975 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

Offices of Hearings and Appeals

Cases Filed With the Office of Hearings and Appeals; Week of May 5 Through May 12, 1989

During the Week of May 5 through May 12, 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 28, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 5 through May 12, 1989]

Date	Name and location of applicant	Case No.	Type of submission
May 8, 1989	Bartkus Oil Company, Boulder, CO	KEE-0176	Exception to the reporting requirements. If granted: Bartkus Oil Company would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Products Sales Report."
May 8, 1989	Pester Marketing Company, Washington, DC	KEF-0134	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with the settlement agreement between Pester Marekting Company and the DOE.
May 12, 1989	Beacon/San Lucas Stops, Hardin, KY	RR238-1	Request for modification/rescission. If granted: The April 17, 1989 Decision and Order issued to San Lucas Truck Stops would be modified regarding the firm's application for refund submitted in the Beacon Oil Refund Proceeding.
May 12, 1989	Economic Regulatory Administration/Kern Oil & Refining Company, Washington, DC.	KRZ-0527	Interlocutory. If granted: The Proposed Remedial Order issued to Kern Oil & Refining Company (Case No. KRO-0520) would be modified to add an additional theory of liability and to reduce the amount of overcharges.
May 12, 1989	Larry D. Delpit, Los Angeles, CA	KRD-0521	Motion for discovery. If granted: Discovery would be granted to Larry D. Delpit in connection with the Statement of Objections submitted in response to the Proposed Remedial Order issued to Larry D. Delpit (Case No. KRO-0520).
May 12, 1989	Knolls Action Project, Albany, NY	KFA-0287	Appeal of an information request denial. If granted: The April 7, 1989 Freedom of Information Request Denial issued by the Office of Naval Reactors would be rescinded, and Knolls Action Project would receive access to documents related to activities at the Knolls Atomic Power Laboratory.
May 12, 1989	Tri-Service Drilling Company, Washington, DC	KEF-0135	Implementation of special refund procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with an April 21, 1989 Consent Order which the DOE entered into with Tri-Service Drilling Company.

REFUND APPLICATIONS RECEIVED

[Week of May 5 to May 12, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/04/89	Thomas P. Reidy	RF40-3710
5/08/89	Bill Lepley's Gulf	RF300-10804
5/08/89	C & C Gulf	RF300-10803
5/08/89	Don's Gulf	RF300-10802
5/08/89	Owens Gulf	RF300-10801
5/08/89	Dick Beggs Riverside.	RF300-10805
5/08/89	Gas Service, Inc	RF300-10806
5/08/89	Tenn-Penn Oil Co	RF115-8
5/08/89	Ken-Wil Oil Co., Inc	RF115-9
5/08/89	Irving Schultz & Co., Inc.	RF115-10
5/08/89	Sullivan Oil Co	RF314-28
5/10/89	Adams Resources & Energy, Inc.	RF313-147
5/10/89	Barrow Oil Co., Inc	RF314-29
5/10/89	Fannon Petroleum Service, Inc.	RF300-10808
5/11/89	Uniondale Crown	RF313-146
5/11/89	Kirkland's Gulf	RF300-10807

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 5 to May 12, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/11/89	Yuska Oil Co	RF310-340
5/11/89	Central DuBois Vans, Inc.	RF300-10810
5/11/89	United Tool & Die	RF300-10811
5/11/89	Paducah	RF300-10812
5/11/89	Wayne Mills Co., Inc.	RF300-10809
5/11/89	Roscoe Service Center.	RF313-148
5/12/89	Riverdale Crown	RF313-149
5/12/89	A. N. Rusche Distributing Co.	RF300-10813
5/05/89 thru 5/12/89.	Crude oil refund applications received.	RF272-75470 thru RF272-75480
5/05/89 thru 5/12/89.	Atlantic Richfield refund applications received.	RF304-9250 thru RF304-9284

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 5 to May 12, 1989]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/05/89 thru 5/12/89.	Shell Oil refund applications received.	RF315-5688 thru RF315-5814
5/05/89 thru 5/12/89.	Exxon refund applications received.	RF307-9940 thru RF307-9952

[FR Doc. 89-18977 Filed 8-11-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $35,000 obtained as a result of a Stipulation and Agreed Final Judgment which the DOE entered into with McClure Oil Company (McClure), a reseller of motor gasoline, diesel fuel and propane located in Oklahoma. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for Refund from the McClure escrow fund must be filed in duplicate and must be received on or before November 13, 1989. All applications for Refund from this escrow fund should refer to Case Number KEF–0009 (McClure Oil Company) and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Rebecca C. Rogers, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6602.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a Stipulation and Agreed Final Judgment entered into by the DOE and McClure Oil Company that settled all claims and disputes between the firm and the DOE regarding the firm's compliance with federal price regulations in its sales of motor gasoline, diesel fuel and propane during the period November 1, 1973, through March 31, 1974 (the Judgment period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the McClure escrow fund was issued on January 23, 1989. 54 FR 4066 (January 27, 1989).

The Decision set forth procedures and standards which the Office of Hearings and Appeals (OHA) of the DOE has formulated to distribute the contents of the escrow account pursuant to the Judgment. OHA has determined that the escrow fund should be distributed to firms and individuals that purchased motor gasoline, diesel fuel and/or propane from McClure during the Judgment period. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of those products from McClure and to demonstrate that it was injured by McClure's alleged regulatory violations. The specific requirements for proving injury are set forth in the following Decision and Order. Applications for Refund will now be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Residual funds in the escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Public Law No. 99–509, Title III.

Dated: August 4, 1989.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision and order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: McClure Oil Company
Date of Filing: November 19, 1985
Case Number: KEF–0009

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR part 205, Subpart V; *see also, Office of Enforcement,* 9 DOE ¶ 82,553 (1982); *Office of Enforcement,* 9 DOE ¶ 82,508 (1981) and, *Office of Enforcement,* 8 DOE ¶ 82,597 (1981). On November 19, 1985, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from McClure Oil Company (McClure) under the terms of a Stipulation and Agreed Final Judgement (Judgment) dated January 30, 1985.[1] In its Petition, the ERA requests that the OHA establish special procedures to make refunds in order to remedy the effects of the alleged regulatory violations that were settled in the McClure Judgment.

[1] The Judgment resolved all matters in dispute arising from a June 2, 1977 Remedial Order issued to McClure and a subsequent Judgment dated September 11, 1980.

I. Background

McClure purchased and resold refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR part 150 and 10 CFR parts 210, 211, and 212. During the period of price controls, the ERA conducted an extensive audit of McClure's operations and, as a result of the audit, alleged that McClure had violated certain of the DOE's price and allocation regulations in its sales of motor gasoline, diesel fuel and propane. Settlement discussions were held, and on January 30, 1985, the ERA and McClure finalized a Judgment (No. 660E00083) that resolved issues pertaining to McClure's refined petroleum product operations during the period November 1, 1973, through March 31, 1974 (the Judgement period). Pursuant to the terms of the Judgment, McClure remitted a total of $35,000 (the Judgement fund) [2] to the DOE for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury, pending a determination regarding their proper distribution.

On January 23, 1989, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the McClure Judgment funds. A copy of the PD&O was published in the **Federal Register** on January 27, 1989, and comments were solicited. *See* 54 **Federal Register** 4066 (January 27, 1989). We have received only one response, a Motion to Intervene filed by McClure. This Motion in essence requests the payment to McClure of a refund that may be granted to a former customer of McClure. The basis for this request is an outstanding, unsatisfied judgment which McClure states has been entered on its behalf against the former customer by the District Court for Seminole County, Oklahoma. This matter concerns specific issues that should be addressed, if at all, in the course of the refund stage of this proceeding. Certainly, McClure's claim has no bearing on the refund procedures we proposed. Therefore, we will not address the substance of the Motion here.

No other comments were received. In this Decision and Order, we will adopt

[2] This figure consists of $18,627.13 in overcharges and $16,372.87 in interest which accrued prior to McClure's payment to the DOE. For accounting purposes, the interest remitted by McClure shall be considered as additional principal. Upon completion of payment, the Judgment fund equalled $35,000.

final refund procedures and will provide a suggested refund application format in order to assist individuals and firms in making claims.

II. Summary of Proposed Refund Procedures

Since we have received no adverse comments regarding the proposed refund procedures, we have determined that those procedures are the most equitable and efficacious means of distributing the McClure Judgment fund, and, therefore, that they should be adopted.

As we indicated in the PD&O, the McClure Judgment resolved alleged regulatory violations involving McClure's sales of motor gasoline, diesel fuel and propoane. We will implement a two-stage refund process by which firms and individuals who purchased those products from McClure during the Judgment period may submit may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants will fall into one of the following three categories of McClure purchasers: (i) End-users, i.e., ultimate consumers; (ii) regulated entities, such as public utilities or cooperatives; and (iii) retailers, resellers and refiners that resold McClure products.

As stated in the PD&O, each claimant will be required to submit a schedule of its monthly purchases of McClure refined petroleum products during the Judgment period. If the product was not purchased directly from McClure, the claimant must provide a statement setting forth its reasons for maintaining that the product originated with McClure.

In addition, a refiner, reseller, or retailer claimant, except one that chooses to utilize the injury presumptions adopted below, will be required to make a detailed showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, a claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed.[3] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom Atlantic Richfield Co.* v. *DOE*, 618 F. Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from McClure. *Id.; see also Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Shupbach and Streitmatter Gas Company*, 14 DOE ¶ 85,186 (1986).

1. Presumptions For Refund Claims

The PD&O outlined various presumptions regarding classes of McClure purchasers and levels of injury which would allow claimants to participate in the refund process without incurring inordinate expense, and would insure that refund claims are evaluated in the most efficient manner possible. We will adopt those presumptions, which are summarized below.

First, we will adopt the volumetric presumption detailed in the PD&O. This presumption states that the alleged overcharges were dispersed equally in all of McClure's sales of motor gasoline, diesel fuel and propane during the Judgment period. In accordance with this presumption, refunds are to be made on a pro-rata or volumetric basis. Under this approach, a claimant's allocable share of the Judgment fund is equal to the number of gallons of products purchased times the per gallon refund amount (plus an appropriate share of the interest which has accrued on the McClure Judgment fund).[4] The PD&O established the volumetric factor at $0.02778, and we will adopt this figure.[5] As explained in the PD&O, we will establish a minimum refund amount of $15.00.[6]

In addition to the volumetric presumption, we will also adopt the injury presumptions described in the PD&O and summarized below.

a. *End-users.* We will adopt the presumption that an end-user or ultimate consumer of McClure products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the Judgment. These applicants will only need to document their purchase volumes from McClure during the Judgment period in order to make the requisite showing that they were injured by the alleged overcharges.

b. *Regulated Firms and Cooperatives.* We will also adopt the presumption that a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement would have passed on any overcharges to its customers or member-customers through automatic rate adjustment mechanisms or the terms of a cooperative agreement. Thus, any refunds received by a regulated firm or cooperative should also be passed through to its customers or member-customers. We will require such a claimant to (i) certify that it will pass through any refund received to its customers or member-customers; (ii) provide us with a full explanation of how it plans to accomplish this restitution; and (iii) certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund. *See Marathon*, 14 DOE at 88,515; *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,208 (1982). Because we require regulated firms and cooperatives to pass refunds through to their customers or member-customers on a dollar for dollar basis, we do not require them to make a detailed demonstration of injury. Instead, such a claimant need only submit documentation of purchase volumes used by itself or, in the case of a cooperative, sold to its members during the Judgment period.[7]

c. *Refiners, Resellers and Retailers Seeking Refunds of $5,000 or Less.* We will adopt the small claims presumption explained in the PD&O. Refiners, resellers or retailers seeking refunds of $5,000 or less, exclusive of interest (i.e., who did not purchase more than 179,986 gallons of eligible products from McClure during the Judgment period) will not be required to submit evidence of injury. Instead, these claimants must only document their relevant purchases

[3] Claimants who have previously relied upon their banked costs in order to be eligible to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs sumbitted in this proceeding. *See* Husky Oil Co./Metro Oil Products, Inc., 16 DOE ¶ 85,090 at 88,179 (1987).

[4] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, any purchaser may file a refund application based upon a claim that a specifically alleged overcharge amount should be used in considering its refund application. *See, e.g.*, Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

[5] We derived this figure by dividing the Judgment fund ($35,000) by the approximate number of gallons of refined products subject to price and allocation controls sold by McClure during the Judgment period (1,259,887), for a final volumetric factor of $0.02778.

[6] Applicants claiming volumetric refunds must have purchased at least 540 gallons of refined products from McClure during the Judgment period to be eligible for a refund.

[7] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See* Marathon, 14 DOE at 88,515.

from McClure. A claimant whose allocable share of the Judgment fund exceeds $5,000, plus accrued interest.[8]

d. *Spot Purchasers.* We will adopt the rebuttable presumption, explained in the PD&O, that a refiner, reseller or retailer that made only spot purchases from McClure did not suffer injury as a result of those purchases. Spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See Office of Enforcement,* 8 DOE ¶ 82,597 at 85,396-97 (1981). Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from McClure.[9]

e. *Consignees.* Finally, we will adopt the rebuttable presumption that consignees of McClure refined petroleum products were not injured as a result of their arrangement with their refiner/supplier. *See, e.g., Jay Oil Company,* 16 DOE ¶ 85,147 (1987). A consignee agent is a firm that distributed covered products pursuant to a contractual agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. *See* 10 CFR 212.31 (definition of "consignee agent"). A consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the Judgment firm's] prices." *See Gulf Oil Corp./C.F. Canter Oil Co.,* 3 DOE ¶ 85,388 at 88,962 (1986).

2. Allocation Claims

We will also adopt the procedures, outlined in the PD&O, for resolving claims based upon McClure's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations. *See* 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in cases such as *Amoco,* 10 DOE at 88,220, and *OKC Corp./Town & Country Markets, Inc.,* 12 DOE ¶ 85,094 (1984). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violations. Finally, the claimant must establish that it was injured and document the extent of the injury.

3. Distribution of Product Funds Remaining after First Stage

Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Public Law 99-509, Title III. *See* Fed. Energy Guidelines ¶ 11,702 *et seq.* PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA, section 3003 (c) and (d). These responsibilities have been delegated to the OHA, and any funds in the McClure Judgment escrow account that the OHA determines will not be needed to effect direct restitution to injured McClure customers will be distributed in accordance with the provisions of PODRA.

III. Application for Refund Procedures

We have adopted the procedures described in the PD&O for the distribution of the McClure Judgment fund. Accordingly, we will now accept Applications for Refund from eligible customers who purchased motor gasoline, diesel fuel, and/or propane from McClure during the Judgment period. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationery. The following pieces of information should be included on all applications:

(1) The name of the Judgment firm: McClure Oil Company, the case number: KEF-0009, and the applicant's name prominently displayed on the first page;

(2) The name and current address of the firm or individual to be designated as the refund recipient;

(3) An explanation of how the claimant used the McClure products, *i.e.,* whether the applicant was a reseller, retailer, consignee, end user, public utility, cooperative, etc.;

(4) The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the application;

(5) A monthly schedule fo the applicant's purchases of McClure motor gasoline, diesel fuel, and/or propane during the Judgment period (11/01/73 through 03/31/74). A separate schedule should be included for each product;

(6) All relevant material necessary to support the applicant's claim in accordance with the injury presumptions and requirements outlined above;

(7) A statement of whether the applicant was supplied directly by McClure. If not, the applicant should state, in detail, its reasons for asserting that the products it purchased originated with McClure;

(8) A statement of whether the applicant was in any way affiliated with McClure. If so, the applicant should state the nature of that affiliation;

(9) A statement of whether the applicant was a consignee agent of McClure products, following the definition of a consignee agent described above;

(10) A statement of whether the ownership of the applicant's firm or business changed during or since the Judgment period. If so, the applicant should describe the change, and provide the names and addresses of previous and/or subsequent owners;

(11) A statement of whether the applicant is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If these actions are still in progress, the applicant should briefly describe the actions and their current status. The applicant must inform the OHA of any change in status while its Application

[8] Under these procedures, claimants who attempt to make a detailed showing of injury in order to support a refund claim, but, instead, provide evidence that leads us to conclude that they passed through all of the alleged overcharges or are eligible for a refund of less than $5,000, will not be entitled to $5,000 small claims presumption refund. Such claimants, however, will be eligible to receive a refund for the amount of injury that they demonstrate. *See* Union Texas Petroleum Corp./Arrow Enterprises, Inc., 15 DOE ¶ 85,087 (1986); Quaker State Oil Refining Corp./Campbell Oil Co., 15 DOE ¶ 85,059 (1986).

[9] In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. *See* Quaker State Oil Refining Corp./Certified Gasoline Co., 14 DOE ¶ 85,465 (1986).

for Refund is pending. *See* 10 CFR 205.9(d);

(12) A statement of whether the applicant or a related firm has filed any other Application for Refund in the McClure refund proceeding;

(13) A statement of whether the applicant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in the McClure proceeding; and

(14) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001."

All Applications for Refund should be sent to: McClure Refund Proceeding, Case No. KEF–0009, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

All Applications must be filed in duplicate and received within 90 days after the publication of this Decision and Order in the **Federal Register**. A copy of each Application will be available for public inspection in the Pubilc Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E–234, 1000 Independence Avenue SW., Washington, DC. Any applicant that believes that its Application contains confidential information must submit two additional copies of the application in which the confidential material has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

It is therefore ordered, That:

(1) Applications for Refund from the funds remitted to the Department of Energy by McClure Oil Company pursuant to the Stipulation and Agreed Final Judgment executed on January 30, 1985 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: August 4, 1989.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 89–18978 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Cooperative Agreement; Financial Assistance Award to Colorado State University, Department of Civil Engineering, Hydrology and Water Resources Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of acceptance of an unsolicited financial assistance application for a cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(e)(1), the Department of Energy, Western Area Power Administration (Western), gives notice of its plans to award a 12-month Cooperative Agreement to the Colorado State University (CSU), Department of Civil Engineering, Hydrology and Water Resources Program, in the amount of $34,060. Funding is authorized in the Act of October 30, 1986, Public Law 99–591, 100 Stat. 3341. The pending award is based on an unsolicited proposal submitted by CSU to perform studies on the Colorado River Basin Reservoir System using indexed sequential hydrological modeling (ISM) procedures to analyze the generated power for establishing marketable hydropower. With the financial assistance from Western, CSU will be able to conduct studies using both the ISM and the Lane's Applied Stochastic Technique package developed by the Bureau of Reclamation as well as other appropriate multivariate stochastic modeling and generation analyst programs developed at CSU to simulate energy generation for the Colorado River Basin Reservoir System. CSU will test the simulated power extensively and evaluate the viability of using ISM procedures in reservoir system analysis for determining the marketable power levels. Results of this coopeative study will provide a strong documentable basis for using ISM as a reasonable alternative approach in reservoir system hydrogeneration analysis.

FOR FURTHER INFORMATION CONTACT: Linda Puttman, Contract Specialist, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–7287, Purchase Requisition Number AA–PR–05893.

Issue at Golden, Colorado, July 28, 1989.

William H. Clagett,

Administrator.

[FR Doc. 89–18979 Filed 8–11–89; 8:45 am]

BILLING CODE 6450–01–M

Stampede Division, Washoe Project—Proposed Power Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Power Rates—Stampede Division, Washoe Project, California.

SUMMARY: The Western Area Power Administration (Western) is proposing a modification to the nonfirm energy rates for the Stampede Division, Washoe Project, California. This proposed rate modification is a minor rate adjustment pursuant to 10 CFR part 903. The Stampede Powerplant (Stampede) is a 3.65–MW hydroelectric facility that was placed in service on January 15, 1988. The current Stampede nonfirm energy rates were approved by the Federal Energy Regulatory Commission (FERC) on February 10, 1987, at 40.45 mills/kilowatthour (kWh), or 27.86 mills/kWh plus annual operation and maintenance (O&M) responsibility. Western has not found a customer willing to purchase Stampede nonfirm energy at these approved rates. Presently, Stampede generation is being sold to Sierra Pacific Power Company (Sierra) under a short-term agreement at 80 percent of Sierra's quarterly weighted marginal cost. This notice proposes a flexible annual rate formula that is intended to ensure the maximum reasonable annual repayment of the Stampede power investment at marketable rates.

SUPPLEMENTARY INFORMATION: Power rates for the Stampede Division are established pursuant to the Department of Energy (DOE) Organization Act of August 4, 1977 (42 U.S.C. 7101, *et seq.*); the Reclamation Act of 1902 (43 U.S.C. 372, *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the Act of August 1, 1956, 70 Stat. 775, authorizing construction of the Washoe Project.

By Delegation Order No. 0204–108, effective December 14, 1983 (48 FR 55664), as amended May 30, 1986 (51 FR 19744), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Under Secretary of the Department of Energy; and (3) the authority to confirm, approve, and place in effect on a final basis, to remand, or to disapprove such rates to the FERC. On October 27, 1988, the Secretary of Energy issued a notice, DOE N 1110.29, amending Delegation Order No. 0204–

108 by transferring authority to place rates into effect on an interim basis from the Under Secretary of the Department of Energy to the Deputy Secretary of the Department of Energy. This order was published in the **Federal Register** on January 26, 1989 (54 FR 3841). This notice of proposed modification of rates is issued pursuant to the delegation to the Administrator and the rate adjustment procedures at 10 CFR part 903, published at 50 FR 37835 on September 18, 1985.

Western is developing these rates for Stampede Division, Washoe Project, in accordance with Reclamation Law, DOE financial reporting policies, procedures, and methodology (DOE Order No. RA 6120.2, September 20, 1979), and the procedures for public participation in rate adjustments found in 10 CFR part 903 (1985).

This notice initiates the public proceedings for a minor rate adjustment announcing the rates under consideration and the beginning of the 30-day consultation and comment period. Neither a public information forum nor a comment forum will be held. Under DOE procedures, such forums are optional for minor rate adjustments, which include rate adjustments for power systems with installed capacity of less than 20,000 kilowatt (kW). Stampede capacity is 3,650 kW, well under the 20,000-kW limit.

Western has decided not to hold public forums because this is a minor rate for a small quantity of nonfirm energy, and the marketing of that energy is not expected to raise any significant or controversial issues of fact or law.

Background

Stampede Dam and Reservoir are located on the Little Truckee River approximately 8 miles above the confluence of the Little Truckee and Truckee Rivers. The dam and reservoir are in Sierra County, California, about 11 miles northeast of the town of Truckee. The water source for Stampede Reservoir is the Little Truckee River drainage basin containing about 136 square miles of dense wooded slopes and grass meadowlands.

When the Stampede Dam and Reservoir were authorized in 1956, hydroelectric power development was included. Power facilities were not constructed at the time Stampede Dam was built during the period 1966 to 1970 because the power function was not economically justified. Nevertheless, provisions were made to facilitate the addition of power facilities at a later date.

A preliminary reevaluation of Stampede was published in a special Bureau of Reclamation (Reclamation) report, "Adding Powerplants at Existing Federal Dams in California," July 1976. The report recommended construction of a powerplant. Definite Plan Report studies were initiated in fiscal year (FY) 1977; the powerplant was constructed and went on-line in January 1988.

Originally, operation of Stampede Dam and Reservoir was to fulfill three purposes: flood control, fisheries enhancement, and recreation. Power generation, resulting from the addition of Stampede at the dam, adds a fourth purpose. Stampede provides approximately 10 million kWh annually. The power plant is operated as an unattended plant with automatic means for maintaining relatively constant downstream water releases in the event of unit shutdown. Generator control is automatic with capability for complete shutdown.

Under a contract with Western, Sierra constructed a ½-mile, 60-kilovolt (kV) transmission line between the Stampede power facility and Sierra's existing 60-kV transmission system for the purpose of delivering energy to Sierra's system. All plant and switchyard controls are centrally located inside the powerplant.

The energy generated by Stampede has an initial priority reservation for designated Washoe Project loads. The Lahontan National Fish Hatchery and the Marble Bluff Fish Facility were designated by Reclamation and Western as project loads of the Washoe Project. This designation makes the Fish and Wildlife Service facilities eligible to be served by Stampede on a priority basis. The projected demand of these facilities should not exceed 500-kW peakload and 2 million kWh annually. Due to the current inability to receive Stampede energy, the designated project-use loads are not currently being served by Stampede, and 100 percent of the output of Stampede is being sold to Sierra. Energy generated at Stampede is nonfirm, and except for the energy (if any) supplied to serve the project-use loads, will be sold as provided in this notice.

On October 25, 1985, Western designated Truckee-Donner Public Utility District (Truckee-Donner) as the commercial customer for Stampede energy (50 FR 43456). Western established a 50-year levelized repayment rate of 40.45 mills/kWh approved by the FERC on February 10, 1987. From the time Stampede energy was allocated to Truckee-Donner through December 1988, Western attempted to fulfill the contract with Truckee-Donner, but was not sucessful for various reasons. One key factor was that the Stampede levelized rate was above the region's nonfirm energy market levels. In the spring of 1989, Western determined a need to create an alternate rate approach.

DATES: The consultation and comment period will begin with publication of this notice in the **Federal Register** and will end September 13, 1989. Written comments may be submitted to the address below on or before the end of the consultation and comment period.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Coleman, Area Manager, Western Area Power Administration, Sacramento Area Office, 1825 Bell Street, Suite 105, Sacramento, CA 95825, (916) 649-4418.

Proposed Rates

Western is proposing an annual bidding process for Stampede nonfirm energy. Annual bids for Stampede generation will only be considered if they meet or exceed the minimum rate (or Floor Rate) Western considers necessary to meet the expense of operating the plant. In addition, Western will annually calculate the conventional cost-based rate necessary to meet the Stampede repayment obligation. This rate will be considered the highest necessary bid (or the Ceiling Rate) for the Stampede energy. Western will annually issue a public notice in the appropriate publications in the region, as well as letters to customers and interested parties, to the effect that Stampede nonfirm energy is available to the highest bidder at a rate ranging between the established Floor and Ceiling Rates contained in the public notice. Entities interested in purchasing the Stampede energy will submit bids to Western indicating the rate they are willing to pay within these parameters. If the highest bid is submitted by more than one entity, selection of the purchaser will be based on the criteria discussed later in this notice.

The range of rates that Western will consider for Stampede nonfirm energy generation will be as follows, as measured at the Stampede Substation and as determined by Western.

Stampede NonFirm Energy Floor Rate (Floor Rate)

The Floor Rate will be based on the greater of either (a) the rate necessary to recover the projected annual O&M expenses for Stampede plus 2 mills per kWh, or (b) 85 percent of the purchaser's projected average annual marginal energy cost as measured at its point of receipt for such energy. This rate is intended to, at a minimum, recover the annual power O&M expenses of the Stampede facility plus part of the annual

interest expense. However, if the region's energy market is causing a potential purchaser to pay higher rates for energy than the calculated O&M-expense based Floor Rate, then Western is proposing that the Stampede energy sale would occur at 85 percent of the purchaser's demonstrated average annual marginal cost alternative, up to the Ceiling Rate discussed below.

This proposal is intended to ensure that Stampede will only be operated if there is an economic benefit to do so, and at the same time attempts to ensure the maximum reasonable revenue recovery by the Stampede Division while still benefiting the purchaser.

Estimation of a potential purchaser's average annual marginal cost alternative will be based on marginal cost filings made with regulatory entities, projected load and resource plans, as well as previous actual marginal cost experience. Western will review the basis for all bids as part of its annual selection process. Within 120 days of the termination of any annual Stampede energy sale, a recalculation of the Floor Rate will be made based on actual annual cost data. The bidder will be required to supply an analysis verifying that the Stampede energy purchases were made at or above 85 percent of the bidder's actual experienced marginal cost for the year. If the Stampede energy purchases were not at or above the actual annual Floor Rate, then the purchaser shall compensate Western for such difference in a lump sum payment that will be billed to the purchaser by Western.

Stampede Nonfirm Energy Ceiling Rate (Ceiling Rate)

The Ceiling Rate will be the cost-based rate determined by Western to be necessary to repay the Stampede power investment and annual expenses over the remaining repayment period of the power facilities. It is expected that this rate will increase annually to the extent that Stampede energy is sold below the Ceiling Rate each year. The table below shows the first Ceiling and Floor Rates and effective dates:

	Date effective	Nonfirm energy (mills per kWh)
Stampede Floor Rate [1].	Oct. 1, 1989 to Sept. 30, 1990.	19.12
Stampede Ceiling Rate.	Oct. 1, 1989 to Sept. 30, 1990.	50.96

[1] Based upon the annual O&M expenses plus 2 mills/kWh.

Point-of-Delivery and Transmission

Stampede is expected to produce 10 GWh annually under average hydrologic conditions. Station-service and project-use loads will have first priority to Stampede generation. All remaining generation will be made available as generated at the Stampede Substation, hereinafter, the point of delivery. The purchaser is responsible for acquiring any transmission or utility services beyond the point of delivery.

Bidding Process

1. Western will contract to sell Stampede generation each year for a period starting October 1 and continuing through September 30 of the next year. Western will issue a notice requesting bids on or about April 1 of each year. Western's notice shall be in the form of letters to interested parties and newspaper publications. Such notice shall contain the applicable Floor and Ceiling Rates, and the Stampede 1-year contract terms of the proposed sale. Western will accept bid responses received on or before August 1. Western will then review the responses and make a selection of a purchaser on or before September 1. Western will notify all parties that submitted bids of its decision in writing. Western's selection of a purchaser shall be an acceptance of the purchaser's offer to purchase at the rate(s) bid. Western and the purchaser shall confirm the Stampede energy sale by letter agreement, which will be consistent with the contract terms contained in the request for bids, as soon as practicable thereafter.

2. The timing and implementation of the first bid cycle is uncertain and will be described in a schedule contained in the first bid notice.

3. Bids shall be submitted in not less than 0.5 mill/kWh increments. All floor bids based on 85 percent of the proposed purchaser's average annual marginal cost, must contain information supporting the marginal cost calculation and a discussion of the proposed purchaser's ability to take Stampede generation at the point of delivery identified in the contract terms contained in the bid solititation.[2]

4. If a bid is not received at a level at or above the Floor Rate based on the Stampede O&M expenses, Western will repeat its bid request quarterly until such time that an acceptable bid is received.

[2] All information submitted supporting a bid will be considered proprietary and held as confidential to the extent allowed by Federal law. The actual bid rates received by Western may be disclosed to support Western's decision process.

5. If a tie occurs in the bidding process, Western will determine the purchaser to receive Stampede generation. Criteria that Western will use in this determination are:

a. Preference will be given to entities entitled to preference under 43 U.S.C. 485h(c).

b. Greater consideration will be given to entities that can assist Western in delivering Stampede energy to the qualified project-use loads.

FERC Process/Rate Approval

1. Western is proposing that FERC review and approve this Stampede nonfirm energy rate formula for 5 years. Western will retain the option of initiating a rate-adjustment process at any time during the approved 5-year rate period in accordance with 10 CFR Part 903, provided that any such new or adjusted rates shall not apply to a then-current purchaser for the remaining duration of its purchase from Stampede.

2. Western will annually report to FERC the basis for the Floor Rate, the Ceiling Rate, the status of Stampede Division repayment, and any decision not to operate the powerplant during a given period.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (Act) of 1980 (5 U.S.C. 601, *et seq.*), each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for Stampede relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates or services of particular applicability are not considered rules within the meaning of the Act. Since the rate for Stampede power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969 and DOE regulations published in the **Federal Register** (45 FR 20695–20701, as amended), Western is reviewing the environmental impacts of these proposed rates for the Stampede Division and will determine whether it involves a major Federal action having a significant adverse impact on the environment.

Executive Order 12291

The purpose of Executive Order 12291, dated February 17, 1981, is to reduce the burdens of existing and future regulations, increase agency accountability for regulatory actions, provide for presidential oversight of the regulatory process, minimize duplication and conflict of regulations, and insure well-reasoned regulations.

The DOE has determined that this is not a major rule pursuant to the criteria of section 1(b) of the order. Furthermore, Western has received an exemption from sections 3, 4, and 7 of Executive Order 12291, and therefore has not prepared a regulatory impact statement.

Availability of Information

All brochures, studies, comments, letters, memorandums, and other documents made or kept by Western for the purpose of developing the proposed alternative rates are and will be available for inspection and copying at the Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, California 95825, (916) 649-4418.

Issued at Golden, Colorado, July 21, 1989.

William H. Clagett,

Administrator.

[FR Doc. 89-18980 Filed 8-11-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3627-9]

Revision of Nebraska National Pollutant Discharge Elimination System (NPDES) Program to Issue General Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice of Approval of the National Pollutant Discharge Elimination System General Permits Program of the State of Nebraska.

SUMMARY: On July 20, 1989, the Regional Administrator for the Environmental Protection Agency (EPA), Region VII approved the State of Nebraska's National Pollutant Discharge Elimination System General Permits Program. This action authorizes the State of Nebraska to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Donald Toensing, Chief, Permits Section. U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, 913/236-2817.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, are of the same type wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are more appropriately controlled under a general permit rather than by individual permits.

Nebraska was authorized to administer the NPDES program in June, 1974. Their program, as previously approved, did not include provisions for the issuance of general permits. There are several categories which could appropriately be regulated by general permits. For these reasons the Nebraska Department of Environmental Control (NDEC) requested a revision of their NPDES program to provide for issuance of general permits. The categories which have been proposed for coverage under the general permits program include: non-contact cooling water, heat pump discharges, storm water discharges and backwash water discharges from potable water treatment plants.

Each general permit will be subject to EPA review and approval as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Nebraska submitted in support of its request, copies of the relevant statutes and regulations. The State has also submitted a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer the general permits program as required by 40 CFR 123.23(c). In addition, the State submitted a program description supplementing the original application for the NPDES program authority to administer the general permits program, including the authority to perform each of the activities set forth in 40 CFR 123.44. Based upon Nebraska's program description and upon its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary procedures and resources to administer the general permits program.

III. Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA will provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Nebraska's authority to issue general permits.

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program
Alabama	10/19/79	10/19/79	10/19/79
Arkansas[1]	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	.....
Colorado[1]	03/27/75	.....	.....
Connecticut	09/26/73	01/09/89	06/03/81
Delaware	04/01/74	.....	.....
Georgia	06/28/74	12/08/80	03/12/81
Hawaii	11/28/74	06/01/79	08/12/83
Illinois[1]	10/23/77	09/20/79	.....
Indiana	01/01/75	12/09/78	.....
Iowa	08/10/78	08/10/78	06/03/81
Kansas	06/28/74	06/28/85	.....
Kentucky[1]	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85
Michigan	10/17/73	12/09/78	06/07/83
Minnesota[1]	06/30/74	12/09/78	07/16/79
Mississippi	05/01/74	01/28/83	05/13/82
Missouri[1]	10/30/74	06/25/79	06/03/81
Montana[1]	06/10/74	06/23/81	.....
Nebraska[1]	06/12/74	11/02/79	09/07/84
Nevada	09/19/75	08/31/78	.....
New Jersey[1]	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	.....
North Carolina	10/19/75	09/28/84	06/14/82
North Dakota	06/13/75	.....	.....
Ohio	03/11/74	01/28/83	07/27/83
Oregon[1]	09/26/73	03/02/79	03/12/81
Pennsylvania	06/30/78	06/30/78	.....
Rhode Island [1]	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82
Tennessee	12/28/77	.....	08/10/83
Utah	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	.....	03/16/82
Virgin Islands	06/30/76	.....	.....
Virginia	03/31/75	02/09/82	04/14/89
Washington	11/14/73	.....	09/30/86
West Virginia[1]	05/10/82	05/10/82	05/10/82
Wisconsin[1]	02/04/74	11/26/79	12/24/80
Wyoming	01/30/75	05/18/81	.....

[1] Denotes Approved State General Permit Program.

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to Section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), I certify that this State General

Permits Program will not have a significant impact on a substantial number of small entities. Approval of the Nebraska NPDES State General Permits Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Nebraska NPDES State General Permits Program merely provides a simplified administrative process.

Dated: July 26, 1989.

Morris Kay,

Regional Administrator.

[FR Doc. 89-18940 Filed 8-11-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review.

August 8, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0072.

Title: Airborne Mobile Radio Telephone License Application.

Form No.: FCC 409.

Action: Extension.

Respondents: Business or other for-profit, and small businesses or organizations.

Frequency of Response: On occasion.

Estimated Annual Burden: 3,000 Responses; 252 Hours.

Needs and Uses: The FCC 409 is used in applying for authority to operate an airborne mobile radio telephone by individual users who intend to become subscribers to a common carrier service. The form is also used for the modification and renewal of such licenses. The information is used by the Commission's staff to determine the qualifications of an applicant.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18883 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

[DA 89-947]

Advisory Committee on Advanced Television Service Planning Subcommittee Meeting

August 9, 1989.

A meeting of the Planning Subcommittee of the Advisory Committee on Advanced Television Service will be held on: September 19, 1989, 10:00 a.m., Commission Meeting Room (Room 856), 1919 M Street, NW., Washington, DC

The purpose of this meeting to receive the reports of the Subcommittee's working parties and to review the work statement for the third period of Planning Subcommittee activities.

The agenda for the meetings is as follows:

1. Call to Order by the Chairman
2. Adoption of the Minutes of the Fifth Meeting
3. Introductory Remarks
4. Review of the Work Statement
5. Status Reports by the Working Party and Advisory Group Chairmen
6. Other Business
7. Date and Location of the Next Subcommittee Meeting
8. Adjournment

This meeting is open to the public.

Parties may submit written statements prior to or at the time of the meeting. Oral statements and discussion will be permitted under the direction of the Subcommittee Chairman.

Any questions regarding this meeting should be directed to Joseph A. Flaherty at (212) 975-2213 or William Hassinger at (202) 632-6460.

Federal Communciations Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-18986 Filed 8-11-89; 8:45 am]

BILLING CODE 6712-01-M

Quarterly Report on the Travel Reimbursement Program

AGENCY: Federal Communications Commission.

ACTION: Publishing of Quarterly Report on Travel Reimbursement Program.

SUMMARY: In Public Law 100-594, the Congress authorized the Federal Communications Commission to accept reimbursement from non-government organizations for travel of employees of the Commission. The Federal Communications Commission must keep records of such travel by each event and prepare a report each quarter of all reimbursements allowed and provide copies of each quarterly report to the Senate Committee on Appropriations, House Committee of Appropriations, Senate Committee on Commerce, Science and Transportation, and the House Committee on Energy and Commerce. In addition the Federal Register must publish each quarterly report in the Federal Register.

DATE: This report is for the period from April 1, 1989 through June 30, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joseph T. Hall, Office of the Managing Director, (202) 632-7194.

SUPPLEMENTARY INFORMATION: The report for the quarter ending June 30, 1989 is as follows:

FEDERAL COMMUNICATIONS COMMISSION,

TRAVEL REIMBURSEMENT PROGRAM,

April 1, 1989-June 30, 1989

Summary Report

Total Number of Sponsored events	32
Total Number of Sponsoring Organizations	30
Total Number of Commissioners/Employees Attending	56
Total Amount of Reimbursement Expected:	
Transportation	$17,120.16
Subsistence	13,714.27
Other Expenses	2,834.38
Total	33,668.81

Individual Event Reports Attached. Amount of Reimbursement Shown May be Estimated.

Individual Event Report

Sponsoring Organization: National Cable Television Association, 1724 Massachusetts Avenue, NW., Washington, DC 20036.

Date of Event: May 21-24, 1989.

Description of the Event: 38th Annual Convention and Exposition.

Commissioners Attending: Commissioner James H. Quello.

Other Employees attending: See Attachment A.

Amount of Reimbursement:	
Transportation	$4,386.00
Subsistence	2,953.65
Other Expenses	673.59
Total	8,013.24

Attachment A—National Cable Television Association

Other Employees Attending:
Brian F. Fontes—Special Assistant, Office of Commissioner Quello
Noel C.R. Gunther—Special Assistant, Office of Commissioner Dennis
Diane S. Killory—General Counsel
Mary Beth Hess—Legal Assistant to the Bureau Chief, Common Carrier Bureau
Alex Felker, Bureau Chief
Bradley P. Holmes—Chief, Policy and Rules Division
William H. Johnson—Deputy Bureau Chief
Ronald Parver—Chief, Cable Television Branch, Mass Media Bureau
Sarah M. Lawrence—Chief, News Media Division, Office of Public Affairs
Lisa A. Hook—Legal Assistant, Office of the Chairman

Sponsoring Organization: National Translator Association, P.O. Box 628, Riverton, WY 82501.
Date of the Event: May 18–20, 1989.
Description of the Event: National Translator Association Annual Convention.
Commissioners Attending: None.
Other Employees Attending: Keith Larson—Chief, Low Power Television Branch, Alan Schneider—Chief, Auxiliary Services Branch, Thomas English—Electronics Engineer, Auxiliary Services Branch, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$1,096.18
Subsistence	611.49
Other Expenses	113.74
Total	1,821.41

Sponsoring Organization: Virginia Telephone Association, 700 Building, Suite 1420, 700 East Main Street, Richmond, VA 23218.
Date of the Event: May 17–20, 1989.
Description of the Event: Virginia Telephone Association 55th Annual Meeting.
Commissioners Attending: None.
Other Employees Attending: James D. Schlichting, Legal Assistant, Office of the Chairman.

Amount of Reimbursement:

Transportation	$93.15
Subsistence	138.50
Other Expenses	0.00
Total	231.65

Sponsoring Organization: United States Telephone Association, 900 19th Street, NW., Suite 800, Washington, DC 20006–2105.
Date of the Event: May 22–25, 1989.
Description of the Event: United States Telephone Association Premier Annual Trade Show.
Commissioners Attending: None.
Other Employees Attending: Lisa A. Hook—Legal Assistant, James D. Schlichting, Legal Assistant, Office of the Chairman.

Amount of Reimbursement:

Transportation	$624.00
Subsistence	606.00
Other Expenses	94.31
Total	1,324.31

Sponsoring Organization: Telecommunications Industry Association, 150 North Michigan Avenue, Suite 600, Chicago, IL 60601–7525.
Date of the Event: May 23, 1989.
Description of the Event: SUPERCOM '89/NETWORK 90's.
Commissioners Attending: None.
Other Employees Attending: William H. Hassinger—Assistant Bureau Chief (Legal), Mass Media Bureau.

Amount of Reimbursement:

Transportation	$318.00
Subsistence	34.00
Other Expenses	39.80
Total	391.80

Sponsoring Organization: Wisconsin State Telephone Association, 4610 University Avenue, Madison, WI 53705.
Date of the Event: May 24, 1989.
Description of the Event: 1989 WSTA Convention.
Commissioners Attending: None.
Other Employees Attending: Cindy Z. Schonhaut—Attorney, Legal Branch, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$358.00
Subsistence	120.36
Other Expenses	160.23
Total	638.59

Sponsoring Organization: KMB Associates, Inc., Box 825, Lakeside Drive, Block Island, R.I.
Date of the Event: May 26, 1989.
Description of the Event: KMB Video Journal.
Commissioners Attending: None.
Other Employees Attending: Steven Gorosh—Attorney, Policy and Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$152.00
Subsistence	0.00
Other Expenses	40.75
Total	192.75

Sponsoring Organization: Electronic Industries Association, 2001 Eye Street, NW., Washington, DC 20006.
Date of the Event: June 5–6, 1989.
Description of the Event: Consumer Electronics Show.
Commissioners Attending: None.
Other Employees Attending: William H. Hassinger, Assistant Bureau Chief (Engineering)—Mass Media Bureau.

Amount of Reimbursement:

Transportation	$258.00
Subsistence	151.00
Other Expenses	22.11
Total	431.11

Sponsoring Organization: Public Telephone Council, 150 N. Michigan Avenue, Suite 600, Chicago, IL 60601.
Date of the Event: June 6–8, 1989.
Description of the Event: PACE/Publicomm 1989.
Commissioners Attending: None.
Other Employees Attending: Kathie A. Kneff—Chief, Informal Complaints and Public Inquiries Branch, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$302.00
Subsistence	106.00
Other Expenses	50.00
Total	458.00

Sponsoring Organization: Northern Telecom, Inc., P.O. Box 13010, Research Triangle Park, N.C. 27709.
Date of the Event: June 11–14, 1989.
Description of the Event: International Conference on Communications 1989.
Commissioners Attending: None.
Other Employees Attending: Thomas J. Sugrue—Chief, Policy and Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$152.00
Subsistence	34.00
Other Expenses	52.20
Total	238.50

Sponsoring Organization: Society of Cable Television Engineers, Inc., 669 Exton Commons, Exton, PA 19341.
Date of the Event: June 15–18, 1989.
Description of the Event: Cable—Tec Expo.
Commissioners Attending: None.
Other Employees Attending: John P. Wong—Electronics Engineer, Video Services Division, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$330.00
Subsistence	333.00
Other Expenses	67.40
Total	730.40

Sponsoring Organization: 3M Company, 3M Center, St. Paul, MN 55144–1000.
Date of the Event: June 17–22, 1989.
Description of the Event: Annual "Broadcast Symposium".
Commission Attending: None.
Other Employees Attending: William H. Hassinger—Assistant Bureau Chief (Engineering), Mass Media Bureau.
Amount of Reimbursement:

Transportation	$300.0
Subsistence	93.00
Other Expenses	3.60
Total	396.60

Sponsoring Organization: Mississippi Association of Broadcasters, 15 Northtown Drive, Suite A, Jackson, MS 39211.
Date of the Event: June 15–17, 1989.
Description of the Event: Mississippi Association of Broadcasters Annual Convention.
Commissioners Attending: None.
Other Employees Attending: Alex D. Felker—Bureau Chief, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$288.0
Subsistence	89.00
Other Expenses	15.65
Total	392.65

Sponsoring Organization: United States Telephone Association, 900 19th Street, NW., Suite 800, Washington, DC 20006–2105.
Date of the Event: June 19–20, 1989.
Description of the Event: Integrated Services Digital Network Seminar.
*Commissioners Attending:*None
Other Employees Attending: Charles Oliver—Attorney, Policy and Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$300.00
Subsistence	124.50
Other Expenses	99.80
Total	524.30

Sponsoring Organization: Flordia Association of Broadcasters, 514 East College, Tallahassee, FL 32301.
Date of the Event: June 21–24, 1989.
Description of the Event: Florida Association of Broadcaster's Annual Convention.
Commissioners Attending: None.
Other Employees Attending: Roderick K. Porter—Deputy Chief, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$200.00
Subsistence	335.00
Other Expenses	30.00
Total	565.00

Sponsoring Organization: Maryland/District of Columbia/Delaware Broadcaster's Association, Inc., 10320 Little Patuxent Parkway, Suite 808, Columbia, MD 21044.
Date of the Event: June 22–25, 1989.
Description of the Event: Maryland/District of Columbia/Delaware Broadcaster's Association Annual Convention.
Commissioners Attending: None.
Other Employees Attending: Alex D. Felker—Bureau Chief, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$21.83
Subsistence	93.00
Other Expenses	8.75
Total	123.58

Sponsoring Organization: National Association of Broadcasters, 1771 N Street, NW., Washington, DC 20036.
Date of the Event: April 29–May 2, 1989.
Description of the Event: National Association of Broadcasters 67th Annual Convention and International Exposition.
Commissioners Attending: Chairman Dennis R. Patrick, Commissioner James H. Quello, Commissioner Patricia Diaz-Dennis.
Other Employees Attending: See Attachment A.

Amount of Reimbursement:

Transportation	$2,740.00
Subsistence	4,065.30
Other Expenses	464.34
Total	7,269.64

Attachment A—National Association of Broadcasters

Other Employees Attending: Alex D. Felker—Bureau Chief, Roderick P. Porter—Deputy Bureau Chief, William H. Hassinger—Assistant Bureau Chief (Legal), Larry D. Eads—Chief, Audio Services Division, Roy J. Steward—Chief, Video Services Division, Charles W. Kelley—Chief, Enforcement Division, Mass Media Bureau.

Individual Event Report

Sponsoring Organization: HAMVENTION, P.O. Box 964, Dayton, OH 45401.
Date of the Event: April 27–30, 1989.
Description of the Event: 1989 HAMVENTION.
Commissioners Attending: None.
Other Employees Attending: John B. Johnson—Chief, Personal Radio Branch, Private Radio Branch.

Amount of Reimbursement:

Transportation	$228.00
Subsistence	193.50
Other Expenses	66.24
Total	487.74

Individual Event Report

Sponsoring Organization: Bellcore, 290 W. Mt. Pleasant Avenue, Livingston, NJ 07039–2729.
Date of the Event: April 5, 1989.
Description of the Event: Telecommunications Cost Forum.
Commissioners Attending: None
Other Employees Attending: Michael R. Wack—Legal Assistant to the Bureau, Chief—Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$318.00
Subsistence	236.50
Other Expenses	60.00
Total	614.00

Individual Event Report

Sponsoring Organization: Ad Club of New Hampshire, P.O. Box 4448, Manchester, NH 03108.
Date of the Event: April 12, 1989.
Description of the Event: Ad Club of New Hampshire Meeting.
Commissioners Attending: None.
Other Employees Attending: Alex D. Felker—Bureau Chief, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$157.00
Subsistence	98.00
Other Expenses	20.50
Total	275.50

Sponsoring Organization: National Economic Research Associates Inc., 101 Main Street, Cambridge MA 02142.
Date of the Event: April 12–15, 1989.
Description of the Event: Third Biennial Telecommunications Seminar.
Commissioners Attending: None.
Other Employees Attending: John R. Haring—Chief, Office of Plans and Policy.

Amount of Reimbursement:

Transportation	$529.00
Subsistence	468.00
Other Expenses	41.30
Total	1,038.30

Sponsoring Organization: New England Telephone, 98 High Street, Boston, MA 02110.
Date of the Event: April 24–28, 1989.
Description of the Event: Spring Accounting Witnesses Conference.
Commissioners Attending: None.
Other Employees Attending: Gerald P. Vaughan—Deputy Bureau Chief (Operations) Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$300.00
Subsistence	175.44
Other Expenses	5.50
Total	480.94

Sponsoring Organization: Ameritech Services, 475 N Martingale Road, Schaumburg, IL 60173.
Date of the Event: April 26–27 1989
Description of the Event: The Interindustry Advisory Group and IIIC Meetings.
Commissioners Attending: None.
Other Employees Attending: Raymond L. Dujack—Electronics Engineer, Policy and Program Planning Division, Common Carrier Bureau

Amount of Reimbursement:

Transportation	$358.00
Subsistence	245.00
Other Expenses	20.00
Total	623.00

Sponsoring Organization: NYNEX Service Company, 120 Bloomingdale Road, Room 350, White Plains, NY 10605.
Date of the Event: May 9–11, 1989.
Description of the Event: IILC Technical Working Committee, Non-Technical Working Committee and Alarm Industry Workshop.
Commissioners Attending: None.
Other Employees Attending: Raymond L. Dujack—Electronics Engineer, Policy and Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$210.00
Subsistence	272.53
Other Expenses	107.60
Total	590.13

Sponsoring Organization: Telestrategies, Incorporated, 1355 Beverly Road, Suite 100, McLean, VA 22101.
Date of the Event: April 26–28, 1989.
Description of the Event: Pay Phone and Operator Services Conference.
Commissioners Attending: None.
Other Employees Attending: Howard Wilchins—Deputy Chief, Enforcement Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$322.00
Subsistence	223.00
Other Expenses	29.47
Total	574.47

Sponsoring Organization: Oregon Independent Telephone Association, 555 Union Street, NW., Salem, OR 97301.
Date of the Event: May 4, 1989.
Description of the Event: Oregon Independent Telephone Association Annual Meeting
Commissioners Attending: Commissioner Patricia Diaz-Dennis.
Other Employees Attending: None.

Amount of Reimbursement:

Transportation	$219.00
Subsistence	152.00
Other Expenses	46.25
Total	417.25

Sponsoring Organization: The Institute of Electrical and Electronic Engineers Inc., c/o Frank Thatcher Associates, Inc., 564 Market Street, Suite 612. San Francisco, CA 94104.
Date of the Event: May 1–3, 1989.
Description of the Event: 1989 VTS Conference.
Commissioners Attending: None.
Other Employees Attending: Thomas P. Stanley—Chief Engineer, Office of Engineering and Technology.

Amount of Reimbursement:

Transportation	$388.00
Subsistence	448.00
Other Expenses	125.00
Total	961.00

Sponsoring Organization: Bell Communications Research, 290 W. Mt. Pleasant Ave, Livingston, NJ 07039.
Date of the Event: May 2–3, 1989.
Description of the Event: Annual Third Party Marketing Executive Briefing.
Commissioners Attending: None.
Other Employees Attending: Gary Phillips—Attorney, Policy and Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$378.00
Subsistence	178.00
Other Expenses	47.00
Total	603.00

Sponsoring Organization: Motorola, Inc., 1776 K Street, NW., Suite 300, Washington, DC 20006.
Date of the Event: May 3–5, 1989.
Description of the Event: Telocator Annual Meeting.
Commissioners Attending: None.
Other Employees Attending: Gerald P. Vaughan—Deputy Bureau Chief (Operation), Gregory J. Vogt—Chief, Mobile Services Division, Myron C. Peck—Deputy Chief, Mobile Services Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	$902.00
Subsistence	709.00
Other Expenses	231.70
Total	1,842.70

Sponsoring Organization: American Women in Radio and Television, 1101 Connecticut Avenue, NW., Suite 700, Washington, DC 20036.
Date of the Event: May 12, 1989.
Description of the Event: 38th Annual Convention.
Commissioners Attending: Chairman Dennis R. Patrick.
Other Employees Attending: None.

Amount of Reimbursement:

Transportation	$110.00
Subsistence	42.50
Other Expenses	61.25
Total	213.75

Sponsoring Organization: Tennessee Cable Television Association, P.O. Box 1737, Johnson City, TN 37605–1737.
Date of the Event: April 25, 1989.
Description of the Event: Tennessee Cable Television Association Convention.
Commissioners Attending: None.
Other Employees Attending: Pamera Hairston—Attorney, Equal Employment Opportunity Branch, Mass Media Bureau.

Amount of Reimbursement:

Transportation	$316.00
Subsistence	97.50
Other Expenses	36.00
Total	449.50

Sponsoring Organization: Institute of Electrical and Electronics Engineers, Inc., 345 E. 47th Street, New York, NY 10017–2394.
Date of the Event: May 23–25, 1989.
Description of the Event: 1989 IEEE EMC Conference.
Commissioners Attending: None.
Other Employees Attending: Thomas W. Phillips—Electronics Engineer, Sampling and Measurements Branch, Office of Engineering and Technology.

Amount of Reimbursement:

Transportation	$466.00
Subsistence	288.00
Other Expenses	0.00
Total	754.00

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89–18987 Filed 8–11–89; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for three new FM stations and one new AM station:

I.

Applicant, City, and State	File No.	MM Docket No.
A. Southwest Educational Media Foundation of Texas, Inc., Waco, TX.	BPED–870610MF	89–338
B. Kennelwood Broadcasting Company, Inc., Waco, TX.	BPH–870629MU	.....
C. Richards Communications, Inc., Waco, TX.	BPH–870630MQ	.....
D. Excelsior Communications, Inc., Waco, TX.	BPH–870630NA	.....
E. Chase Communications, Inc., Waco, TX.	BPH–870630NB	.....

Issue Heading and Applicants

1. Comparative, A, B, C, D, E
2. Ultimate, A, B, C, D, E

II

Applicant, City, and State	File No.	MM Docket No.
A. Thomas Ferebee, Oscoda, MI.	BPH-870925MA	89-339
B. Iosco County Communications, Inc., Oscoda, MI..	BPH-871023ML	

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

[Docket No.]

III.

Applicant, City, and State	File No.	MM Docket No.
A. Emision De Radio, Balmaseda, Inc., Ponte Vedra Beach, FL.	BPH-870505MA	89-350
B. Safe Care, Inc., Ponte Vedra Beach, FL.	BPH-870505MB	.....
C. Stephen G. McGowan, Ponte Vedra Beach, FL.	BPH-870506ME	.....
D. Ponte Vedra Broadcasting, Inc., Ponte Vedra Beach, FL.	BPH-870506MF	.....
E. Tallahassee Broadcasting, Co., Ponte Vedra Beach, FL.	BPH-870506MG	.....
F. Chameleon Broadcasting, Inc., Ponte Vedra Beach, FL.	BPH-870506MH	.....
G. Sunstar Communications, Inc., Ponte Vedra Beach, FL.	BPH-870506MI	.....
H. Dale Broadcasting, Inc., Ponte Vedra Beach, FL.	BPH-870506MK	.....
I. Ponte Vedra Radio Corporation, Ponte Vedra Beach, FL.	BPH-870506ML	.....
J. Ronald Scott Perry, Ponte Vedra Beach, FL.	BPH-870506MM	.....
K. First Coast Radio, Inc., Ponte Vedra Beach, FL.	BPH-870506MN	.....
L. Florida FM Limited Partnership, Ponte Vedra Beach, FL.	BPH-870506MO	.....
M. Monroe E. Berkman and Suzette M. Berkman, Ponte Vedra Beach, FL.	BPH-870506MP	.....
N. LeeAnn Kendal Scopinich, Ponte Vedra Beach, FL.	BPH-870506MQ	.....

Issue Heading and Applicants

1. See Appendix, L
2. See Appendix, L
3. See Appendix, L
4. See Appendix, L
5. Financial Qualifications, K
6. Comparative, A–N
7. Ultimate, A–N

IV.

Applicant, City, and State	File No.	MM Docket No.
A. Statewide Broadcasters Inc., Black Canyon City, AZ.	BP-870330AL	89-340
B. Good News Broadcasting, Inc., South Tucson, AZ.	BP-870824AG	.....

Issue Heading and Applicants

1. Environmental Impact, A
2. 307(b)–Modification, A, B
3. Comparative, A, B
4. Ultimate, A, B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 Fed. Reg. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix—(Ponte Vedra Beach, FL)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of L (Florida).

2. To determine whether L (Florida's) organizational structure is a sham.

3. To determine whether L (Florida) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to timely report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.

4. To determine, from the evidence adduced pursuant to Issues 1 through 3 above, whether L (Florida) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 89–18988 Filed 8–11–89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067–0188.

Title: Disaster Response Questionnaire.

Abstract: The Disaster Response Questionnaire is used to assess the effectiveness of State and/or local response to actual disasters and also evaluate FEMA programs to support and enhance local capabilities as directed by the Federal Civil Defense Act of 1950 (As Amended).

Type of Respondents: State and Local Governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 540.

Number of Respondents: 360.

Estimated Average Burden Hours per Response: 1.5.

Frequency of Response: On occasion, after a disaster declaration.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 6465–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Pamela Barr, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: July 19, 1989.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 89–18946 Filed 8–11–89; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before comunicating with the Commission regarding a pending agreement.

Agreement No.: 202–010790–007.

Title: Israel Easbound Conference Agreement

Parties:

Zim Israel Navigation Co., Ltd., (Zim Container Service Division)

Farrell Lines, Inc.

Lykes Bros. Steamship Co., Inc.

Synopsis: The proposed modification would clarify existing procedures for the discussion and modification or cancellation of proposed or effective independent actions.

Agreement No.: 203–011248.

Title: NYK–PM&O Discussion Agreement.

Parties:

Nippon Yusen Kaisha

Phillipines, Micronesia & Orient Navigation Co.

Synopsis: The proposed Agreement would authorize the parties to discuss and agree upon transportation matters of mutual concern in the trades from Taiwan, Hong Kong, the Philippines, and Thailand to Hawaii. Adherence to any rate matters agreed upon would be voluntary.

By Order of the Federal Maritime Commission.

Dated: August 8, 1989.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 89–18891 Filed 8–11–89; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

August 8, 1989.

Background

Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (Title 44 U.S.C. Chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR Part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the OMB desk officer listed in the notice. OMB's usual practice is not to take any action on a proposed information collection until at least ten working days after notice in the **Federal Register**, but occasionally the public interest requires more rapid action.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7340)

Request for OMB approval to extend with revision

1. *Report title:* Monthly Consolidated Foreign Currency Report of Banks in the United States.

Agency form number: FFIEC 035.

OMB Docket number: 7100–0178.

Frequency: Monthly.

Reporters: U.S. banks and U.S. branches or agencies of foreign banks.

Annual reporting hours: 6,999.

Estimated average hours per response: 12.68.

Number of respondents: 46. Small businesses are not affected.

General description of report:

This information collection is mandatory [12 U.S.C. 248(a) and 1844(c)] and is given confidential treatment.

This report is needed to monitor the foreign exchange positions of major banking institutions and to detect changes in policy in individual banks. Also, the report is used as an aid in the analysis of foreign exchange markets. The proposed revisions include additional data items on currency options, swaps and futures, offset by the elimination of the seven-category maturity gap breakdown.

Board of Governors of the Federal Reserve System, August 8, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89–18926 Filed 8–11–89; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in September

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of September 1989. The National Advisory Councils will be performing review of applications for Federal assistance and the Boards of Scientific Counselors will review and evaluate intramural projects and individual staff scientists. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92–463.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism.

Date and Time: September 11–12: 10:15 a.m.

Place: National Institutes of Health, Building #1, 3rd Floor, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open—September 11: 10:15 a.m.–5:00 p.m. Closed—Otherwise.

Contact: James Vaughan, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4375.

Purpose: The Council advises the Secretary, Department of Health and Human Services regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the

Secretary with respect to approval and amount of award.

Committee Name: Board of Scientific Counselors, NIMH.

Date and Time: September 11–13: 8:30 a.m.

Place: National Institutes of Health, Building 36, Room 1B–07, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open—September 11: 8:30–9:00 a.m. Closed—Otherwise.

Contact: Steven M. Paul, National Institute of Mental Health, Building 10, Room 4N–224, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496–3501.

Purpose: The Board provides expert advice to the Director, National Institute of Mental Health, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Committee Name: National Advisory Council on Drug Abuse, NIDA.

Date and Time: September 12–13: 9:00 a.m.

Place: NIH Campus, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, MD 20892.

Status of Meeting: Open—September 12: 9:00 a.m.—5:00 p.m. September 13: 2:00 p.m.—5:00 p.m. Closed—Otherwise.

Contact: Sheila H. Gardner, Room 8A–54, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0441.

Purpose: The Council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute on Drug Abuse on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Committee Name: National Advisory Health Council, NIMH.

Date and Time: September 18–20, 9:00 a.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

Status of Meeting: Open—September 19: 9:00 a.m.–1:00 p.m. Closed—Otherwise.

Contact: Eleanor Friedenberg, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–3367.

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Committee Name: Board of Scientific Counselors, NIAAA.

Date and Time: September 25–26: 9:00 a.m.

Place: Flow Building, Room 51, 12501 Washington Avenue, Rockville, MD 20852.

Status of Meeting: Open—September 25: 9:00 a.m.–9:30 a.m. Closed—Otherwise.

Contact: Boris Tabakoff, National Institute on Alcohol Abuse and Alcoholism, Building 10, Room 3C–103, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496–8996.

Purpose: The Board provides expert advice to the Director, Division of Intramural Clinical and Biological Research, National Institute on Alcohol Abuse and Alcoholism (NIAAA), and to the Director, NIAAA, on the alcohol intramural research program. This advice is derived from periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Substantive information, summaries of meetings, and rosters of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, Room 10–42, (301) 443–2620; Ms. Diana Widner, NIAAA Committee Management Officer, Room 16C–20 (301) 443–4375; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9–105, (301) 443–4333. The mailing address for the above parties is: Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Date: August 7, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89–18892 Filed 8–11–89; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 89F–0315]

Calgon Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Calgon Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1, 2-dibromo-2, 4-dicyanobutane as a preservative in defoaming agents used in the manufacture of paper and paperboard intended to contact food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4150) has been filed by Calgon Corp., Calgon Center, P.O. Box 1346, Pittsburgh, PA 15230. The petition proposes to amend § 176.210 *Defoaming agents used in the manufacture of paper and paperboard* (21 CFR 176.210) to provide for the safe use of 1,2-dibromo-2,4-dicyanobutane as a preservative in defoaming agents used in the manufacture of paper and paperboard intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 7, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–18932 Filed 8–11–89; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 89G–0217]

Kraft, Inc.; Filing of Petition for Affirmation of Gras status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Kraft, Inc., has filed a petition (GRASP 9G0351), proposing to affirm that modified protein texturizers are generally recognized as safe (GRAS) as direct human food ingredients.

DATE: Comments by October 13, 1989.

ADDRESS: Written comments to the Dockets Management branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and the regulations for affirmation of GRAS status in 21 CFR 170.35, notice is given that a petition (GRASP 9G0351) has been filed by Kraft, Inc., 801 Waukegan Rd., Glenview, IL 60024, proposing that modified protein texturizers be affirmed as GRAS for use as direct human food ingredients.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in 21 CFR 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before October 13, 1989, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments shoud include any available information that would be helpful in determining whether the substances are, or are not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 4, 1989.

Richard J. Ronk,

Deputy Director, Center for Food safety and Applied Nutrition.

[FR Doc. 89–18933 Filed 8–11–89; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

ACTION: The Health Care Financing Administration (HCFA) has submitted the following public information collection requirement to the Office of Management and Budget (OMB) for review and clearance in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

SUMMARY: On August 7, 1989, the Secretary of Health and Humans Services signed a regulation "Medicare Home Health Agency Conditions of Participation," BPD–476, which appears elsewhere in this issue of the **Federal Register**. The effective date of this regulation is July 1, 1989. Sections 484.10, 484.12, 484.14, 484.16, 484.18, 484.30, 484.32, 484.34, 484.36, 484.48, and 484.52 of the regulation requires information collection. In view of the critical importance of the residents' rights provisions contained in the regulation and the considerable opportunity already extended to the public for comment, the HCFA has requested the Office of Management and Budget to expedite their review within 30 days of this publication.

Type of Request: Revision; *Originating Office:* Health Care Financing Administration; *Title of information collection:* Medicare Home Health Agency Conditions of Participation—Information Collection Requirements; *Form number:* Form HCFA–R–39; *Frequency:* On occasion; *Respondents:* Home Health Agencies Participating in the Medicare Program; *Estimated number of responses:* 5,651; *Average hours per response:* 6.85; *Total estimated burden hours:* 38,709; *Additional Information or Comments:* Regulation BPD–476 is published elsewhere in this issue of the **Federal Register**. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: August 10, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89–19042 Filed 8–11–89; 8:45 am]

BILLING CODE 4120–03–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, on October 25–26, 1989, at the Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to recess on October 25 and 11:00 a.m. to adjournment on October 26 to discuss new initiatives, program policies, and issues. Attendance by the public will be limited to space available.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institutes, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request.

Dr. William R. Harlan, Director, Division of Epidemiology and Clinical Applications, Federal Building, Room 212, Bethesda, Maryland 20892, (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated: August 4, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89–18968 Filed 8–11–89; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Commission on Acquired Immune Deficiency Syndrome; Meeting

This is to announce the following meeting of the National Advisory body.

NAME: National Commission on Acquired Immune Deficiency Syndrome.

Date and Time: August 17, 1989 from 2:00 p.m.—3:30 p.m.

Place: Sheraton Washington Hotel, Idaho Room, 2660 Woodley Road, NW., Washington, DC 20008

This meeting is not open to the public.

PURPOSE: The general purpose of the Commission is to carry out activities promoting the development of a national consensus on policy concerning acquired immune deficiency syndrome (AIDS), as provided in the Commission's enabling legislation, Public Law 100–607.

AGENDA: The agenda item for the meeting will be the selection of an Executive Director for the Commission and will involve the review, discussion, and evaluation of personnel applications. These personnel applications contain information of a personal nature the disclosure of which constitute a clearly unwarranted invasion of personal privacy. To protect against this disclosure of the confidential information to be discussed, as authorized by section 552b (C)(6), it is essential to close this meeting.

The meeting is being held on short notice in order to allow the Commission to promptly select its Executive Director and begin its work.

Anyone requesting information regarding the subject Commission should contact: Ms. Iris Gelberg at 202–472–4248.

Dated: August 8, 1989.

John Gallivan.

PHS Regulations Officer.

[FR Doc. 89–18936 Filed 8–11–89; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–82–3110–10 CAPL]

Public Use Restriction; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of temporary vehicle use restrictions in the Carrizo Plain Natural Area and the Caliente Range within San Luis Obispo County in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: This emergency action restricts vehicle use on BLM-administered public land in the Carrizo Plain Natural Area and the Caliente Range in San Luis Obispo County, California, due to the acquisition of public lands which have yet to be addressed in a Resource Management Plan. Vehicle use on roads designated as "Administrative Access Only" shall be limited to persons specifically designated by the Authorized Officer to drive on said raods. The public lands affected by this category of road closure are located in portions of T31S, R19E; T31S, R20E; T32S, R19E; T32S, R20E; T32S, R21E; T32S, R22E; T12N, R28W; T12N, R27W; T12N, R26W; T11N, R28W; T11N, R27W; T11N, R26W; T11N, R25W; and T11N, R24W. Vehicle use on roads designated as "Seasonal Public Access" shall be permitted from on or about the second Saturday of August until the roads are determined to be impassable due to weather conditions or until the last Saturday in November, whichever occurs first. The public lands affected by this category of use restriction are in portions of T32N, R20E; T12N, R28W; T11N, R28W; and T11N, R29W. Vehicle use on roads designated as "Public Access" shall be permitted on a year-round basis, unless safety considerations or road condition due to weather requires a temporary road closure. The public lands affected by this category of use restirction are in portions of T30S, R19E; T30S, R20E; T31S, R19E; T31S, R20E; T31S, R21E; T32S, R20E; T32S, R21E; and T12N, R27W. Maps of the affected roads and their respective designations are avalable at the Caliente Resource Area Office, 4301 Rosedale Highway, Bakersfield, California. These restrictions will apply from the date of publication in the **Federal Register** and remain until an amendment thereof or the publication of a Resource Management Plan adequately addresses public access on these lands.

SUPPLEMENTARY INFORMATION: This emergency road closure is intended to control vehicle use on newly acquired lands and other public lands where sensitive resources are receiving or may receive increased public use. Road use restrictions in the Carrizo Plain Natural Area are designed primarily to protect significant cultural sites, to protect the habitat of endangered species, and to reduce the potential for erosion. The vehicle use restrictions in the Caliente Range are intended to protect an existing Wilderness Study Caliente Range are intended to protect an existing Wilderness Study Area, to improve the quality of recreational experiences, to reduce the potential for erosion, to enhance public, and to protect sensitive riparian habitat. Authority for these vehicle use restrictions is contained in CFR Title 43, Chapter II, 8364.1(a).

DATES: This vehicle restriction will be effective on August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Glenn Carpenter, Caliente Resource Area Manager, Caliente Resource Area, Bureau of Land Management, 4301 Rosedale Highway, Bakersfield, California, 93308; (805) 861–4236.

Dated: August 8, 1989.

Glenn A. Carpenter,

Caliente Resource Area Manager.

[FR Doc. 89–18962 Filed 8–11–89; 8:45 am]

BILLING CODE 4310–40–M

NATIONAL CAPITAL PLANNING COMMISSION

Senior Executive Service; Performance Review Board Members

AGENCY: National Capital Planning Commission.

ACTION: Notice of Members of Senior Executive Service (SES) Performance Review Board.

SUMMARY: Section 4314(c) of Title 5, U.S.C. (as amended by the Civil Service Reform Act of 1978) requires that each agency establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards (PRB) to review, evaluate, and make a final recommendation on performance appraisals assigned to individual members of the agency's SES. The PRB established for the National Capital Planning Commission (NCPC) also makes recommendations to the agency head regarding SES performance awards, ranks, and bonuses. Section 4314(c)(4) requires that notice of appointment of Performance Review Board members be published in the **Federal Register.**

The following persons have been appointed to serve as members and alternates of the SES PRB for the National Capital Planning Commission: Reginald W. Griffith, Robert E. Gresham, Eugene Kinlow, Peter J. Basso, and Syl C. Angel, from January 1, 1989 to January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Connie M. Harshaw, Administrative Officer, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576, (202) 724–0170.

Dated: August 3, 1989.

Linda Dodd-Major,

Legal Counsel.

[FR Doc. 89–18781 Filed 8–11–89; 8:45 am]

BILLING CODE 7520–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-353]

Philadelphia Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Philadelphia Electric Company, (the licensee), for operation of the Limerick Generating Station, Unit 2, located in Montgomery and Chester Counties, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would extend the permitted time of operation with a non-inerted containment to accommodate completion of the Power Ascension Test Program.

The proposed action is in accordance with the licensee's application for exemption dated December 5, 1988.

Inerting the containment for the Limerick Generating Station Unit 2 is required by 10 CFR 50.44. Section 50.44(c)(3)(i) states in part that, "Effective May 4, 1982 or 6 months after initial criticality, whichever is later, an inerted atmosphere shall be provided for each boiling light-water nuclear power reactor with a Mark I or Mark II type containment".

The licensee requested an exemption from 10 CFR 50.44(c)(3)(i) to extend the permitted time of operation with a non-inerted containment to accommodate completion of the Power Ascension Test Program. The Limerick Unit 2 Power Ascension Test Program is based on maintaining the containment in a non-inerted condition until the successful completion of the 100-hour warranty run, a condtion which normally would be expected to occur within approximately 120 effective full power days (EFPD) of core burn-up.

The Need for the Proposed Action

The regulation established a six-month exemption period after initial criticality when inerting is not required with the understanding and expectation that a Power Ascension Test Program would be a continuous program unimpeded by physical or regulatory limits to power increases. In the case of Limerick Unit 1, and most other recent BWR initial startups, unanticipated equipment problems have caused the power ascension test period to be extended beyond the six month duration. The average actual duration is approximately ten months.

It has been a long established practice, as reflected in 10 CFR 50.44, to operate boiling water plants during power ascension testing with non-inerted containments. The high frequency of containment entries during this period of plant operations make it impractical to operate with an inerted containment and inerting would impact the effectiveness of the Power Ascension Test Program. It is advantageous to operate the reactor without inerting the containment during the Power Ascension Test program to permit inspections for identification of possible safety problems. Strict compliance with the regulation would result in undue hardships and schedule pressures in excess of those contemplated when the regulation was adopted and also in excess of recent industry power ascension testing experience.

Environmental Impact of the Proposed Action

The proposed exemption from 10 CFR 50.44(c)(3)(i) will not increase the probability of any accident or create the possibility of a new or different kind of accident from any accident previously evaluated since not changes are being made in plant operation or equipment. BWR containments are inserted with nitrogen during normal plant operation to reduce the potential for a hydrogen-oxygen reaction in the unlikely event of an accident that could generate hydrogen. However, during initial startup operations, overall plant safety is enhanced by not inerting the containment. The non-inerted containment permits frequent and prompt entries to the containment to examine equipment performance. An inerted containment will tend to inhibit these containment entries and thus potentially delay discovery of malfunctioning equipment.

The staff has assessed the potential environmental impacts related to operation with the additional effective full power days of core operation with a deinerted containment and has concluded that there would be no discernible incremental environmental effects. The proposed exemption will not result in any changes to the potential types of liquid, gaseous or solid effluents that might be released during operation with a deinerted versus inerted containment. There is no projected difference in occupational radiation exposure with or without the exemption and no projected increases in radioactivity that might be released to the environment.

The staff has also concluded that there will be no significant differential in environmental impacts as a result of postulated abnormal events for the few additional months of testing without an inerted containment and the likelihood of accident releases to the environment is diminished by operation with a non-inerted containment during the initial startup testing operations.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact. Additionally, it does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of the plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

These actions do not involve the use of any resources not previously considered in the Final Environmental Statement for the Limerick Generating Station, Unit 2, dated April 1984.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed exemption will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated December 5, 1988 which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 8th day of August 1989.

For the Nuclear Regulatory Commission.

Walter Butler,

Director Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89–18942 Filed 8–11–89; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–27096; File No. SR–NYSE–89–20]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Reduction of the Exchange's "Questioned Trade" Resolution Process Time-Frames

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 25, 1989, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes set forth in detail two changes in the time-frames for the "Questioned Trade" resolution requirements of the Exchange's "Correction System" to: (i) Conform these procedures to the National Securities Clearing Corporation's shortened Comparison Redesign time-frames; and (ii) further shorten the "Questioned Trade" resolution procedures in preparation for the implementation of the Exchange's Overnight Comparison System ("T+1").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The Exchange has developed a plan to streamline and more efficiently process transactions in its listed stocks which were executed on the Exchange. Toward that end, it has begun implementation of its "T+1" Overnight Comparison System (OCS) which it believes will substantially increase the efficiency of the post-trade comparison process by reducing—by four full days—the length of time members and member organizations are exposed to the risk of loss due to market fluctuations on uncompared or "Questioned Trades".

The Exchange's implementation plan has been structured so that any disruption to clearing member firms' operations procedures will be minimal, and so that the personnel of clearing member firms can become acclimated to the new System gradually.

This philosophy has been enunciated in the Exchange's request for "enabling" Rule 130, which will become effective on or before September, 1990 (18 months from approval), and its request for the gradual implementation of its "Correction System", which provides for the electronic resolution of uncompared or "Questioned Trades". (For a complete description of the OCS and Exchange Rule 130, please refer to File No. SR–NYSE–88–36, which was approved by the Commission in SEC Release No. 34–26627. For a complete description of the Exchange's "Correction System", please refer to File No. SR–NYSE–89–03, which was approved by the Commission in SEC Release No. 34–26773.)

The Exchange's "Correction System" began operation on April 27, 1989, when uncompared or "Questioned Trades" in stocks whose ticker symbols began with the letter "A" were resolved through the System, and subsequently expanded in May and June 1989 through the letter "M". On July 18, stocks whose ticker symbols begin with the letters "N" through "Z" were added. Thus, all "Questioned Trades" in listed stocks will be resolved through the "Correction System" and its related procedures, and no "Questioned Trade" will be resolved through procedures contained in Exchange Rule 134.A.

Member firm Trading Floor personnel will start to process "Questioned Trades" beginning at 12:01 PM on the first business day after the trade date ("T+1") rather than on the second business day, and complete that task on the same day ("T+1"). The time-frame for the close-out of trades that cannot be compared will remain as at present—the fifth business day after the trade date. Since the procedures contained in *Exhibit B* will apply to the resolution of "Questioned Trades" in all stocks listed on the Exchange, its implementation by the Exchange will have the effect of rescinding the "Questioned Trades" comparison procedures contained in *Exhibit A*.

The Exchange believes that its initiative to streamline and more efficiently resolve uncompared transactions by the gradual implementation of its Overnight Comparison System ("T+1") and the related shortening of the Exchange's "Questioned Trade" resolution procedures through the electronic processing of its "Correction System" will help protect investors and the public interest as called for in section 6(b)(5) of the Act.

In concert with the Exchange's development of its Overnight Comparison System ("T+1") the National Securities Clearing Corporation (NSCC) has been developing its Comparison Redesign, which will require its clearing members to submit their comparison data by 2:00 AM on the first business day after the trade date ("T+1") rather than on the afternoon of "T+1". (Please refer to File No. SR–NSCC–89–4 for a description of the NSCC Comparison Redesign.)

Therefore, the Exchange proposes to shorten the operational time-frames of the "Correction System" as set forth in *Exhibit A* that, if approved, will require its clearing members to make any necessary adjustments to their uncompared trade data in their purchase and sales departments on the first business day after the trade date ("T+1") rather than on the second business day ("T+2"). "Questioned Trades" will be processed by member firms Trading Floor personnel on the second business day after the trade ("T+2") rather than on the third business day ("T+3"). The time-frames for the close-out of trades that cannot be compared will remain as at present—the fifth business day after the trade date. The Exchange will implement these shortened time-frames at the same time that NSCC implements its Comparison Redesign.

The proposed rule changes meet other requirements of section 6(b)(5) in that they will help prevent fraudulent and

manipulative acts and practices, promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, and facilitating transactions in securities. It also meets requirements of section 17A(a)(1) in that it will enhance the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule changes will impose any burden on competition not in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants of Others

The Exchange has not solicited comments on the proposed rule changes and no unsolicited comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

In view of the fact that the electronic "Correction System" is currently being used to process "Questioned Trades" in "regular way" transactions in listed stocks effeced on the Exchange, and in view of the fact that the Commission has already approved the "Correction System Operations Procedures" contained in File No. SR–NYSE–89–03, the Exchange views the instant filing merely as changes to the time-frames of an existing Exchange Rule. As such, these rule changes are being filed with the commission pursuant to section 19(b)(3)(A)(i), "constituting as stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization" and may take effect upon filing with the Commission. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

Since NSCC has not selected an effective date the sample Information Memo set forth in *Exhibit A* contains various blank spaces. Since the procedures contained in *Exhibit A* will apply to the resolution of all uncompared trades in all stocks listed on the Exchange, its implementation by the Exchange will have the effect of rescinding the "Questioned Trade" comparison procedures approved by the Commission in File No. SR–NYSE–89–03.

The Exchange intends to closely monitor the results of shortening the comparison cycle and the concomitant shortening of the "Questioned Trade" resolution cycle described above. At such time as the Exchange is satisfied that no significant operational problems exist, it proposes to shorten the operational time-frames of the "Correction System" still further before it fully implements the Overnight Comparison ("T+1") requirements of Exchange Rule 130. The operational requiremets of this proposal are set forth in *Exhibit B*. If approved, Exchange clearing members will be required to make any necessary adjustments to their uncompared trades in their purchase and sales departments beginning on the first business day after the trade date ("T+1") and complete that task by 12:00 PM on the same day.

IV. Solicitation of Comments

Interested persons are invited to submit data, views and arguments concerning the foregoing. Persons making written submissions should file copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above (SR–NYSE–89–20) and should be submitted by September 5, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 89–18779 Filed 8–11–89; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 4, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

ACM Managed Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4778)

A.L. Laboratories, Inc.
Class A Common Stock, $.20 Par Value (File No. 7–4779)

American Capital Bond Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7–4780)

American Real Estate Partners, LP
Common Stock, No Par Value (File No. 7–4781)

Avalon Corp.
Common Stock, $1.00 Par Value (File No. 7–4782)

Avon Products, Inc.
$2.00 Equity Red. Cm. Pfd., $1.00 Par Value (File No. 7–4783)

Cameron Iron Works
$3.50 Cm. Cv. Exch. Pfd. $.10 Par Value (File No. 7–4784)

CDI Corp.
Common Stock, $.10 Par Value (File No. 7–4785)

Citizens & Southern Corp.
Common Stock, $2.50 Par Value (File No. 7–4786)

Colonial Intermediate High Income Fund
Common Stock, No Par Value (File No. 7–4787)

Connecticut Natural Gas Corp.
Common Stock, $3.125 Par Value (File No. 7–4788)

Counsellors Tandem Securities Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4789)

CPI Corp.
Common Stock, $.40 Par Value (File No. 7–4790)

CRI Insured Mortgage Investments, Ltd.
Common Stock, No Par Value (File No. 7–4791)

Diamond Shamrock R&M Inc.
$2.00 Cm. Cv. Exch. Pfd., $.01 Par Value (File No. 7–4792)

Filtertek, Inc.
Common Stock, $.25 Par Value (File No. 7–4793)

First Capital Holdings
$2.0625 Cm. Cv. Pfd. Vtg., $.25 Par Value (File No. 7–4794)

Global Marine Inc.

Common Stock, $.10 Par Value (File No. 7–4795)
Gordon Jewelry Corp.
Class A Common Stock, $1.00 Par Value (File No. 7–4796)
General Energy Development Ltd.
Common Stock, No Par Value (File No. 7–4797)
HRE Properties
Common Stock, No Par Value (File No. 7–4798)
Homestead Financial Corp.
Class A Common Stock, $.01 Par Value (File No. 7–4799)
Huntingdon Int'l Holdings Plc
American Depository Receipts (File No. 7–4800)
ITEL Corp.
Common Stock, $1.00 Par Value (File No. 7–4801)
Johnstown/Consolidated Realty Trust
Common Stock, No Par Value (File No. 7–4802)
Kemper Corp.
Common Stock, No Par Value (File No. 7–4803)
Kemper Strategic Municipal Income Trust
Common Stock, $.01 Par Value (File No. 7–4804)
Kuhlman Corp.
Common Stock, $1.00 Par Value (File No. 7–4805)
MFS Multimarket Total Return Trust
Common Stock, No Par Value (File No. 7–4806)
McDermott International Inc.
Warrants (File No. 7–4807)
Mesabi Trust
Shares of Beneficial Interest (File No. 7–4808)
Morgan Grenfell Smallcap Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4809)
Morgan Keegan, Inc.
Common Stock, $.66 ½ Par Value (File No. 7–4810)
Prospect Street High Income Portfolio, Inc.
Common Stock, $.01 Par Value (File No. 7–4811)
Putnam High Income Convertible and Bond Fund
Common Stock, No Par Value (File No. 7–4812)
RAC Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–4813)
RJR Holdings Group, Inc.
Fltg. Rate Cm. Exch. Pfd., $.01 Par Value (File No. 7–4814)
RPS Realty Trust
Common Stock, $.10 Par Value (File No. 7–4815)
Rayonier Timberlands LP
Common Stock, No Par Value (File No. 7–4816)
Salant Corp.
Common Stock, No Par Value (File No. 7–4817)
Trammell Crow Real Estate Investors
Common Stock, $.10 Par Value (File No. 7–4818)
United Asset Management Corp.
Common Stock, $.01 Par Value (File No. 7–4819)
Universal Matchbox Group Ltd.
Common Stock, $.10 Par Value (File No. 7–4820)
Valero Energy Corp. Convertible
$2.0625 Cm. Cv. Pref., $1.00 Par Value (File No. 7–4821)
VMS Mortgage Investment Fund
Common Stock, $.01 Par Value (File No. 7–4822)
Wells Fargo Mortgage & Equity Trust
Common Stock, No Par Value (File No. 7–4823)
Western Union Corp.
$3.00 Cm. Cv. B Pfd., $.10 Par Value (File No. 7–4824)
Westpac Banking Corp.
American Depository Shares (File No. 7–4825)
Windmere Corp.
Common Stock, $.10 Par Value (File No. 7–4826)
WICOR Inc.
Common Stock, $1.00 Par Value (File No. 7–4827)
Waban Inc. Management
Common Stock, $.01 Par Value (File No. 7–4828)
ARC International Corp.
Common Stock, No Par Value (File No. 7–4829)
COMFED Bancorp Inc.
Common Stock, $.01 Par Value (File No. 7–4830)
Crown Central Petroleum Corp.
Class A Common Stock, $5.00 Par Value (File No. 7–4831)
Crown Central Petroleum Corp.
Class B Common Stock, 1/10 Vtg., $5.00 Par Value (File No. 7–4832)
Firstfed America Inc.
Common Stock, $.01 Par Value (File No. 7–4833)
Oneita Industries Inc.
Common Stock, $.25 Par Value (File No. 7–4834)
Peters, (J.M.) Corp.
Common Stock, $.10 Par Value (File No. 7–4835)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 25, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privilege pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89–18904 Filed 8–11–89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–17101; 812–7133]

ML-Lee Acquisition Fund II, L.P., et al.; Notice of Application

August 7, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: ML-Lee Acquisition Fund II, L.P. ("Fund II"), ML-Lee Acquisition Fund (Retirement Accounts) II, L.P. ("Retirement Fund") (together with Fund II, "New Funds"), ML-Lee Acquisition Fund, L.P. ("Fund I") (together with the New Funds, "Funds"), Thomas H. Lee Advisors II, L.P. ("Advisors II") and Thomas H. Lee Advisors I ("Advisors I") (together with Advisors II, "Investment Advisers").

RELEVANT 1940 ACT SECTIONS: Order requested under sections 6(c), 17(d) and 57(i) and Rule 17d–1 permitting certain joint transactions which are otherwise prohibited under sections 17(d) and 57(a)(4).

SUMMARY OF APPLICATION: Applicants seek an order under sections 6(c), 57(i) and 17(d) of the 1940 Act and Rule 17d–1 permitting the purchase of securities by the New Funds in joint transactions otherwise prohibited by sections 57(a)(4) and 17(d) with Fund I and each other and in which Advisors, Advisors II, or an affiliate is a participant.

FILING DATE: The application was filed on September 23, 1988 and amended on March 9, 1989 and August 4, 1989. The Applicants will file an amendment during the notice period clarifying certain conditions to the requested order.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person

may request a hearing on this application or asked to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 P.M. on August 31, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request either personnaly or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; the Funds, World Financial Center, North Tower, New York, New York 10281–1318; the Investment Advisers, 75 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Cathey Baker, (202) 272–3047, or Branch Chief Brion R. Thompson, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of a lengthy application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. Each New Fund is a recently formed Delaware limited partnership which is governed by its respective Amended and Restated Agreement of Limited Partnership ("Partnership Agreement"). The New Funds, which have elected to be regulated as business development companies under the 1940 Act, have been designed to provide the ability for individuals to participate in "mezzanine" level debt and preferred stock investments issued in connection with leveraged buyouts and other corporate reorganizations.

2. The investment objectives of each New Fund will be to provide a current return, an opportunity for significant capital appreciation, and return of investment in a limited period of time through investments in mezzanine loans and other securities ("Qualified Investments"). Qualified Investments include (i) Mezzanine Investments, *i.e.*, subordinated debt investments (including the mezzanine portion of traditional leveraged buyouts), private placements of debt with equity components, partial buyouts, and other forms of mezzanine financing with equity participations in the form of straight equity, options, warrants, and other equity securities, and (ii) Bridge Investments, *i.e.*, investments generally with a term of nine months or less, a portion of which is expected to become Mezzanine Investments.

3. Advisors II is a recently formed Delaware limited partnership and a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Advisors II is controlled by its administrative general partner, T.H. Lee Mezzanine II, a Massachusetts business trust controlled by Thomas H. Lee and under common control with Thomas H. Lee Company ("Lee Company"), a sole proprietorship owned by Thomas H. Lee. The Lee Company is engaged primarily in acquiring or making majority equity investments in established middle-market companies, often through a leveraged acquisition, as well as other types of investments, including those typical of the venture capital business. Thomas H. Lee is the individual general partner of Advisors II.

4. Fund I is a Delaware limited partnership organized in 1987 under an Agreement of Limited Partnership ("Partnership Agreement") and is regulated as a business development company under the 1940 Act. Fund I has the same investment objectives as the New Funds. Fund I has five general partners, four of which are individuals ("Individual General Partners"). In accordance with Section 56(a) of the 1940 Act, a majority of the Individual General Partners are persons who are not "interested persons" of Fund I within the meaning of Section 2(a)(19) of the 1940 Act ("Independent General Partners"). ML-Lee Acquisition Fund, L.P. (Investment Company Act Release No. 15918, Aug. 12, 1987).

5. The Managing General Partner for Fund I is Mezzanine Investments, L.P., a limited partnership controlled by its general partner, ML Mezzanine Inc., a special purpose, indirect, wholly-owned subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."). The sole limited partner of the Managing General Partner is Advisors I, described below. Under the partnership agreement establishing the Managing General Partner, its limited partner has no authority to participate in the management of the Managing General Partner and no voting rights relating to the Managing General Partner. Fund I considers its relationship with the Managing General Partner, a registered investment adviser under the Advisers Act, to be an investment advisory relationship. Accordingly, the partnership relationship between Fund I and the Managing General Partner and the distributions made thereunder, including specifically the distributions made to Advisors I as the limited partner of the Managing General Partner, are subject to the provisions of the 1940 Act, including Section 15. Under the Partnership Agreement, the Managing General Partner is responsible for purchasing investments made by Fund I, for providing administrative services, and for admitting additional or assignee limited partners to Fund I.

6. Advisors I, the investment adviser to Fund I, is responsible for the identification of all mezzanine and related equity investments made by the fund. Advisors I is a Massachusetts business trust which is under common control with Advisors II and the Lee Company. On September 23, 1987, Fund I, Advisors I (then organized as a Massachusetts corporation, Thomas H. Lee Advisors, Inc.) and the Managing General Partner received an exemptive order under sections 6(c), 17(d) and 57(i) of the 1940 Act and Rule 17d–1 permitting the purchase of securities by Fund I in joint transactions otherwise prohibited by sections 57(a) (4) and 17(d) of the 1940 Act, in which Advisors I or an affiliate is a participant. ML-Lee Acquisition Fund, L.P. (Investment Company Act Release No. 16001) ("Prior Order").

7. The New Funds have filed a registration statement ("Registration Statement") on Form N–2 (File No. 33–25816) under the Securities Act of 1933, as amended ("1933 Act"), with respect to an offering of up to 1,000,000 units of limited partnership interest ("Units"). The public offering price will be $1,000 per Unit, with a maximum aggregate offering price of $1 billion. Subject to market conditions, the maximum aggregate offering price of $1 billion may be increased prior to effectiveness by an amendment to the Registration Statement. Merrill Lynch, Pierce, Fenner & Smith Incorporated will act as the selling agent for the Units on a "best efforts" basis. Investors desiring to become limited partners in the New Funds will be required to subscribe for at least five Units (two Units for Individual Retirement Accounts) and to meet certain suitability standards set forth in the application. The Managing General Partner will also make cash capital contributions to the New Funds. The Managing General Partner's capital contribution will be determined pursuant to the requirements of Revenue Procedure 89–12. The source of the Managing General Partner's capital contribution will be the capital contribution received by it from Advisors II, its limited partner (in contrast to the financial arrangement for Fund I in the Prior Order, where such funds were provided by the general

partner of the Managing General Partner).

8. The general partners of each New Fund will consist of four individual general partners ("Individual General Partners") and Mezzanine Investments II, L.P., as managing general partner ("Managing General Partner"). The Managing General Partner is described further below. The Individual General Partners of each New Fund will include three independent general partners (defined to be individuals who are not "interested persons" of such Fund within the meaning of the 1940 Act) ("Independent General Partners") and one individual, Thomas H. Lee, who is an affiliate of Advisors II. On November 23, 1988, the New Funds (then T.H. Lee Acquisition Fund II, L.P. and T.H. Lee Acquisition Fund (Retirement Accounts (II, L.P.) received an exemptive order determining that the Independent General Partners are not "interested persons" of any New Fund or of certain other entities specified therein within the meaning of Section 2(a)(19) of the 1940 Act solely by reason of being general partners of the funds. T.H. Lee Acquisition Fund II, L.P. (Investment Company Act Release No. 16651). The New Funds, Advisors II and the Managing General Partner have filed an application for an amended order to determine that the Independent General Partners are not "interested persons" of certain other entities as well. A majority of the general partners of each New Fund must be Independent General Partners. Each Partnership Agreement provides that if at any time the number of Independent General Partners is less than a majority of the general partners, the Independent General Partners shall designate and admit within 90 days one or more Independent General Partners so as to restore the number of Independent General Partners to a majority of the general partners.

9. The Managing General Partner for each New Fund will be Mezzanine Investments II, L.P., a limited partnership controlled by its general partner, ML Mezzanine II Inc., a special purpose, indirect, wholly-owned subsidiary of ML & Co. The sole limited partner of the Managing General Partner is Advisors II, described below. Under the partnership agreement establishing the Managing General Partner, its limited partner has no authority to participate in the management of the Managing General Partner and no voting rights relating to the Managing General Partner. Under the Partnership Agreement for each New Fund, the Managing General Partner will be responsible for purchasing investments which have been approved by the Independent General Partners, for investing and managing the Fund's temporary investments, and for admitting additional or assignee limited partners to the New Fund. The Managing General Partner will also have the responsibilities with respect to investments of a New Fund which are set forth in item 15, below. The Managing General Partner will receive an allocation of profits and losses provided in the Partnership Agreement, as discussed further below. An affiliate of the Managing General Partner, ML Fund Administrators Inc., will provide administrative services to the New Funds and will receive an annual administrative fee equal to the larger of $500,000 (divided between the two New Funds in proportion to the number of Units sold) or 0.45% of the net offering proceeds, subject to certain adjustments after the fourth and eighth years of operations.

10. Each New Fund considers its relationship with the Managing General Partner, which will be a registered investment adviser under the Advisers Act, to be an investment advisory relationship. Accordingly, the partnership relationship and the distributions made thereunder, including specifically the distributions which will be made to Advisors II as the limited partner of the Managing General Partner, as discussed further in item 13 below, are subject to the provisions of the 1940 Act, including Section 15.

11. Advisors II will act as investment adviser to the New Funds pursuant to an investment advisory agreement ("Advisory Agreement") with each New Fund. The New Funds propose to retain Advisors II in light of its expertise and that of its affiliates with respect to "mezzanine" level debt and preferred stock in related equity securities and common stock investments issued in connection with leveraged buyouts and other corporate recapitalizations. Under the Advisory Agreement, Advisors II will be responsible for the identification of all Qualified Investments to be made by each New Fund. Advisors II will receive an annual fee equal to the larger of $1.2 million (divided between the two New Funds) and 1% of the assets under management, subject to certain reductions. As noted above, Advisors II will also receive the benefit of certain distributions made by the New Funds to the Managing General Partner and distributed by it in turn to Advisors II as its limited partner.

12. Each New Fund will be managed by its Individual General Partners, except with respect to the specific activities for which the Managing General Partner or Advisors II will be responsible. The Individual General Partners of a New Fund will provide overall guidance and supervision of operations and will perform the same functions as directors of a corporation. The Independent General Partners will assume the responsibilities and obligations that the 1940 Act and regulations thereunder impose upon the non-interested directors of a business development company.

13. The allocation of profits and losses of each New Fund will be made in accordance with its Partnership Agreement. The application describes in detail the specific allocation of profits and losses under the Partnership Agreement. In summary, the Partnership Agreements provide for the allocation to the Managing General Partner of income and capital gains in proportion to its equity investment in the New Fund, and up to 20% of cumulative ordinary income and net realized capital gains from investment which is subordinated to a Priority Return (as described in the application) to the limited partners of the New Fund ("Incentive Management Fee"). The allocation has been included in the Partnership Agreement on the basis exclusively of an opinion of counsel to the New Funds that such allocation, and the anticipated allocation by the Managing General Partner of 95% of the Incentive Management Fee to Advisors II as its limited partner, will not violate the provisions of Section 15 of the 1940 Act or Section 205 of the Advisers Act. The Applicants have not requested Commission review or approval of such opinion letter and the Commission expresses no opinion as to counsel's interpretation that Section 15 of the 1940 Act and section 205(C) of the Advisers Act permit the New Funds' allocations.

14. The Applicants request an order pursuant to Sections 6(c), 17(d) and 57(i) of the 1940 Act and Rule 17d–1 to permit the purchase of securities by the New Funds in joint transactions with Fund I and each other and in transactions in which Advisors II or an affiliate thereof is a participant and which are otherwise prohibited under section 17(d) and 57(a)(4) of the 1940 Act. In structuring the New Funds, the Managing General Partner and Advisors II have established specific guidelines for the New Funds' Qualified Investments ("Guidelines"). The Guidelines, which are primarily financial in nature, are based on criteria utilized for institutional mezzanine funds that are exempt from registration under the 1940 Act. The Guidelines serve to inform

prospective investors of the parameters of the New Funds' investments, and the Applicants believe that they limit potential conflicts by delineating specific categories of eligible investments, as in the case of coinvestments by institutional partnerships and their general partners. The Applicants state that it is possible that, over time, it may be appropriate to modify the Guidelines as a result of changes in the structure of Qualified Investments or otherwise. Any changes in the Guidelines would, however, require the approval of both the Managing General Partner and the Individual General Partners. In addition, as a condition to the issuance of the order requested, the Applicants undertake that no changes would be made in the guidelines until an amendment of the order is obtained from the Commission.

15. The Guidelines, relate to various aspects of Qualified Investments. As business development companies, the New Funds must, under section 2(a)(48) of the 1940 Act, make available "significant managerial assistance" to eligible portfolio companies comprising at least 70% of their assets. The Guidelines thus establish two categories of issuers of the securities to be purchased by the New Funds. The first category consists of "Managed Companies," *i.e.*, companies to which Advisors II or its affiliates intend to "make available significant managerial assistance" (as defined in section 2(a)(47) with the 1940 Act). The second category consists of "Non-Managed Companies." As used in the Guidelines, the term "Lee Affiliates" includes the Lee Company, Advisors II, Advisors I, and any other affiliated person of the Lee Company (other than the Funds) within the meaning of section 2(a)(3) (C) or (D) of the 1940 Act. Unless a Qualified Investment meets the applicable Guidelines, it will not be acquired by a New Fund unless it has been approved in advance by both the Managing General and the Independent General Partners in accordance with the conditions set forth in the application and described in this notice. Among other things, the Guidelines provide that, with respect to Managed Companies in which a New Fund makes a Qualified Investment: (i) The Lee Affiliates will make a meaningful equity investment, either (x) equal to at least $5 million or (y) consisting in the acquisition of or right to acquire 50% or more of the equity remaining after any common equity acquired by management, the Funds, and other mezzanine lenders or financing sources; (ii) the New Fund's investment will be on terms no less favorable in all respects to (*i.e.*, the same as, or no less advantageous to the Fund than) any corresponding investments in the same company by third parties, including Lee Affiliates; and (iii) at least 70% of the New Fund's assets must be invested in Qualified Investments in Managed Companies. With respect to Non-Managed Companies, the Guidelines provide that: (i) The investment has been structured by third parties which are not affiliates of Advisors II; (ii) the Lee Affiliates will not acquire more than 25% of the non-management equity of a Non-Managed Company (subject to the condition described below); (iii) the New Fund's investment will be on terms no less favorable in all respects to (*i.e.*, terms the same as, or no less advantageous to the Fund than) any corresponding investments in the same company by third parties, including any Lee Affiliates; and (iv) not more than 30% of the New Fund's assets will be invested in Non-Managed Companies.

16. In addition to the Guidelines concerning Qualified Investments, additional conditions will govern the New Funds' operations and investments. While Advisors II is responsible for the identification of investments, the conditions provide that the Independent General Partners must determine that an investment meets the applicable Guidelines. For proposed investments that do not meet such Guidelines, determinations as to several factors must be made by both the Managing General Partner and the Independent General Partners before the investment is made. The terms and conditions which would be applicable to the operations of the New Funds and coinvestments by the New Funds with each other and Fund I and a Lee Affiliate are as follows:

(i) Other than temporary investments in short-term securities and other securities complying with section 55 of the 1940 Act, and the investments described below, each investment made by the New Funds will have to meet, in the determination of the Independent General Partners of each respective New Fund, as described below, the Guidelines for Qualified Investments or be approved by the Managing General Partner and the Independent General Partners.

(ii) Each Qualified Investment that is structured by a Lee Affiliate and approved for investment by it will be brought to the attention of the Independent General Partners of each New Fund for review, subject to item (v) below. If the Independent General Partners of a New Fund determine that the investment meets the applicable Guidelines, the investment would be eligible for investment by the New Fund, and, subject to item (iv) below, each such investment will be acquired by the New Fund to the extent that the New Fund has available funds sufficient to make such acquisition. If there are presented to the Independent General Partners of a New Fund more eligible investments than the New Fund has available funds to acquire, the Independent General Partners will have to determine, with the advice of Advisors II and the Managing General Partner, the order of priority of such investments. If a proposed investment does not meet the Guidelines, the Independent General Partners will have to determine that the investment is appropriate for the New Fund in light of its objectives and policies and does not involve overreaching of the New Fund and then determine whether to acquire such investment for the New Fund.

(iii) Prior to committing to a particular investment that does not meet the Guidelines, the Independent General Partners of a New Fund would be required to determine that (a) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the limited partners of the New Fund and do not involve overreaching of the New Fund or such partners on the part of any person concerned, and (b) the proposed transaction is consistent with the interests of the limited partners of the New Fund and is consistent with the policy of the New Funds recited in filings made by the New Fund under the 1933 Act, the Registration Statement and reports filed under the Securities Exchange Act of 1934, and its reports to partners.

(iv) Each Qualified Investment will be allocated among the Funds based on the ratio of each Fund's assets available for investment (including borrowings that have been committed but not yet drawn down); provided, however, that (a) with respect to Qualified Investments of at least $10 million in size, each Fund will be allocated a minimum amount of $1 million, and (b) with respect to Qualified Investments of less than $10 million in size, no Fund will be required to coinvest less than $1 million. With respect to Fund II, the determination of assets available for investment during its first two years of operation will be made as if such Fund had borrowed 50% of its net offering proceeds (or such lesser amount as Advisors II expects such Fund to borrow) and thereafter will be made based on the actual amount of

its borrowings (including borrowings that have been committed but not yet drawn down).

(v) Neither Thomas H. Lee, individually, in his capacity as Individual General Partner, nor Advisors II, in its capacity as a limited partner of the Managing General Partner, will either (a) participate in the deliberations or approval of any investment by the New Funds or (b) receive and comment on information with respect to any potential investments.

(vi) Neither the Managing General Partner nor any other ML & Co. affiliate will participate in a transaction in which a New Fund invests unless such participation is permitted by the 1940 Act or any separate exemption is obtained thereunder.

(vii) To the extent a Le Affiliate purchases a security of the same class as any component of a Qualified Investment to be acquired by a New Fund, the terms of purchase of each such security (including terms as to purchase price, settlement date, registration rights (if any), and other rights provided to the purchasers of such Qualified Investments) will have to be the same as, or no more favorable than, the Fund's terms.

(viii) The Funds will particpate in the disposition of securities held by them as coinvestments on a proportionate basis and on the same terms and conditions (a "lock-step" disposition). If a Fund or any Lee affiliate elects to dispose of a security purchased in a coinvestment by such Fund with a Lee Affiliate, notice of the proposed sale will be given to the Managing General Partner and the Individual General Partners at the earliest practical time. Each Fund and any Lee Affiliate holding such security will participate in the disposition of such security on a lock-step basis, unless the Managing General Partner and the Independent General Partners determine that a Fund should not participate in such sale or not participate on a lock-step basis. A Fund may only not participate on a lock-step basis in the disposition of securities to be sold by a Lee Affiliate if the Managing General Partner and the Independent General Partners find that the retention or sale, as the case may be, of the securities is fair to the Fund and that such Fund's participation or choice not to participate in the sale is not the result of overreaching by the Investment Adviser or a Lee Affiliate. If the Managing General Partner or the Independent General Partners of a Fund do not make such a finding, then such Fund must participate in such sale on the basis of a lock-step disposition. If at any time the result of a proposed disposition of any portfolio security held by a Fund would be to alter the proportionate holdings of each class of securities held by a Fund and any Lee Affiliate, then the Managing General Partner and the Independent General Partners of the Fund must determine that such a result is fair to the Fund and is not the result of overreaching by a Lee Affiliate. Neither Thomas H. Lee, individually, in his capacity as Individual General Partner, nor Advisors II, in its capacity as a limited partner of the Managing General Partner, will participate in the foregoing deliberations. The Independent General Partners will record in their records the basis of their decision as to whether to participate in such sale.

(ix) The Individual General Partners will be provided information quarterly to enable them to determine whether all investments made during the preceding quarter comply with the conditions set forth above; provided, however, that neither Thomas H. Lee, individually, in his capacity as Individual General Partner, nor Advisors II, in its capacity as a limited partner of the Managing General Partner, will participate in such deliberations to the extent any such investment was recommended to the Fund by its Investment Adviser. In addition, the Individual General Partners of a New Fund will consider on a quarterly basis the continuing appropriateness of the standards established for investments by the New Fund. In this regard, the Individual General Partners will consider whether use of such standards continues to be in the best interests of the New Fund and the limited partners and does not involve overreaching of the New Fund or the limited partners on the part of any party concerned.

(x) The Independent General Partners will maintain the records required by section 57(f)(3) of the 1940 Act and will comply with section 57(h) of the 1940 Act, and each of the Applicants will otherwise maintain all records required by the 1940 Act.

Applicant's Legal Analysis and Conclusions

17. The Applicants submit that the request for the order authorizing co-investments with affiliated persons on a prospective basis is supported by a number of factors. First, the rationale for establishing the New Funds is to provide access to "mezzanine" debt, preferred stock and related equity securities, and common stock investments not generally available to individuals. At the same time, suitability standards have been established which, in the Applicants' view, are appropriate in light of the risks and other considerations involved in an investment in a New Fund. Second, the Applicants believe that the continuing substantive obligations imposed upon the Managing General Partner and the Independent General Partners of a New Fund provide significant protection to investors. Unless a particular investment identified by Advisors II has been approved in advance by the Managing General Partner and the Independent General Partners of a New Fund, Qualified Investments must be determined by the Independent General Partners to meet the applicable Guidelines. Third, the Guidelines include minimum yield requirements on mezzanine investments in companies qualifying as Managed Companies, and, as indicated above, the allocation of income and capital gains to the Managing General Partner described in item 13 above is subordinated to a Priority Return to the limited partners of the New Fund. Lastly, the proposed coinvestments among the Funds will be allocated in accordance with the ratio of each Fund's assets available for investment, and dispositions of securities held by them as coinvestments will be made on a lock-step basis. Accordingly, the Applicants believe that the Funds' operting policies, in conjunction with the structure of their management arrangements, support the issuance of the order requested.

18. The order is also sought pursuant to section 6(c) of the 1940 Act because it involves a class of transactions rather than specific individual transactions. The Applicants believe that the terms of the relief requested in this regard are consistent with the standards enumerated in section 6(c) of the 1940 Act.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants undertake that no changes will be made in the Guidelines or the conditions set forth in item 16, above, until an amendment of the requested order is obtained from the Commission.

2. Under each Partnership Agreement, a New Fund is authorized to make in-kind distributions of portfolio securities to its partners. Applicants agree not to make any in-kind distributions of securities to partners of a New Fund until such Fund has either obtained a no-action letter from the staff of the Commission or, alternatively, has obtained an order pursuant to Section

206A of the Advisers Act permitting such distribution.

3. The New Funds represent that at least 15% of the assets of each New Fund will be invested in Non-Managed Companies in which the Lee Affiliates do not own any securities.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-18966 Filed 8-11-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Order Instituting Proceeding; U.S.-Japan Service Case

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Order 89-8-8, order instituting the *U.S.-Japan Service Case*, Docket 64638.

SUMMARY: By Order 89-8-8, the Department is instituting the *U.S.-Japan Service Case* to select a gateway/carrier combination for additional air service in the U.S.-Japan market, as well as a backup gateway/carrier combination. The Department proposes to convert this route, which was previously served by a small package delivery carrier, to combination service. The Memorandum of Understanding governing this route limits service between the points Honolulu-Tokyo, Honolulu-Nagoya, or any new U.S.-flag gateway and Tokyo. The case will be set for oral evidentiary hearing before an Administrative Law Judge, and the primary award will be for a five year term. In this Order, the Department is also dismissing applications for *pendente lite* exemptions that had been filed by the following carriers: American Airlines, America West Airlines, Continental Airlines, Delta Air Lines, and Northwest Airlines.

DATES: Applications, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration shall be filed by August 25, 1989 and answers shall be filed seven calendar days thereafter.

ADDRESS: The above pleadings should be filed in Docket 46438, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590.

Dated: August 8, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-18905 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review, Akron-Canton Regional Airport, North Canton, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Akron-Canton Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the Akron-Canton Regional Airport Authority. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Arkon-Canton Regional Airport were in compliance with applicable requirements effective April 24, 1989. The proposed noise compatibility program will be approved or disapproved on or before January 17, 1990.

EFFECTIVE DATE: The effective date of the FAA's start of its review of the associated noise compatibility program is July 21, 1989. The public comment period ends September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for that Akron-Canton Regional Airport which will be approved or disapproved on or before January 17, 1990. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Akron-Canton Regional Airport, effective on July 21, 1989. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 17, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, East Willow Run Airport, 8820 Beck Road, Belleville, Michigan 48111.

Akron-Canton Regional Airport Authority, Akron-Canton Regional Airport, 5400 Lauby Road, Box No. 23, North Canton, Ohio 44720.

Questions may be directed to the individual named above under the

heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois, July 21, 1989.

Henry A. Lamberts,

Acting Manager, Airports Division, Great Lakes Region.

[FR Doc. 89-18913 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

Approval of Noise Compatibility Program, Burbank-Glendale-Pasadena Airport, Burbank, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Burbank-Glendale-Pasadena Airport Authority, Burbank, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On August 11, 1988, the FAA determined that the noise exposure maps submitted by the Airport Authority under Part 150 were in compliance with applicable requirements. On July 27, 1989, the Associate Administrator for Airports approved the Burbank-Glendale-Pasadena Airport noise compatibility program. Twenty-two of the proposed action elements were approved and nine were disapproved. These proposed measures required no FAA determination at this time. One program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

EFFECTIVE DATE: The effective date of the FAA's approval of the Burbank-Glendale-Pasadena Airport noise compatibility program is July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Howard S. Yoshioka, Supervisor, Planning Section, AWP-611, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for the Burbank-Glendale-Pasadena Airport, effective July 27, 1989.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create and undue burden on interstate or foreign commerce, unjustly discriminate against type or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, request for project grants must be submitted to the Regional Office.

The Burbank-Glendale-Pasadena Airport Authority submitted to the FAA on April 14, 1987 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from January 1985 through October 1988. The Burbank-Glendale-Pasadena Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 22, 1988. Notice of this determination was published in the **Federal Register** on May 18, 1988 (53 FR 17814).

The Burbank-Glendale-Pasadena Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on August 11, 1988, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 34 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective July 27, 1989.

Outright approval was granted for all of the specific program elements. (Describe any elements disapproved or partially approved and reasons for or conditions of such action. Describe approved actions on and off airport in summary form.)

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for

Airports on July 27, 1989. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Burbank-Glendale-Pasadena Airport.

Issued in Hawthorne, August 1, 1989.

James J. Wiggins,

Acting Manager, Airports Division.

[FR Doc. 89-18914 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice, Detroit Metropolitan Wayne County Airport, Detroit, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Wayne County for Detroit Metropolitan Wayne County Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 24, 1989.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611.1, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Detroit Metropolitan Wayne County Airport are in compliance with applicable requirements of Part 150, effective July 24, 1989.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non compatible uses and for the prevention of the introduction of additional non compatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by Wayne County. The specific maps under consideration are the noise exposure maps: Existing (1988) Noise Exposure Map (Exhibit 1), page 7 and Forecast (1993) Noise Exposure Map (Exhibit 2), page 8 (both showing unabated contours), in the submission. The FAA has determined that these maps for Detroit Metropolitan Wayne County Airport are in compliance with applicable requirements. This determination is effective on July 24, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 269, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport East, 8820 Beck Road, Belleville, Michigan 48111.

Division of Airports, Wayne County, Detroit Metropolitan Wayne County Airport, L.C. Smith Terminal-Mezzanine, Detroit, Michigan 48242.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Des Plaines, Illinois on July 24, 1989.

W. Robert Billingsley,

Assistant Manager, Airports Division, Great Lakes Region.

[FR Doc. 89-18917 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map; Receipt of Noise Compatibility Program and Request for Review, Little Rock Regional Airport, Little Rock, AR

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the city of Little Rock, Arkansas, for Little Rock Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Little Rock Regional Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before January 24, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program is July 28, 1989. The public comment period ends September 26, 1989.

FOR FURTHER INFORMATION CONTACT: Donald C. Harris, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76192–0612, (817) 624–5609. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Little Rock Regional Airport are in compliance with applicable requirements of Part 150, effective July 28, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 24, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The city of Little Rock, Arkansas, submitted to the FAA on September 14, 1987, noise exposure maps, descriptions and other documentation which were produced during development of the Little Rock Regional Airport FAR Part 150 Noise Compatibility Study from July, 1986 through December, 1988. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the city of Little Rock, Arkansas. The specific maps under consideration are the Noise Exposure Map: 1986 Unabated Conditions, and the Noise Exposure Map: 1992 Unabated Conditions found following page I–6 in the Noise Exposure Map Document.

The FAA has determined that these maps for Little Rock Regional Airport are in compliance with applicable requirements. This determination is effective on July 28, 1989. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 10 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Little Rock Regional Airport, also effective on July 28, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 24, 1990.

the FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW. Room 617, Washington, DC 20591.

Federal Aviation Administration, Airports Division, ASW–600, Fort Worth, Texas 76193–0600.

Mr. James R. Rodgers, Airport Manager, No. 1 Airport Drive, Little Rock Regional Airport, Little Rock, Arkansas 72202–4489.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, July 28, 1989.

Wm. Jack Sasser,

Manager, Airports Division.

[FR Doc. 89–18916 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–13–M

Receipt of Noise Compatibility Program and Request for Review, McCarran International Airport, Las Vegas, NV

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for McCarran International Airport (LAS), Las Vegas, Nevada, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by the Clark County Department of Aviation. This program

was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for the McCarran International Airport (LAS) were in compliance with applicable requirements effective November 3, 1988, and it is the FAA's intention to approve or disapprove this program on or before September 30, 1989.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is July 15, 1989. The public comment period ends September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Howard S. Yoshioka, Supervisor, Planning Section, AWP-611, Federal Aviation Administration, Western-Pacific Region, P.O. Box 91007, World Way Postal Center, Los Angeles, California 90009, (213) 297-1250. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for McCarran International Airport, which will be approved or disapproved on or before September 30, 1989. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for the McCarran International Airport (LAS), effective on March 14, 1989. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 15, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested person are invited to comment on the proposed program with specific reference to these factors. All comments other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, 15000 S. Aviation Boulevard, Room 6E25, Hawthorne, California 90261.

Mr. Robert Broadbent, Director of Aviation, McCarran International Airport, P.O. Box 11005, Las Vegas, Nevada 89111.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on August 7, 1989.

James J. Wiggins,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 89-18915 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-32]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before:

ADDRESS: Send comments to any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20519; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 8, 1989.

Deborah Swank,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25893.
Petitioner: George Loegering.
Regulations Affected: 14 CFR 91.52(b)(h).
Description of Relief Sought: To allow petitioner to operate his Beechcraft Bonanza without an automatic type emergency locator transmitter that is in operating condition attached to the airplane.

Docket No.: 25896.
Petitioner: Allen Gerbino.
Sections of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought: To allow petitioner to remove, replace, reinstall, and store main rotor blades for Hughes 300 Series helicopters.

Docket No.: 25897.
Petitioner: Harvey Robert Hay.
Sections of the FAR Affected: 14 CFR 121.383(c).
Description of Relief Sought: To allow petitioner to maintain his airman certification after his 60th birthday.

Docket No.: 25969.
Petitioner: Eastern Air Lines, Inc.

Sections of the FAR Affected: 14 CFR 45.13(b).
Description of Relief Sought: To allow the removal of aircraft engine identification plates and the placement of the same data plate on a different engine assembly.

Docket No.: 22872.
Petitioner: Air Transport Association of America.
Regulations Affected: 14 CFR 61.157(a) and 121.424(a) and (b); item I(b) of Appendix A of Part 61; and item I(a) of Appendix E of Part 121.
Description of Relief Sought/ Disposition: To amend Exemption No. 4416, as amended, to allow the second-in-command pilots, of airplanes requiring only two flight crewmembers, of the petitioner's member airlines and other qualifying Part 121 certificate holders to receive training and checking by the use of advanced pictorial means that have been specifically approved for this purpose. GRANT, July 31, 1989. Exemption No. 4416B.

Docket No.: 23875.
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 45.25(b)(2).
Description of Relief Sought/ Disposition: To extend Exemption No. 4061C, that allows petitioner to display 12-inch-high N-Numbers on the outboard surface of the engine nacelles that are on an intergral part of the wing pods. GRANT, July 31, 1989. Exemption No. 4061D.

Docket No.: 24541.
Petitioner: Boeing Commercial Airplanes.
Sections of the FAR Affected: 14 CFR 91.45.
Description of Relief Sought/ Disposition: To extend Exemption No. 4467, as amended, that allows petitioner to conduct ferry flights with one engine inoperative on its Boeing 707, 720, 727, or 747 turbine-engine-powered transport category airplanes without obtaining a special flight permit. GRANT, July 26, 1989. Exemption No. 4467B.

Docket No.: 25089.
Petitioner: Hawkins & Powers Aviation, Inc.
Regulations Affected: 14 CFR 137.53(c)(2).
Description of Relief Sought/ Disposition: To allow petitioner to conduct aerial applications of insecticide materials from C-118A (DC-6) aircraft, without the aircraft being equipped with a device capable of jettisoning at least one-half of the aircraft's maximum authorized load of agricultural materials within 45 seconds when operated over congested areas. GRANT, July 31, 1989. Exemption No. 5075.

Docket No.: 25168.
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(8).
Description of Relief Sought/ Disposition: To extend Exemption No. 4856, that allows petitioner to continue to transport employees and dependents on its DC-8-60 (DC-8) cargo flights. GRANT, July 27, 1989. Exemption No. 4856A.

Docket No.: 25195.
Petitioner: Loral Systems Group.
Sections of the FAR Affected: 14 CFR 45.27(b).
Description of Relief Sought/ Disposition: To extend Exemption No. 4861, that allows petitioner to place the nationality and registration marks (N-numbers) on the outboard surface of each propulsion duct (engine nacelle) on its GZ22 airship. GRANT, July 31, 1989. Exemption No. 4861A.

Docket No.: 25683.
Petitioner: Christopher C. Foltz.
Sections of the FAR Affected: 14 CFR 61.197.
Description of Relief Sought/ Disposition: To allows petitioner a 90-day extension on his current flight instructor certificate. GRANT, June 12, 1989. Exemption No. 5076.

[FR Doc. 89-18918 Filed 8-11-89; 8:45 am]
BILLING CODE 4910-13-M

Airborne Windshear Warning and Escape Guidance Systems for Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C117 prescribed the minimum performance standards that airborne windshear warning and escape guidance systems for transport airplanes must be identified with the marking "TSO-C117."

DATE: Comments must identify the TSO file number and be received on or before November 24, 1989.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO-C117, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

Proposed TSO-C117, specifies minimum performance standards for airborne windshear warning and escape guidance systems for transport category airplanes. The document defines performance, functions and feature for systems which provide windshear warning and escape guidance commands for detection of the aircraft's presence in such phenomenon. It is not applicable to systems that look ahead to sense windshear conditions before the phenomenon is encountered not to systems that use atmospheric and/or other data to predict the likelihood of a windshear alert. Also, the proposed TSO incorporates Radio Technical Commission for Aeronautics (RTCA) Document Nos. DO-160B, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 1984, for the environmental standards, and DO-178a, "Software Considerations in Airborne Systems and Equipment Certification," dated March 1985, for the computer software requirements.

How to Obtain Copies

A copy of the proposed TSO–C117 may be obtained by contacting "For Further Information Contact." TSO–C117 references RTCA/DO–160B for the environmental, standard, and RTCA/DO–178A for the computer software requirements; RTCA documents may be purchased from the Radio Technical Commission for Aeronautics Secretariat, One McPherson Square, Suite 500, 1425 K Street, NW., Washington, DC 20005.

Issued in Washington, DC on August 7, 1989.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89–18919 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–13–M

Aircraft Fabric Grade A; Availability of Technical Standard Order

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C15d prescribes the minimum performance standards that aircraft fabric, grade A must meet to be identified with the marking "TSO–C15d".

DATE: Comments must identify the TSO file number and be received on or before November 24, 1989.

ADDRESS: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C15d, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date. In room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW, Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, view, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Aircraft Certification Service before issuing the final TSO.

Background

Proposed TSO–C15d will permit the use of snythetic fabric materials, in particular polyester, as well as cotton fabric for the external covering of aircraft surfaces. The synthetic "Airplane Cloth" must be shown to have certain properties equivalent to cotton cloth. The proposed TSO references the Society of Automotive Engineers, Inc. (SAE), Aerospace Material Specification (AMS) 3806C, "Cloth Airplance, Cotton, Mercerized, 810b (355N) Breaking Strength," dated April 15, 1980, for the minimum performance standards.

How to Obtain Copies

A copy of the proposed TSO–C15d, may be obtained by contracting the person under "For Further Information Contact." SAE Aerospace Material Specification 3806C my be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096.

Issued in Washington, DC, on August 8, 1989.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89–18920 Filed 8–11–89; 8:45 am]

BILLING CODE 4910–13–M

Aircraft Fabric Intermediate Grade; Availability of Technical Standard Order

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO–C14b prescribes the minimum performance standards that aircraft fabric, intermediate grade must meet to be identified with the marking "TSO–C14b".

DATE: Comments must identify the TSO file number and be reached on or before November 24, 1989.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C14b, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Director of Aircraft Certification Service before issuing the final TSO.

Background

Proposed TSO–C14b will permit the use of synthetic fabric materials, in particular polyester, as well as cotton fabric for the external covering of aircraft surfaces. The synthetic "Airplane Cloth" must be shown to have certain properties equivalent to cotton cloth. The proposed TSO references the Society of Automotive Engineers, Inc. (SAE), Aerospace Material Specification (AMS) 3804C, "Cloth, Airplane, Cotton, Mercerized, 651b (290N) Breaking Strength," dated January 1, 1984, for the minimum performance standards.

How to Obtain Copies

A copy of the proposed TSO–C14b, may be obtained by contacting the person under "For Further Information Contact." SAE Aerospace Material Specification 3804C may be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, Pennsylvania.

Issued in Washington, DC, on August 8, 1989.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89-18921 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

Tires; Availability of Technical Standard Order

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of technical standard order (TSO) and request for comments.

SUMMARY: The proposed TSO-C62d prescribes the minimum performance standards that tires must meet to be identified with the marking "TSO-C62d."

DATE: Comments must identify the TSO file number and be received on or before November 24, 1989.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO-C62d, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Or deliver comments to: Federal Aviation Administration, Room 335, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Analysis Branch, AIR-120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-9546.

Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 335, FAA Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. All communications received on or before the closing date for comments specified above will be considered by the Aircraft Certification Service Director before issuing the final TSO.

Background

The FAA recently completed a review of airworthiness criteria and approval procedures for lightweight nonretreadable and retreadable tires in airline service and concluded that TSO-C62 should be revised to address certain issues including design criteria, design changes, and installation approvals for such articles.

Under existing regulations and procedures, a tire approved as part of a type design (original type certificate, amended type certificate, or supplemental type certificate) or under a parts manufacturer approval (PMA) is approved for installation on a specific aircraft model. A tire approved solely under TSO procedures is approved for design and production only, and not for installation on an aircraft model. A separate approval is required for the installation of that tire on a specific aircraft model. It is the responsibility of the aircraft owner or operator to ensure that a tire installed as a replacement or modification for an original tire approved as part of a type design is FAA approved. The revisions proposed for TSO-C62 call attention to the approval procedures under existing regulations, and address other aspects of design criteria and design changes. A number of minor editorial changes are also proposed.

How to Obtain Copies

A copy of the proposed TSO-C62d may be obtained by contacting the person under "For Further Information Contact."

Issued in Washington, DC, on August 8, 1989.

Daniel P. Salvano,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 89-18922 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Commercial Driver's License Supplemental Grant Program Funding Distribution for Fiscal Years (FYs) 1990 and 1991

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of eligibility and distribution of grant funds.

SUMMARY: The FHWA is issuing a notice to publish the administrative formula for the distribution of the Commercial Driver's License (CDL) Supplemental Grant funds for Fiscal Years (FYs) 1990 and 1991 under the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. L. 99-570, 100 Stat. 3207-170), section 12005(d)(2). The amount of funds available for FYs 1990 and 1991 will be $3 million each year, which is subject to the obligation ceiling placed on the Motor Carrier Safety Assistance Program (MCSAP). Most States should be eligible to receive a minimum of $30,000 in each fiscal year. The FHWA administrative formula will use the number of knowledge and skills tests administered and the number of CDLs issued to determine the States' total Supplemental Grant funding.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning, (202) 366-0233, Ms. Jill Hochman, Office of Motor Carrier Standards, (202) 366-4001 or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 am to 4:15 pm. EDT, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Commercial Driver's License (CDL) Supplemental Grant Program was established by the Commercial Motor Vehicle Safety Act of 1986 (the Act) (Title XII of Pub. L. 99-570, 100 Stat. 3207-170) and signed into law by the President on October 27, 1986. Section 12005(d) of the Act gives the Secretary of Transportation the authority to make Supplemental Grants to eligible States in FYs 1990 and 1991 for the purpose of testing operators of commercial motor vehicles. Funds under this grant program shall be distributed among the eligible States on the basis of the number of knowledge (written or oral) and skills (driving) tests administered and the number of commercial driver's licenses (CDL) issued in the preceding fiscal year (FY 1989 data for FY 1990 funds and FY 1990 data for FY 1991 funds). Funding will consist of $3 million each fiscal year, which is subject to the obligation ceiling placed on the MCSAP Program. This notice is being issued pursuant to section 6(b)(1) of OMB Circular No. A-102 (revised) (3/11/88) (53 FR 8028).

Eligibility

As required by section 12005(c) to become eligible for the Commercial Driver's License (CDL) Supplemental Grant program in FYs 1990 and 1991, a State must agree: (1) To adopt and administer in such fiscal year a testing program in accordance with the Commercial Driver Testing and Licensing Standards (49 CFR Part 383) issued on July 15, 1988, (2) to require commercial vehicle drivers to pass

knowledge and skills tests which comply with 49 CFR Part 383, (3) to have in effect and enforce a law which provides that any person with a blood alcohol concentration (BAC) of 0.10 percent or greater when operating a commercial motor vehicle is deemed to be driving while under the influence of alcohol, and (4) to maintain the expenditure of non-Federal funds for CDL testing at a level which does not fall below the average of the last two fiscal years prior to October 27, 1986. A State must agree to all of the above requirements to become eligible to receive Supplemental Grant funds in FYs 1990 and 1991.

For the purpose of this grant program, a State will be considered to be in compliance with requirement (1) above and eligible to receive Supplemental Grant funds in FYs 1990 and 1991, if the State is involved in activities that are directly related to "adopting and administering" the testing program. Therefore, if a State did not administer any tests in the previous year but is performing other activities directly related to "adopting and administering" a testing program in accordance with 49 CFR Part 383 they would be eligible to receive grant funds. Other eligible activities include: (1) Acquisition of equipment, (2) employing and training personnel to conduct tests, (3) computer system redesign and programming, (4) use of outside resources for activities relating to testing, and (5) compliance and verification procedures. General development activities such as studies of existing laws, resource needs, legislative and economic impacts, facilities needs, etc. will not be eligible uses of grant funds under this phase of the grant program.

Distribution of Funds

In FYs 1990 and 1991, Supplemental Grant funds will be made available to the States under a two part formula. Under part I of the formula, $30,000 will be made available to each eligible State. An eligible State which has administered no tests or issued no licenses in the previous FY would be included in this category. Under part II, the balance of funds will be distributed to eligible states based on the ratio that the number of skills and knowledge tests administered and CDLs issued in the previous FY in each eligible State bears to the national total for the previous FY (see hypothetical example in Appendix).

States are encouraged to develop and administer knowledge and skills tests in accordance with 49 CFR Part 383 even if they are unable to currently participate in the Commercial Driver's License Information System (CDLIS). If a State is not participating in the CDLIS, but is administering tests in accordance with 49 CFR, Part 383, then the State's portion of the Supplemental Grant funds will be allocated on the basis of the number of tests administered in accordance with 49 CFR Part 383.

Grant Application

Funds allocated to a State are available to that State for obligation until the last day of the fiscal year. Any funds not obligated before the last day of the fiscal year will no longer be available to that State for obligation and become available to the Secretary to use in carrying out the CDL Program.

To receive the funds allocated to it under the two part formula, a State must submit a grant application to FHWA, which includes a work plan that describes the activities to be undertaken and the estimated costs. Upon approval of the grant application, the State will execute a Supplemental Grant Agreement form; the execution of this grant agreement constitutes an obligation of the funds.

To ensure full utilization of the obligation ceilings that will be imposed on the MCSAP program for FYs 1990 and 1991, FHWA will canvass States that have not applied for their allocations by September 1 of each year to determine if they intend to apply for them. If any States indicate that they do not intend to apply for their funds, FHWA will initiate actions to determine other appropriate uses of the funds in carrying out the CDL Program. This may include canvassing the States that received funds under Part II of the formula to determine if they could use additional funds.

In order to provide adequate time for processing the grant applications, all applications for funds must be received by the local FHWA division office by September 15. The FHWA will proceed with the development of plans to reallocate any funds that States have not applied for by September 15. This is necessary to ensure that all the funds can be obligated prior to the end of the FY (September 30).

Issued on August 8, 1989.

R.D. Morgan,

Executive Director.

Appendix

EXAMPLE OF DISTRIBUTION OF SUPPLEMENTAL GRANT FUNDS FOR FYS 1990 AND 1991

	Data Collection			
Eligible State	Knowledge tests	Skills tests	CDLs issued	Total
1. State A	215	50	0	265
2. State B	50	0	0	50
3. State C	0	0	0	0
4. State D	2,000	800	200	3,000
National total				3,315

Ratio for Part II (State Total/National Total)			Distribution Formula Balance
1. State A = (265/3,315)	=	.08	Available Funding=$3,000,000
2. State B = (50/3,315)	=	.02	Part I Distribution
3. State C =		0	(51×30,000) = $1,530,000
4. State D = (3,000/3,315)	=	.90	
		1.00	Part II Distribution $1,470,000

ALLOCATION TO STATES

Part I Minimum Base	Part II Distribution Formula			
1. State A $30,000+	($1,470,000×.08)=	$117,600	=	$147,600
2. State B $30,000+	($1,470,000×.02)=	$29,400	=	$59,400
3. State C $30,000+	0		=	$30,000

ALLOCATION TO STATES—Continued

	Part I Minimum Base	Part II Distribution Formula		
4. State D	$30,000 +	($1,470,000 × .90) =	$1,323,000	= $1,353,000
Remaining 47 States =	$30,000 each +	0		= $1,410,000
				$3,000,000

[FR Doc. 89-18990 Filed 8-11-89; 8:45 am]
BILLING CODE 4910-22-M

Research and Special Programs Administration, Office of Hazardous Materials Transportation

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATE: Comments must be received on or before September 13, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW. Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10225-N	Atochem, Inc., Glen Rock, NJ	49 CFR 173.119	To authorize shipment of dimethylethylamine, classed as a flammable liquid in non-DOT steel drums overpacked in 16 gauge steel salvage drums. (mode 1)
10226-N	Jaco Waterproofing, Inc., Hamilton, OH	49 CFR 173.119	To authorize shipment of a resin solution, classed as a flammable liquid, in a non-DOT specification cargo tank. (mode 1)
10227-N	Minnesota Valley, Engineering, Inc., New Prague, MN.	49 CFR 173.316, 178.57	To authorize manufacture, marking and sale of a model stroller 1.3 litter low pressure liquid oxygen dewar for shipment of liquid oxygen classed as a nonflammable gas. (mode 1)
10228-N	Koch Industries, Inc., Wichita, KS	49 CFR 173.119, 173.304, 173.315	To authorize transportation of flammable liquids and gases in meter provers having nominal water capacities between 15 and 1000 gallons. (mode 1)
10229-N	United States Can Company, Oak Brook, IL	49 CFR 173.302, 173.304, 178.33-2(b), 175.3	To authorize manufacture, marking and sale of non-DOT specification aerosol cans for flammable and nonflammable compressed gases. (modes 1, 2, 3, 4)
10230-N	Georgia Box, Inc., Jackson, GA	49 CFR 173.128, 173.132, 173.266, Part 173 Subpart F.	To authorize manufacture, marking, and sale of a non-DOT single-trip blow molded high density polyethylene portable tank having a wood pallet, foam transition base, corrugated cover for hydrogen peroxide solution classed as oxidizer, various corrosive materials and flammable liquids. (modes 1, 2, 3)
10231-N	Degussa Corporation, Ridgefield Park, NJ	49 CFR 173.245b	To authorize shipment of Sodium tetrasulfide, classed as a corrosive material, in IMO type I tanks. (modes 1, 2, 3)
10232-N	Sexton Can Company, Inc., Cambridge, MA	49 CFR 173.304, 175.3	To authorize shipment of refrigerant gases, n.o.s., classed as nonflammable gas and other nonflammable gases specifically identified to, and approved by the OHMT in non-DOT specification aerosol containers similar to the DOT 2Q container. (modes 1, 2, 3, 4, 5)
10233-N	Schutz Werke GmbH & Co., KG, D-5418 Selters, Germany.	49 CFR 173 Subpart D, E, F and H, 178.224	To authorize manufacture, marking and sale of a non-DOT specification fiber drum with top and bottom of 48 mm steel for shipment of those materials authorized for shipment in 21C fiber drum. (modes 1, 2, 3)
10234-N	Gottlieb Duttenhoefer, GmbH & Co. KG, 6733 Hassloch, Germany.	49 CFR 173.346, 178.116	To authorize manufacture, marking and sale of a non-DOT specification 0.7 mm thick sheet steel drum similar to the DOT 17E steel drum for toulene diisocyanate, classed as a poison B. (modes 1, 2)

NEW EXEMPTIONS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
10235-N	U.S. Department of Defense, Falls Church, VA	49 CFR 173.276, 173.31(a), 173.336	To authorize use of a non-DOT specification stainless steel, ASTM A240 Type 304L pressure tank car for transportation of nitrogen tetroxide, liquid, classed as a Poison A and methylhydrazine, anhydrous hydrazine, unsymmetrical dimethylhydrazine, classed as flammable liquids. (mode 2)
10236-N	Northern Energy, Inc., Spokane, WA	49 CFR 173.31(c)	To authorize movement of railcar, containing residue propane fumes, classed as flammable gas, without required retesting. (mode 2)

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 7, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-18992 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comments must be received on or before August 29, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
4607-X	Armstrong Laboratories, Inc., West Roxbury, MA.	4607
4932-X	Federal Laboratories, Inc., Saltsburg, PA.	4932
5923-X	Unigas Inc., Mercedita, PR.	5923
5923-X	Linde Gases of Southern California, Inc., Stanta Ana, CA.	5923
6250-X	McDonnell Douglas Corporation, St. Louis, MO.	6250
6325-X	Atlas Powder Company, Dallas, TX.	6325
6530-X	National Welders, Charlotte, NC.	6530
6530-X	Messer Griesheim Industries, Inc., Valley Forge, PA.	6530
6530-X	Liquid Carbonic Industrial/Medical Corporation, Chicago, IL.	6530
6530-X	Liquid Carbonic Specialty Gas Corporation, Chicago, IL.	6530
6765-X	Messer Griesheim Industries, Inc., Valley Forge, PA.	6765
6765-X	Airco Industrial Gases, Murry Hill, NJ.	6765
7052-X	NASA (National Aeronautics & Space Administration), Washington, DC.	7052
7052-X	Duracell Inc., Bethel, CT.	7052
7607-X	I.T. Corporation (International Technology Corp.), Torrance, CA.	7607
8156-X	Liquid Carbonic Specialty Gas Corporation, Chicago, IL.	8156
8175-X	The Norac Company, Inc., Azusa, CA.	8175
8248-X	AT&T Technologies, Inc., Greensboro, NC.	8248
8269-X	Fort Worth Fabrication, Inc., Fort Worth, TX.	8269
8287-X	Rohm and Haas Company, Philadelphia, PA.	8287
8354-X	Compaignie Des Containers Reservoirs, Paris, France.	8354
8386-X	J.J. Mauget Company, Los Angeles, CA.	8386
8445-X	Waste Conversion, Inc., Hatfield, PA.	8445
8445-X	E&K Hazardous Waste Services, Inc., Sheboygan, WI.	8445
8554-X	Thermex Energy Corporation, Dallas, TX.	8554
8567-X	Environmental Oil, Inc., Syracuse, NY.	8567
8579-X	Nitram, Inc., Tampa, FL.	8579
8650-X	Ethyl Corporation, Baton Rouge, LA.	8650
8723-X	Atlas Powder Company, Dallas, TX (See Footnote 1).	8723
8732-X	Chemcentral, Inc., Chicago, IL.	8732
8732-X	The Dow Chemical Company, Midland, MI.	8732
8888-X	Nalco Chemical Company, Naperville, IL.	8888
8901-X	Douglas Chemical Company, Liberty, MO.	8901
8986-X	Cook Slurry Company, Salt Lake City, UT.	8986
8988-X	Vann Systems, Houston, TX.	8988
9016-X	Van Leer Verpackungen GmbH, Koln, West Germany.	9016
9066-X	Volvo Cars of North America Rockleigh, NJ (See Footnote 2).	9066

Application No.	Applicant	Renewal of exemption
9130-X	Bio/Lab, Incorporated, Decatur, GA.	9130
9130-X	Calgon Vestal Laboratories, St. Louis, MO.	9130
9150-X	Hoover Group, Inc., Beatrice, NE.	9150
9162-X	Sun Pipe Line Company, Longview, TX.	9162
9393-X	Sexton Can Company, Inc., Cambridge, MA (See Footnote 3).	9393
9490-X	National Refrigerants, Inc., Plymouth Meeting, PA.	9490
9498-X	C-I-L Inc., North York, Ont., Canada.	9498
9505-X	The Norac Company, Inc., Azusa, CA.	9505
9722-X	Russell-Stanley Corporation, Red Bank, NJ.	9722
9723-X	Aqua-Tech, Inc., Port Washington, WI.	9723
9747-X	Aerosol Services Company, Inc., City of Industry, CA.	9747
9758-X	Camping Gaz Int'l (nee Application des Gaz S.A.) Paris, France (See Footnote 4).	9758
9749-X	Rollins Chempak, Inc., Wilmington, DE.	9769
9918-X	Hughes Aircraft Company, Tucson, AZ.	9918
9968-X	Moli Energy, Limited, Burnaby, B.C., Canada (See Footnote 5).	9968
10175-X	Phillips Container, Cleveland, OH (See Footnote 6).	10175
10184-X	Union Carbide Industrial Gases Inc. (UCIG), Danbury, CT (See Footnote 7).	10184

(1) To authorize the addition to an IMO Type 1 Portable tank for shipment of certain blasting agents, n.o.s.

(2) To renew and modify section 7 paragraph A to include DOT-12B fiberboard box identified as Volvo 2.

(3) To authorize the addition of an alternate style cylinder with a pressure release bottom, for shipment of certain nonflammable gases.

(4) To modify the exemption to include an additional type container Ferno 5000 identical to the C-206 presently authorized for shipment of certain flammable gases.

(5) To authorize motor vehicle, rail freight, cargo vessel, and cargo aircraft as additional modes of transportaion.

(6) To authorize the addition of certain flammable liquids and to add rail freight and cargo vessel as modes of transportation.

(7) To authorize DOT Specification 4B or 4A cylinders retested in accordance with 49 CFR 173.34(e)(9) and (10) for shipment of a copressed gas, n.o.s.

Application No.	Applicant	Parties to exemption
7052-P	LO-KATA Communication Electronics, Cornwall, England.	7052
7607-P	Metcalf & Eddy, Inc., Santa Clara, CA.	7607
8445-P	Heritage Transport, Inc., Indianapolis, IN.	8445
8445-P	Merrell Dow Research, Indianapolis, IN.	8445
8554-P	Dote Explosives, Inc., Rosemount, MN.	8554
8718-P	U.S. Department of Defense, Falls Church, VA.	8718
8859-P	Eastman Kodak Company, Rochester, NY.	8859
8862-P	ARC Chemical Division Balchem Corporation, Slate Hill, NY.	8862
9332-P	Chromalloy R & T Division, Orangeburg, NY.	9332
9723-P	Heritage Transport, Inc., Indianapolis, IN.	9723
10001-P	Airco, The BOC Group, Inc., Murray Hill, NJ.	10001

This notice of receipt of applications for renewal exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on August 9, 1989.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-18993 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-60-M

Compliance With Federal Requirements for Reporting Releases and Transporting Hazardous Materials; Joint Workshop With the Environmental Protection Agency

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of jointly sponsored workshop.

SUMMARY: This notice advises interested persons that the Department of Transportation (DOT) and Environmental Protection Agency (EPA) will jointly sponsor a workshop on complying with federal requirements for reporting releases of hazardous substances and transporting hazardous materials.

DATE: DOT/EPA Workshop—A one day workshop will be held October 24 and 26, 1989, 7:30 a.m.-5:00 p.m., at the Holiday Inn, Inner Harbor in Baltimore, MD. You may register for either date. Every effort will be made to accommodate your preference. If space is not available on that day, you will be notified. Attendance is limited, so please register early. Those who do not register in advance will be able to attend only on a space available basis. This workshop is being offered free of charge and is open to anyone who wants to attend.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Research and Special Programs Administration (DHM-51), 400 Seventh Street, SW., Washington, DC 20590: (202) 366-2229, or Pamela Harris, Environmental Protection Agency, OS-210, 401 M Street, SW., Washington, DC 20460; (202) 475-9815. To register, call the Workshop Coordinator at (202) 475-9814.

ADDITIONAL INFORMATION: This workshop will provide practical information to assist regulated firms in complying with release reporting and transportation requirements. Specifically the workshop will address:

- What is required to report releases of hazardous substances
- What substances are subject to reporting requirements
- What kinds of releases must be reported
- What exemptions from reporting requirements are provided
- What kinds of report-related information will be requested
- What penalties may be assessed for failure to report releases
- How to properly classify hazardous materials for transportation
- How to properly package, label and prepare shipping papers for transporting hazardous materials
- What mechanisms exist for enforcement of violations of the transportation requirements
- How to comply with hazardous waste manifest requirements
- What is the Hazardous Materials Information Exchange (HMIX) and how to use it
- What are the EPA and OSHA worker protection standards

Issued in Washington, DC on August 9, 1989, under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

[FR Doc. 89-18991 Filed 8-11-89; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 23-89]

Treasury Bonds of 2019

Washington, August 3, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Bonds of 2019 (CUSIP No. 912810 ED 6), hereafter referred to as Bonds. The Bonds will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Bonds and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Bonds may be issued to Federal Reserve Banks for their own account in exchagne for maturing Treasury securities. Additional amounts of the Bonds may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Bonds will be dated August 15, 1989, and will accrue interest from that date, payable on a semiannual basis on February 15, 1990, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 2019, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Bonds are subject to all taxes imposed under the Internal Revenue Code of 1954. The Bonds are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Bonds will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Bonds will be issued only in book-entry form, and in denominations of $1,000 $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Bond may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in Section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Bonds in their fully constituted form; the description of the separate Principal and Interest components is set forth in Section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Bonds offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC. 20239–1500, prior to the 1:00 p.m., Eastern Daylight Saving time, Thursday, August 10, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, August 9, 1989, and received no later than Tuesday, August 15, 1989.

3.2. The par amount of Bonds bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Bonds applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 92.500. That stated rate of interest will be paid on all of the Bonds. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the

offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7 Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1 The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Bonds specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Bonds allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Bonds allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, August 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, August 11, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Bonds allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, August 15, 1989. When payment has been submitted with the tender and the purchase price of the Bonds allotted is over par, settlement for the premium must be completely timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Bonds allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definititive securities tendered in payment for the Bonds allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Bond being purchased. In any such case, that tender form used to place the Bonds allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and Principal of Securities), a Bond may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3 For a Bond to be separated into the components described in Section 6.1., the par amount of the Bond must be in an amount which, based on the stated interest rate of the Bond, will produce a semi-annual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Bond may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Bonds. Once a Bond has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5. Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7 Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconstitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9 Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Bonds separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Bonds.

7.2. The Secretary of the Treasury may at any time supplement or amend provisions of their circular if such supplements or amendments do not adversely affect existing rights of holders of the Bonds. Public announcement of such changes will be promptly provided.

7.3. The Bonds issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Governemnt is pledged to pay, in legal tender, principal and interest on the Bonds.

7.4 Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Bonds of August 15, 2019, Cusip No. 912810 ED 6

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) 2019 due August 15, 2019, CUSIP No. 912803 AR 4.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury interest (TINT) due:	
February 15, 1990	BF 6
August 15, 1990	BG 4
February 15, 1991	BH 2
August 15, 1991	BJ 8
February 15, 1992	BK 5
August 15, 1992	BL 3
February 15, 1993	BM 1
August 15, 1993	BN 9
February 15, 1994	BP 4
August 15, 1994	BQ 2
February 15, 1995	BR 0
August 15, 1995	BS 8
February 15, 1996	BT 6
August 15, 1996	BU 3
February 15, 1997	BV 1
August 15, 1997	BW 9
February 15, 1998	BX 7
August 15, 1998	BY 5
February 15, 1999	BZ 2
August 15, 1999	CA 6
February 15, 2000	CB 4
August 15, 2000	CC 2
February 15, 2001	CD 0
August 15, 2001	CE 8
February 15, 2002	CF 5
August 15, 2002	CG 3
February 15, 2003	CH 1
August 15, 2003	CJ 7
February 15, 2004	CK 4
August 15, 2004	CL 2
February 15, 2005	CM 0
August 15, 2005	CN 8
February 15, 2006	CP 3
August 15, 2006	CQ 1
February 15, 2007	CR 9
August 15, 2007	CS 7
February 15, 2008	CT 5
August 15, 2008	CU 2
February 15, 2009	CV 0
August 15, 2009	CW 8
February 15, 2010	CX 6
August 15, 2010	CY 4
February 15, 2011	CZ 1
August 15, 2011	DA 5
February 15, 2012	DB 3
August 15, 2012	DC 1
February 15, 2013	DD 9
August 15, 2013	DE 7
February 15, 2014	DF 4
August 15, 2014	DG 2
February 15, 2015	DH 0
August 15, 2015	JT 8
February 15, 2016	KG 4
August 15, 2016	KJ 8
February 15, 2017	KL 3
August 15, 2017	KN 9
February 15, 2018	KQ 2
August 15, 2018	KS 8
February 15, 2019	KU 3
August 15, 2019	KW 9

Attachment B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face	Interest payment
5.000	$40,000	$1,000
5.125	1,600,000	41,000
5.250	800,000	21,000
5.375	1,600,000	43,000
5.500	400,000	11,000
5.625	320,000	9,000
5.750	800,000	23,000
5.875	1,600,000	47,000
6.000	100,000	3,000
6.125	1,600,000	49,000
6.250	32,000	1,000
6.375	1,600,000	51,000
6.500	400,000	13,000
6.625	1,600,000	53,000
6.750	800,000	27,000
6.875	320,000	11,000
7.000	200,000	7,000
7.125	1,600,000	57,000
7.250	800,000	29,000
7.375	1,600,000	59,000
7.500	800,000	3,000
7.625	1,600,000	61,000
7.750	800,000	31,000
7.875	1,600,000	63,000
8.000	25,000	1,000
8.125	320,000	13,000
8.250	800,000	33,000
8.375	1,600,000	67,000
8.500	400,000	17,000
8.625	1,600,000	69,000
8.750	160,000	7,000
8.875	1,600,000	71,000
9.000	200,000	9,000
9.125	1,600,000	73,000
9.250	800,000	37,000
9.375	64,000	3,000
9.500	400,000	19,000
9.625	1,600,000	77,000
9.750	800,000	39,000
9.875	1,600,000	79,000
10.000	20,000	1,000
10.125	1,600,000	81,000
10.250	800,000	41,000
10.375	1,600,000	83,000
10.500	400,000	21,000
10.625	320,000	17,000
10.750	800,000	43,000
10.875	1,600,000	87,000
11.000	200,000	11,000
11.125	1,600,000	89,000
11.250	160,000	9,000
11.375	1,600,000	91,000
11.500	400,000	23,000
11.625	1,600,000	93,000
11.750	800,000	47,000
11.875	320,000	19,000
12.000	50,000	3,000
12.125	1,600,000	97,000
12.250	800,000	49,000
12.375	1,600,000	99,000
12.500	16,000	1,000
12.625	1,600,000	101,000
12.750	800,000	51,000
12.875	1,600,000	103,000
13.000	200,000	13,000
13.125	320,000	21,000
13.250	800,000	53,000
13.375	1,600,000	107,000
13.500	400,000	27,000
13.625	1,600,000	109,000
13.750	160,000	11,000
13.875	1,600,000	111,000
14.000	100,000	7,000

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face	Interest payment
14.125	1,600,000	113,000
14.250	800,000	57,000
14.375	320,000	23,000
14.500	400,000	29,000
14.625	1,600,000	117,000
14.750	800,000	59,000
14.875	1,600,000	119,000
15.000	40,000	3,000
15.125	1,600,000	121,000
15.250	800,000	61,000
15.375	1,600,000	123,000
15.500	400,000	31,000
15.625	64,000	5,000
15.750	800,000	63,000
15.875	1,600,000	127,000
16.000	25,000	2,000
16.125	1,600,000	129,000
16.250	160,000	13,000
16.375	1,600,000	131,000
16.500	400,000	33,000
16.625	1,600,000	133,000
16.750	800,000	67,000
16.875	320,000	27,000
17.000	200,000	17,000
17.125	1,600,000	137,000
17.250	800,000	69,000
17.375	1,600,000	139,000
17.500	80,000	7,000
17.625	1,600,000	141,000
17.750	800,000	71,000
17.875	1,600,000	143,000
18.000	100,000	9,000
18.125	320,000	29,000
18.250	800,000	73,000
18.375	1,600,000	147,000
18.500	400,000	37,000
18.625	1,600,000	149,000
18.750	32,000	3,000
18.875	1,600,000	151,000
19.000	200,000	19,000
19.125	1,600,000	153,000
19.250	800,000	77,000
19.375	320,000	31,000
19.500	400,000	39,000
19.625	1,600,000	157,000
19.750	800,000	79,000
19.875	1,600,000	159,000
20.000	10,000	1,000
20.125	1,600,000	161,000
20.250	800,000	81,000

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[Department Circular—Public Debt Series—No. 22-89]

Treasury Notes of August 15, 1999, Series C-1999

Washington, August 3, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated

Treasury Notes of August 15, 1999, Series C–1999 (CUSIP No. 912827 XW 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 15, 1989, and will accrue interest from that date, payable on a semiannual basis on February 15, 1990, and each subsequent 6 months on August 15 and February 15 through the date that the principal becomes payable. They will mature August 15, 1999, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. A Note may be held in its fully constituted form or it may be divided into its separate Principal and Interest Components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as fiscal agents of the United States. The provisions specifically applicable to the separation, maintenance, transfer, and reconstitution of Principal and Interest Components are set forth in section 6 of this circular. Subsections 2.1. through 2.4. of this section are descriptive of Notes in their fully constituted form; the description of the separate Principal and Interest components is set forth in section 6 of this circular.

2.6. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time Wednesday, August 9, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 8, 1989, and received no later than Tuesday, August 15, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 97.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, August 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, August 11, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, August 15, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. Separability of Principal and Interest

6.1. Under the Treasury's STRIPS Program (Separate Trading of Registered Interest and principal of Securities), a Note may be divided into its separate components and maintained as such on the book-entry records of the Federal Reserve Banks, acting as Fiscal Agents of the United States. The separate STRIPS components are: each future semiannual interest payment (referred to as an Interest Component) and the principal payment (referred to as the Principal Component). Each Interest Component and the Principal Component shall have an identifying designation and CUSIP number, which are set forth in Attachment A to this circular.

6.2. Attachment A also provides the payable dates for the separate components. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

6.3 For a Note to be separated into the components described in Section 6.1., the par amount of the Note must be in an amount which, based on the stated interest rate of the Note, will produce a semiannual interest payment of $1,000 or a multiple of $1,000. Attachment B to this circular provides the minimum par amounts required to separate a security at various interest rates, as well as the interest payments corresponding to those minimum par amounts. Par amounts greater than the minimum amount must be in multiples of that amount. The minimum par amount for this offering will be provided in the public announcement of the amount and yield range of accepted bids.

6.4. A Note may be separated into its components at any time from the issue date until maturity. A request for separation must be made to the Federal Reserve Bank maintaining the account for the Notes. Once a Note has been separated into its components, the components may be maintained and transferred in multiples of $1,000.

6.5 Interest Components and Principal Components in multiples of $1,000 will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

6.6. Interest and Principal Components of separated securities may be reconstituted, i.e., restored to their fully constituted form, on the book-entry records of the Federal Reserve Banks. A Principal Component and all related unmatured Interest Components, in the appropriate minimum or multiple amounts previously announced, must be submitted together for reconstitution.

6.7. Detached physical interest coupons, coupons held under the CUBES Program, or cash payments may not be substituted for missing Interest or Principal Components. Any reconsitution request which does not comprise all of the necessary STRIPS components in the appropriate amounts will not be accepted.

6.8. The book-entry transfer of each Interest Component and Principal Component included in a reconstitution transaction will be subject to the fee schedule generally applicable to transfers of book-entry Treasury securities.

6.9. Unless otherwise provided in this offering circular, the Department of the Treasury's general regulations governing United States securities apply to the Notes separated into their components.

7. General Provisions

7.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

7.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

7.3. The Notes issued under this circular shall be obligations of the United States, whether held in the fully constituted form or as separate Interest and Principal Components, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

7.4. Attachments A and B are incorporated as part of this circular.

Gerald Murphy,

Fiscal Assistant Secretary.

Attachment A—CUSIP Numbers and Designations for the Principal Component and Interest Components of Treasury Notes of August 15, 1999, Series C–1999, CUSIP No. 912827 XW 7

The Principal Component is designated (Interest Rate) Treasury Principal (TPRN) Series C–1999 due August 15, 1999, CUSIP No. 912820 AT 4.

INTEREST COMPONENTS

Designation	CUSIP No. 912833
Treasury interest (TINT) due:	
February 15, 1990	BF 6
August 15, 1990	BG 4
February 15, 1991	BH 2
August 15, 1991	BJ 8
February 15, 1992	BK 5
August 15, 1992	BL 3
February 15, 1993	BM 1
August 15, 1993	BN 9
February 15, 1994	BP 4
August 15, 1994	BQ 2
February 15, 1995	BR 0
August 15, 1995	BS 8
February 15, 1996	BT 6
August 15, 1996	BU 3
February 15, 1997	BV 1
August 15, 1997	BW 9
February 15, 1998	BX 7
August 15, 1998	BY 5
February 15, 1999	BZ 2
August 15, 1999	CA 6

Attachment B

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000

Coupon (percent)	Minimum face	Interest payment
5.000	$40,000	$1,000
5.125	1,600,000	41,000
5.250	800,000	21,000
5.375	1,600,000	43,000
5.500	400,000	11,000
5.625	320,000	9,000
5.750	800,000	23,000
5.875	1,600,000	47,000
6.000	100,000	3,000
6.125	1,600,000	49,000
6.250	32,000	1,000
6.375	1,600,000	51,000
6.500	400,000	13,000
6.625	1,600,000	53,000
6.750	800,000	27,000
6.875	320,000	11,000
7.000	200,000	7,000
7.125	1,600,000	57,000
7.250	800,000	29,000
7.375	1,600,000	59,000
7.500	80,000	3,000
7.625	1,600,000	61,000
7.750	800,000	31,000
7.875	1,600,000	63,000
8.000	25,000	1,000
8.125	320,000	13,000
8.250	800,000	33,000
8.375	1,600,000	67,000
8.500	400,000	17,000
8.625	1,600,000	69,000
8.750	160,000	7,000
8.875	1,600,000	71,000
9.000	200,000	9,000
9.125	1,600,000	73,000
9.250	800,000	37,000
9.375	64,000	3,000
9.500	400,000	19,000
9.625	1,600,000	77,000
9.750	800,000	39,000
9.875	1,600,000	79,000
10.000	20,000	1,000
10.125	1,600,000	81,000

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face	Interest payment
10.250	800,000	41,000
10.375	1,600,000	83,000
10.500	400,000	21,000
10.625	320,000	17,000
10.750	800,000	43,000
10.875	1,600,000	87,000
11.000	200,000	11,000
11.125	1,600,000	89,000
11.250	160,000	9,000
11.375	1,600,000	91,000
11.500	400,000	23,000
11.625	1,600,000	93,000
11.750	800,000	47,000
11.875	320,000	19,000
12.000	50,000	3,000
12.125	1,600,000	97,000
12.250	800,000	49,000
12.375	1,600,000	99,000
12.500	16,000	1,000
12.625	1,600,000	101,000
12.750	800,000	51,000
12.875	1,600,000	103,000
13.000	200,000	13,000
13.125	320,000	21,000
13.250	800,000	53,000
13.375	1,600,000	107,000
13.500	400,000	27,000
13.625	1,600,000	109,000
13.750	160,000	11,000
13.875	1,600,000	111,000
14.000	100,000	7,000
14.125	1,600,000	113,000
14.250	800,000	57,000
14.375	320,000	23,000
14.500	400,000	29,000
14.625	1,600,000	117,000
14.750	800,000	59,000
14.875	1,600,000	119,000
15.000	40,000	3,000
15.125	1,600,000	121,000
15.250	800,000	61,000
15.375	1,600,000	123,000
15.500	400,000	31,000
15.625	64,000	5,000
15.750	800,000	63,000
15.875	1,600,000	127,000
16.000	25,000	2,000
16.125	1,600,000	129,000
16.250	160,000	13,000
16.375	1,600,000	131,000
16.500	400,000	33,000
16.625	1,600,000	133,000
16.750	800,000	67,000
16.875	320,000	27,000
17.000	200,000	17,000
17.125	1,600,000	137,000
17.250	800,000	69,000
17.375	1,600,000	139,000
17.500	80,000	7,000
17.625	1,600,000	141,000
17.750	800,000	71,000
17.875	1,600,000	143,000
18.000	100,000	9,000
18.125	320,000	29,000
18.250	800,000	73,000
18.375	1,600,000	147,000
18.500	400,000	37,000
18.625	1,600,000	149,000
18.750	32,000	3,000
18.875	1,600,000	151,000
19.000	200,000	19,000
19.125	1,600,000	153,000
19.250	800,000	77,000

MINIMUM FACE AMOUNTS WHICH ARE MULTIPLES OF $1,000 REQUIRED IN ORDER TO PRODUCE INTEREST PAYMENTS THAT ARE MULTIPLES OF $1,000—Continued

Coupon (percent)	Minimum face	Interest payment
19.375	320,000	31,000
19.500	400,000	39,000
19.625	1,600,000	157,000
19.750	800,000	79,000
19.875	1,600,000	159,000
20.000	10,000	1,000
20.125	1,600,000	161,000
20.250	800,000	81,000

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[Department Circular—Public Debt Series—No. 21-89]

Treasury Notes of August 15, 1992, Series T-1992, Washington, August 3, 1989.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximatley $10,000,000,000 of United States securities, designated Treasury Notes of August 15, 1992, Series T-1992 (CUSIP No. 912827 XV 9), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 15, 1989, and will accrue interest from that date, payable on a semiannual basis on February 15, 1990, and each subsequent 6 months on August 15 and February 15, through the date that the principal becomes payable. They will mature August 15, 1992, and will not be subject to call for redemption prior to

maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000 and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500, prior to 1:00 p.m., Eastern Daylight Saving time, Tuesday, August 8, 1989. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, August 7, 1989, and received no later than Tuesday, August 15, 1989.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10 percent. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.250. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Tuesday, August 15, 1989. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Friday, August 11, 1989. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, August 15, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified

above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR. Doc. 89-19055 Filed 8-10-89 10:25 am]

BILLING CODE 4810-40-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316. Please do not send applications for benefits to the above addresses.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on September 13, 1989.

By direction of the Secretary.

Dated: August 2, 1989.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Revision

1. Veterans Benefits Administration
2. Certification of Delivery of Advance Payment and Enrollment (Chapters 30, 32, 34, and 35, Title 38, U.S.C.; Chapter 106, Title 10, U.S.C.; and Section 903, Public Law 96-342)
3. VA Form 22-1999v
4. This form is used by educational institutions' certifying officials to certify delivery of advance payment and to report any changes in enrollment status. The information is used by VA to adjust benefits and, if necessary, to remove a bar to the future payment of benefits.
5. On occasion
6. State or local governments; non-profit institutions; small businesses or organizations
7. 38,500 responses
8. 1/12 hour
9. Not applicable.

Extension

1. Veterans Benefits Administration
2. Enrollment Certification (Under Chapters 30, 32, 34, or 35, Title 38, U.S.C. or Chapter 106, 10 U.S.C.)
3. VA Forms 22-1999, 22-1999-1, 22-1999-2
4. These forms are used by schools and employers to report the enrollment of veterans, servicepersons, selected reservists, and other eligible persons in approved programs of education or training. The data requested is necessary to determine the correct rate of payment.
5. On occasion and for a school term or semester
6. Individuals or households; State or local governments; farms; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations
7. 9,587 responses.
8. 1/6 hour
9. Not applicable.

[FR Doc. 89-18928 Filed 8-11-89; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463, section 10(a)(2), that a meeting of a subcommittee of the Veterans' Advisory Committee on Environmental Hazards will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420 on September 8, 1989. The purpose of the meeting is to assist the Department in the development of Agency policy with respect to veterans' claims for compensation based upon exposure to herbicides containing dioxin compatible with the decision of the court in Nehmer v. Veterans Administration, et al.

The meeting will convene at 9:00 a.m. until 6:00 p.m. in Room 119. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Sylvia Arrington, Veterans Affairs Central Office (phone 202/233-2115) prior to September 1, 1989.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Special Assistant to the General Counsel, Room 1034, Veterans Affairs Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to

clarify submitted material prior to consideration by the Committee.

By direction of the Secretary.

Dated: August 4, 1989.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 89-18929 Filed 8-11-89; 8:45 am]

BILLING CODE 8320-01-M

Small Business Competitiveness Demonstration Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) has been selected to participate in the Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) interim policy directive and test plan implementing title VII of the "Business Opportunity Development Reform Act of 1988."

DATES: Written comments must be received on or before September 13, 1989. Comments will be available for public inspection until September 25, 1989.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 at the above address, between the hours of 8:00 and 4:30 p.m., Monday through Friday (except holidays), until September 25, 1989.

FOR FURTHER INFORMATION CONTACT: Mildred C. Shields, Acquisition Policy Staff, Department of Veterans Affairs, (202) 233-4339.

SUPPLEMENTARY INFORMATION: Title VII of the "Business Opportunity Development Reform Act of 1988" (Pub. L. 100-656 (53 FR 52889)) seeks to test the effectiveness of eliminating set-asides in certain industry groups through the establishment of a new program entitled the "Small Business Competitiveness Demonstration Program." The program has two primary objectives: (1) To demonstrate whether small business firms in certain industry groups can compete successfully on an unrestricted basis for Federal contracts; and (2) to demonstrate whether targeted goaling and management techniques can expend Federal contract opportunities for small business in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. VA has been identified as a participant in the demonstration.

For purposes of the expansion portion of the demonstration program, VA has targeted the following industries:

Code	Description	(Includes FSS) previous FY total amount (000)	Amount to SB (000)	Percent to SB	Targeted increase (per FY)
(8733)	Medical research	$1,101	$85	7	1%
(7373)	Automated information system design and integration services (Formerly R302)	70	0	0	5%
(7371)	ADP acquisition support services		New category		2.5%
(6531)	Real property appraisal services	$1,381	3	.2	2.5%
(7334)	Other photographic mapping and printing services	220	10	4	5%
(7377/7372)	Lease of general purpose ADPE, software, etc.	$1,520	47	3	2.5%
(7359)	Lease of office machines and visible record equipment	838	48	5	2.5%
(7699)	Maintenance of special industry machinery	524	27	5	2.5%
(3842)	Protective clothing: (1) Removal of hazardous materiels (2) Against infectious disease (3) Gloves, patient exam (4) Gloves, surgical.	22,697	414	1	2.5%
(7872)	Film, processed	627	35	5	2.5%

The Director, Office of Small and Disadvantaged Business Utilization will assist procuring activities in locating additional sources through contacts with other Federal agencies, the U.S. Small Business Administration Procurement Automated Source System, trade journals, and attendance at local and Federal procurement conferences. To accomplish the expansion program, acquisitions in excess of $25,000 shall be set-aside for exclusive Small Business participation.

Approved: August 4, 1989.

Edward J. Derwinski,

Secretary.

[FR Doc. 89-18930 Filed 8-11-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 155
Monday, August 14, 1989

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).

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 54, No. 147/Wednesday, August 2, 1989/31917–31918.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, August 8, 1989.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. Item 4. Opinion and Order: Administrator v. Janka and Newman, Dockets SE–8144 and SE–8159; disposition of the Administrator's appeal and Item 5. Opinion and Order: Administrator v. Godwin, Docket SE–8397; **disposition of respondent's appeal were removed from the agenda and Public Hearing: Recommendation for No Hearing re Harrison Road Bridge Collapse in Miamitown, Ohio, May 26, 1989, was added to the agenda as Item 4.**

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382–6525.

Dated: August 8, 1989.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 89–19034 Filed 8–9–89; 4:44 pm]

BILLING CODE 7533-01-M

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1419)

TIME AND DATE: 10 a.m. (EDT), August 16, 1989.

PLACE: TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on July 26, 1989.

Old Business

1. Final Rate Review.

ACTION ITEMS

New Business

A—Budget and Financing

*A1. Call for Early Redemption of TVA Bonds Held by the Federal Financing Bank.

A2. Adoption of Supplemental Resolution Authorizing 1989 Series B Bonds.

A3. Modification to the Capital Budget Financed from Power Proceeds and Borrowings for FY89—Gallatin Fossil Plant Unit 4 for Replacement of Waterwall Tubes.

A4. Modification to the Capital Budget Financed from Power Proceeds and Borrowings for FY89—Paradise Fossil Plant Unit 3 to Rehabilitate Expansion Joints.

B—Purchase Awards

B1. Invitation HE–89659A for 161–kV Main Power Transformer for Bull Run Fossil Plant.

B2. Requisition 75—Short-term Coal for John Sevier Fossil Plant.

B3. Contracts 68P–84–T1 and 71P65–99–1—Fuel Supply for Sequoyah and Watts Bar Nuclear Plants.

C—Power Items

C1. Agreement Covering Arrangements for Purchase of Power from Oberon Resources Corporation.

C2. Replacement Energy Service Schedule Under Interconnection Agreement with Mississippi Power & Light Company.

C3. Revision to 5-percent Interruptible Power Arrangements.

C4. Revised Arrangements for TVA's Financial Support of Regional Industrial Development Associations.

E—Real Property Transactions

E1. Sale of Permanent Easement Affecting Approximately 0.57 Acre of Land on Norris Reservoir in Campbell County, Tennessee.

E2. Transfer of Custody of Approximately 822 Acres of Land on Pickwick Reservoir in Tishomingo County, Mississippi.

F—Unclassified

*F1. Implementation of a Before-Tax Payment Plan for Employee Medical and Dental Contributions.

F2. Supplement No. 2 to Contract No. TV–69085A with Olin Chemicals for Stream Gage Monitoring Assistance.

F3. Supplement No. 1 to Contract No. TV–76008A with U.S. Department of the Army, Corps of Engineers, for the Development of Digital Database for Beaver Lake Water Quality Study.

F4. Contract No. TV–79140T with Tennessee-Tombigbee Waterway Development Council in Columbus, Mississippi.

F5. Filing of a Condemnation Case.

F6. Cooperative Agreement No. TV–78293T with the Electric Power Research Institute.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Coordinator, Governmental and Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: August 8, 1989.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 89–19045 Filed 8–10–89; 9:11 am]

BILLING CODE 8120-01-M

* Items approved by individual Board members. This would give formal ratification to the Board's action.

federal register

Monday
August 14, 1989

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 484

Medicare Program; Home Health Agencies: Conditions of Participation and Reduction in Recordkeeping Requirements; Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 484

[BERC-476-IFC]

RIN # 0938-AD45

Medicare Program; Home Health Agencies: Conditions of Participation and Reduction in Recordkeeping Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: These regulations add to the current conditions of participation for home health agencies (HHAs). Specifically, the regulations specify requirements for protecting and promoting patient rights; training and competency of home health aides; notifying State entities responsible for the licensing or certification of HHAs of changes in ownership of the agency or management of the agency; including an individual's plan of care as part of the individuals' clinical records; and operating and furnishing services in compliance with applicable Federal, State, and local laws and regulations and with accepted professional standards and principles that apply to professionals furnishing home health services.

Most of the provisions of these regulations implement section 930 of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499), section 4021 of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203), and section 411(d) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360).

These regulations also implement, in part, a proposed rule that was published on December 31, 1986 (51 FR 47266) to reduce the information collection and recordkeeping requirements for the conditions of participation for HHAs.

DATES: *Effective date:* These regulations are effective on July 1, 1989 and, except as otherwise provided, apply to services furnished by home health agencies after June 30, 1989. The requirement that HHAs establish a competency evaluation program for home health aides (§ 484.36(b)) is not effective until February 14, 1990, because we recognize that the delay in the promulgation of this interim final rule, without an extension in the effective date, would impose an unacceptable burden on home health agencies and State survey agencies. The requirement that an HHA may only use as a home health aide an individual who has successfully completed a training and competency evaluation program or a competency evaluation program as provided in § 484.36 is effective for home health aide services furnished after August 14, 1990. States are not required to comply with the information collection and reporting requirements in the sections listed in "**SUPPLEMENTARY INFORMATION**" under the heading "Collection of Information Requirements" until the Office of Management and Budget approves them.

Comment period: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 13, 1989.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-476-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC,

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile. (FAX) copies of comments.

In commenting, please refer to file code BERC-476-IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

If you wish to submit comments on the information collection requirements contained in these regulations, you may submit comments to: Allison Herron, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION, CONTACT: Thomas Hoyer, (301) 966-4607.

SUPPLEMENTARY INFORMATION:

I. General Legislative Background

Home health services are furnished to the elderly and disabled under Medicare. They include an array of services such as professional nursing care, physical and occupational therapy, speech pathology, medical social services, home health aide services, and medical supplies and equipment. These services are delivered singly, or in combination, to aid in the recovery from an acute illness or to improve a patient's health status.

The Medicare statute limits payment for home health services to providers of services who have qualified for a Medicare provider agreement as a home health agency (HHA). HHAs must meet all State and local licensure requirements as well as the Medicare conditions of participation. These conditions of participation apply to an HHA as an entity. In addition, as indicated in section 4021 of Public Law 100-203, they also apply to each individual under the care of the HHA, unless a condition is specifically limited to Medicare beneficiaries.

Currently, there are about 5,680 HHAs participating in the Medicare program. The majority of HHAs are visiting nurse associations, other charitable organizations, and State and local public health departments, which had been furnishing home health services to the public before the enactment of Medicare in 1965. With the provision of Medicare financing for these services, several new types of providers entered the home health services field. These new providers include private nonprofit agencies that are organized and operated by individuals, but which have achieved and maintained a tax-exempt status; and proprietary agencies that are privately owned, profit-making agencies.

The growth in the number of HHAs participating in the Medicare program has resulted in the practice of some HHAs hiring personnel who have no prior training or experience in caring for the medical needs of the aged and disabled. Congress found this situation to be particularly prevalent in the case of those HHAs that do not directly employ home health aides, but contract out for those services, sometimes with personnel agencies that supply general temporary help. (See H.R. Rep. No. 1167, 96th Cong., 2d Sess. 369 (1980).) Section 930(l) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96-499), amended section 1861(m)(4) of the Social Security Act (the Act) by modifying the previous definition of the home health benefit that covers services furnished by a home health aide. As amended, section 1861(m)(4) of the Act requires that for Medicare to cover home health aide services, home health aides, whether employed directly by an HHA or made available through contract with another entity, must successfully complete a training program approved by the Secretary.

On December 22, 1987, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) was enacted. Section 4021(a) of Public Law 100–203 amended section 1861(o)(6) of the Act by requiring that HHAs meet the conditions of participation specified in section 1891(a) of the Act that was added by section 4021(b) of Public Law 100–203. As added, section 1891(a) requires an HHA to meet the following conditions:

- Protect and promote the rights of each individual under its care.
- Notify the State entity responsible for the licensing or certification of the agency of a change in ownership, and management of the agency.
- After December 31, 1989, use as a home health aide only individuals who have been determined to be competent to furnish home health aide care.
- Use individuals that meet minimum training standards established by the Secretary to use or demonstrate durable medical equipment.
- Include an individual's plan of care required under section 1861(m) of the Act as part of the individual's clinical records described in section 1861(o)(3) of the Act (currently appears as a condition of participation in 42 CFR 405.1228).
- Operate and furnish services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124 of the Act) and with accepted professional standards and principles that apply to professionals furnishing services in an HHA (currently appears as a condition of participation in 42 CFR 405.1220).

Section 1891(a)(3)(D)(i) of the Act requires the Secretary to establish minimun standards for home health aide training and competency evaluation programs by October 1, 1988.

Section 1891(b) of the Act requires the Secretary to assure that the conditions of participation and requirements specified in or in accordance with sections 1861(o) and 1891(a) of the Act and the enforcement of these conditions and requirements are adequate to protect the health and safety of individuals under the care of an HHA and to promote the effective and efficient use of public moneys.

Section 4039(g) of Public Law 100–203 authorizes the Secretary to issue regulations (on an interim or other basis) as may be necessary to implement the provisions of section 4021 of Public Law 100–203.

On July 1, 1988, Congress enacted the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360). Section 411(d) of Public Law 100–360 amended section 4021 of Public Law 100–203 by—

- Including physical or occupational therapy assistants in the definition of a licensed health professional; and
- Removing from section 1891 of the Act the training standards for the demonstration and use of durable medical equipment and imposing these standards as coverage requirements in section 1861(n) of the Act.

II. Redesignation Table for 42 CFR Part 405, Subpart L

In addition to the other provisions of this regulation, we have redesignated the conditions of participation for HHAs (42 CFR Part 405, Subpart L) as new Part 484. In the preamble to this rule, we refer to the redesignated sections (that is, Part 484) in our discussions of the regulation changes. We have provided below a table for cross-referencing the old and new sections.

Old section	New section
405.1201	484.1
405.1202	484.2
405.1220	484.10
405.1221	484.12
405.1222	484.14
405.1223	484.16
405.1224	484.30
405.1225	484.32
405.1226	484.34
405.1227	484.36
405.1228	484.48
405.1229	484.52
405.1230	484.40

Additionally, we are consolidating the changes to the conditions of participation for HHAs made by section 4021 of Pub. L. 100–203 in this final rule with comment period because we believe that it will be less confusing than the issuance of several different final rules on the conditions of participation for HHAs. The changes for the reduction of information collection and recordkeeping requirements made in response to the proposed rule of December 31, 1986, however, are not subject to formal public comment. We are requesting public comment only on the changes made in response to the Omnibus Budget Reconciliation Act of 1987.

III. Recent Statutory Provisions and Implementing Regulation Requirements

A. Patient Rights Requirements

Section 1891(a)(1) of the Act, as added by section 4021(b) of Pub. L. 100–203, specifies the conditions of participation regarding patient rights that HHAs must meet. HHAs must protect and promote the rights of each individual under their care, including each of the following rights:

- The right to be fully informed in advance about the care and treatment to be furnished by the HHA, to be fully informed in advance of any changes in the care or treatment to be furnished by the agency that may affect the individual's well-being, and (except with respect to an individual determined to be incompetent) to participate in planning care and treatment or changes in care or treatment.
- The right to voice grievances without discrimination or reprisal for voicing grievances with respect to treatment or care that is (or fails to be) furnished.
- The right to confidentiality of the clinical records described in section 1861(o)(3) of the Act.
- The right to have one's property treated with respect.
- The right to be fully informed orally and in writing (in advance of coming under the care of the agency) of:
  - All items and services furnished by (or under arrangements with) the agency for which payment may be made under Medicare;
  - The coverage available for items and services under Medicare, Medicaid, and any other Federal program of which the agency is reasonably aware;
  - Any charges for items and services not covered under Medicare and any charges the individual may have to pay regarding items and services furnished by (or under arrangements with) the agency; and
  - Any changes in the charges or items and services for which the individual may be liable.
- The right to be fully informed in writing (in advance of coming under the care of the agency) of the individual's rights and obligations under Medicare.
- The right to be fully informed of the availability of the State HHA hotline established under section 1864(a) of the Act.

1. *Standard:* Providing notice of rights and documenting observance.

We will require HHAs to—

- Provide patients with written notice of their rights under this condition of participation in advance of furnishing care to patients or during the initial evaluation visit but before treatment is given (§ 484.10(a)(1)).
- Maintain documentation that shows that they have complied with their obligations to notify patients of their rights (§ 484.10(a)(2)). This requirement is necessary so that State surveyors will be able to determine if HHAs are complying with these requirements.

2. *Standard:* Exercise of rights and respect for property.

The regulations—

• Specify that patients have the right to exercise their rights as patients of HHAs (§ 484.10(b)(1)).

• Permit a patient's family or guardian to exercise the patient's rights when a patient has been judged incompetent [§ 484.10(b)(2)]. The Report of the Committee on the Budget, House of Representatives that accompanied Pub L. 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 411 (1987)] indicates that it is the intent of Congress that a patient's family or guardian be permitted to exercise his or her rights if the patient is judged incompetent.

• Specify that patients have the right to have their property treated with respect [§ 484.10(b)(3)].

• Provide patients the right to voice grievances regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of an HHA without discrimination or reprisal for doing so (§ 484.10(b)(4)).

• Require HHAs to investigate complaints made by a patient or the patient's family or guardian regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for a patient's property by anyone furnishing services on behalf of the HHA. HHAs also must document both the existence of complaints and resolutions (§ 484.10(b)(5)). We believe that it is the intent of Congress that HHAs both protect patients from retribution if they voice grievances about the care furnished by an agency or organization under arrangement with an HHA, and act to resolve any complaints by patients about their care or loss of property. The Report of the Committee on the Budget, House of Representatives that accompanied Pub L. 100–203 (H.R. Rep. No. [illegible] Congress, 1st Session 412 (1987)) [illegible] Congress believes that HHAs should be encouraged to solicit their opinions on quality of care as a means of ensuring the provision of quality home health services. We also intended to place responsibility for ensuring patients' rights and property treated with respect on HHAs furnishing services directly. We feel that Congress intended HHAs to be responsible for resolving complaints made by patients regarding the care or treatment or a lack of respect for a patient's property by someone furnishing services on behalf of an HHA.

3. *Standard:* Right to be informed and to participate in planning care and treatment.

The regulations—

• Provide that patients have the right to be informed orally and in writing in advance about the care and treatment to be furnished, and to be informed in advance of any changes in the care and treatment to be furnished (§ 484.10(c)(1)).

• Require HHAs to advise patients, in advance of furnishing treatment or services, of the disciplines that will furnish care, and the frequency of visits proposed to be furnished (§ 484.10(c)(1)(i)). We believe that this requirement meets the intent of Congress as expressed in the committee report language. Specifically, the Report of the Committee on the Budget, House of Representatives that accompanied Public Law 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 411 (1987)] indicates with respect to the beneficiary's right to receive a full and complete explanation of care and treatment to be delivered, that:

> Such an explanation is to be provided by the HHA with whom a beneficiary has contracted for services and is to be given before treatment is scheduled to begin and before any recommended changes in care are put into place. It is the Committee's intent that an adequate explanation to a beneficiary include, at a minimum, a description of the services to be provided, a proposed service delivery schedule, and a discussion of any options that may be available for an alternative course of action that is in compliance with the physician's plan of care but may better meet the specific needs of the individual.

• Require HHAs to advise patients of any planned changes to the care or treatment before the changes occur [§ 484.10(c)(1)(ii)]. We believe that this requirement also is intended by the Congress to be included in these regulations as required by the previously cited [illegible] language.

• Specify that patients have the right to be informed regarding care or treatment that is [illegible] in the planning of the treatment and that HHAs must protect patients of that right. The regulations also require patients to participate in planning changes in treatment (§ 484.10(c)(2)).

4. *Standard:* Confidentiality of medical records.

The regulations—

• Specify that patients have the right to confidentiality of the clinical records maintained by HHAs (§ 484.10(d)).

• Require that HHAs advise patients of an agency's policies and procedures regarding disclosure of clinical records (§ 484.10(d)).

5. *Standard:* Notification of liability for payment.

The regulations specify that patients have the right to be advised, and that HHAs must advise patients—

• Orally and in writing of the extent to which payment can be expected to be made for items or services to be furnished to patients by Medicare, Medicaid, and any other program in the State that is funded all or in part with Federal funds of which an HHA is reasonably aware (§ 484.10(e)(1)).

• Orally and in writing of the amount of charges for items and services that an HHA expects will not be covered by Medicare and the amount of any charges the individual may have to pay regarding services furnished by (or under arrangements with) an HHA (§ 484.10(e)(2)).

• Of any changes that occur in the information provided to patients under this standard as soon as possible but no later than 15 working days after an HHA becomes aware of a change (§ 484.10(e)(3)). While section 1891(a)(1)(E)(iv) of the Act requires that patients be informed of any changes in the charges for services, we are specifically requiring that notice of changes be made within 15 days since we believe that that timeframe is reasonable for HHAs to meet. We considered providing a longer timeframe for notification of changes. However, we were concerned that a longer timeframe would increase the potential beneficiary liability for charges that the patient had previously been advised would be covered. A longer timeframe also might increase significantly the liability of a patient for charges that may be increased after the start of care (for example, a price increase in charges for all patients that occurs after the initial notice of charges). We also considered imposing a shorter timeframe. However, this action also would have increased the potential of patient liability since agencies would be able to delay advising patients of changes indefinitely. We request specific public comment on this timeframe.

6. *Standard:* State-wide health hotline.

The regulations require that all patients have the right to be advised of the number of the HHA hotline in the State and require that at the time HHAs accept patients for treatment or care, HHAs must advise patients in writing of the telephone number of the HHA hotline established by the State, the hours of its operation, and its purpose (§ 484.10(f)). While section 1891(a)(1)(G) of the Act specifies that patients have the right to be informed of the

availability of the State HHA hotline, the Report of the Committee on the Budget, House of Representatives that accompanied Public Law 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 414 (1987)) states "that agencies inform beneficiaries of the availability of the hotline, including the actual number of the hotline and the hours during which it is in service. Agencies should also explain the purpose of the hotline so that beneficiaries can make appropriate use of it."

B. Home Health Aide Training and Competency Requirements

Section 4021(b) of Public Law 100–203, adds section 1891(a)(3) to the Act and specifies that—

- Beginning January 1, 1990, HHAs must not use as home health aides (on a full-time, temporary, per diem, or other basis), individuals to furnish home health services, unless the individuals have completed a training and competency evaluation program or a competency evaluation program, that meets the minimum standards established by the Secretary under 1891(a)(3)(D) of the Act, and are competent to furnish home health services. If the individual has not been employed as a home health aide for a continuous period of 24 consecutive months since completing a program, then the individual is not considered to have completed either a training and competency evaluation program, or a competency evaluation program (sections 1891(a)(3) (A) and (C)).
- HHAs must provide a competency evaluation program and necessary preparation for home health aides employed as of July 1, 1989 to complete the program by January 1, 1990 (section 1891(a)(3)(B)(i)).
- HHAs must provide regular performance reviews and in-service education to assure the competency of home health aides (section 1891(a)(3)(B)(ii)).
- The Secretary must establish minimum standards for training and competency evaluation programs by October 1, 1988, that address the content of the curriculum, minimum hours of training, qualification of instructors, and procedures for determination of competency (sections 1891(a)(3)(D) (i) and (ii)). The standards may permit approval of programs offered by or in HHAs (if they have not been out of compliance with any condition of participation in the last two years), as well as outside agencies (including employee organizations), and of programs in effect on December 22, 1987, which met the standards established by the Secretary (section 1891(a)(3)(D)(iii)). Individuals completing a training and competency evaluation program before July 1, 1989 will be deemed to have completed a program approved by the Secretary if the Secretary determines that the program meets the Secretary's standards (section 1891(a)(3)(D)(iv)).

1. *Definition of "home health aide".* We have revised § 484.4 to define the term "home health aide" as any individual who has successfully completed a training program that meets the requirements of § 484.36(a) and a competency evaluation program that meets the requirements of § 484.36(b), or a competency evaluation program that meets the requirements of § 484.36(b). We believe that Congress intended that to function as a home health aide, an individual must meet the requirements of section 1891(a)(3) of the Act.

Section 1891(a)(3) of the Act states specifically, that a "home health aide" is any individual who has successfully completed a training and competency evaluation program *or* a competency evaluation program that meets the requirements established by the Secretary. Hence, as long as an individual has successfully completed a competency evaluation program that meets the requirements established for those programs in § 484.36(b), the individual is considered to be a "home health aide", regardless of whether he or she has also completed a training program that meets the requirements of § 484.36(a). However, any training offered by an HHA or any other entity that is designed to enable an individual to successfully complete the competency evaluation program must meet the requirements of § 484.36(a) to be considered to be approved by the Secretary.

2. *Condition of participation:* Home health aide services.

Section 484.36 is revised to require that HHAs may not use (on any basis, directly or under arrangements with another organization), any individual who does not meet the definition of "home health aide" in § 484.4 to furnish home health aide services after August 14, 1989.

3. *Standard:* Home health aide training.

The regulations specify—

- The requirements that a home health aide training program must meet (§ 484.36(a)).
- The content requirements for home health aide training programs (§ 484.36).
- That an aide training program must, at a minimum, include 75 hours of a combination of classroom and supervised practical training as described in § 484.36(a)(1). The classroom training may be conducted in an HHA; we are not requiring that the classroom training be provided in an academic setting. The training program must contain no fewer than 16 hours of supervised practical training. The individual being trained must have completed at least 16 hours of classroom training before beginning supervised practical training (§ 484.36(a)(1)).

We have established a requirement for 75 hours of total training to conform to the statutory requirement regarding hours of training for nurses' aides in Medicare and Medicaid certified nursing facilities of various types. Sections 1819(f)(2)(A)(i)(II) and 1919(f)(2)(A)(i)(II) of the Act require that nurses' aides must have received a minimum of 75 hours of initial training in order to function as nurses' aides in these facilities. We adopted the statutory standard for hours of training for nurses' aides in these facilities because we believe that it is appropriate to require the same amount of training for home health aides as for nurses' aides in these facilities. Nurses' aides in these facilities furnish essentially the same services to inpatients and residents of these facilities as home health aides furnish to patients in their homes. Since the statute specifies 75 hours as the minimum amount of training for nurses' aides, we believe that this amount of training is equally applicable to home health aides.

In addition, we have required that at least 16 hours of training be supervised practical training because we believe that hands-on experience is essential to learning how to furnish these services. We have defined "supervised practical training" as meaning training in a laboratory or other setting in which the trainee performs tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse. Supervised practical training could occur in the course of furnishing services to patients as long as the trainee was accompanied and observed by a registered nurse or a licensed practical nurse who retained responsibility for the services being furnished.

- That the home health aide training program must include each of the following subject areas:
  - Communication skills.
  - Observation, reporting, and documentation of patient status and the care or services furnished.
  - Reading and recording temperature, pulse, and respiration.
  - Basic infection control procedures.
  - Basic elements of body function and changes in body function that must be reported to an aide's supervisor.
  - Maintenance of a clean, safe, and

healthy environment.
Recognizing emergencies and knowledge of emergency procedures.
The physical, emotional, and developmental characteristics of the populations served by the HHA, including the need for respect for the patient, his or her privacy, and his or her property.
Appropriate and safe techniques in personal hygiene and grooming, including: bed bath; sponge, tub, or shower bath; shampoo, sink tub, or bed; nail and skin care;. oral hygiene.
Safe transfer techniques and ambulation.
Normal range of motion and positioning.
Adequate nutrition and fluid intake.
Any other task that the HHA may choose to have the home health aide perform (§ 484.36(a)(1)).

We believe that these topics must be addressed for an individual to be able to function appropriately as a home health aide. These subject areas are a composite of the areas included in the home health aide training standards of the Joint Commission for Accreditation of Health Organizations (freestanding home care standards for 1988), the model curriculum of the National Homecaring Council (now under the auspices of the Foundation for Home Care), and the National League for Nursing (standards for accredited HHAs). Thus, we believe that these areas represent, to the degree possible, the current industry standards regarding the curriculum that is necessary to ensure a minimum level of quality of home health aide services. HHAs are, of course, free to instruct aides in additional areas of concern to them and to provide training of a duration that exceeds the mimimum required by these regulations.

• That a home health aide training program may be offered by any organization (for example, an HHA) except as specified in § 484.36(a)(2)(iii) (§ 484.36(a)(2)(i)).

• The qualifications for instructors of home health aide training and supervision (§ 484.36(a)(2)(ii)).

• That home health aide training programs that are offered by or in an HHA that has been determined to be out of compliance with one or more conditions of participation within any of the 24 months prior to the start of the training program do not meet the training program requirements (§ 484.36(a)(2)(i)).

These provisions are supported by section 1891(a)(3)(D)(iii) of the Act and the legislative history. The Report of the Committee on Energy and Commerce, House of Representatives that accompanied Public Law 100-203 (H.R. Rep. No. 391, 100th Congress, 1st Session 416 (1987)) further states that—"It should be emphasized that the Committee intends for these agencies to have been in compliance with all—not most—the conditions of participation. Medicare certification—which can be awarded even when an agency has not met all the participation requirements—alone, is [n]ot sufficient to grant recognition of a training program offered by or in that agency."

Therefore, we believe that it is the intent of Congress that the only entities restricted from furnishing home health aide training are HHAs that have been out of compliance with one or more conditions of participation at any point within the previous two year period. Those HHAs are limited to hiring home health aides that already meet the training standards or arranging for training of home health aides through contracts with organizations to which the HHAs are not directly or indirectly related as defined in regulations at § 413.17.

While the statute and the committee reports preclude acceptance of home health aide training programs provided "by or in" HHAs that have been out of compliance with any of the conditions of participation, we do not believe that it was the intent of Congress to preclude HHAs from arranging for training and competency evaluation programs that meet these standards through contracts with entities to which they are not related. The effect of a prohibition against use of a contract to acquire training may be the loss of access to home health aide services if HHAs are unable to hire aides who are already trained.

• That the training of home health aides and the supervision of home health aides during the supervised practical portion of the training be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience. At least 1 year of nursing experience must be in the provision of home health care, and the registered nurse must have had at least 6 months experience supervising home health aide services (§ 484.36(a)(2)(ii)). We believe that this level of expertise is necessary as a minimum requirement for the individual who will be responsible for the training of home health aides. We believe that only a registered nurse with this level of experience and expertise will be able to oversee properly the training of home health aide trainees due to the nature and diversity of the curriculum.

The regulations, however, permit the use of individuals to supplement the instruction as long as they function under the supervision of a qualified instructor. For example, a licensed practical nurse could provide the home health aide training under the supervision of a registered nurse who has 2 years experience in home health care and at least 6 months experience in training home health aides. In addition, § 484.36(b)(5)(iv) permits licensed practical nurses, as well as registered nurses, to supervise home health aide candidates in the course of the supervised practical training required by § 484.36(a)(1). However, a registered nurse must maintain overall responsibility for the training of all home health aide candidates, and is required by § 484.36(b)(3)(ii) to perform the competency evaluation of home health aides.

• That HHAs must maintain documentation that the requirements relating to the training program are met (§ 484.36(a)(4)). We believe that this documentation is necessary for the Medicare State surveyor and the Secretary to determine if the home health aides used by an HHA meet the requirements of these regulations.

A home health aide will be considered to have completed a training and competency evaluation program that was approved by the Secretary if the home health aide has successfully completed a training and competency evaluation program that the Secretary determines met the requirements of this standard and the competency evaluation standard at § 484.36(b) at the time the aide completed it. Therefore, home health aides who have already complied with these requirements need not be retrained and reevaluated to be considered to be "home health aides." However, HHAs must document that all of these requirements were met by the training and competency evaluation programs that aides successfully completed. In making these determinations, past in-service training and supervisory evaluation visits that occurred when the supervisor observed the aide furnishing care, can be considered "supervised practical training."

3. *Standard:* Competency evaluation procedures.

These regulations—

• Address the frequency of competency evaluations (§ 484.36(b)(1)).

• Specify that individuals may furnish home health aide services on behalf of an HHA only after they have

successfully completed a competency evaluation program. HHAs are responsible for ensuring that the individuals who furnish home health aide services on their behalf meet the competency requirements (§ 484.36(b)(1)(i)).

This requirement implements the intent of Congress that home health aides must be found to be competent before they may furnish home health aide services, and that HHAs are responsible for using only competent home health aides. Specifically, the Report of the Committee on the Budget, House of Representatives that accompanied Public Law 100-203 (H.R. Rep. No. 100-391, 100th Congress, 1st Session 417 (1987)) states that—

"It is the Committee's intent that such determinations of competency are to be made before an aide can be allowed to provide a particular type of care or service."

Moreover, page 416 of the Report states that—

"As the Committee amendments state, home health agencies themselves are responsible for ensuring that their aides are, in fact, trained and competent."

• Require that HHAs complete a performance review of each home health aide no less frequently than every 12 months. The performance review must meet each of the requirements for the competency evaluation as set forth in § 484.36(b) (§ 484.36(b)(1)(ii)).

Section 1891(a)(3)(B)(ii) requires that there be periodic performance evaluation of home health aides. We chose to require that this review occur no less than every 12 months because we understand that annual performance reviews are the norm for entities that currently perform these reviews, and we believe that annual reviews are adequate to assess competency. We expect that periodic performance reviews will be completed once per year based on the information that supervisors gather in the course of performing supervisory visits throughout the year, and by interviewing home health aides about areas that aides may not have had to demonstrate competency during the year, such as emergency procedures.

• Provide that a home health aide competency evaluation program may be offered by any organization except in an HHA that has been determined to be out of compliance with one or more of the requirements of part 484 within any of the 24 months before the training program is to begin (§ 484.36(b)(3)(i)). Section 1891(a)(3)(D)(iii) of the Act and the Committee language that apply to when HHAs may not train home health aides, as discussed in reference to § 484.36(a)(2)(i), also apply to competency evaluation programs for home health aides. Therefore, HHAs that are precluded from training their home health aides are also precluded from conducting competency evaluations for those aides.

• Specify that home health aide competency evaluation programs that are offered by or in HHAs that have been determined to be out of compliance with one or more of the conditions of participation within any of the 24 months prior to the competency evaluation do not meet the requirements of these regulations (§ 484.36(b)(3)(iii)).

• Require that competency evaluations be performed by a registered nurse. We believe that only a registered nurse is capable of determining if an aide is competent to furnish care.

• Require HHAs to maintain documentation that the requirements relating to competency evaluation are met (§ 484.36(b)(5)(i)). We believe this documentation is necessary in order for the Medicare State surveyor and the Secretary to determine if home health aides used by HHAs meet the requirements of these regulations.

• Require that a registered nurse must evaluate the competency of each aide with respect to the topics identified in § 484.36(a)(1) (ii) through (xiii) and any other task an agency chooses to have an aide perform after observation of an aide's performance of the task with a patient (§ 484.36(b)(5)(ii)). We believe that, to protect patient health and safety, it is essential that a home health aide's competency be demonstrated in each task that an HHA would have the home health aide perform. Moreover, we believe that it is necessary that a registered nurse perform evaluations by observing a home health aide performing the task for which the aide is being evaluated. We do not believe that written examinations alone can satisfactorily determine whether aides are competent to furnish patient care. We believe that these requirements comply with the stated intent of Congress. Specifically, the Report of the Committee on the Budget, House of Representatives that accompanied Public Law 100-203 (H.R. Rep. No. 391, 100th Congress, 1st Session 417 (1987)) states that—

"Among the key issues that must be addressed is the level of competency that is to be determined before services can be provided. In setting such standards, however, it should be made clear that the Committee does not intend to require that all home health aides be competent to provide all types of home health services. It does intend, however, that each individual aide be qualified to deliver each individual service or perform each individual task for which he or she is responsible. For example, an aide who, among other things, is expected or required to turn patients who are confined to bed, must be determined to be competent in that job in order for this requirement to be met. Similarly, this mandate would require that an aide who also is responsible for assisting in transferring patients from their bed to a wheelchair or for helping to bathe them must be determined to be competent in those tasks. It is the committee's intent that such determinations of competency are to be made before an aide can be allowed to provide a particular type of care or service."

• Specify that home health aides must not be considered to have successfully passed competency evaluations if the aides are determined by a qualified individual performing the evaluation to be unsatisfactory in more than one of the topics evaluated (§ 484.36(b)(4)(ii)). We believe that the establishment of a certain minimal level of competency is not inconsistent with Congress' intent that only competent persons provide home health aide services. We recognize that an unsatisfactory showing in only one of the areas does not necessarily prevent an aide from being competent to furnish services for which he or she has demonstrated competence. However, section 1891(a)(3)(A) of the Act specifies that the agency must use as home health aides only individuals who have "completed a training and competency evaluation program, or a competency evaluation program, that meets minimum standards established by the Secretary * * * and is competent to provide such items and services." We believe that a minimum standard of satisfactory completion of the competency program is necessary in order to determine if an individual who has completed a competency evaluation program is competent to furnish services. We considered specifying topic areas that would have to be satisfactorily completed for the aide to be determined competent to function. However, we chose to impose a requirement that any individual who is found unsatisfactory in more than one of the required topics will not be considered to have completed a competency evaluation program until he or she has been found satisfactory in at least 11 of the required topics. We request specific public comment regarding this minimum standard of completion of the program.

• Require that home health aides cannot be considered competent in any task for which they are evaluated as "unsatisfactory," and may not perform that task as home health aides without direct supervision of a licensed nurse

until they receive remedial training and have passed with a subsequent evaluation of satisfactory (§ 484.36(b)(5)(iv)).

Section 1891(a)(3)(C) of the Act precludes the use of home health aides who have not demonstrated competency in the services that they furnish. Moreover, we believe that this restriction is clearly the intent of Congress as reflected in the committee report language quoted with regard to § 484.36(b)(4)(i) and (ii) above. The requirement, however, permits the use of a licensed nurse (that is, a registered nurse, a licensed practical nurse, or a licensed vocational nurse) to accompany a home health aide candidate in the provision of hands on care as part of the 16 hours of supervised practical training required for a home health aide training program to meet the Federal requirements at § 484.36(a).

- Require home health aides to receive no less than 3 hours of in-service training per calendar quarter. This in-service training must be provided by a qualified instructor as defined in § 484.36(a)(2)(ii) and may occur while an aide is furnishing care to patients (§ 484.36(b)(7)). Section 1891(a)(3)(B)(ii) of the Act also requires that there be regular in-service training of home health aides. We believe that 3 hours of in-service training per calendar quarter is the minimum that could effectively meet the intent of Congress. HHAs have considerable latitude in determining when this in-service training can occur.
- Require HHAs to implement a competency evaluation program that meets the requirements of these regulations no later than February 14, 1990, and provide preparation as may be necessary for an individual to successfully complete a program after August 14, 1990 (§ 484.36(b)(5)). After August 14, 1990, home health aide services must be furnished by a home health aide as defined in § 484.2. We have extended these statutory effective dates by 6 months each because of the delay in promulgating this interim final rule.

When home health aides have successfully completed an initial competency evaluation program before February 14, 1990, that the Secretary determines met the requirements of § 484.36(b) at the time the aides successfully completed it, then the home health aides will be considered to have successfully completed an initial competency evaluation program approved by the Secretary. Therefore, home health aides who have already complied with a competency evaluation program that meets the requirements of this standard need not complete another initial competency evaluation to be considered to be home health aides.

C. Plan of Treatment

Section 1891(a)(5) of the Act, as added by section 4021(b) of Public Law 100–203, requires HHAs to include "an individual's" plan of care required under section 1861(m) of the Act as part of the patients' clinical records. Section 405.1223 (now recodified at § 484.16) requires that care follow a plan of treatment established and reviewed periodically by a physician, and defines the minimum content of the plan of treatment. The content and periodic physician review requirements governing the "plan of treatment", which are required by the conditions of participation at § 484.16, are identical to the content and periodic physician review requirements of the plan, which section 1861(m) requires be present for the services to be covered. The effect of the statutory provisions is, therefore, to rename the "plan of treatment" as "plan of care". This is not to be confused with the nursing care plan, which is sometimes called a "plan of care". The conditions of participation do not require that an HHA develop or maintain a "nursing care plan".

Consequently, we have changed the term "plan of treatment" to "plan of care" to comply with section 4021 of Public Law 100–203. As revised, § 484.48 requires that plans of care as described in § 484.18(a) be included in patients' clinical records.

D. Federal, State, and Local Laws and Regulations and Accepted Standards of Practice

Section 1891(a)(6) of the Act, as added by section 4021(b) of Public Law 100–203, requires HHAs to operate and furnish services in compliance with all applicable Federal, State, and local laws and regulations, and with accepted professional standards and principles that apply to professionals furnishing home health services. Section 1891(a)(2) of the Act requires HHAs to notify State survey agencies of changes in the persons with an ownership or control interest; the persons who are officers, directors, agents, or managing employees (as defined in section 1126(b) of the Act); and the corporation, association, or other company responsible for the management of an HHA. We have implemented these statutory requirements in § 484.12, which previously was limited to compliance with Federal, State, and local laws and regulations.

These regulations implement the statute by—

- Requiring HHAs and their staff to operate and furnish services in compliance with all applicable Federal, State, and local laws and regulations. If State or applicable local laws provide for licensure of HHAs, HHAs not subject to licensure must be approved by the licensing authority as meeting the standards established for licensure (§ 484.12(a)).
- Requiring HHAs to comply with the requirements of part 420, subpart C (§ 484.12(b)). (Subpart C implements section 1124 of the Act).
- Requiring that HHAs disclose the information specified in § 484.12(b) (i) through (iii) to State survey agencies at an HHA's initial request for certification, and at the time of any change in this information (§ 484.12(b)). The Report of the Committee on Energy and Commerce, House of Representatives that accompanied Public Law 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 414 (1987)) indicated that Congress intended that HHAs notify State survey agencies of these changes at the time they take place (page 414 of that Report). Moreover, section 1891(a)(2) of the Act specifically states that this notice must be given "at the time of the change".
- Requiring HHAs to notify State agencies of the names and addresses of all persons with an ownership or control interest in an HHA as defined in §§ 420.201, 420.202, and 420.206 (§ 484.12(b)(1)). Regulations at §§ 420.201, 420.202, and 420.206 implement section 1124(a)(3) of the Act and therefore have been cross referenced here.
- Requiring HHAs to notify State survey agencies of the names and addresses of each person who is an officer, a director, an agent, or a managing employee of an HHA as defined in §§ 420.201, 420.202, and 420.206 (§ 484.12(b)(2)). Regulations at §§ 420.201, 420.202, and 420.206 implement section 1126(b) of the Act and therefore have been cross referenced here.
- Requiring HHAs to notify State survey agencies of the names and addresses of the corporation, association, or other company that is responsible for managing an HHA, and the names and addresses of the chief executive officer and the chairpersons of the boards of directors of that corporation, association, or other company responsible for managing an HHA (§ 484.12(b)(iii)). We believe that these requirements are necessary to clearly identify where the responsibility for the management of HHAs lies. In our experience, there are frequently

extremely complex corporate arrangements, involving multiple layers of ownership and management, which cause it to be extremely difficult to identify the entity that is legally responsible for the management of a provider. We believe it is the intent of Congress that the licensing entity be advised of the names and addresses of the individuals who are ultimately responsible for the management of an HHA so that they have the information necessary to evaluate the HHA before licensing. We believe that the names and addresses of the chief executive officer and the chairperson of the board of directors of the corporation, association, or other company that is responsible for managing an HHA are necessary to this review. We believe that this requirement is supported by the Report of the Committee on Energy and Commerce, House of Representatives that accompanied Public Law. 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 414 (1987)), which states that—

The Committee believes these new requirements must be established in order to provide licensing agencies with important and relevant information that should be considered as part of the licensing process. With the number of home health agencies growing at an annual rate of some 20 to 25 percent, there is an increasing need for licensing officials to have access to information about who owns and manages agencies that serve a vulnerable population and that receive public dollars. The backgrounds of individuals who have, for example, been convicted of fraud or fined for violating program strictures in the past should be reviewed carefully before a license to operate is granted or renewed. Similar action should be taken with regard to the records of organizations or companies that have owned or managed home health agencies (or other health facilities such as a nursing home) that have been previously de-certified from participation in either the Medicare or Medicaid program. But unless licensing bodies receive notice of changes in ownership or management, such investigations are more difficult to undertake.

- Requiring that HHAs and their staff comply with accepted professional standards and principles that apply to professionals furnishing items and services in HHAs. The Report of the Committee on Energy and Commerce, House of Representatives that accompanied Public Law 100–203 (H.R. Rep. No. 391, 100th Congress, 1st Session 415 (1987)), states that—

The Committee intends such standards and principles to include those that are applicable to the delivery of professional services in a home health care setting, as well as the more general standards and principles with which a member of a particular health profession is expected to comply.

F. Deletion of Addenda to § 405.1221(d)

We have deleted from the appendix to the home health conditions of participation, the addenda to § 405.1221(d) that identifies specific State requirements that States had imposed upon HHAs as Federal conditions of participation because they were considered to be higher than the Federal requirements. This appendix is being deleted because section 1891(a)(2) of the Act, as amended by Public Law 100–203, requires that HHAs comply with all applicable Federal, State, and local laws and regulations. We believe that the specified State requirements contained in the appendix are all requirements of State or local laws and regulations that apply to HHAs. Therefore, section 1891(a)(2) of the Act, as amended by Public Law 100–203, requires that the more stringent requirements contained in the appendix (as well as applicable State or local laws and regulations that have not been published in the appendix) must be met by HHAs so that they can be certified to participate in the Medicare program. Hence, there is no need to publish them in an appendix to the conditions of participation.

IV. Reduction in Information Collection and Recordkeeping Requirements

A. Background

Regulations at 5 CFR 1320.14 implement the requirement of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) that authorizes the Office of Management and Budget (OMB) to review all information collection and recordkeeping requirements in Federal regulations. On December 31, 1986, we published a proposed rule (51 FR 47266) that responded to OMB's request for changes to reduce or simplify recordkeeping requirements within the conditions of participation for HHAs, independent laboratories, providers of outpatient physical therapy, physical therapists in independent practice, and providers of outpatient speech therapy. The proposed rule also solicits public comments on those changes as well as on all recordkeeping requirements. contained in 42 CFR part 405, subparts L, M, and O.

B. Analysis of Comments Received on December 31, 1986 Proposed Rule

Each condition of participation and standard identified in the proposed rule contains requirements other than the paperwork burden reduction requirements on which the proposed rule was based. There were many comments regarding issues that were not related to reducing the paperwork burden requirements. While we have taken these other comments under advisement, we have not adopted them in this final rule, nor have we responded to them in this preamble. We are unable to adopt the commenters' suggestions on requirements other than those that we specifically addressed in the proposed rule because to do so would be to adopt them without providing an opportunity for public comment. We will, however, consider the recommendations of the commenters before proposing future changes to the conditions of participation.

Concerning the reduction of information collection and recordkeeping requirements for the conditions of participation for HHAs, we received comments from 69 commenters, which included professional organizations and associations, HHAs, physical therapists, rehabilitation agencies, public health departments, State governmental agencies, universities, and private individuals. We have summarized below the major provisions of the proposed rule that relate to the conditions of participation for HHAs and for which comments were received. A summary of those comments and our responses follow an explanation of each provision.

1. *Condition of participation:* Organization, services, administration—Standard: Personnel policies and records (§ 405.1221(e)).

Section 405.1221(e) requires that HHA personnel records include current job descriptions, qualifications, evidence of licensure (if applicable), performance evaluations, and health examinations. We proposed to revise these requirements to require that HHA personnel records retain only qualifications and evidence of State licensure (if applicable).

Comments: —Many commenters supported the reduction of this information, however other commenters objected to this reduction. Those who objected stated that elimination of these requirements would minimize an HHA's control over individuals who furnished services under arrangements with an HHA. They indicated that the elimination of these requirements would result in the use of less qualified personnel and that patient outcomes could suffer as a result. Commenters also stated that evidence of health examinations is important to increasing the likelihood that persons furnishing home health care are free from disease that could be communicated to patients.

Response: We have decided to revise the current requirements as we had proposed. We expect that the emphasis

of both HHAs and surveyors will be on the outcome of patient care, rather than on the content of personnel files. We are requiring that personnel records include only qualifications and licensure information because we believe that only those records directly impact the quality of patient care.

2. *Condition of participation:* Organization, services, administration—Standard: Personnel under hourly or per visit contracts (§ 405.1221(f)).

Section 405.1221(f)(1) specifies that, if personnel under hourly or per visit contract are used by an HHA, a written contract must exist between the two parties that designates clearly:

(i) That patients are accepted for care only by the primary HHA;

(ii) The services that are to be provided;

(iii) The need to conform to all applicable agency policies including personnel qualifications;

(iv) The responsibility for participating in developing plans of treatment;

(v) The manner in which services will be controlled, coordinated, and evaluated by the primary HHA;

(vi) The procedures for submitting clinical and progress notes, scheduling of visits, periodic patient evaluation; and

(vii) The procedures for determining charges and payment.

Section 405.1221(h) specifies the requirements to be met by an HHA that furnishes services under an arrangement with another entity. Specifically, there must be a written contract between an HHA and another entity that meets the requirements of § 405.1221(f)(1) and section 1861(w) of the Act. Therefore, any revisions to the requirements of § 405.1221(f)(1) also revise the content of the contracts between an HHA and an entity that provides services on behalf of the HHA under arrangements in accordance with section 1861(w)(1) of the Act.

We proposed to revise § 405.1221(f) by removing the explicit contractual requirements, such as the designation of the procedures for submission of clinical records, and the manner in which the services would be controlled, coordinated, and evaluated by the agency. We proposed to require that personnel under contract be held accountable for meeting the same agency requirements as salaried personnel as set forth in subpart L (§ 405.1221(f)(3), 51 FR 47271).

Comments: Several commenters requested that we delete any specifications for these contracts. Other commenters requested that we retain § 405.1221(f)(1)(v) because in the commenters' opinions, it is essential that a contract address the manner in which care is controlled, coordinated, and evaluated since the contract provisions apply to services provided under arrangements with another entity. Other commenters opposed the requirement at § 405.1221(f)(1)(vii) that the contracts address "procedures for determining charges and reimbursement". Another commenter objected to the requirement in § 405.1221(f)(1)(iii) that the personnel conform to all applicable agency personnel policies, because the commenter believes it is often difficult to do so. Another commenter recommended that we consult with the Department of Labor and the Internal Revenue Service (IRS) to avoid conflict with labor laws and IRS laws for contract workers. However, this commenter did not specify any conflicts caused by these regulations.

Response: Upon reconsideration, we have not removed any of the contract requirements between an HHA and personnel paid on a per hour or per visit basis (§ 405.1221(f)) and between an HHA and entities that furnish services under arrangements on behalf of an HHA (§ 405.1221(h) through its reference to § 405.1221(f)(1)). We chose not to eliminate these requirements as a result of the OIG study of home health aide services described earlier. This study revealed widespread problems in the provision of home health aide services, and found a significantly disproportionate share of the problems with the services of home health aides who furnish services under an arrangement between an HHA and another entity.

The most frequently occurring problem is that home health aides who are not employees of an HHA do not perform all of the tasks that a physician orders the aides to perform. OIG found that the supervision of these aides, in particular, is inadequate, and that patients are not likely to recover as quickly or easily as they might, had the services ordered been furnished. Clearly, there are weaknesses in the provision of home health aide services that impact adversely upon patient care. We believe that deleting those aspects of the required content of these contracts that address most specifically patient care (such as the control, coordination, and evaluation of care furnished under contract and the submission of clinical record information) will exacerbate those weaknesses, since the OIG study found that the problems with patient care occurred because of inadequate control, and inadequate coordination and evaluation of care furnished under the contract. Therefore, we are retaining the current requirements while we seek ways to resolve the problems that OIG identified with home health aide services provided under contract.

We do, however, recognize that the language in § 405.1221(f)(1)(vii), which requires "procedures for determining charges and reimbursement" could be better stated as "payment for services furnished under the contract". While this contract requirement does not impact specifically on the care furnished, it is essential to a determination of whether the services are furnished under an arrangement that meets the requirement of section 1861(w)(1) of the Act that an arrangement provides that Medicare payment to an HHA is payment in full for the services furnished under the contract.

We do not believe that it is necessary to consult with the Department of Labor or IRS regarding their laws for "contract employees". The commenter presented no substantial conflict that needs to be resolved by consulting with the Department of Labor or IRS.

3. *Condition of participation:* Organization, services, administration—Standard: Coordination of patient services (§ 405.1221(g)).

This standard requires that the clinical record support an HHA's attempts to assure a free exchange of information among all personnel furnishing services. We proposed only clarifying changes to the language of this requirement.

Comment: Most commenters supported our proposal. However, one commenter asked whether the requirement that all personnel who furnish services maintain liaison to support the objectives of the plan of treatment applied to all services furnished by an HHA or only to those on the plan of treatment.

Response: Section 405.1223 requires that the plan of treatment contain the services that an HHA furnishes to a patient during the period covered by the plan of treatment. Therefore, the coordination of services required by § 405.1221(g) encompasses all services furnished by an HHA to a patient.

Comment: One commenter suggested that HCFA Form 486 (Medicare's medical information form and update) be sent to a physician every 60 days in lieu of a summary report on a patient's condition, which is required by § 405.1221(g).

Response: HCFA Form 486 is prepared only for Medicare beneficiaries when an HHA bills Medicare for care. It is not completed ordinarily for non-Medicare

patients, as is the summary report that is required by § 405.1221(g). An HHA may, if it chooses, use a completed HCFA Form 486 as the summary report, as long as it summarizes adequately the patient's condition. However, we do not believe that any useful purpose would be served by requiring its use for all patients in lieu of any other summary report an HHA may now prepare and send to physicians every 60 days.

Comment: One commenter suggested that we revise § 405.1221(g) to require that a written summary report of a patient's condition be sent to a physician no less frequently than every 62 days, rather than 60 days as currently required.

Response: We have revised the regulation to permit the submission of the summary report no less often than every 62 days (rather than every 60 days) to conform the timeframe to the revision we have made to the frequency of physician review (§ 405.1223(b), redesignated as § 484.16) and signature (§ 405.1633) on the plan of care.

4. *Condition of participation:* Organization, services, administration—Standard: Institutional planning (§ 405.1221(i)).

This standard requires that an HHA conform to certain broad requirements relating to the formulation of an annual operating budget and an agency generated three-year capital expenditure program for anticipated expenditures that exceed a set dollar amount. We proposed to increase this amount from $100,000 to $600,000 in accordance with sections 1122(g) and 1861(z) of the Act, as amended by section 607 of the Social Security Amendments of 1983, Pub. L. No. 98–21. The other provisions are required explicitly by section 1861(z) of the Act or are necessary for purposes of determining whether the threshold amount has been exceeded.

Comment: Commenters supported this statutory change.

Response: As proposed, we have revised § 405.1221(i)(2) to reflect the increase in the threshold amount from $100,000 to $600,000.

5. Condition of participation: Acceptance of patients, plan of treatment, medical supervision—Standard: Plan of treatment (§ 405.1223(a)).

This standard requires that care follow a plan of treatment established and reviewed periodically by a physician, and defines the minimum content of the plan of treatment. We proposed to retain this standard without change. However, we requested comments on the continued need for these requirements.

As explained in section III. D. of this preamble, we have changed the term "plan of treatment" to "plan of care" to comply with section 4021(b) of Pub. L. 100–203.

Comment: One commenter recommended that when speech therapy services are furnished, the speech therapist should be allowed to establish an HHA plan of treatment without physician consultation or approval.

Response: Section 1861(m) of the Act requires a physician to establish and periodically review a plan of care, and section 1891(a)(4) of the Act requires HHAs to include in their clinical records a plan of care as required under section 1861(m)(4) of the Act. Therefore, the statute requires that HHAs have a plan of care that is established and approved by a physician for each individual served by the agency.

Comment: One commenter requested that we revise § 405.1223(a) to permit a physician to order an initial assessment of the need for home care through a hospital discharge planner or the physician's office staff, and that the plan of care established as a result of that initial assessment be reviewed by the physician only if there are additions or modifications to the original plan.

Response: Acceptance of the commenter's suggestion would violate section 1891(a)(4) of the Act that requires a plan of care, established and reviewed periodically by the physician, be included in the patient's clinical records.

Comment: One commenter believes that the inclusion of orders for specific procedures and modalities of therapy services (specifically amount, frequency, and duration of these services) for a period of 60 days is inappropriate since a patient's response can vary from day to day, and the amount, frequency, and duration of treatments may need to be changed more frequently than every 60 days.

Response: We believe that it is important to patient health and safety that this level of specificity be included in the plan of care so that any professional who must care for the patient is aware of the services ordered by the physician for the patient. While the plan of care must be reviewed no less than every 62 days (as revised by these regulations at § 405.1221(g)), health professionals are encouraged to contact the physician to acquire changes in orders whenever changes appear appropriate to the patient's treatment.

Comment: Several commenters believe that a physician should sign only for those activities within the plan of treatment for which the physician is responsible. One commenter mentioned specifically that a physician should not be responsible for a nurse's plan of care.

Response: We believe that a physician is responsible for all services that are ordered when he or she approves a plan of care in the same way that the physician is responsible for all services he or she orders in a hospital or in a skilled nursing facility. An HHA is (and always has been) found to be out of compliance with these regulations if it furnishes any care that is not included in a plan of care that a physician has established and approved.

The purpose of a plan of care is to provide the information essential for the provision of quality care. It is the only care plan that an HHA is required by these regulations to keep, and therefore, it must contain sufficient information to permit staff who are not familiar with the patient to provide quality care. If an HHA desires to also develop a "nurse's plan of care", it is certainly free to do so to the degree that it does not cause information necessary to the care of a patient to be deleted or omitted from the plan of care that must be established and reviewed periodically by a physician.

6. *Condition of participation:* Acceptance of patients, plan of treatment, medical supervision—Standard: Periodic review of plan of treatment (§ 405.1223(b)).

This standard requires that the status of each patient be reviewed no less frequently than every 60 days by HHA staff and the attending physician. We proposed to retain the requirement for physician and HHA staff review, but to require that the status of each patient be reviewed no less frequently than every 62 days to conform this requirement to the physician certification requirement (§ 405.1633).

Comments: Many commenters supported the proposed conforming change. One commenter requested that the requirement for periodic physician review of the plan of treatment be eliminated because the physician must also sign a physician certification every two months and receive a summary report every 60 days. Another commenter suggested that we require that an HHA provide the physician who signed the plan of care with a summary report of a patient's condition no less frequently than every 62 days also, to conform it to the physician certification, and plan of care signature requirements.

Response: We have retained the requirement for the physician review and signature on the plan of care because, as we have explained with respect to the initial physician plan of care signature, we believe it is

necessary to ensure patient health and safety, and we believe that it is necessary to implement section 1891(a)(4) of the Act, which incorporates section 1861(m) of the Act by reference. As proposed, we revised the timeframe to require that the review be completed no less frequently than every 62 days (§ 405.1223(b)). Moreover, we have adopted the suggestion that a summary report that an HHA sends to a physician be sent no less frequently than every 62 days (§ 405.1221(g)). We believe that conforming these timeframes to one another will be less confusing to HHAs and Medicare State surveyors and more efficient.

7. *Condition of participation:* Skilled nursing service—Standard: Duties of the registered nurse (§ 405.1224(a)) and Standard: Duties of the licensed practical nurse (§ 405.1224(b)).

These standards describe the duties of registered nurses (RNs) and licensed practical nurses (LPNs) including their responsibilities to prepare clinical notes and progress notes. We did not propose to revise the requirements regarding clinical notes and progress notes since we believe that these requirements are consistent with accepted professional standards of practice and therefore should not be burdensome.

Comment: Commenters agreed that the writing of clinical notes and progress notes are accepted professional responsibilities of RNs and LPNs. The other comments on this section addressed issues that we did not raise in the proposed rule and to which we are not responding in this final rule.

Response: We have not revised the regulations with respect to RN and LPN completion of clinical notes and progress notes.

8. *Condition of participation:*—Therapy services—Standard: Supervision of physical therapy assistant and occupational therapy assistant (§ 405.1225(a)).

This section sets forth standards for the preparation of clinical and progress notes by physical therapy assistants and occupational therapy assistants. We proposed no changes to the supervision standard because we believe that the requirements are consistent with accepted professional standards of practice and that, therefore, virtually no recordkeeping burden is imposed. However, we requested comments on it.

Comment: Commenters generally did not object to the requirements regarding the completion of clinical and progress notes by physical therapy assistants and occupational therapy assistants. The other comments addressed aspects of the section that were not the subject of the proposed rule.

Response: We have retained without change the requirements with regard to clinical and progress notes.

I. Condition of participation: Medical social services (§ 405.1226).

This section contains requirements regarding medical social worker and medical social work assistant completion of clinical and progress notes on the patient's condition and assisting in the development of the plan of treatment. We proposed no specific changes to these requirements because we believe that the requirements for completion of clinical notes and progress notes are consistent with accepted professional standards for medical social work and therefore impose no recordkeeping burden.

Comment: Commenters did not oppose the current requirements regarding social worker and social work assistant completion of progress and clinical notes. The other comments on this section addressed issues that we did not raise in the proposed rule and to which we are not responding in this final rule.

Response: We have retained without change the requirements with regard to clinical and progress notes.

9. Condition of participation: Clinical records (§ 405.1228).

This section contains specific requirements for maintaining, retaining, and protecting clinical records for every patient receiving services from an HHA. We proposed to keep the current requirements, but to make a technical change to the existing language of the regulation.

Comment: Several commenters suggested requirements beyond those imposed by the current regulations that the commenters believe are necessary to ensure patient health and safety.

Response: We are not making changes other than the proposed technical change. We will consider the commenters' suggestions before we propose future rulemaking.

Comment: Several commenters objected to the requirement that clinical notes be kept on all patients. They requested that we revise § 405.1228 (redesignated as § 484.48) to require that these notes be maintained only for Medicare patients.

Response: We have not accepted this comment. Section 1861(o) of the Act requires that in order to be considered an "HHA", an entity must maintain clinical records on its patients. As with other conditions of participation, this requirement is not limited to Medicare patients, but rather applies to all patients and must be met before an HHA can be certified to participate in the Medicare program. The clinical note is the most essential element of a patient's clinical records since it describes the services furnished to the patient, the patient's response to treatment and current status. This information is essential to ensure the quality of the care being furnished by an HHA.

Comment: Several commenters requested that we clarify that the terms "progress notes" and "clinical notes" are identical and may be used interchangeably.

Response: We have not made this change because, as defined in the conditions of participation at § 405.1202 (redesignated as § 484.2), clinical notes and progress notes differ. A clinical note must be prepared for each visit to a patient on the date of the visit, and must include a description of signs and symptoms, treatment and or drug given, the patient's reaction and any changes in the patient's physical or emotional condition. In contrast, a progress note is a dated written notation by a member of the health team that summarizes facts about the care and the patient's response over a specified period of time. Thus, the progress note is a summary of the clinical notes for a specific period of time.

Comment: Commenters objected to the requirement that medical records be retained for five years after the month that the applicable cost report is filed unless State law requires that they be retained for a longer period of time. One commenter suggested that the retention period be reduced to three years.

Response: We have kept the current record retention requirement because we believe that retention of the records for this period of time is necessary to ensure that the records needed to verify the appropriateness of Medicare payment are available. The clinical records provide the only evidence that an HHA furnished services for which it has claimed payment.

HHAs do not submit cost reports to which the services relate until three months after the year in which the services were furnished (or for an additional three months if an extension is granted). Moreover, the services included in a cost report may have been furnished in the last three months of the previous year. Since the Federal government may perform an audit of agency records any time until three years after submission of the cost report (or later if there is evidence of program fraud), the records must be retained for at least four years and nine months after submission of a cost report. Otherwise, there would be no evidence of the total number of visits furnished and of the

number of visits furnished to Medicare patients if audit of the source information is needed to settle an HHA's cost report.

Comment: One commenter stated that nurses should be able to carry clinical records with them when visiting a patient's home since practicing without them is unsafe and duplicating them is expensive and burdensome. Section 405.1228(b) (redesignated as § 484.48) requires that clinical records be safeguarded against loss or unauthorized use.

Response: Medicare regulations do not prohibit the removal of clinical records for use by a nurse when furnishing care. Nevertheless, an HHA may impose policies and procedures it believes will ensure that clinical records are safeguarded against loss or unauthorized use.

10. *Condition of participation:* Evaluation—Standard: Policy and administrative review (§ 405.1229(a)).

This standard requires an HHA to assess the overall status of its patient care programs. One method of furthering this evaluation is to collect patient care and related data. This standard suggests selected data that an HHA might find useful in the course of its evaluation. We proposed to delete the detailed list of suggested data items from this section because, upon reconsideration, we believe that an HHA should have the flexibility to tailor the data collected to its unique characteristics.

Comment: Some commenters supported this proposed change. Several commenters opposed this proposed change. One commenter indicated that the entire list should be retained. Another commenter requested that the information on the number of patient visits made by an HHA and the records of staff time be retained. Those who suggested that this information be kept were concerned that this information would not be available for use in determining appropriate Medicare payment if these regulations did not include this list. The other comments on this section addressed issues that we did not address in the proposed rule and to which we are not responding in this final rule.

Response: As proposed, we have deleted the list of data that the regulations suggested be collected. We believe that an HHA is able to determine which data elements will facilitate its review without Federal regulations on this aspect of its operation. Notwithstanding the elimination of this list from these regulations, an HHA will continue to be required, under separate statutory authority, to maintain the data necessary to substantiate the information on its Medicare cost report.

11. *Condition of participation:* Evaluation—Standard: Clinical record review (§ 405.1229(b)).

We did not propose to revise this section of the regulations nor did we receive any comments. However, we have extended the period that may be covered by the review of clinical records from 60 days to 62 days to conform to the changes we have made with respect to the frequency of physician review of a plan of care, and the period of time to be covered by a summary report of a patient's condition. Since we are extending the period, rather than reducing it, and since we are making the change to conform it to other requirements, we believe that we are reducing, rather than adding to the burden imposed by these regulations.

B. Regulation Provisions

1. *Condition of participation:* Organization, services, administration—Standard: Coordination of patient services (§ 405.1221(g)).

We have revised § 405.1221(g) to permit the submission of the summary report no less than every 62 days (rather than every 60 days) to conform the timeframe to the revision we have made to the frequency of physician review (§ 405.1223(b) and signature (§ 405.1633) on the plan of care.

2. *Condition of participation:* Organization, services, administration—Standard: Institutional planning (§ 405.1221(i)).

We have revised § 405.1221(i)(2) to reflect the increase in the threshold amount (for anticipated expenditures within an agency's generated three-year capital expenditure program) from $100,000 to $600,000.

3. *Condition of participation:* Acceptance of patients, plan of treatment, medical supervision—Standard: Plan of treatment (§ 405.1223(a)).

We have changed the term "plan of treatment" to read "plan of care" to comply with section 4021 of Public Law 100–203.

4. *Condition of participation:* Acceptance of patients, plan of treatment, medical supervision-Standard: Periodic review of plan of treatment (§ 405.1223(b)).

We retained the requirement for physician and HHA staff review, with one change. The status of each patient must be reviewed no less frequently than every 62 days (rather than 60 days) to conform this requirement to the physician certification requirement (§ 405.1633).

5. *Condition of participation:* Evaluation—Standard: Policy and administrative review (§ 405.1229(a)).

We have deleted the list of selected data that an HHA might find useful in the course of evaluating its patient care programs.

6. *Condition of participation:* Evaluation—Standard: Clinical record review (§ 405.1229(b)).

We extended the period that may be covered by the review of clinical records from 60 days to 62 days to conform to the changes we have made with respect to the frequency of physician review of a plan of care, and the period of time to be covered by a summary report of a patient's condition.

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This final rule implements section 1861(o)(6) of the Act, as amended by section 4021(b) of Public Law 100–203; section 1891(a) of the Act, as added by section 4021(b) of Public Law 100–203; and certain changes in recordkeeping requirements that had been previously proposed on December 31, 1986 (51 FR 47266). As described in section I of this document, section 4021(b) of Public Law 100–203 requires that an HHA meet the following conditions:

- Protect and promote the rights of each individual under its care.
- Notify the State entity responsible for the licensing or certification of the agency of a change in ownership, and management of the agency.
- After December 31, 1989, use as a home health aide only individuals who have been determined to be competent to furnish part-time or intermittent home health aide care.
- Use individuals that meet minimum training standards established by the Secretary to use or demonstrate durable

medical equipment when furnishing services.

• Include an individual's plan of care required under section 1861(m) of the Act as part of the individual's clinical records described in section 1861(o)(3) of the Act (currently appears as a condition of participation in 42 CFR 4015.1228).

• Operate and furnish services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1124 of the Act) and with accepted professional standards and principles that apply to professionals furnishing services in an HHA (currently appears as a condition of participation in 42 CFR 405.1220).

With the exception of those regulations implementing section 1891(a)(3) of the Act that require the Secretary to establish minimum standards of competency for home health aides who are providing services to Medicare patients either under contract to an HHA or are employed directly by an HHA, we believe that the other provisions of this rule that are required by section 4021(b) of Public Law 100–203 are largely conforming changes to the statute. In those instances in which our regulations go beyond a strict reading of the statute in implementing the patients' rights provisions of the Act, we believe the regulations serve to clarify the intent of Congress by specifying procedures to be followed in implementing the law. The discretion we have exercised in detailing technical requirements, we believe, will not impose a significant burden on HHAs. We do recognize that the provisions requiring HHAs to protect Medicare patients rights may impose some additional costs on those HHAs that do not already have such policies. However, we view these effects as resulting from the statute rather than from this rule.

With respect to the changes in recordkeeping requirements that we proposed in the December 31, 1986 Federal Register and which are being implemented by this rule we consider the changes to be minor and believe they will have little effect on the operations of HHAs.

Section 1891(a)(3) of the Act, requiring the establishment of competency and training standards for home health aides, gives the Secretary broad latitude in specifying competency standards and curricula for training aides. We expect that most home health aides currently employed by HHAs will achieve the required level of competency through their work experience by the time the new standards become effective. Thus, we do not expect that most aides currently working in HHAs will require formal training to meet the competency standards, and as a result, the cost of training the present work force of HHA aides should be minimal.

It should be noted that several States already have some training and certification requirements as a condition of employment for home health aides. Although we cannot determine whether the training requirements in these States are sufficient to meet the competency standards being promulgated under this rule, we expect that HHAs operating in these States have already adjusted their operations to meet the State requirements. Furthermore, we are aware that some States have legislation pending that would require home health aide competency certification as a condition of licensing HHAs. Thus, we do not expect this rule to have a significant effect on HHAs operating in those States that either already require aide training and certification or will promulgate such standards in the near future.

Moreover, the renewed emphasis on HHA accreditation by the National League of Nurses under its long-standing program, and the recent adoption by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) of new standards for the accreditation of home health care providers will, we believe, encourage many HHAs to adopt voluntarily many of the provisions set forth in this rule. In addition, many HHAs use the National Homecaring Council's model curriculum and evaluation program for home health aide training and evaluation. This program also contains many of the elements of these regulations. We believe that voluntary compliance with these industry standards will reduce significantly the impact of these Federal regulations on most HHAs. We anticipate that most HHAs will seek to comply with private industry standards to ensure that they are not placed at a competitive disadvantage. Therefore, these Federal regulations will affect most agencies only to the limited extent that the requirements of the Federal regulations exceed those of the private standards.

In conclusion, for all the reasons discussed above, we believe that the overall effect of this rule will be small. We do not expect this rule to have an annual effect on the economy of $100 million or more, nor do we expect it to meet any of the other criteria of a major rule under E.O. 12291. Therefore we have not prepared a regulatory impact analysis.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

For the reasons outlined in our discussion of E.O. 12291, we do not expect HHAs to experience significant adverse effects from this rule. Therefore, we have determined, and the Secretary certifies that this rule will not have a significant impact on a substantial number of HHAs.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Waiver of Proposed Rulemaking

Section 4039(g) of Public Law 100–203 provides that, if necessary, we may issue regulations to implement certain provisions of that law, including the HHA provisions of these regulations and other Medicare reforms, on an interim final basis. Congress, in Public Law 100–203, charged the agency with developing and implementing several significant and complex payment reforms. Congress recognized, however, that the agency may not be able both to develop the regulations necessary to implement these reforms and to engage in the time- and resource-consuming process entailed by the usual notice and comment procedure before the effective dates which it prescribed. Indeed, in the case of the modifications to the HHA conditions of participation contained in section 4021(b) of Public Law 100–203 (enacted December 22, 1987), Congress intended for the Secretary to make use of interim final rules by imposing, in section 4021(c), a July 1, 1989 effective date on the HHA conditions of participation modifications. The usual notice and comment procedures could

not have been completed in the time allowed.

The Secretary believes it necessary to exercise his option, under section 4039(g), to issue these provisions as an interim final rule in order to allow HHAs sufficient time to comply the new guidelines, which statutorily become effective on July 1, 1989.

Although this rule is being issued as an interim final rule, we are interested in comments and advice regarding changes that should be made to this issuance. Therefore, we are providing a 60-day comment period for public comment.

VII. Response to Comments

Because of the large number of comments we receive on interim final regulations, we cannot acknowledge or respond to them individually. However, if we decide to change the regulations, we will publish an additional **Federal Register** rule and respond to the major issues in the preamble to that rule.

VIII. Collection of Information Requirements

Section 484.10 and its implementing patient rights notification and §§ 484.12, 484.14, 484.16, 484.18, 484.30, 484.32, 484.34, 484.36, 484.48, and 484.52 of this rule contain information collection requirements that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504, et seq.). These requirements will not be effective until OMB approval is received. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the **"ADDRESS"** section of this preamble.

List of Subjects in 42 CFR Part 484

Administrative practice and procedure, Health facilities, Health professions, Home health agencies, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as set forth below:

A. Part 405, subpart L is redesignated as Part 484 and revised to read as follows:

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

Subpart A—General Provisions

Sec.

484.1 Basis and scope.
484.2 Definitions.
484.4 Personnel qualifications.

Subpart B—Administration

484.10 Condition of participation: Patient rights.
484.12 Condition of participation: Compliance with Federal, State, and local laws, disclosure and ownership information, and accepted professional standards and principles.
484.14 Condition of participation: Organization, services, administration.
484.16 Condition of participation: Group of professional personnel.
484.18 Condition of participation: Acceptance of patients, plan of care, medical supervision.

Subpart C—Furnishing of Services

484.30 Condition of participation: Skilled nursing services.
484.32 Condition of participation: Therapy services.
484.34 Condition of participation: Medical social services.
484.36 Condition of participation: Home health aide services.
484.38 Condition of participation: Qualifying to furnish outpatient physical therapy or speech pathology services.
484.48 Condition of participation: Clinical records.
484.52 Condition of participation: Evaluation of the agency's program.

Authority: Secs. 1102, 1861, 1871 and 1891 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395hh, and 1395bbb).

Subpart A—General Provisions

§ 484.1 Basis and scope.

This part implements the requirements of sections 1861(o) and 1891(a) of the Act for HHA services and also sets forth the additional requirements considered necessary to ensure the health and safety of patients.

§ 484.2 Definitions.

As used in this part, unless the context indicates otherwise—*"Bylaws or equivalent"* means a set of rules adopted by an HHA for governing the agency's operation.

"Branch office" means a location or site from which a home health agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the home health agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch independently to meet the conditions of participation as a home health agency.

"Clinical note" means a notation of a contact with a patient that is written and dated by a member of the health team, and that describes signs and symptoms, treatment and drugs administered and the patient's reaction, and any changes in physical or emotional condition.

"HHA" stands for home health agency.

"Nonprofit agency" means an agency exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1954.

"Parent home health agency" means the agency that develops and maintains administrative controls of subunits and/or branch offices.

"Primary home health agency" means the agency that is responsible for the services furnished to patients and for implementation of the plan of care.

"Progress note" means a written notation, dated and signed by a member of the health team, that summarizes facts about care furnished and the patient's response during a given period of time.

"Proprietary agency" means a private profit-making agency licensed by the State.

"Public agency" means an agency operated by a State or local government.

"Subdivision" means a component of a multi-function health agency, such as the home care department of a hospital or the nursing division of a health department, which independently meets the conditions of participation for HHAs. A subdivision that has subunits or branch offices is considered a parent agency.

"Subunit" means a semi-autonomous organization that—

(1) Serves patients in a geographic area different from that of the parent agency; and

(2) Must independently meet the conditions of participation for HHAs because it is too far from the parent agency to share administration, supervision, and services on a daily basis.

"Summary report" means the compilation of the pertinent factors of a patient's clinical notes and progress notes that is submitted to the patient's physician.

"Supervision" means authoritative procedural guidance by a qualified person for the accomplishment of a function or activity. Unless otherwise specified in this part, the supervisor must be on the premises to supervise an individual who does not meet the qualifications specified in § 484.4.

§ 484.4 Personnel qualifications.

Staff required to meet the conditions set forth in this part are staff who meet the qualifications specified in this section.

"Administrator, home health agency". A person who:

(a) Is a licensed physician; or

(b) Is a registered nurse; or

(c) Has training and experience in health service administration and at least 1 year of supervisory or administrative experience in home health care or related health programs.

"*Audiologist*". A person who:

(a) Meets the education and experience requirements for a Certificate of Clinical Competence in audiology granted by the American Speech-Language-Hearing Association; or

(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

"*Home health aide*". Effective for services furnished after August 14, 1990, a person who has successfully completed a State-established or other training program that meets the requirements of § 484.36(a) and a competency evaluation program or State licensure program that meets the requirements of § 484.36(b), or a competency evaluation program or State licensure program that meets the requirements of § 484.36(b). An individual is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the individual's most recent completion of this program(s), there has been a continuous period of 24 consecutive months during none of which the individual furnished services described in § 409.40 of this chapter for compensation.

"*Occupational therapist*". A person who:

(a) Is a graduate of an occupational therapy curriculum accredited jointly by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Occupational Therapy Association; or

(b) Is eligible for the National Registration Examination of the American Occupational Therapy Association; or

(c) Has 2 years of appropriate experience as an occupational therapist, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapist after December 31, 1977.

"*Occupational therapy assistant*". A person who:

(a) Meets the requirements for certification as an occupational therapy assistant established by the American Occupational Therapy Association; or

(b) Has 2 years of appropriate experience as an occupational therapy assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapy assistant after December 31, 1977.

"*Physical therapist*". A person who is licensed as a physical therapist by the State in which practicing, and

(a) Has graduated from a physical therapy curriculum approved by:

(1) The American Physical Therapy Association, or

(2) The Committee on Allied Health Education and Accreditation of the American Medical Association, or

(3) The Council on Medical Education of the American Medical Association and the American Physical Therapy Association; or

(b) Prior to January 1, 1966,

(1) Was admitted to membership by the American Physical Therapy Association, or

(2) Was admitted to registration by the American Registry of Physical Therapist, or

(3) Has graduated from a physical therapy curriculum in a 4-year college or university approved by a State department of education; or

(c) Has 2 years of appropriate experience as a physical therapist, and has achieved a satifactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service except that such determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking qualification as a physical therapist after December 31, 1977; or

(d) Was licensed or registered prior to January 1, 1966, and prior to January 1, 1970, had 15 years of full-time experience in the treatment of illness or injury through the practice of physical therapy in which services were rendered under the order and direction of attending and referring doctors of medicine or osteopathy; or

(e) If trained outside the United States,

(1) Was graduated since 1928 from a physical therapy curriculum approved in the country in which the curriculum was located and in which there is a member organization of the World Confederation for Physical Therapy.

(2) Meets the requirements for membership in a member organization of the World Confederation for Physical Therapy.

"*Physical therapy assistant*". A person who is licensed as a physical therapist assistant, if applicable, by the State in which practicing, and

(1) Has graduated from a 2-year college-level program approved by the American Physical Therapy Association; or

(2) Has 2 years of appropriate experience as a physical therapist assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as a physical therapist assistant after December 31, 1977.

"*Physician*". A doctor of medicine, osteophathy or podiatry legally authorized to practice medicine and surgery by the State in which such function or action is performed.

"*Practical (vocational) nurse*". A person who is licensed as a practical (vocational) nurse by the State in which practicing.

"*Public health nurse*". A registered nurse who has completed a baccalaureate degree program approved by the National League for Nursing for public health nursing preparation or postregistered nurse study that includes content aproved by the National League for Nursing for public health nursing preparation.

"*Registered nurse (RN)*". A graduate of an approved school of professional nursing, who is licensed as a registered nurse by the State in which practicing.

"*Social work assistant*". A person who:

(1) Has a baccalaureate degree in social work, psychology, sociology, or other field related to social work, and has had at least 1 year of social work experience in a health care setting; or

(2) Has 2 years of appropriate experience as a social work assistant, and has achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that these determinations of proficiency do not apply with respect to persons initially licensed by a State or seeking initial qualification as a social work assistant after December 31, 1977.

"*Social worker*". A person who has a master's degree from a school of social work accredited by the Council on Social Work Education, and has 1 year of social work experience in a health care setting.

"Speech pathologist". A person who:

(1) Meets the education and experience requirements for a Certificate of Clinical Competence in (speech pathology or audiology) granted by the American Speech-Language-Hearing Association; or

(2) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.

Subpart B—Administration

§ 484.10 Condition of participation: Patient rights.

The patient has the right to be informed of his or her rights. The HHA must protect and promote the exercise of these rights.

(a) *Standard: Notice of rights.* (1) The HHA must provide the patient with a written notice of the patient's rights in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of treatment.

(2) The HHA must maintain documentation showing that it has complied with the requirements of this section.

(b) *Standard: Exercise of rights and respect for property and person.* (1) The patient has the right to exercise his or her rights as a patient of the HHA.

(2) The patient's family or guardian may exercise the patient's rights when the patient has been judged incompetent.

(3) The patient has the right to have his or her property treated with respect.

(4) The patient has the right to voice grievances regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for property by anyone who is furnishing services on behalf of the HHA and must not be subjected to discrimination or reprisal for doing so.

(5) The HHA must investigate complaints made by a patient or the patient's family or guardian regarding treatment or care that is (or fails to be) furnished, or regarding the lack of respect for the patient's property by anyone furnishing services on behalf of the HHA, and must document both the existence of the complaint and the resolution of the complaint.

(c) *Standard: Right to be informed and to participate in planning care and treatment.* (1) The patient has the right to be informed, in advance about the care to be furnished, and of any changes in the care to be furnished.

(i) The HHA must advise the patient in advance of the disciplines that will furnish care, and the frequency of visits proposed to be furnished.

(ii) The HHA must advise the patient in advance of any change in the plan of care before the change is made.

(2) The patient has the right to participate in the planning of the care. The HHA must advise the patient in advance of the right to participate in planning the care or treatment and in planning changes in the care or treatment.

(d) *Standard: Confidentiality of medical records.* The patient has the right to confidentiality of the clinical records maintained by the HHA. The HHA must advise the patient of the agency's policies and procedures regarding disclosure of clinical records.

(e) *Standard: Patient liability for payment.* (1) The patient has the right to be advised, before care is initiated, of the extent to which payment for the HHA services may be expected from Medicare of other sources, and the extent to which payment may be required from the patient. Before the care is initiated, the HHA must inform the patient, orally and in writing, of—

(i) The extent to which payment may be expected from Medicare, Medicaid, or any other Federally funded or aided program known to the HHA;

(ii) The charges for services that will not be covered by Medicare; and

(iii) The charges that the individual may have to pay.

(2) The patient has the right to be advised orally and in writing of any changes in the information provided in accordance with paragraph (e)(1) of this section when they occur. The HHA must advise the patient of these changes orally and in writing as soon as possible, but no later than 15 working days from the date that the HHA becomes aware of a change.

(f) *Standard: Home health hotline.* The patient has the right to be advised of the availability of the toll-free HHA hotline in the State. When the agency accepts the patient for treatment or care, the HHA must advise the patient in writing of the telephone number of the home health hotline established by the State, the hours of its operation, and that the purpose of the hotline is to receive complaints or questions about local HHAs.

§ 484.12 Condition of participation: Compliance with Federal, State, and local laws, disclosure and ownership information, and accepted professional standards and principles.

(a) *Standard: Compliance with Federal, State, and local laws and regulations.* The HHA and its staff must operate and furnish services in compliance with all applicable Federal, State, and local laws and regulations. If State or applicable local law provides for the licensure of HHAs, an agency not subject to licensure is approved by the licensing authority as meeting the standards established for licensure.

(b) *Standard: Disclosure of ownership and management information.* The HHA must comply with the requirements of Part 420, Subpart C of this chapter. The HHA also must disclose the following information to the State survey agency at the time of the HHA's initial request for certification, for each survey, and at the time of any change in ownership or management:

(1) The name and address of all persons with an ownership or control interest in the HHA as defined in §§ 420.201, 420.202, and 420.206 of this chapter.

(2) The name and address of each person who is an officer, a director, an agent or a managing employee of the HHA as defined in §§ 420.201, 420.202, and 420.206 of this chapter.

(3) The name and address of the corporation, association, or other company that is responsible for the management of the HHA, and the name and address of the chief executive officer and the chairman of the board of directors of that corporation, association, or other company responsible for the management of the HHA.

(c) *Standard: Compliance with accepted professional standards and principles.* The HHA and its staff must comply with accepted professional standards and principles that apply to professionals furnishing services in an HHA.

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§ 484.14 Condition of participation: Organization, services, administration.

Organization, services furnished, administrative control, and lines of authority for the delegation of responsibility down to the patient care level are clearly set forth in writing and are readily identifiable. Administrative and supervisory functions are not delegated to another agency or organization and all services not furnished directly, including services provided through subunits are monitored and controlled by the parent agency. If an agency has subunits, appropriate administrative records are maintained for each subunit.

(a) *Standard: Services furnished.* Part-time or intermittent skilled nursing services and at least one other therapeutic service (physical, speech, or occupational therapy; medical social services; or home health aide services)

are made available on a visiting basis, in a place of residence used as a patient's home. An HHA must provide at least one of the qualifying services directly through agency employees, but may provide the second qualifying service and additional services under arrangements with another agency or organization.

(b) *Standard: Governing body.* A governing body (or designated persons so functioning) assumes full legal authority and responsibility for the operation of the agency. The governing body appoints a qualified administrator, arranges for professional advice as required under § 484.16, adopts and periodically reviews written bylaws or an acceptable equivalent, and oversees the management and fiscal affairs of the agency.

(c) *Standard: Administrator.* The administrator, who may also be the supervising physician or registered nurse required under paragraph (d) of this section, organizes and directs the agency's ongoing functions; maintains ongoing liaison among the governing body, the group of professional personnel, and the staff; employs qualified personnel and ensures adequate staff education and evaluations; ensures the accuracy of public information materials and activities; and implements an effective budgeting and accounting system. A qualified person is authorized in writing.

(d) *Standard: Supervising physician or registered nurse.* The skilled nursing and other therapeutic services furnished are under the supervision and direction of a physician or a registered nurse (who preferably has at least 1 year of nursing experience and is a public health nurse). This person, or similarly qualified alternate, is available at all times during operating hours and participates in all activities relevant to the professional services furnished including the development of qualifications and the assignment of personnel.

(e) *Standard: Personnel policies.* Personnel practices and patient care are supported by appropriate, written personnel policies. Personnel records include qualifications and licensure that are kept current.

(f) *Standard: Personnel under hourly or per visit contracts.* If personnel under hourly or per visit contracts are used by the HHA, there is a written contract between those personnel and the agency that specifies the following:

(1) That patients are accepted for care only by the primary home health agency,

(2) The services to be furnished,

(3) The necessity to conform to all applicable agency policies including personnel qualifications,

(4) The responsibility for participating in developing plans of care,

(5) The manner in which services will be controlled, coordinated, and evaluated by the primary agency,

(6) The procedures for submitting clinical and progress notes, scheduling of visits, periodic patient evaluation, and

(7) The procedures for payment for services furnished under the contract.

(g) *Standard: Coordination of patient services.* All personnel furnishing services maintain liaison to assure that their efforts are coordinated effectively and support the objectives outlined in the plan of care. The clinical record or minutes of case conferences establish that effective interchange, reporting, and coordination of patient care does occur. A written summary report for each patient is sent to the attending physician at least every 62 days.

(h) *Standard Services under arrangements.* Services furnished under arrangements are subject to a written contract conforming with the requirements specified in paragraph (f) of this section and with the requirements of section 1861(w) of the Act (42 U.S.C. 1395x(w)).

(i) *Standard: Institutional planning.* The HHA under the direction of the governing body, prepares an overall plan and budget that includes an annual operating budget and a capital expenditure plan.

(1) *Annual operating budget.* There is an annual operating budget that includes all anticipated income and expenses related to items that would, under generally accepted accounting principles, be considered income and expense items. However, it is not required that there be prepared, in connection with any budget, an item by item identification of the components of each type of anticipated income or expense.

(2) *Capital expenditure plan.* (i) There is a capital expenditure plan for at least a 3-year period, including the operating budget year. The plan includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure of more than $600,000 for items that would, under generally accepted accounting principles, be considered capital items. In determining if a single capital expenditure exceeds $600,000, the cost of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, modernization, expansion, or replacement of land, plant, building, and equipment are included. Expenditures directly or indirectly related to capital expenditures, such as grading, paving, broker commissions, taxes assessed during the construction period, and costs involved in demolishing or razing structures on land are also included. Transactions that are separated in time but are components of an overall plan or patient care objective are viewed in their entirety without regard to their timing. Other costs related to capital expenditures include title fees, permit and license fees, broker commissions, architect, legal, accounting, and appraisal fees; interest, finance, or carrying charges on bonds, notes and other costs incurred for borrowing funds.

(ii) If the anticipated source of financing is, in any part, the anticipated payment from title V (Maternal and Child Health and Crippled Children's Services) or title XVIII (Medicare) of title XIX (Medicaid) or the Social Security Act, the plan specifies the following:

(A) Whether the proposed capital expenditure is required to comform, or is likely to be required to conform, to current standards, criteria, or plans developed in accordance with the Public Health Service Act or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963.

(B) Whether a capital expenditure proposal has been submitted to the designated planning agency for approval in accordance with section 1122 of the Act (42 U.S.C. 1320a–1) and implementing regulations.

(C) Whether the designated planning agency has approved or disapproved the proposed capital expenditure if it was presented to that agency.

(3) *Preparation of plan and budget.* The overall plan and budget is prepared under the direction of the governing body of the HHA by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff (if any) of the HHA.

(4) *Annual review of plan and budget.* The overall plan and budget is reviewed and updated at least annually by the committee referred to in paragraph (i)(3) of this section under the direction of the governing body of the HHA.

§ 484.16 Condition of participation: Group of professional personnel.

A group of professional personnel, which includes at least one physician and one registered nurse (preferably a public health nurse), and with appropriate representation from other professional disciplines, establishes and annually reviews the agency's policies

governing scope of services offered, admission and discharge policies, medical supervision and plans of care, emergency care, clinical records, personnel qualifications, and program evaluation. At least one member of the group is neither an owner (§ 484.14(b)) nor an employee of the agency.

(a) *Standard: Advisory and evaluation function.* The group of professional personnel meets frequently to advise the agency on professional issues, to participate in the evaluation of the agency's program, and to assist the agency in maintaining liaison with other health care providers in the community and in the agency's community information program. The meetings are documented by dated minutes.

§ 484.18 Condition of participation: Acceptnce of patients, plan of care, medical supervision.

Patients are accepted for treatment on the basis of a reasonable expectation that the patient's medical, nursing, and social needs can be met adequately by the agency in the patient's place of residence. Care follows a written plan of care established and periodically reviewed by a doctor of medicine, osteopathy, or podiatric medicine.

(a) *Standard: Plan of care.* The plan of care developed in consultation with the agency staff covers all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. If a physician refers a patient under a plan of care that cannot be completed until after an evaluation visit, the physician is consulted to approve additions or modifications to the original plan. Orders for therapy services include the specific procedures and modalities to be used and the amount, frequency, and duration. The therapist and other agency personnel participate in developing the plan of care.

(b) *Standard: Periodic review of plan of care.* The total plan of care is reviewed by the attending physician and HHA personnel as often as the severity of the patient's condition requires, but at least once every 62 days. Agency professional staff promptly alert the physician to any changes that suggest a need to alter the plan of care.

(c) *Standard: Conformance with physician's orders.* Drugs and treatments are administered by agency staff only as ordered by the physician. The nurse or therapist immediately records and signs oral orders and obtains the physician's countersignature. Agency staff check all medicines a patient may be taking to identify possibly ineffective drug therapy or adverse reactions, significant side effects, drug allergies, and contraindicated medication, and promptly report any problems to the physician.

Subpart C—Furnishing of Services

§ 484.30 Condition of participation: Skilled nursing services.

The HHA furnishes skilled nursing services by or under the supervision of a registered nurse and in accordance with the plan of care.

(a) *Standard: Duties of the registered nurse.* The registered nurse makes the initial evaluation visit, regularly reevaluates the patient's nursing needs, initiates the plan of care and necessary revisions, provides those services requiring substantial and specialized nursing skill, initiates appropriate preventive and rehabilitative nursing procedures, prepares clinical and progress notes, coordinates services, informs the physician and other personnel of changes, in the patient's condition and needs, counsels the patient and family in meeting nursing and related needs, participates in inservice programs, and supervises and teaches other nursing personnel.

(b) *Standard: Duties of the licensed practical nurse.* The licensed practical nurse furnishes services in accordance with agency policies, prepares clinical and progress notes, assists the physician and registered nurse in performing specialized procedures, prepares equipment and materials for treatments observing aseptic technique as required, and assists the patient in learning appropriate self-care techniques.

§ 484.32 Condition of participation: Therapy services.

Any therapy services offered by the HHA directly or under arrangement are given by a qualified therapist or by a qualified therapist assistant under the supervision of a qualified therapist and in accordance with the plan of care. The qualified therapist assists the physician in evaluating level of function, helps develop the plan of care (revising as necessary), prepares clinical and progress notes, advises and consults with the family and other agency personnel, and participates in inservice programs.

(a) *Standard: Supervision of physical therapist assistant and occupational therapist assistant.* Services furnished by a qualified physical therapist assistant or qualified occupational therapy assistant may be furnished under the supervision of a qualified physical or occupational therapist. A physical therapist assistant or occupational therapy assistant performs services planned, delegated, and supervised by the therapist, assists in preparing clinical notes and progress reports, and participates in educating the patient and family, and in inservice programs.

(b) *Standard: Supervision of speech therapy services.* Speech therapy services are furnished only by or under supervision of a qualified speech pathologist or audiologist.

§ 484.34 Condition of participation: Medical social services.

If the agency furnishes medical social services, those services are given by a qualified social worker or by a qualified social work assistant under the supervision of a qualified social worker, and in accordance with the plan of care. The social worker assists the physician and other team members in understanding the significant social and emotional factors related to the health problems, participates in the development of the plan of care, prepares clinical and progress notes, works with the family, uses appropriate community resources, participates in discharge planning and inservice programs, and acts as a consultant to other agency personnel.

§ 484.36 Condition of participation: Home health aide services.

Home health aides are selected on the basis of such factors as a sympathetic attitude toward the care of the sick, ability to read, write, and carry out directions, and maturity and ability to deal effectively with the demands of the job. They are closely supervised to ensure their competence in providing care. For home health services furnished (either directly or through arrangements with other organizations) after August 14, 1990, the HHA must use individuals who meet the personnel qualifications specified in § 484.4 for "home health aide".

(a) *Standard: Home health aide training*—(1) *Content and duration of training.* The aide training program must address each of the following subject areas through classroom and supervised practical training totalling at least 75 hours, with at least 16 hours devoted to supervised practical training. The individual being trained must complete at least 16 hours of classroom training

before beginning the supervisied practical training.

(i) Communications skills.

(ii) Observation, reporting and documentation of patient status and the care or service furnished.

(iii) Reading and recording temperature, pulse, and respiration.

(iv) Basic infection control procedures.

(v) Basic elements of body functioning and changes in body function that must be reported to an aide's supervisor.

(vi) Maintenance of a clean, safe, and healthy environment.

(vii) Recognizing emergencies and knowledge of emergency procedures.

(viii) The physical, emotional, and developmental needs of and ways to work with the populations served by the HHA, including the need for respect for the patient, his or her privacy and his or her property.

(ix) Appropriate and safe techniques in personal hygiene and grooming that include—

(A) Bed bath.

(B) Sponge, tub, or shower bath.

(C) Shampoo, sink, tub, or bed.

(D) Nail and skin care.

(E) Oral hygiene.

(F) Toileting and elimination.

(x) Safe transfer techniques and ambulation.

(xi) Normal range of motion and positioning.

(xii) Adequate nutrition and fluid intake.

(xiii) Any other task that the HHA may choose to have the home health aide perform.

"Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse.

(2) *Conduct of training*—(i) *Organizations.* A home health aide training program may be offered by any organization except an HHA that has been determined to be out of compliance with one or more of the requirements of this part within any of the 24 months before the training program is to begin.

(ii) *Qualifications for instructors.* The training of home health aides and the supervision of home health aides during the supervised practical portion of the training must be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of home health care, and who has supervised home health aide services for at least 6 months. Other individuals may be used to provide instruction under the supervision of a qualified registered nurse.

(3) *Documentation of training.* The HHA must maintain sufficient documentation to demonstrate that the requirements of this standard are met.

(b) *Standard: Competency evaluation and in-service training*—(1) *Applicability.* An individual may furnish home health aide services on behalf of an HHA only after that individual has successfully completed a competency evaluation program as described in this paragraph. The HHA is responsible for ensuring that the individuals who furnish home health aide services on its behalf meet the competency evaluation requirements of this section.

(2) *Content and frequency of evaluations and amount of in-service training.* (i) The competency evaluation must address each of the subjects listed in paragraph (a)(1) (ii) through (xiii) of this section.

(ii) The HHA must complete a performance review of each home health aide no less frequently than every 12 months.

(iii) The home health aide must receive at least 3 hours of in-service training per calendar quarter. The in-service training may be furnished while the aide is furnishing care to patients.

(3) *Conduct of evaluation and training*—(i) *Organizations.* A home health aid competency evaluation program and the in-service training may be offered by any organization except as specified in paragraph (a)(2)(i) of this section.

(ii) *Evaluators and instructors.* The competency evaluation must be performed by a registered nurse, and the in-service training generally must be supervised by a registered nurse who possesses a minimum of 2 years of nursing experience at least 1 year of which must be in the provision of home health care and who has supervised home health aide services for at least 6 months.

(iii) *Subject areas.* The subject areas listed at paragraphs (a)(1) (iii), (ix), (x), and (xi) of this section must be evaluated after observation of the aide's performance of the tasks with a patient. The other subject areas in paragraph (a)(1) of this section may be evaluated through written examination, oral examination, or after observation of a home health aide with a patient.

(4) *Competency determination.* (i) A home health aide is not considered competent in any task for which he or she is evaluated as "unsatisfactory". The aide must not perform that task without direct supervision by a licensed nurse until after he or she receives training in the task for which he or she was evaluated as "unsatisfactory" and passes a subsequent evaluation with "satisfactory".

(ii) A home health aide is not considered to have successfully passed a competency evaluation if the aide has an "unsatisfactory" rating in more than one of the required areas.

(5) *Documentation of competency evaluation.* The HHA must maintain documentation which demonstrates that the requirements of this standard are met.

(6) *Effective date.* The HHA must implement a competency evaluation program that meets the requirements of this paragraph before February 14, 1990, and must provide the preparation necessary for the individual to successfully complete a program after August 14, 1990.

(c) *Standard: Assignment and duties of the home health aide.* The home health aide is assigned to a particular patient by a registered nurse. Written instructions for patient care are prepared by a registered nurse or therapist as appropriate. Duties include the performance of simple procedures as an extension of therapy services, personal care, ambulation and exercise, household services essential to health care at home, assistance with medications that are ordinarily self-administered, reporting changes in the patient's conditions and needs, and completing appropriate records.

(d) *Standard: Supervision.* The registered nurse makes a supervisory visit to the patient's residence at least every 2 weeks, either when the aide is present to observe and assist, or when the aide is absent, to assess relationships and determine whether goals are being met. If a patient is receiving only skilled therapy services and home health aide services, a skilled therapist may make the supervisory visits at least every 2 weeks, in lieu of a registered nurse.

§ 484.38 Condition of participation: Qualifying to furnish outpatient physical therapy or speech pathology services.

An HHA that wishes to furnish outpatient physical therapy or speech pathology services must meet all the pertinent conditions of this part and also meet the additional health and safety requirements set forth in §§ 405.1717 through 405.1719, 405.1721, 405.1723, and 405.1725 of this chapter to implement section 1861(p) of the Act.

§ 484.48 Condition of participation: Clinical records.

A clinical record containing pertinent past and current findings in accordance

with accepted professional standards is maintained for every patient receiving home health services. In addition to the plan of care, the record contains appropriate identifying information; name of physician; drug, dietary, treatment, and activity orders; signed and dated clinical and progress notes; copies of summary reports sent to the attending physician; and a discharge summary.

(a) *Standards: Retention of records.* Clinical records are retained for 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. Policies provide for retention even if the HHA discontinues operations. If a patient is transferred to another health facility, a copy of the record or abstract is sent with the patient.

(b) *Standards: Protection of records.* Clinical record information is safeguarded against loss or unauthorized use. Written procedures govern use and removal of records and the conditions for release of information. Patient's written consent is required for release of information not authorized by law.

§ 484.52 Condition of participation: Evaluation of the agency's program.

The HHA has written policies requiring an overall evaluation of the agency's total program at least once a year by the group of professional personnel (or a committee of this group), HHA staff, and consumers, or by professional people outside the agency working in conjunction with consumers. The evaluation consists of an overall policy and administrative review and a clinical record review. The evaluation assesses the extent to which the agency's program is appropriate, adequate, effective, and efficient. Results of the evaluation are reported to and acted upon by those responsible for the operation of the agency and are maintained separately as administrative records.

(a) *Standard: Policy and administrative review.* As a part of the evaluation process the policies and administrative practices of the agency are reviewed to determine the extent to which they promote patient care that is appropriate, adequate, effective, and efficient. Mechanisms are established in writing for the collection of pertinent data to assist in evaluation.

(b) *Standard: Clinical record review.* At least quarterly, appropriate health professionals, representing at least the scope of the program, review a sample of both active and closed clinical records to determine whether established policies are followed in furnishing services directly or under arrangement. There is a continuing review of clinical records for each 62-day period that a patient receives home health services to determine adequacy of the plan of care and appropriateness of continuation of care.

(Catalog of Federal Domestic Assistance Program, No. 13.773, Medicare Hospital Insurance; No. 13.774, Medicare Supplementary Medical Insurance)

Dated: October 31, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: December 30, 1988.

Otis R. Bowen,

Secretary.

This Regulation was officially submitted to the Office of the Federal Register on August 7, 1989 by Charlotte E. Lewis for publication in the **Federal Register**.

[FR Doc. 89-18762 Filed 8-11-89; 8:45 am]

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Monday
August 14, 1989

Part III

Environmental Protection Agency

40 CFR Parts 264, 265, and 270

Delay of Closure Period for Hazardous Waste Management; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265 and 270

[FRL-3576-2]

RIN 2050-AB71

Delay of Closure Period for Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today amending portions of the closure requirements under subtitle C of the Resource Conservation and Recovery Act (RCRA) applicable to owners and operators of certain types of hazardous waste facilities. Today's final rule allows, under limited circumstances, a landfill, surface impoundment, or land treatment unit to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit. This final rule details the circumstances under which a unit may remain open to receive non-hazardous wastes and describes the conditions applicable to such units.

EFFECTIVE DATE: November 13, 1989.

ADDRESSES: The public docket for this rulemaking is available for public inspection in Room S-201, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. The docket number is F-88-DCPP-FFFFF. The public must make an appointment to review docket materials by calling (202) 475-9327. The public may copy materials at the cost of $.15 per page. Charges under $15.00 are waived.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-8346 (toll free) or (202) 382-3000 in Washington, DC, or Permits Branch, Office of Solid Waste (OS-341) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4740.

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I. Authority

These regulations are issued under the authority of sections 1006, 2002(a), 3004, 3005, and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925 and 6926).

II. Background

Section 3004 of the Resource Conservation and Recovery Act (RCRA) requires the Administrator of EPA to promulgate regulations establishing such performance standards applicable to owners and operators of hazardous waste treatment, storage, or disposal facilities (TSDFs), as may be necessary to protect human health and the environment. Section 3005 requires the Administrator to promulgate regulations requiring each person owning or operating a TSDF to have a permit, and to establish requirements for permit applications. Recognizing that a period of time would be required to issue permits to all facilities, Congress created "interim status" in section 3005(e) of RCRA. Owners and operators of existing hazardous waste TSDFs who qualify for interim status will be treated as having been issued permits until EPA takes final administrative action on their permit applications. The privilege of carrying on operations during interim status carries with it the responsibility of complying with appropriate portions of the section 3004 standards.

EPA has issued several sets of regulations to implement these RCRA requirements. These regulations include part 264 (which provides standards for owners and operators of TSDFs that have been issued RCRA permits) and part 265 (which provides standards for owners and operators of interim status TSDFs) of title 40 of the Code of Federal Regulations (CFR). Subpart G within these two parts addresses requirements for closing TSDFs and maintaining them after closure if necessary. The subpart G requirements in both of these parts, particularly the closure deadlines found in §§ 264.112, 265.112, 264.113, and 265.113, will be affected by the promulgation of today's final rule.

The requirements of §§ 264.113 and 265.113 were last amended on May 2, 1986 (51 FR 16422). In the May 1986 rulemaking, the Agency made conforming changes to the requirements in §§ 264.113 (a) and (b) and 265.113 (a) and (b) requiring that closure be completed within 180 days after the final receipt of hazardous wastes rather than after the final receipt of wastes (51 FR 16422). After promulgation of the May 2, 1986 amendments, lawsuits were filed challenging the requirement that closure be completed within 180 days after the final receipt of hazardous waste. The litigants, Union Carbide Corporation (Union Carbide) and the Chemical Manufacturers Association (CMA), contended that this change was inconsistent with the Congressional intent evidenced in the legislative history of the Hazardous and Solid Waste Amendments (HSWA) which amended RCRA in 1984 regarding closure of surface impoundments. Further, the litigation contended that the change was unnecessary to protect human health and the environment, and that it would discourage waste minimization and other goals Congress expressed in HSWA. EPA entered into settlement discussions with the litigants. To date, no settlement of the case has been reached.

On June 6, 1988 (53 FR 20738), the Agency proposed a rule amending the parts 264 and part 265 closure requirements to allow owners and operators of landfills and surface impoundments meeting specific eligibility criteria to delay closure of their facilities to receive non-hazardous waste following the final receipt of hazardous waste. The rule proposed general requirements for surface impoundments and landfills wishing to remain open to receive non-hazardous wastes and additional requirements for surface impoundments that did not meet the part 264 liner and leachate collection system requirements.

The Agency received 24 comment letters in response to the June 6, 1988 proposal. The comments received were filed in Docket #F–88–DCPP–FFFFF and are available for public review. Additionally, the Agency has prepared a summary of these comments and the Agency's response in a document entitled "Response to Comments to June 6, 1988 Proposed Rule to Allow Delay of Closure Following the Final Receipt of Hazardous Wastes (53 FR 20738)." This document is available for public review at the EPA RCRA Docket (Room 2427), 401 M Street, Washington, DC 20460.

In brief, most commenters supported allowing certain hazardous waste management units the opportunity to delay closure to receive only non-hazardous wastes. These commenters felt that the proposal provided owners and operators of these hazardous waste management units with needed flexibility in their management operations. These commenters also agreed with the Agency position that the proposed requirements would provide adequate protection of human health and the environment.

Commenters opposed to the proposal generally objected to its applicability to surface impoundments not satisfying the liner and leachate collection aspects of the minimum technology requirements (MTR). Commenters expressed concern that these units could not be operated in a manner that would be adequately protective of human health and the environment. These commenters also contended that the Agency did not have the authority to allow these units to remain open, since RCRA section 3005(j) required them either to be retrofitted to meet MTR, or to cease the receipt of hazardous waste on November 8, 1988. The Agency has carefully considered the comments received and is today finalizing the proposal with a number of changes which are discussed further in later sections of this preamble.

III. Summary of Today's Rule

Today the Agency is promulgating requirements amending 40 CFR 264.113 and 265.113, that will allow certain landfills, surface impoundments, and land treatment units to be eligible to delay closure to receive only non-hazardous waste after the final receipt of hazardous waste. The Agency believes that these units, including surface impoundments that do not meet the part 264 liner and leachate collection system elements of the minimum technological requirements (MTR) specified by RCRA section 3004(o), but from which hazardous wastes have been removed, can operate in an environmentally protective manner by meeting the requirements set forth in this rule. The requirements promulgated in today's rule specify general conditions applicable to all surface impoundments, landfills and land treatment units delaying closure, with additional conditions imposed on surface impoundments that do not meet part 264 liner and leachate collection system requirements.

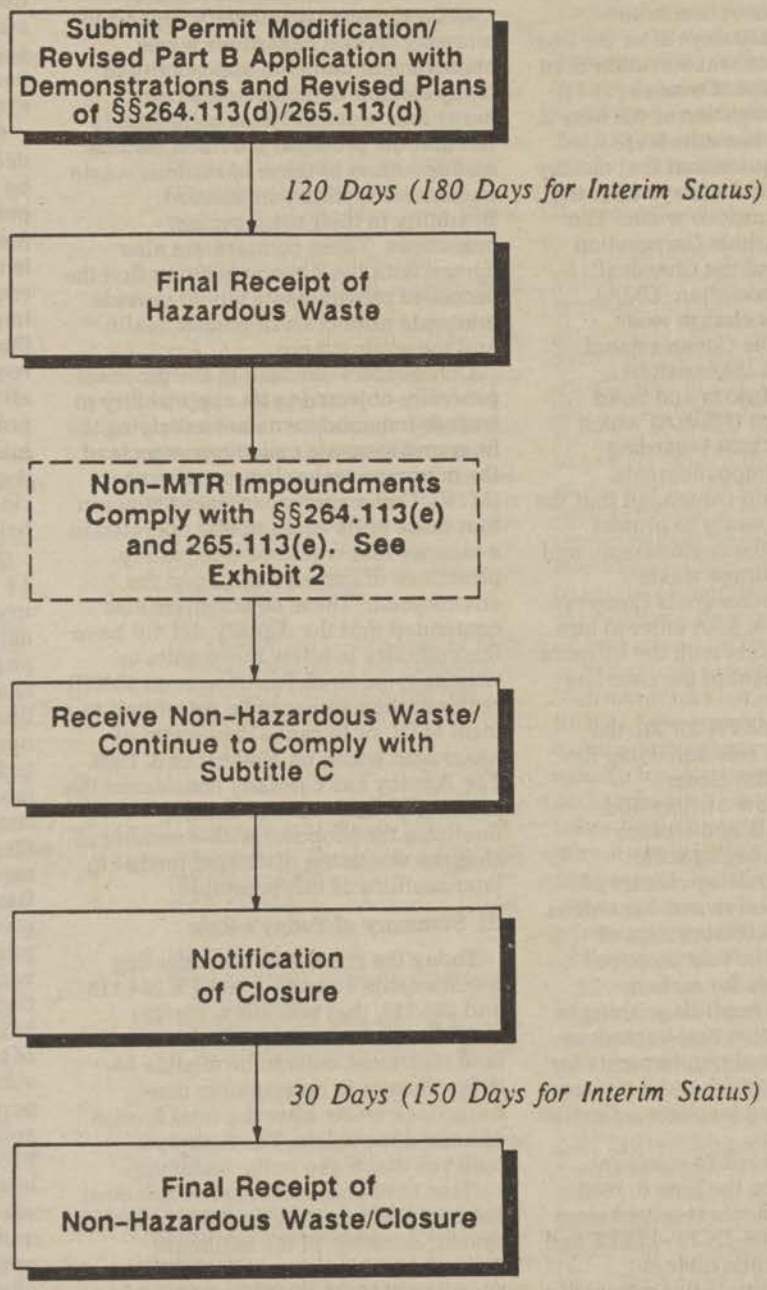
Owners and operators of facilities delaying closure under today's rule will be required to operate under the full permit requirements of 40 CFR part 264 (or part 265 requirements until a permit is issued), including corrective action requirements. In addition, surface impoundments not in compliance with liner and leachate collection system requirements will be required to remove all hazardous waste to the extent practicable. Facilities currently in interim status that meet the requirements of today's rule may delay closure while the permit application is being reviewed.

The general requirements in §§ 264.113(d) and 265.113(d) applicable to all owners and operators wishing to delay closure are being finalized as proposed with a few minor clarifying changes. These requirements are illustrated in Exhibit 1. Owners and operators wishing to delay closure under today's final rule must request a permit modification at least 120 days prior to final receipt of hazardous wastes, or, if the facility is in interim status, submit an amended part B application (or a part B application if one has not been previously submitted) at least 180 days prior to the final receipt of hazardous wastes. Owners or operators of units that received their final volume of hazardous wastes before promulgation of today's rule may delay closure if they submit the required demonstrations and permit modification (or amended part B application) within 90 days of today's Federal Register notice. Facilities which lost interim status prior to today's notice are ineligible to delay closure. These units may, of course, submit permit applications, which, if approved, could allow them to receive non-hazardous wastes pursuant to the applicable requirements of today's rule.

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Exhibit 1

Requirements Applicable to All Facilities Wishing to Defer Closure



* Note: If a permit or permit modification is denied at any time, or interim status terminated for the affected unit, closure pursuant to §§ 264.113(a) and (b) or 265.113(a) and (b) must be initiated.

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The request for a permit modification or the amended part B application must include demonstrations that the unit has the existing design capacity to manage non-hazardous waste, and that the non-hazardous wastes are not incompatible with any hazardous or non-hazardous wastes remaining in the unit. In addition, certain facility information including the waste analysis plan, ground-water monitoring plans, closure and post closure plans and cost estimates, financial assurance demonstrations and the human exposure assessment information required under RCRA section 3019, must be updated as necessary to account for receipt of only non-hazardous waste.

Owners and operators of units remaining open under today's rule must also continue to comply with all applicable part 264 permit requirements (or part 265 requirements until a permit is issued). Units may not remain open to receive only non hazardous wastes if the Regional Administrator determines that continued operation of the unit or facility cannot be conducted in accordance with these requirements ensuring the protection of human health and the environment. Finally, units must be closed in accordance with the approved closure plan and the subpart G regulations applicable to hazardous waste management units, including notification of the Agency in accordance with the deadlines specified in §§ 264.112(d)(1) and 265.112(d)(1).

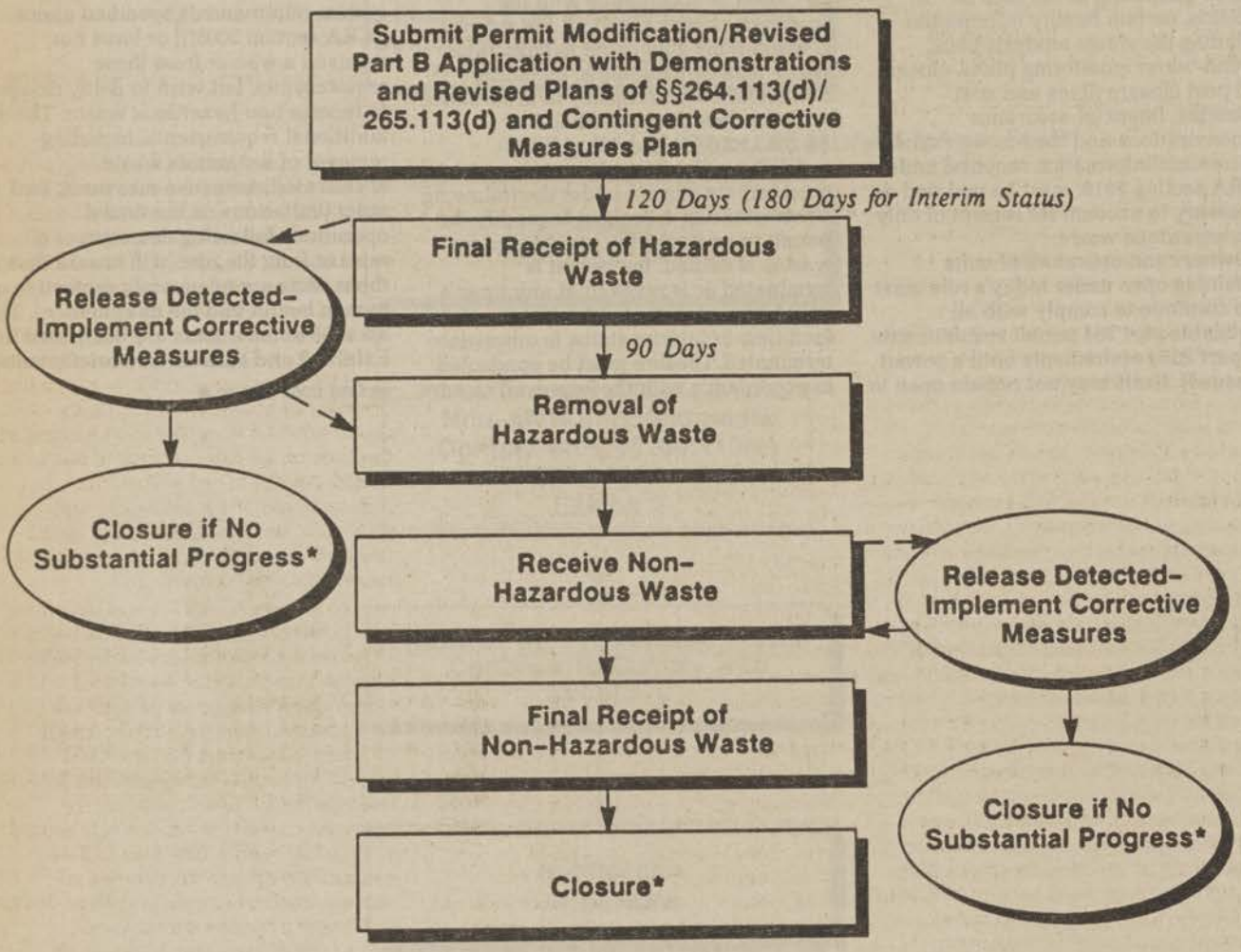
Additionally, the owner or operator must initiate closure under the following circumstances: A request to modify the permit to manage only non-hazardous wastes is denied; the permit is terminated or is revoked at any time; a RCRA permit is denied for interim status facilities; or interim status is otherwise terminated. Closure must be conducted in accordance with the approved closure plan and the deadlines currently in § 264.113 (a) and (b) or § 265.113 (a) and (b).

Today's rule also establishes additional requirements applicable to surface impoundments that do not satisfy the liner and leachate collection system requirements specified under RCRA section 3005(j) or have not received a waiver from these requirements, but wish to delay closure to receive non-hazardous waste. These additional requirements, including removal of hazardous waste, accelerated corrective measures, and strict limitations on continued operations following detection of a release from the unit, will ensure that these units are adequately protective of human health and the environment. The specific requirements are illustrated in Exhibit 2 and summarized briefly below.

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Exhibit 2

Surface Impoundment/Waste Removal Alternative



** Unit continues to be subject to corrective action requirements, if applicable.*

BILLING CODE 6560-50-C

Owners and operators of surface impoundments not meeting liner and leachate collection system requirements must prepare and submit a contingent corrective measures plan with their request to modify their permit (or for interim status facilities, with their amended part B application). The plan must include a description of corrective measures that can be implemented quickly if a release is detected and, if waste may continue to be received, a demonstration that continued receipt of wastes following detection of a release will not impede implementation of the corrective measures. (The contents of the plan are discussed in more detail in IV.B.2.a of today's preamble).

Under the final rule, owners and operators of surface impoundments not meeting double liner and leachate collection system requirements and who wish to delay closure must remove all hazardous liquids and remove all sludges from the impoundment to the extent practicable. If a release is detected either prior to or after final receipt of hazardous wastes at a surface impoundment from which hazardous wastes have been removed, corrective measures must be implemented within one year from the date of release. Continued receipt of non-hazardous wastes while corrective measures are being implemented may occur only if the owner or operator already has an approved contingent corrective measures plan (or a full corrective action plan) that accounts for the continued receipt of non-hazardous wastes and demonstrates that such continued receipt of wastes will not impede the progress of the corrective action. If the corrective measures plan has not been approved, receipt of waste must cease until such a corrective measures plan has been approved.

If an owner or operator fails to make substantial progress in conducting corrective action, either by failure to initiate actual remediation or containment activities within the first year and/or subsequently failing to implement actions leading to substantial progress towards achieving the facility's ground-water protection standard (GWPS) or background levels, if applicable, he must initiate closure of the impoundment in accordance with the requirements of subpart G of part 264 or 265. Substantial progress towards achieving the facility's GWPS or background levels will be determined on a case-by-case basis. The achievement of substantial progress will be measured by whether the owner or operator has corrective action measures in place within one year, and has met significant plan milestones or deadlines in the compliance schedule, permit, or enforcement order that establishes timeframes for achieving the facility's GWPS, or background levels. Today's rule also includes administrative procedures providing opportunity for public comment on the Regional Administrator's decision that substantial progress has not been made and that closure of the unit is therefore required.

IV. Section-by-Section Analysis

The following sections of this preamble address the major issues raised by commenters on the proposed rule and present the Agency's response to these major issues and rationale for changes to the proposed rule. The preamble is arranged in a section-by-section sequence for ease of reference. Section A addresses the applicability of the rule. Section B discusses the part 264 technical requirements applicable to permitted facilities. The part 270 procedural requirements applicable to permitting are addressed in section C. Section D discusses the conforming changes to 265 interim status standards. The requirements proposed in parts 264 and 265 are substantively identical, but have slightly different procedural requirements.

A. Applicability

Today's rule is restricted to permitted and interim status landfill, land treatment, and surface impoundment units that: (1) Are in compliance with applicable permit or interim status requirements (except double liner requirements); (2) cease to receive hazardous wastes; and (3) will subsequently receive only non-hazardous waste. The proposed rule did not extend the option to delay closure to land treatment units, but specifically requested comments on whether the option should be available to such units. After considering public comments received, the Agency has decided to allow land treatment units to delay closure if they satisfy the eligibility criteria in § 264.113(d) or § 265.113(d). This change is discussed in greater detail in section IV.A.3. below.

The rule does not extend the option to delay closure to units that lost interim status. Today's rule also does not extend the option to delay closure to manage only non-hazardous wastes to storage or treatment tanks, container storage areas, waste piles, or incinerators. If owners or operators of such units wish to receive non-hazardous wastes after the final receipt of hazardous wastes, they must first comply with the current closure requirements. The Agency believes that the activities necessary to close storage units and incinerators (e.g., waste removal and decontamination) are compatible with the future use of the unit and therefore requiring these units to conduct closure prior to receiving only non-hazardous wastes will not impose an undue burden on owners or operators.

1. Surface Impoundments Not Meeting Liner and Leachate Collection System Requirements

The proposal required surface impoundments not meeting the MTR liner and leachate collection system standards to meet the general conditions applicable to all units (§§ 264.113(d) and 265.113(d)) as well as additional requirements (§§ 264.113(e) and 265.113(e)). The proposed rule (Option 3, § 264.113(e)(3)) allowed impoundments in which wastes remained in place (i.e., disposal impoundments) to delay closure only if they were not leaking at the time of the final receipt of hazardous waste. As described below, the requirements of §§ 264.113(e) and 265.113(e) have been modified in the final rule in response to comments received on the proposal.

Many commenters favored the provision of the proposal allowing non-MTR surface impoundments to delay closure and provided anecdotal information in support of it. Other commenters opposed the proposal, expressing concern that it would adversely impact human health and the environment. Those commenters asserted that the proposed rule would violate the requirements in RCRA section 3005(j) which require that surface impoundments that have not met MTR cease receipt, storage, and treatment of hazardous wastes on November 8, 1988. Commenters further argued that because all hazardous wastes would not be removed from the impoundment (for instance, under one of the options, no hazardous wastes were required to be removed), and because the facility would not cease activities that involve the management of the remaining hazardous wastes, the unit should be considered an active hazardous waste surface impoundment and therefore would be in violation of section 3005(j) of RCRA. These commenters further asserted that the proposal violates RCRA section 1003(a)(5) because the proposal achieves protection of human health and the environment by remediating releases, rather than by preventing releases, which they argued is required by the statute.

One of these commenters also questioned the Agency's technical judgment in allowing hazardous waste to remain in surface impoundments lacking double liners and leak detection systems. The commenter noted that the Agency previously has been unwilling to rely solely on ground-water monitoring and corrective action to detect and cleanup releases, favoring instead a combination of design and operating requirements to minimize the potential for releases. The commenter also pointed out that the Agency had not presented any data with this rulemaking indicating that the Agency now found that ground-water monitoring and corrective action were more effective than it believed in the past. Finally, the commenter expressed concern that placing additional liquid non-hazardous wastes into a surface impoundment containing hazardous wastes could increase the pressure head and, consequently, increase the chances that hazardous constituents from the hazardous wastes would escape into the environment.

The Agency is not persuaded by the commenters' legal arguments based on section 3005(j). The Agency does not believe that the use of the term "storage" in RCRA section 3005(j) bars the continued receipt of non-hazardous wastes by impoundments that may contain hazardous wastes. The statute clearly requires that non-MTR surface impoundments cease receiving hazardous wastes by November 8, 1988, and all non-retrofitted impoundments must comply with this requirement. The statute does not itself require closure of these units. In a colloquy clarifying statutory language, Senators Randolph and Chafee indicated that the intent of the provision was not to require retrofitting for hazardous waste impoundments that receive or store hazardous waste prior to November 8, 1988, but cease to receive hazardous waste after that date, and that requiring such closure would not be necessary if continued waste management in the impoundment were conducted in a manner ensuring continued protection of human health and the environment (130 Cong. Rec. S9182 daily ed. July 25, 1984).

The Agency does, however, agree with the commenters that section 1003(a)(5) establishes the goal of managing hazardous waste properly in the first place, "thereby reducing the need for corrective action at a future date." However, the Agency believes that Congress intended to allow the Agency to determine the type of regulatory controls needed to provide "proper management" for each type of hazardous waste management unit. This provision does not prohibit non-retrofitted surface impoundments from delaying closure to receive non-hazardous wastes. Closure of these units need not be required if the Agency determines that the wastes in the impoundments can still be managed in such a way as to reduce the need for future corrective action.

The Agency has re-evaluated the proposal in light of the technical and policy concerns raised in the comments. Upon reconsideration, the Agency has determined that only those non-retrofitted impoundments that meet the removal requirements described in Option 1 of the proposal will be eligible to delay closure. Surface impoundments from which wastes are not removed will not be permitted to delay closure. Further, flushing of impoundments to achieve only a 95 percent volume displacement is not sufficient under the final rule as evidence of waste removal.

EPA, as noted by the commenters, generally has adopted regulatory requirements which impose both prevention and detection and remediation requirements for land disposal units. This position was first articulated in the Agency's July 26, 1982 rulemaking establishing standards for land disposal facilities (47 FR 32274). The 1982 rule promulgated two sets of standards for landfills, surface impoundments, waste piles, and land treatment units. The design and operating standards were intended to minimize the formation and migration of leachate and thus reduce the likelihood of releases, while the ground-water monitoring and response requirements were promulgated to ensure that releases would be detected and corrective action measures implemented in the event of a release. The Agency reiterated its position on these dual goals of prevention and protection in its May 2, 1986 rule establishing additional closure, post-closure care, and financial responsibility requirements for hazardous waste facilities. In the preamble to the 1986 final rule, the Agency stated that "the hazardous waste regulations incorporate a two-part 'prevention and care' system whose overall goal is to minimize the formation and migration of leachate to the adjacent subsurface soil, ground water, or surface water." (51 FR 16432) The Agency also relied on this position in the May 29, 1987 (52 FR 2218), proposal to extend double liner and leachate collection standards to certain new, replacement, and expansion landfills and surface impoundments not required to meet these standards under section 3004(o).

The Agency also agrees with the commenters that proposed Options 2 and 3 failed to require measures sufficient to prevent releases from impoundments. Consistent with previous policies, EPA is not willing to rely solely on detection and remediation to provide protection for human health and the environment at non-retrofitted impoundments which retain significant amounts of liquid. Under both of these options, particularly Option 3, significant amounts of hazardous liquids would remain in surface impoundments that lack liners and leachate collection systems or have liners that do not meet the standards that EPA would require for new units. EPA shares the commenter's concern that adding additional non-hazardous liquids could increase the pressure level in these impoundments thereby increasing the potential for releases of the remaining hazardous wastes from these impoundments. On re-examination the Agency no longer believes that the enhancements to the remediation process that the Agency had proposed (such as accelerated corrective action) are sufficient to mitigate the possibility that a release may escape early detection and prompt remediation. Consequently, the Agency believes that protection of human health and the environment requires prompt closure of impoundments retaining significant amounts of hazardous waste. Closure will supply necessary "preventative" measures by requiring the owner or operator to either remove all hazardous wastes and waste constituents or to eliminate all free liquids and install an impermeable cap to reduce the potential for future releases of hazardous constituents.

The Agency continues to believe that proposed Option 1 does, however, require sufficient preventative measures to ensure continued protection of human health and the environment. Under this option, the owner or operator must remove all liquid hazardous wastes and remove hazardous sludges to the extent practicable. The Agency believes that the significant reduction in the quantity of waste in the unit will reduce the threat posed by any release to the environment. While some small amount of hazardous sludges may remain, the required removal activity significantly decreases the likelihood that a release of hazardous constituents, leached from the sludge at levels presenting a threat to human health and the environment, will occur.

To further ensure continued environmental protection, the Agency has retained the requirements it proposed to expedite the detection and remediation process. Units delaying closure will be required to receive permits and to operate under part 264 standards including ground-water monitoring standards. These units will therefore be subject to the same ground-water monitoring requirements as units meeting all MTR. Further, to ensure prompt response and remediation in the event of a release, accelerated corrective action and/or closure of units is required.

Surface impoundments not meeting liner and leachate collection systems requirements must submit a contingent corrective measures plan describing interim measures for handling a release if it occurs and promptly implement this plan if a release is detected. Detection of releases will be determined using either background levels or the ground-water protection standard (GWPS) if one has been established. Further, owners and operators will not be allowed to delay implementation of corrective measures while a GWPS is being established.

The Agency therefore continues to believe that the combination of waste removal and stricter detection and remediation requirements of §§ 264.113(e) and 265.113(e) will protect human health and the environment and be consistent with the objectives and specific requirements of RCRA. Accordingly, the Agency is finalizing revised requirements in §§ 264.113(e) and 265.113(e) which allow surface impoundments not meeting liner and leachate collection system requirements to delay closure if hazardous wastes are first removed and other eligibility and operating criteria are met. Section IV.B.2 discusses in more detail how the proposed requirements have been modified in response to comments.

2. Landfills

The proposed rule would allow landfills that meet the general requirements set forth in §§ 264.113(d) and 265.113(d) to delay closure. One commenter opposed allowing landfills not meeting MTR to delay closure. The commenter contended that landfills not meeting MTR would pose risks of release similar to those posed by non-retrofitted surface impoundments.

The Agency has considered the commenter's concerns, but is promulgating the final rule as proposed allowing landfills to delay closure if they meet the requirements in § 264.113(d). Existing landfills are not subject to the provisions of Section 3005(j) of RCRA that require surface impoundments to retrofit or cease receipt of hazardous waste by November 8, 1988. Existing landfills are, however, subject to the requirements of section 3004(o) of RCRA. Under section 3004(o) existing landfills must retrofit to meet MTR or cease receipt of hazardous waste only if they are laterally expanded, or otherwise trigger the replacement or new unit definitions.

The Agency believes that since existing landfills not satisfying MTR may remain in operation to handle hazardous wastes, they should be allowed to delay closure to receive only non-hazardous wastes if they meet the requirements of § 264.113(d) or § 265.113(d), as applicable. The Agency also disagrees with the commenter's view of the risks presented by receipt of non-hazardous waste at landfills. When evaluating a request to delay closure of an existing landfill, the Agency will carefully consider the compatibility of the hazardous and non-hazardous waste to be managed in the landfill in addition to all other requirements in §§ 264.113(d) and 265.113(d). Requiring landfills to comply with §§ 264.113(e) and 265.113(e) would result in units receiving only non-hazardous wastes being subject to more stringent requirements than landfills receiving hazardous wastes. Accordingly, under today's rule, landfills are subject only to the requirements in §§ 264.113(d) and 265.113(d) to delay closure.

3. Land Treatment Units

The proposed rule did not extend the option to delay closure to land treatment units. The Agency did, however, specifically request comment on whether the proposal should be extended to land treatment units.

The majority of commenters on this issue supported extending the option to delay closure to land treatment units. Comments favoring the option pointed out that many land treatment facilities already manage both hazardous and non-hazardous waste streams. Commenters further asserted that land treatment units pose a lower risk to ground water than surface impoundments and landfills because hazardous constituents are degraded and immobilized as part of treatment, and that the destruction efficiency of a land treatment unit may be improved when non-hazardous wastes are combined with hazardous wastes. One commenter who opposed allowing land treatment units to delay closure stated that increased pressure and potential explosive and subsidence hazards could be caused by the acceptance of non-hazardous wastes.

The Agency has considered these comments and has expanded the final rule to allow land treatment units to delay closure if they satisfy the eligibility criteria of §§ 264.113(d) and 265.113(d). The Agency believes that land treatment units can delay closure and operate in a manner that is protective of human health and the environment. All land treatment units that delay closure will continue to be subject to all subtitle C requirements for land treatment units and the requirements of §§ 264.113(d) and 265.113(d) of today's rule. Existing subtitle C regulations require owners and operators of land treatment units to demonstrate that the hazardous constituents in the subtitle C wastes will be completely degraded, transformed or immobilized in the treatment zone. As part of the permit or permit modification (or amended Part B application for interim status facilities) required to delay closure, these owners and operators will be required to demonstrate that receipt of non-hazardous waste will not inhibit the degradation, transformation or immobilization of the hazardous wastes in the treatment zone. These factors, together with the other requirements of §§ 264.113(d) and 265.113(d) will ensure that land treatment units delaying closure are adequately protective of human health and the environment.

4. Other Treatment and Storage Facilities

The proposed rule would not allow storage units (i.e., storage and treatment tanks, container storage areas, or waste piles) or incinerators to delay closure. In the preamble to the proposal, the Agency stated that if these units wanted to delay closure in order to receive only non-hazardous waste, they would first be required to close in compliance with the requirements of subpart G. The requirements for closure of these units involve removal or decontamination of all wastes and waste residues, containers, liners, bases and contaminated soils, equipment and other containment system components (40 CFR 264.178, 264.197, 264.258, 264.351, 265.197, and 265.351). These closure requirements are not incompatible with the reuse of these units for receipt of only non-hazardous waste. Once the unit has been emptied of all hazardous wastes and decontaminated, it could receive non-hazardous waste as a subtitle D facility, without being subject to the stricter provisions of today's rule.

Only one commenter recommended that tanks and container storage areas be allowed to delay closure. The Agency

continues to believe that because the activities which would be necessary to delay closure are so similar to activities required to close these units, prohibiting storage units from delaying closure under today's rule will not impose an undue burden on the owners and operators of these units. Therefore, the final rule is promulgated as proposed and is not applicable to storage and treatment tanks, container storage areas, waste piles and incinerators.

B. Part 264 Standards

The Agency proposed to amend §§ 264.112(d) and 264.113 (a), (b), and (c), and to add new paragraphs (d) and (e) to § 264.113. Sections 264.113 (a) and (b) require a facility owner or operator to treat, dispose, or remove all hazardous wastes within 90 days and to complete closure activities within 180 days of the final receipt of hazardous wastes. Further, § 264.112(d) establishes that the date the owner or operator expects to begin closure, which triggers the notification requirements, is no later than 30 days after the receipt of the last known volume of hazardous wastes. Under §§ 264.113 (a) and (b) and 265.113 (a) and (b), extensions to the closure period may be granted in certain limited circumstances. Today's rule provides an additional justification for an extension of the closure period to allow for management of only non-hazardous wastes. Additionally, a conforming change is being made to §§ 264.112(d) and 264.113(c) to address deadlines for closure of units that qualify to delay closure. The changes to § 264.113 being promulgated today supplement existing part 264 standards and provide assurance that public health and the environment will be adequately protected at units delaying closure.

1. General Conditions for Delay of Closure (§ 264.113 (d))

Section 264.113(d) of today's rule establishes the general requirements applicable to all units delaying closure to receive non-hazardous wastes after the final receipt of hazardous wastes. These requirements supplement existing subtitle C requirements. The § 264.113(d) requirements are discussed in turn below.

a. *Demonstrations for Extensions to Closure Deadlines (§ 264.113(d)(1)).* Section 264.113(d)(1) of the proposed rule required owners and operators of facilities wishing to delay closure to demonstrate as part of their permit application or modification that: (1) The unit(s) has adequate existing design capacity to continue to receive waste; (2) there is a reasonable likelihood that non-hazardous wastes will be received in the unit within one year of the final receipt of hazardous waste; (3) non-hazardous wastes received will be compatible with any other wastes remaining in the unit; (4) closure of the unit is incompatible with continued operation of the facility; and (5) the facility will continue to be operated in compliance with all applicable permit or interim status requirements.

The Agency received a number of comments regarding these demonstrations. Most commenters recommended that the required demonstrations be modified or deleted from the final rule. The Agency continues to believe, however, that the demonstrations required in the proposal are necessary to ensure that units delaying closure to receive only non-hazardous waste remain adequately protective of human health and the environment. In many cases, the required demonstrations are the same as those currently required under §§ 264.113(b) and 265.113(b) for units wishing to temporarily suspend hazardous waste management activities. The Agency's rationale for retaining each of the demonstrations is presented below.

(1) *Design Capacity.* One commenter recommended that the option to delay closure not be restricted to a facility's original design capacity. The Agency continues to believe that it is prudent to restrict the option to delay closure to the existing design capacity. In proposing these changes to the closure requirements, the Agency recognized that closure of a unit while the unit has remaining capacity to receive non-hazardous wastes could disrupt facility operations or impose substantial economic burdens on the facility owner or operator. Where existing capacity can be utilized to manage non-hazardous wastes in a manner that remains protective of human health and the environment, extensions to the closure period may be allowed. The Agency believes that it is unwise to allow the expansion of subtitle C units for managing non-hazardous wastes, thus resulting in large units subject to subtitle C. Finally, the Agency does not believe that many owners and operators would want to expand their subtitle C units or facilities simply to receive more non-hazardous waste, since such lateral expansion of surface impoundments and landfills would trigger the liner and leachate collection system requirements of RCRA section 3004(o). The Agency recommends that if additional non-hazardous waste capacity is needed, a facility choose to construct a unit designed to handle non-hazardous wastes in accordance with Subtitle D requirements.

(2) *Receipt of Non-Hazardous Waste Within One Year.* A commenter suggested that the required demonstration that wastes will be received within one year of the final receipt of hazardous waste be documented (e.g., through submission of contracts indicating anticipated receipt of non-hazardous waste) and that the time period within which non-hazardous wastes must be received should be shortened to three months. The Agency does not believe that such changes are necessary. The provision allowing a unit to remain open if it receives additional wastes within one year of the final receipt of hazardous wastes is consistent with the provisions allowing continued receipt of hazardous waste. In implementing §§ 264.112(d)(2) and 265.112(d)(2), the Agency currently determines on a case-by-case basis the documentation that best supports the claim that additional wastes will be received and that sufficient design capacity is remaining. In evaluating these submissions, the Regional Administrator generally takes into account a number of factors including those suggested by the commenter, such as: (1) Unit or facility characteristics, including capacity and operating conditions; (2) demand for the facility; (3) the owner or operator's business plans; and (4) the history of facility operations (OSWER Policy Directive #9476.00-5, January 1987, pp. 3-16 and 3-17). Finally, the eligibility requirements, including the requirements to continue to comply with all permit conditions or interim status standards, if applicable, will ensure that units remaining open following the final receipt of hazardous waste are protective of human health and the environment.

(3) *Compatibility of Wastes.* The Agency received comments on the compatibility demonstration (§§ 264.113(d)(1)(iv) and 265.113(d)(1)(iv)) only with respect to landfill units. Several commenters challenged the Agency's suggestion in the preamble that it would be difficult to demonstrate that municipal solid wastes would be compatible with hazardous wastes remaining in landfill units, and therefore it would be unlikely that receipt of municipal solid wastes would be allowed. The Agency continues to believe that, in most cases, it will be difficult to demonstrate that municipal solid wastes will be compatible with hazardous wastes remaining in a unit delaying closure. Problems which are anticipated include subsidence,

settlement of the cap, or leachate and methane gas production. The Agency acknowledges, however, that some units have been specifically designed to co-manage both hazardous and municipal solid wastes. For these types of units, the Agency agrees with the commenter that it may not be difficult to demonstrate that the continued receipt of non-hazardous wastes will be compatible with the design of the unit and with the hazardous wastes remaining in the unit. In cases where the unit has not been designed specifically to handle hazardous and non-hazardous wastes, however, the Agency still believes that it will be difficult to demonstrate that the addition of non-hazardous wastes will be compatible with the remaining wastes in the unit and with the facility design and operating requirements of part 264. The requirements of §§ 264.113(d)(1)(iv) and 265.113(d)(1)(iv) therefore remain unchanged. These requirements are applicable to all types of units eligible to delay closure.

(4) *Incompatibility of Closure With Continued Operations.* A few commenters expressed confusion about the requirement that owners and operators demonstrate that closure of the unit would be incompatible with continued operation of the facility.

After considering the commenters' concerns, the Agency has decided to retain the requirement that owners and operators of units delaying closure demonstrate that closure of the unit would be incompatible with continued operation of the facility (§ 264.113(d)(1)(iv)). This requirement is consistent with existing requirements for requesting an extension to the deadlines to begin closure for owners or operators wishing to receive additional hazardous wastes, and has not proved to be an implementation concern to date. This demonstration can be supported by submission of information showing the role of the unit in the facility's overall waste management scheme. The practical, rather than economic, disruptions which closure of the unit with remaining capacity would have on facility operations should be evidenced.

b. *Continued Compliance With Subtitle C Requirements.* A few commenters asserted that the Agency does not have the authority to require continued compliance with Subtitle C permitting requirements because units delaying closure would be managing only non-hazardous wastes. One commenter recommended that the Agency not require compliance with both State and local regulations in addition to Subtitle C requirements to avoid duplicate and potentially conflicting requirements. Finally, one commenter suggested that the Agency clarify that surface impoundments not meeting liner and leachate collection system requirements need not comply with the permit requirements for retrofitting.

RCRA provides the Agency ample authority to regulate any units that received hazardous waste after November 19, 1980. Units wishing to delay closure are currently regulated under Subtitle C and remain regulated as long as hazardous constituents from those wastes remain in the units, unless the owner or operator obtains a delisting or satisfies clean closure requirements.

In specifying in the preamble to the proposal that units comply with applicable State and local regulations, the Agency was merely restating existing requirements. Currently, an owner or operator is subject to all applicable State and local regulations in addition to applicable Federal requirements.

Finally, one commenter pointed out that the requirement for surface impoundments not designed to satisfy the MTR liner and leachate collection system requirements to comply with all part 264 permit requirements could cause confusion. The Agency wishes to clarify that the MTR liner and leachate collection requirements are not applicable permit requirements for surface impoundments operating under a § 264.113(e) and § 265.113(e) extension. It should be noted that lateral expansion of units delaying closure pursuant to §§ 264.113(d) and (e) is not allowed. Lateral expansion of such units would trigger the MTR requirements of § 3004(o) as well as constitute a violation of today's regulation.

c. *Changes to Facility Plans (§ 264.113(d)(2)).* Section 264.113(d)(2) proposed that owners and operators submit with their permit modification request, necessary and appropriate changes to the waste analysis plan, ground-water monitoring plan and response plan, closure and post-closure plans and cost estimates, and demonstrations of financial assurance required elsewhere in part 264. These requirements parallel existing requirements that facility plans be revised to reflect substantial changes in the types of hazardous wastes being handled or the hazardous waste management practices employed. Similarly, the Agency believes that to ensure proper management of units receiving non-hazardous wastes, selected plans should be revised to reflect changes in unit operations for managing only non-hazardous wastes.

The Agency received very few comments on the proposed requirement to modify the ground-water monitoring plan, closure and post-closure plans and cost estimates, and financial assurance demonstrations (responses to these comments appear in the Comment Response Document). However, a number of commenters objected to the requirement to revise the waste analysis plan. One commenter stated that modifying the waste analysis plan is unnecessary because waste compatibility already will have been demonstrated under the requirements of § 264.113(d)(1)(iii). In addition, this commenter stated that the Subtitle C waste analysis program cannot be adapted to municipal solid wastes because of the difficulty of obtaining the necessary data. Under Subtitle C, generators of hazardous wastes must prepare a manifest identifying the contents of each shipment of waste. In contrast, generators of municipal solid wastes are not required to compile the data necessary to characterize their wastes. Thus, municipalities and commercial trash collectors would be unable to provide the TSDFs with data on the exact content of municipal solid waste (generally household wastes) which would be necessary to comply with the waste analysis plan requirements.

The Agency continues to believe that revision of the waste analysis plan is necessary and practicable in most cases. Such information will be required to support the compatibility demonstration in § 264.113(d)(1)(iii). The Agency would expect the compatibility demonstration required in § 264.113(d)(1)(iii) to cross-reference the waste analysis plan as evidence that non-hazardous waste streams are compatible with previously managed hazardous wastes.

It should be noted, however, that the final rule requires that the waste analysis plan be revised "as necessary and appropriate" to account for the addition of additional or new non-hazardous waste streams. The Agency acknowledges that in some cases the Subtitle C procedures for conducting physical and chemical waste analyses and the requirements to prepare a waste analysis plan describing these procedures may be difficult to apply to municipal solid wastes. For example, generators of municipal trash (e.g., households) do not have the data necessary to characterize the wastes. In such cases, the Agency may allow the owner or operator to use his own knowledge about the waste streams to

make the required compatibility demonstration (e.g., local ordinances that prohibit certain types of wastes from being disposed in the trash or visual inspections of truckloads). This flexible approach is consistent with current Agency practices.

d. *Exposure Assessment Information.* Section 264.113(d)(4) of the proposed rule would have required owners and operators wishing to delay closure to submit the human exposure assessment required under RCRA section 3019(a) with the request to delay closure. This section further would have required that if the Regional Administrator determined that the unit posed a substantial risk to human health, then the unit would not be eligible to delay closure.

One commenter recommended that the Regional Administrator determine that continued use of the unit to receive only nonhazardous waste would not pose a substantial risk to human health. Another commenter argued that the requirement was stated in excessively vague language and provided no opportunity for administrative appeal. Finally, a third commenter stated that section 3019 information must be submitted only upon submission of a final part B permit application, and that resubmission of the data should not be a condition of delaying closure.

The Agency has considered the commenters' recommendations and agrees that resubmission of the human exposure assessment information required under RCRA section 3019(a) (40 CFR 270.10(j)) may not always be necessary to demonstrate that a unit can operate in a manner protective of human health and the environment. The purpose of the information gathered under the authority of RCRA section 3019 is to assist in the evaluation that a unit delaying closure can continue to operate in a manner protective of human health and the environment. Therefore, the Agency is modifying the final rule to clarify that the information will only be required to be updated "as necessary and appropriate" to account for the receipt of non-hazardous wastes following final receipt of hazardous wastes. The Agency is also including the requirement to submit or revise the § 3019 information with the other plans and information updates required under § 264.113(d)(2) rather than as a separate requirement in § 264.113(d)(4). As a result of this change, proposed § 264.113(d)(4) has been deleted and § 264.113(d)(5) has been renumbered § 264.113(d)(3).

e. *Permit Revisions (§ 264.113(d)(4)).* Under § 264.113(d)(5), the proposed rule required that the permit modification include revisions to the affected conditions of the permit, as appropriate, to account for the management of only non-hazardous waste in the unit delaying closure. No comments were received on this section of the proposal and the Agency is finalizing the requirement as proposed. Because of other changes to the proposal that have resulted in a renumbering of some sections, this section is being promulgated today as § 264.113(d)(3).

2. Additional Requirements for Surface Impoundments that do not Meet Liner and Leachate Collection System Requirements (§ 264.113(e))

The Agency proposed under § 264.113(e) additional requirements applicable to surface impoundments that do not meet MTR liner and leachate collection system requirements. These additional requirements were established to ensure that these units are operated in a manner that is as protective of human health and the environment as surface impoundments in full compliance with MTR.

All surface impoundments not meeting MTR liner and leachate collection system requirements must comply with the requirements of both § 264.113(d) and § 264.113(e). Comments received on the proposed § 264.113(e) requirements and the Agency's final position are discussed below.

It must be noted that these units must continue to comply with section 3005(j) which explicitly prohibits non-retrofitted surface impoundments from receiving hazardous wastes after the November 8, 1988 retrofit deadline. Receipt of some non-hazardous wastes also may not be permitted in these units. Certain non-hazardous liquids (e.g., electroplating wastewaters) generate a listed hazardous sludge. In a June 30, 1988, **Federal Register** notice clarifying the retrofitting requirements, the Agency stated that it interpreted the section 3005(j) requirement that receipt of hazardous waste cease after November 8, 1988 to mean "that no additional hazardous wastes or waste that generates a hazardous sludge shall be placed in the unit (53 FR 24718)." In order to remain in compliance with section 3005(j), therefore, non-retrofitted surface impoundments delaying closure under today's rule will not be permitted to receive a non-hazardous waste if that waste generates a hazardous sludge.

a. *Contingent Corrective Measures Plan (§ 264.113(e)(1)).* In addition to the demonstrations and requirements described in IV.B.1 above, the Agency proposed to require owners or operators of surface impoundments that do not satisfy liner and leachate collection system requirements to include a contingent corrective measures plan with the request to modify the permit as a condition of delaying closure, unless a corrective action plan has already been submitted. The purpose of the plan is to ensure that corrective action can be implemented quickly if a release is detected. Since the exact extent and type of release will not be known, the contingent corrective measures plan should describe a range of possible remedies for likely release scenarios. The preparation of this plan does not relieve the owner or operator from any existing or future requirements of a corrective action program or schedules of compliance in a RCRA section 3008(h) corrective action order or any other order incorporating corrective action requirements.

The Agency received only three comments on this requirement. One commenter stated that the requirement is "overly burdensome" and duplicative of corrective action provisions in § 264.100, and indicated that since facilities delaying closure will still be subject to the permitting process, a separate mechanism for implementing corrective action is not necessary. A second commenter argued that the amount of detail required for the plan is beyond what could reasonably be known prior to actually having a release. Another commenter questioned whether the corrective measures plan would include "meaningful corrective measures."

The Agency is finalizing the requirement of § 264.113(e)(1)(i) for the contingent corrective measures plan as proposed because of the importance of ensuring that surface impoundments not meeting liner and leachate collection system standards continue to be managed in a manner most protective of human health and the environment. Requiring a contingent corrective measures plan in advance of a detection of a release will ensure prompt implementation of remedial measures to prevent further contamination, contain any existing contamination, and remediate contaminated ground water. In general, the Agency believes that this plan can readily be prepared using the data submitted as part of the Part B application (e.g., types of constituents at the facility, hydrogeologic conditions, location of ground-water monitoring wells, and available remedial technologies). In fact, some States already require a contingent corrective measures plan.

Further, the Agency believes that the measures required in the contingent corrective measures plan will be

"meaningful" and timely. The Agency believes that it is practical to anticipate many of the actions that may be necessary to remediate releases to ground water. The measures outlined in the contingent corrective measures plan will often be the same types of measures required under the full corrective action plan. Among the measures discussed by the Agency in the preamble to the proposed rule that might be included in the plan were extrapolation of future contaminant movement, a discussion of the likely contaminants of concern, and a description of measures that can be installed quickly to address releases of different types of constituents or releases at variable rates, and plumes of different size and depth. In many cases these actions will constitute interim measures, such as alternate water supplies, stabilization and repair of side walls, dikes, and liners, or reduction of head. Such interim measures would prevent and contain releases and complement any longer-term corrective measures that may be required following a detailed evaluation. The plan should also describe in detail the range of corrective measures that might be used, including the equipment and physical components required.

Finally, the owner or operator must address whether continued receipt of wastes would impede the progress of corrective action and establish criteria or milestones to ensure that substantial progress in remediating the release is achieved. As discussed further in section IV.B.2.c.3 of today's preamble, the owner or operator of a non-retrofitted surface impoundment must cease the receipt of waste upon detection of release unless he has an approved contingent corrective measures plan which demonstrates that continued waste receipt will not impede the progress of the required corrective measures.

b. *Alternatives.* Today's final rule requires owners or operators of surface impoundments that do not meet liner and leachate collection system requirements to remove all hazardous liquids and sludges to the extent practicable as a precondition of delaying closure to receive non-hazardous wastes. As part of the demonstrations required in the request to delay closure, an owner or operator must include a plan for complying with this waste removal requirement. Two alternatives originally proposed have not been finalized. The following section summarizes the comments received on the alternatives and describes the Agency's final position.

(1) *Alternative 1—Removal of Hazardous Wastes (§ 264.113(e)(2)).* The proposal offered owners and operators, as a primary alternative, the option to remove all hazardous liquids and sludges from the surface impoundment prior to receipt of non-hazardous waste. This option appears in today's final rule as Section 264.113(e)(2). This section discusses comments received on this option, as well as the applicability of the mixture rule to impoundments removing hazardous wastes.

(a) *Liquid and sludge removal.* Under the first alternative, proposed as § 264.113(e)(2)(i), the Agency proposed that an owner or operator of a surface impoundment remove all hazardous liquids and hazardous sludges, to the extent practicable without damaging the liner, from the impoundment prior to the receipt of non-hazardous waste.[1] In the preamble, the Agency noted that for unlined units (i.e., units with natural clay liners), the hazardous wastes must be removed down to the underlying and adjacent soil. In addition, the proposal specified that, in the event of a release to ground water, the facility would have to comply with the corrective action requirements of proposed § 264.113(e)(5) and discussed in section IV.B.2.c below.

The Agency also proposed that owners or operators choosing this alternative remove hazardous wastes (liquid and sludges) no later than 90 days after the final receipt of hazardous waste. The proposal allowed the Regional Administrator to approve a request for a longer period of time based on need (e.g., due to adverse weather conditions or specific operating practices), and on a demonstration that an extension would not pose a threat to human health and the environment. The deadline and criteria for requesting an extension to the 90-day deadline in the proposal were consistent with the current provisions in § 264.113(a) for removing all hazardous wastes at closure and for requesting an extension to that deadline.

The Agency received one comment on this proposed alternative requesting clarification of whether natural clay-lined units should remove the clay liners along with the sludge. The requirement to remove sludge from unlined units "down to the underlying and adjacent soil" excludes the liner in naturally-clay lined units. Removal need only be completed to the clay. This clarification does not affect the amount of materials that may be required to be removed from the unit at the time of final closure. No other comments were received and the provision is finalized as proposed.

(b) *Relationship to the mixture rule.* In the preamble to the proposed rule, the Agency discussed the applicability of the "mixture rule" in the context of owners or operators who treat wastes in a series of surface impoundments. In that discussion, the Agency stated that in most cases, the mixture rule would not apply because mixing of hazardous sludge with non-hazardous influent would be unlikely. Therefore, a non-retrofitted surface impoundment delaying closure under the proposed rule could discharge into a non-retrofitted downstream surface impoundment, because the discharged wastes would not be considered hazardous. The Agency received several comments on this interpretation of the "mixture rule." (53 FR 20750) While several commenters supported the Agency's interpretation, other commenters argued that this position is inconsistent with previous Agency interpretations. The commenters who disagreed stated that when a non-hazardous waste and a listed hazardous waste are co-mingled and co-managed in the same unit under any circumstances, the entire mixture is considered a listed hazardous waste and must be managed appropriately.

The Agency maintains that the discussion of the mixture rule contained in the preamble to the proposal is consistent with previous Agency actions. The Agency has consistently interpreted the mixture rule *not* to apply where a non-listed waste is discharged to a unit (i.e., surface impoundment) even if that liquid generates a hazardous sludge, unless the sludge is in some way "mixed" with the liquid (e.g., scoured as a result of operations in the unit). If the Agency did not interpret the mixture rule in this manner, there would be no point in carefully limiting listings to include sludges but exclude wastewaters. The alternate mixture rule interpretation suggested by several commenters would make the wastewater hazardous as soon as the listed sludge was generated.

EPA believes that the opportunity for mixing of hazardous sludges and hazardous liquids from impoundments where all hazardous liquids and sludges have been removed to the extent practicable as required by §§ 264.113(e)(2) and 265.113(e)(2) will be minimal. Opportunities for mixing will be further diminished as additional non-

[1] The draft RCRA Guidance Document, "Minimum Technology Guidance on Single Liner Systems for Landfills, Surface Impoundments and Waste Piles, Design, Construction and Operation," issued May 24, 1985, for example, suggests that a minimum of 18 inches of protective soil or equivalent is appropriate to protect liners from damage when mechanical equipment is used to remove sludge or contents of the impoundments.

hazardous sludge is generated. Were any mixing to occur, it would be confined to the liquid/sludge interface. Levels of hazardous constituents escaping from the hazardous sludge to the non-hazardous liquid are not likely to pose an appreciable risk to human health and the environment. Should the impoundment be subsequently dredged so that scouring or other physical mixing occurs, the mixture rule would come into effect. (This rationale is discussed further in 46 FR 56582, November 17, 1981).

Once all hazardous liquids and hazardous sludges have been removed to the extent practicable, free liquids from such impoundments may be discharged to non-MTR units because the liquids would not be considered to be hazardous wastes. Additionally, as discussed earlier, to remain in compliance with section 3005(j), non-retrofitted impoundments wishing to delay closure may not receive a non-hazardous waste that generates a hazardous waste or sludge.

(2) *Alternative 2—Flushing Hazardous Wastes.* The proposal offered owners or operators the second option of flushing or displacing liquid hazardous wastes and removing hazardous sludges. For reasons discussed below, the Agency is not finalizing this alternative.

The proposed "flushing" alternative (proposed § 264.113(e)(2)(ii)) would have allowed an owner or operator to delay closure of a surface impoundment subject to § 264.113(e) if he removed the hazardous sludges and also removed the liquid hazardous waste and suspended solids by flushing the unit with non-hazardous influent until 95 percent of the hazardous liquid had been removed. In addition, the owner or operator would have been required to demonstrate that the remaining liquid waste and suspended solids did not exhibit a characteristic of hazardous wastes as defined in subpart C of part 261. Testing for listed hazardous constituents, however, was not required. The Agency intended this alternative to apply primarily to owners or operators of biological treatment impoundments who demonstrated that it would be infeasible or impracticable to drain the impoundment to remove all hazardous wastes.

Comments received on this alternative were varied. Several commenters argued that the displacement alternative was inappropriate for impoundments containing listed hazardous wastes and recommended removal of hazardous wastes to at least delisting levels. Other commenters asserted that the Agency was improperly allowing for dilution of hazardous wastes as a substitute for adequate treatment. Commenters in favor of the displacement alternative stated that the alternative is a reasonable standard and would eventually result in the removal of all hazardous waste in the unit.

The Agency is concerned that many commenters misunderstood the flushing alternative, particularly the relationship of the 95 percent volume displacement requirements and the requirements for delisting of hazardous wastes (40 CFR 260.22). The Agency may have contributed to this confusion by referring to testing for characteristics only and by describing the mixture rule only in terms of the interface between the non-hazardous influent and the sludge remaining in the bottom of the impoundment. If the liquid itself is a listed hazardous waste, the remaining 5 percent volume of that liquid would continue to be hazardous waste. Therefore, if an impoundment retained 5 percent liquid hazardous wastes, all new non-hazardous influent would become hazardous wastes as a result of the "mixture rule," unless the original hazardous waste was listed solely because it exhibited one or more characteristics and the mixture no longer exhibited the characteristic (40 CFR 261.3). Therefore, while the impoundment that removed 95 percent of its liquid could delay closure without retrofitting, if it discharged to another impoundment downstream, the second impoundment would be receiving hazardous wastes and would therefore be subject to the retrofit requirements in RCRA section 3005(j).

Furthermore, in light of the commenters' concerns, the Agency has decided to re-evaluate this option. The Agency is uncertain that the option to delay closure is warranted for any impoundment that retains up to 5 percent liquid hazardous waste. For the reasons discussed above and in section IV.A.1 of this preamble, the Agency has decided to delete this option from the final rule. The Agency points out, however, that owners and operators who remove all liquids under Alternative 1 may use flushing as a removal method. The owner or operator would have to demonstrate the complete removal of hazardous liquids. Tracer studies as described in the proposed Alternative 2 (53 FR 20750), or modeling studies may be used.

(3) *Alternative 3—Leaving Hazardous Wastes In Place.* The third alternative proposed in § 264.113(e)(3) would have allowed owners or operators of impoundments who intend to leave hazardous wastes in place at closure to delay closure under limited circumstances. This option also has not been finalized in today's rule. Because hazardous wastes would not have been removed prior to the receipt of non-hazardous wastes, the Agency proposed more stringent requirements for these impoundments than for impoundments at which hazardous wastes would have been removed. This alternative would have been available only to those units that had not detected a release at or prior to the final receipt of hazardous wastes. In addition, if a release had been detected after the final receipt of hazardous wastes, the owner or operator would have been required to initiate closure of the disposal impoundment in accordance with the approved closure plan no later than 30 days after the detection of the release and implement the corrective measures specified in the contingent corrective measures plan no later than one year after the release had been detected.

One commenter recommended that impoundments which have not removed hazardous wastes (impoundments using proposed Alternative 3) not be allowed to delay closure. This commenter felt that these impoundments are more likely to leak and would pose an excessive threat to human health and the environment. As discussed in section IV.A.1 above, the Agency is not finalizing this alternative. Upon reconsideration, the Agency has determined that surface impoundments from which hazardous wastes are not removed present a greater threat of release of hazardous constituents. Therefore, these impoundments cannot remain open to receive non-hazardous waste and achieve the Agency's dual goals of release prevention and protection of human health and the environment. The Agency believes that only the closure of these surface impoundments will provide adequate protection.

c. *Corrective Action Requirements (§§ 264.113(e) (4) and (5)).* Under the proposed rule, units that delayed closure would remain subject to all applicable part 264 corrective action requirements. In addition, surface impoundments not meeting the liner and leachate collection system requirements would be subject to more stringent requirements in the event of a release. The following section summarizes the comments received and the Agency's final position on the proposed trigger for corrective action, reliance on ground-water monitoring data to detect releases, and additional corrective action requirements applicable to surface impoundments not meeting liner and leachate collection system requirements.

(1) *Corrective Action Trigger (§§ 264.113(e)(4)).* The Agency proposed in §§ 264.113(e)(5), (6), (7), and (8) that surface impoundments not meeting liner and leachate collection system requirements implement corrective measures (and close, if wastes have been left in place) if contamination is detected. Detection occurs when there is contamination that is statistically greater than (or less than in the case of pH) background levels for detection monitoring parameters or hazardous constituents specified in the permit, or is in excess of the GWPS, if one has been established, at the point of compliance. (For more information on the Agency's final Ground-Water Monitoring Statistical Rule, see October 11, 1988, 53 FR 39720.)

A number of commenters disagreed with these requirements and argued that facilities should be allowed to establish a GWPS before corrective measures are required to be implemented. These commenters contended that the proposed trigger for corrective action (and closure for impoundments that have left waste in place) would be too sensitive and that temporary fluctuations in the levels of hazardous constituents would trigger unnecessary corrective action (or closure). One commenter requested clarification of the manner in which a background level would be established.

After consideration of the commenters' recommendations, the Agency has decided to retain the corrective action trigger as originally proposed. (Because the Agency is not finalizing proposed Alternative 3, the corrective action trigger no longer acts as a closure trigger for surface impoundments that have not removed hazardous wastes as a condition of delaying closure.) However, because the corrective action requirements have been modified somewhat (see section IV.B.2.c.3), these requirements have been renumbered and promulgated in § 264.113(e)(4).

The Agency believes that the trigger for corrective action is a necessary element of today's regulations. The delayed closure regulations will allow non-retrofitted surface impoundments to remain open after November 8, 1988 (as well as those surface impoundments which become subject to section 3005(j)(1) after the date of enactment of HSWA due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 3001), and the requirements must therefore provide sufficient continued protection of health and the environment. The Agency has provided for this protection through strict eligibility and operating criteria and more stringent corrective measures provisions, including requirements for the submission of a contingent corrective measures plan and implementation of corrective action if a release over background levels is detected at units without a GWPS.

The Agency does not believe that allowing units without a GWPS to obtain one before requiring corrective action will provide adequate protection since a delay in remediation of a release that might occur if corrective measures were not implemented until after a GWPS was obtained could pose an additional threat. Modeling data comparing the relative performance of clay liners and synthetic liners satisfying the liner and leachate collection system requirements suggest that a non-retrofitted surface impoundment may have releases that are faster and larger than from a surface impoundment meeting the liner and leachate collection system requirements. Therefore, it is critical that releases from units not meeting liner and leachate collection system requirements be addressed as quickly as possible. The requirements for a contingent corrective measures plan combined with the more sensitive trigger will ensure prompt release containment and remediation.

It should be noted, however, that an owner or operator who has filed a Part B permit application may request a GWPS at any time before or after corrective measures have been initiated. A facility may request and obtain a GWPS in advance of a release during the permit approval process, or at the time that the release is detected. The Regional Administrator, in § 264.91(b), has the authority to include in the facility permit a combination of subpart F monitoring and response programs in order to protect human health and the environment. This provision gives the Regional Administrator the discretion to set a GWPS before a release has occurred. The GWPS can be established at background or maximum contaminant levels, or at alternate concentration limits on a case-by-case basis. Alternate concentration limits set at acceptable health exposure levels using Agency values should not be difficult to establish prior to a release being detected.

If no GWPS has been established, the Agency will continue to require that initial corrective measures be implemented in accordance with the contingent corrective measures plan after a release over background levels is detected. Background levels are to be determined as described in §§ 264.97 and 265.91. The Agency recognizes that in some circumstances a release over background levels may not require extensive corrective measures. If a GWPS is established in accordance with the procedures in § 264.94 during or after interim measures have been implemented, an owner or operator will be allowed to demonstrate that no further corrective action measures are necessary. Finally, it is noted that these requirements are anticipated to be consistent with forthcoming changes to 40 CFR subpart F. The delayed closure provisions may be amended at a later date to account for these new subpart F provisions.

(2) *Other Media.* The proposed rule required that EPA base the initial determination of whether expedited corrective action is required at surface impoundments subject to the requirements of § 264.113(e) on ground-water monitoring data. The unit, however, would remain subject to all corrective action requirements for all media. The Agency requested comments on this approach and whether other options may be appropriate.

One commenter agreed with the proposal and noted that it is consistent with the Agency's approach to all regulated land disposal units. Furthermore, the use of ground-water monitoring data should be adequate to detect most releases to other media. Another commenter, however, asserted that reliance on ground-water monitoring alone is inadequate because results may be affected by poorly placed wells and local hydrologic conditions that control plume migration. This commenter also felt that contamination to media other than ground water may not be expeditiously detected.

The Agency continues to believe that ground-water monitoring is an adequate tool for determining whether the accelerated corrective action requirements of today's rule are necessary for releases to ground water. The provision of § 264.113(e)(5) and (6) has been finalized as proposed. Ground-water monitoring has been traditionally and successfully used to monitor contaminant detection and plume migration. Forthcoming corrective action regulations will address releases to all other media. The provisions in today's rule supplement existing and any future regulation addressing corrective action requirements for all media.

(3) *Additional Corrective Measures Requirements.* The Agency's proposal included additional corrective measures requirements that would apply to surface impoundments not meeting liner

and leachate collection system requirements and which have removed (or will remove) hazardous waste in order to delay closure. The proposed requirements differed, depending on whether a release had been detected before or after the final receipt of hazardous wastes. Under the proposal, units found to be leaking at or prior to the final receipt of hazardous wastes would be required to cease the receipt of all wastes until corrective measures have been implemented (§ 264.113(a)(5) and (6)). Units found to be leaking after the final receipt of hazardous waste could continue to receive non-hazardous waste only if corrective measures were implemented within one year of the detection of a release, and if continued receipt of the non-hazardous waste would not pose a threat to human health or the environment (§ 264.113(e)(7)). The Agency requested comments on whether the requirements should differ depending on the timing of the release, and on the one-year deadline for implementing the corrective measures.

Some argued that the Agency provided no justification for imposing stricter requirements on owners or operators who detected a release at or prior to the final receipt of hazardous waste. Others contended that ceasing receipt of waste until corrective measures are implemented would be unduly disruptive to facility operations. Nearly all comments on this issue recommended that the same corrective action requirements apply in cases of releases detected before and after the final receipt of hazardous waste. Two commenters recommended that all surface impoundments with releases, regardless of when the releases were detected, be required to cease the receipt of wastes until corrective measures are implemented. Another commenter recommended that the Regional Administrator be allowed to grant one-year extensions to the proposed deadline for implementing corrective measures on a case-by-case basis.

The Agency has carefully considered the commenters' suggestions, and has decided to modify the requirements applicable to the continued receipt of wastes after the detection of a release. The final rule under § 264.113(e)(5) allows the owner or operator to continue to receive wastes after detection of a release, regardless of when the release is detected, only in those cases where a contingent corrective measures plan (or full corrective action plan) has been approved. In addition to a description of the corrective measures to be implemented, if receipt of wastes is to continue, the plan must fully account for the impact of receipt of non-hazardous wastes on corrective measures by demonstrating that continued receipt of wastes will not adversely affect the implementation of corrective measures and the achievement of substantial progress in achieving the facility's GWPS. The Agency believes that these effects must be considered before receipt of non-hazardous wastes is allowed. Once EPA has approved the contingent corrective measures plan that demonstrates that continued receipt of non-hazardous waste will not adversely affect the progress of the corrective action, receipt of non-hazardous wastes may resume.

As stated in the preamble to the proposed rule, the Agency continues to believe that temporarily ceasing receipt of wastes until corrective measures have been implemented should not be overly disruptive to facility owners or operators. Many units will have already triggered compliance monitoring and/or be engaged in corrective action under Subpart F. Therefore, in those cases where waste receipt must be halted, there should not be an extensive delay in implementing corrective action and allowing the unit to resume receipt of wastes. The Agency also anticipates that since these units have detected releases, they will receive priority in obtaining approval for corrective action plans.

The Agency is finalizing the one-year deadline for implementing corrective measures under § 264.113(e)(4) as proposed. The Agency believes one year from the time of release detection or plan approval whichever is later, is sufficient time to begin implementing corrective measures. As discussed in the preamble to the proposed rule (53 FR 20752), the Agency intends that actual containment or remediation measures be implemented within one year. The actions required to be accomplished within this one year will be negotiated during the corrective measures approval process. In addition, the Regional Administrator has the option to require implementation of corrective measures earlier than one year after a release is detected if necessary for the protection of human health and the environment. Established procedures for adjusting such permit schedules of compliance will be available. Therefore, specific authority to allow the Regional Administrator to grant extensions is unnecessary and could lead to unacceptable delays in closing a unit should the owner or operator fail to take timely action to initiate the implementation of remedial action.

d. *Evaluating the Progress of Corrective Action (§§ 264.113(e) (5), (6), and (7)).* The proposed rule required owners or operators to demonstrate "substantial progress" in implementing corrective action and achieving the facilities' GWPS or background level if the facility has not yet established a GWPS. If the Regional Administrator determined that an owner or operator had failed to make substantial progress in implementing the required corrective measures, the owner or operator would be required to initiate closure of the leaking unit (§ 264.113(e)(10)). The proposed rule did not define "substantial progress" because the Agency believed that the determination should be made on a case-by-case basis. In the preamble to the proposal, however, the Agency did provide examples of situations that illustrated a failure to make substantial progress. Examples included failure to comply with the requirements of section (e)(5) for implementing corrective measures within one year or subsequent failure to comply with significant deadlines in the approved corrective measures plan, schedule of compliance, the permit, or other enforcement orders establishing timeframes for achieving the facility's GWPS. The Agency also specified that semi-annual corrective action progress reports required under § 264.113(e)(9) would be considered in making the determination, but that compliance with only these procedural or reporting requirements would not alone constitute substantial progress.

The proposed rule also established an accelerated set of procedures for initiating closure under § 264.113(e)(11). The procedures included notification of the owner or operator, public notice of the decision, and a 20-day comment period. These proposed procedures did not allow administrative appeals of final decisions regarding closure.

Several commenters expressed concern that the term "substantial progress" was too vague and subjective. One commenter felt that hearings should be allowed to determine whether substantial progress has been made. Another commenter recommended that the Agency allow administrative appeals of decisions to require closure.

The Agency has considered the commenters' recommendations, but continues to believe that a specific definition of "substantial progress" is both unnecessary and undesirable. Establishing a rigid standard of substantial progress would prevent a Regional Administrator from

considering site-specific factors in the determination of whether progress in corrective action is being made. Because corrective action measures are tailored to specific sites, this lack of flexibility could result in a standard that in some cases is inadequately protective of human health and the environment, and in other cases is unnecessarily burdensome to owners and operators. The Agency believes that its description of actions considered to constitute substantial progress provides adequate guidance to both owners and operators and Regional Administrators. EPA notes that, while commenters were dissatisfied that a definition of substantial progress was not included in the rule, they did not suggest alternative definitions. Therefore, the Agency is finalizing the rule as proposed (with the reporting requirement and substantial progress requirement renumbered as § 264.113(e) (5) and (6)).

Finally, the Agency has retained the expedited procedural requirements in §§ 264.113(e)(11) and 265.113(e)(11) for determining whether substantial progress has been achieved (renumbered as §§ 264.113(e)(7) and 265.113(e)(7) for the final rule). The Agency continues to believe that these procedures afford owners and operators adequate protection of any due process rights and that hearing and administrative appeals are neither appropriate nor required. The objective of the procedures is to reduce delays in initiating closure, while still providing owners and operators and the public with notice and comment opportunities. As discussed elsewhere in today's preamble, the requirement to implement effective corrective measures in the event a release is detected is an essential component of the controls imposed on surface impoundments not meeting the liner and leachate collection system requirements. EPA believes that the harm potentially caused to human health and the environment by impoundments unable to promptly remediate releases outweighs any potential burdens imposed on owners and operators. Furthermore, it must be remembered that owners and operators are not authorized generally under this rule to delay closure; rather the authorization to delay closure is an exception to the general Subpart G requirements and is expressly conditioned upon meeting the substantial progress demonstration when and if applicable. Although this provision is itself self-implementing and need not be accompanied by further notice and comment opportunities, the Agency has afforded such an opportunity through the procedures in §§ 264.113(e)(7) and 265.113(e)(7). The further delay that might result from a hearing provision or administrative appeals cannot be justified in light of the importance of timely response actions. Nor would such additional procedures be likely to present any information for decisionmaking that could not be provided by notice and the opportunity to provide written comment.

In addition, with respect to permitted facilities, receipt of approval for this action and establishment of specific milestones defining "substantial progress" are determined through a permit issuance or modification process. This administrative process includes all procedural protections necessary to meet statutory and Constitutional requirements. Thus, a conditional authorization to delay closure as a permit provision and the automatic expiration for failure to comply with the permit requirement to make substantial progress in remediating releases will have already been subject to notice and opportunities for comment and administrative appeals. Accordingly, further process is unnecessary.

To provide analogous procedural protections for facilities which may still be in interim status at the time of the Regional Administrator's determination, parallel procedures appear in § 265.113(e)(7). As with permitted facilities, the conditional authorization to delay closure is also accompanied by an opportunity for notice and comment. This occurs through the procedures for closure plan approval or modification in § 265.112(d). Accordingly, further procedures such as hearings and administrative appeals are not necessary and have not been added to the final rule.

3. *Notification of Closure (§ 264.112(d)(2)).* The proposed rule amended § 264.112(d)(2) to specify that for units delaying closure, the "expected date of closure" is no later than 30 days after the final receipt of non-hazardous wastes. No comments were received on this proposed change, and therefore the final rule is promulgated as proposed.

C. *Part 270 Permit Modification Requirements (§ 270.42).* The proposed rule designated the request to modify the permit to delay closure to receive non-hazardous wastes after the final receipt of hazardous waste as a Class 2 modification, in accordance with the recently finalized rule establishing three classes of permit modifications (September 28, 1988, 53 FR 37912).

Two commenters recommended that permit modifications to delay closure be considered Class 3 modifications rather than Class 2 modifications. One commenter felt that the time allowed for submitting the request to modify the permit under § 264.113(d), or for submitting a part B or revised part B application under § 265.113(d), is unrealistically short considering the amount of information to be included in the requests. Another commenter suggested that specific criteria be identified as necessary to support a Regional Administrator's denial of a request to delay closure. Another commenter recommended that time be allowed for a facility to construct an alternative waste management unit for closure if the Regional Administrator denies the request to delay closure. Finally, one commenter suggested that an owner or operator be allowed to receive non-hazardous waste during the time the permit modification is being reviewed.

The Agency has taken these comments into consideration but has decided to promulgate the final rule as proposed. Class 2 modifications are defined as modifications in the types and quantities of waste managed under the facility permit, including authorizations to treat or store new wastes that do not require different unit design or management practices (53 FR 37915). Delaying closure to receive only non-hazardous waste does not change the basic purpose and use of the unit but only alters the type of waste being managed (wastes will continue to be regulated under the subtitle C permitting requirements). Furthermore, the Class 2 modification allows the Agency to require that the major permit modification procedures be followed if the proposed change raises significant interest or concern (40 CFR 270.42(b)). Therefore, the Agency believes that classification of the permit modification as Class 2 is adequate. It should be noted that, in those States which have not adopted the new permit modification classification rule, a permit modification to delay closure will be considered a major modification.

The Agency also believes that the amount of time allowed in the proposed rule (§ 264.113(d)(3)) for submitting permit modification information is adequate. These timeframes are consistent with the current timeframes for submitting permitting and closure plan information (40 CFR 270.42(b)). In addition, most changes that must be made to the permit or permit application are not substantial and therefore should not require additional time to complete.

The Agency does not believe that specific criteria need to be established to support the Regional Administrator's

decision to deny a request to delay closure. Therefore, no changes to the final rule have been made. As discussed in section IV.B.2.d of today's preamble, the requirement to close in accordance with an approved closure plan is subject to judicial review. Additionally, facilities must submit an amended part B application or a request for a permit modification. The denial of either is subject to the administrative requirements provided for in 40 CFR Part 124. Finally, for interim status facilities, the extension of the closure period is generally processed together with closure plan approval. The closure plan approval process includes an opportunity for comment by the owner or operator (see § 264.112(a)). Such existing procedures provide the owner or operator with ample opportunity to review the basis for the denial decision.

Furthermore, the Agency does not believe that additional time should be allowed to construct alternative units to handle wastes if the request to delay closure is denied. (The delay of closure option is an exception to general closure requirements and extends closure timeframes only temporarily.) Owners and operators of facilities will have had adequate notice that their units will have to close, and therefore will have had time to plan alternatives in the event that the permit modification is denied.

Finally, the Agency wishes to clarify that non-hazardous waste may be received during the time when a permitted facility's permit modification to delay closure is under review. As discussed in the preamble to the proposed rule, interim status units would be allowed to receive non-hazardous waste while the Agency reviewed the part B application (with certain exceptions for surface impoundments as discussed in section IV.B.2.c). Similarly, it was intended that permitted facilities that are awaiting the Agency's decision on their permit modification to delay closure be allowed to receive non-hazardous waste during this period of Agency review. In either case, facilities must continue to comply with all applicable subtitle C requirements to ensure continued protection of human health and the environment.

D. Conforming Changes

The Agency proposed conforming changes to the interim status standards in part 265 that parallel the technical requirements in part 264 for delaying closure to receive only non-hazardous waste. The interim status requirements are substantially the same as those for permitted units. These requirements have been finalized incorporating changes parallel to those discussed above for permitted units. This section addresses only those comments or regulatory changes unique to the part 265 requirements.

1. Conforming Changes to Part 265 Interim Status Requirements

The sections below describe comments received on the proposed conforming changes to part 265 interim status requirements, including eligibility of interim status facilities to delay closure, ground-water monitoring and corrective action implementation, and eligibility to delay closure of units receiving interim status as a result of new regulations.

a. *Eligibility.* The proposed rule would allow owners or operators of interim status facilities to remain open to receive nonhazardous waste if they meet the requirements of § 265.113 (d) and (e), if applicable, including submission of a part B application or a revised part B application. Part B applications are required because the Agency does not believe that a facility should be allowed to remain open to receive non-hazardous waste while remaining indefinitely in interim status. During the period prior to receipt of the permit, the owner or operator must comply with applicable requirements in § 265.113 (d) and (e), if applicable, and continue to conduct operations in accordance with all other applicable part 265 requirements. The Agency believes that the criteria in § 265.113(d), combined with the technical and any other requirements of part 265 for delaying closure, are sufficient to preclude any increased threat to human health and the environment during the permit review period. If the permit is denied, the part 265 closure requirements become effective immediately.

One commenter requested clarification of whether interim status surface impoundments that had chosen to close (in lieu of obtaining a permit) would be allowed to delay closure. The Agency would allow such units to delay closure if they meet the criteria of §§ 265.113(d) and 265.113(e), if applicable, including submission of a part B permit application. If the unit is in the process of closing, Agency approval to delay closure would depend on how far along the unit is in the closure process. Since many of the closure activities (e.g., the removal of waste) are compatible with the requirements for delaying closure, requests to delay closure could, in some cases be considered. If the surface impoundment has certified clean closure, and its interim status is subsequently terminated, it could receive non-hazardous waste as a Subtitle D facility following closure and would not need to avail itself of today's rule. However, if it is to be closed with hazardous waste in place and the unit has already been capped, the cap may only be disturbed under the conditions specified in §§ 264.117(c) and 265.117(c). This provision requires that the Regional Administrator find that the disturbance: (1) Is necessary to the proposed use of the property and will not increase the potential hazard to human health or the environment; or (2) is necessary to reduce a threat to human health and the environment.

b. *Ground-Water Monitoring and Corrective Action.* The Agency proposed that the corrective action requirements in § 265.113(e) applicable to non-retrofitted surface impoundments be triggered by a statistically significant increase in hazardous constituents over background levels (or decrease in pH levels) for interim status facilities that have not yet established a GWPS. Units not in compliance with liner and leachate collection system requirements are subject to accelerated corrective action requirements consistent with § 264.113(e)(8) requirements.

Several commenters objected to the provisions allowing interim status units to delay closure. These commenters argued that interim status ground-water monitoring requirements do not sufficiently protect human health and the environment because they do not accurately detect hazardous waste releases. These commenters also argued that corrective action provisions for interim status facilities under delayed closure are inadequately protective of human health and the environment because there is no regulatory authority to trigger corrective action.

The Agency believes that the requirements of § 265.113 (d) and (e) in combination with the other applicable part 265 requirements are adequately protective. These provisions require that units in interim status must apply for a permit as a condition of delaying closure, and that upon permit issuance these units will be subject to the stricter part 264 requirements for ground-water monitoring. Additionally, owners or operators of surface impoundments that do not meet MTR liner and leachate collection system requirements who wish to delay closure must comply with corrective action requirements specified in § 265.113(e) even in the absence of a RCRA § 3008(h) order. Further, contingent corrective measures plans

can be incorporated into subsequent section 3008(h) orders if necessary.

c. *Applicability to New Interim Status Units.* The Agency proposed that the option to delay closure be made available to owners or operators of units that receive interim status as a result of new regulations. The Agency indicated in the preamble to the proposed rule that proposed deadlines for submitting revised part B applications would be adequate because these owners or operators would be given sufficient notice that they will become subject to Subtitle C requirements.

One commenter recommended that the delay of closure option be available to owners or operators of units that have become classified as hazardous waste management units as a result of regulatory interpretation by the EPA. As discussed above, this is allowed if the unit meets the requirements of § 265.113 (d) and (e). The rule has therefore been finalized as proposed.

V. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under RCRA sections 3008, 7003, and 3013, although authorized States have primary enforcement responsibility.

Prior to HSWA, a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in a State where the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements and prohibitions apply in authorized States in the interim.

B. Effect of Rule on State Authorizations

Today's rule promulgates standards that are not effective in authorized States since the requirements are not imposed pursuant to HSWA. Thus, the requirements will be applicable only in those States that do not have interim or final authorization. In authorized States, the requirements will not be applicable until the State revises its program to adopt equivalent requirements under State law.

In general, 40 CFR 271.21(e)(2) requires States that have final authorization to modify their programs to reflect Federal program changes and to subsequently submit the modifications to EPA for approval. It should be noted, however, that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs (See 40 CFR 271.1(i)). The standards promulgated today are less stringent than or reduce the scope of the existing Federal requirements. Therefore, authorized States are not required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions promulgated above. If the State does modify its program, EPA must approve the modification for the State requirements to become subtitle C RCRA requirements. States should follow the deadlines of 40 CFR 271.21(e)(2) if they desire to adopt this less stringent requirement.

VI. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being promulgated today are designed to reduce the burden of the RCRA regulations and are not likely to result in a significant increase in costs. Thus, this final rule is not a major rule; no Regulatory Impact Analysis has been prepared.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection request contained in the proposed or final rule.

The information collection requirements in this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control Number 2050-0008. Reporting and recordkeeping burden on the public for this collection is estimated at 320 hours for the 4 respondents, with an average of 80 hours per response. These burden estimates include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, etc.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR #0807), contact Rick Westlund, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460 (202-382-2745); and Marcus Peacock, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC. 20503.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 801 et seq.), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). The amendments promulgated today are more flexible than the existing regulations and thus result in no additional costs. The viability of small entities, thereby, should not be adversely affected.

Accordingly, I certify that this regulation will not have a significant impact on a substantial number of small entities.

Dated: August 2, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, it is proposed that 40 CFR, chapter I be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 264.13 is amended by revising paragraphs (a)(1), (a)(3)(i), and (b)(1) to read as follows:

§ 264.13 General waste analysis

(a)(1) Before an owner or operator treats, stores, or disposes of any hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

* * * * *

(3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), has changed; and

* * * * *

(b) * * *

(1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under § 264.113(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

* * * * *

3. In § 264.112, is amended by revising paragraph (d)(2) to read as follows:

§ 264.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) No later than 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 264.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

4. Section 264.113 is amended by revising paragraphs (a) introductory text, (a)(1)(ii)(A), (b) introductory text, (b)(1)(ii)(A), and (c) and adding paragraphs (d) and (e) to read as follows:

§ 264.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility. The Regional Administrator may approve an extension to the closure period if the owner or operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows:

(1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section; and

(2) The demonstration in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Regional Administrator may allow an owner or operator to receive only non-hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator requests a permit modification in compliance with all applicable requirements in parts 270 and 124 of this title and in the permit modification request demonstrates that:

(i) The unit has the existing design capacity as indicated on the part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining wastes in the unit, or with the facility design and operating requirements of the unit or facility under this part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable permit requirements; and

(2) The request to modify the permit includes an amended waste analysis plan, ground-water monitoring and response program, human exposure assessment required under RCRA

section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate, to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under § 264.112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The request to modify the permit includes revisions, as necessary and appropriate, to affected conditions of the permit to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The request to modify the permit and the demonstrations referred to in paragraphs (d)(1) and (d)(2) of this section are submitted to the Regional Administrator no later than 120 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes at the unit, or no later than 90 days after the effective date of this rule in the state in which the unit is located, whichever is later.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o) (2) or (3) or 3005(j) (2), (3), (4) or (13) must:

(1) Submit with the request to modify the permit:

(i) A contingent corrective measures plan, unless a corrective action plan has already been submitted under § 264.99; and

(ii) A plan for removing hazardous wastes in compliance with paragraph (e)(2) of this section; and

(2) Remove all hazardous wastes from the unit by removing all hazardous liquids, and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(3) Removal of hazardous wastes must be completed no later than 90 days after the final receipt of hazardous wastes. The Regional Administrator may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(4) If a release that is a statistically significant increase (or decrease in the case of pH) over background values for detection monitoring parameters or constituents specified in the permit or that exceeds the facility's ground-water protection standard at the point of compliance, if applicable, is detected in accordance with the requirements in subpart F of this part, the owner or operator of the unit:

(i) Must implement corrective measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(ii) May continue to receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Regional Administrator to implement corrective measures in less than one year or to cease the receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(5) During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(6) The Regional Administrator may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in paragraph (e)(4) of this section, or fails to make substantial progress in implementing corrective action and achieving the facility's ground-water protection standard or background levels if the facility has not yet established a ground-water protection standard.

(7) If the owner or operator fails to implement corrective measures as required in paragraph (e)(4) of this section, or if the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(6) of this section he shall:

(i) Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadlines in paragraphs (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Regional Administrator receives no written comments, the decision will become final five days after the close of the comment period. The Regional Administrator will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in paragraphs (a) and (b) of this section.

(iv) If the Regional Administrator receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Regional Administrator determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

(v) The final determinations made by the Regional Administrator under paragraphs (e)(7) (iii) and (iv) of this section are not subject to administrative appeal.

4a. A parenthetical is added at the end of the last section in Subpart G of Part 264 to read as follows:

(The information collection requirements in Subpart G are approved by the Office of Management and Budget under control number 2050–0008]

5. Section 264.142 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 264.142 Cost estimate for closure.

(a) * * *

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under § 264.113(d), that might have economic value.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

6. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

7. Section 265.13 is amended by revising paragraphs (a)(1), (a)(3)(i), and (b)(1) to read as follows:

§ 265.13 General waste analysis.

(a)(1) Before an owner or operator treats, stores or disposes of any hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), he must obtain a detailed chemical and physical analysis of a representative sample of the wastes.

* * * * *

(3) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

(i) When the owner or operator is notified, or has reason to believe, that the process or operation generating the hazardous wastes or non-hazardous wastes, if applicable, under §265.113(d) has changed; and

* * * * *

(b) * * *

(1) The parameters for which each hazardous waste, or non-hazardous waste if applicable under §265.113(d), will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with paragraph (a) of this section);

* * * * *

8. Section 265.112 is amended by revising paragraph (d)(2) to read as follows:

§ 265.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(2) The date when he "expects to begin closure" must be either:

(i) Within 30 days after the date on which any hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous wastes, no later than one year after the date on which the unit received the most recent volume of hazardous wastes. If the owner or operator of a hazardous waste management unit can demonstrate to the Regional Administrator that the hazardous waste management unit or facility has the capacity to receive additional hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit; or

(ii) For units meeting the requirements of § 265.113(d), no later than 30 days after the date on which the hazardous waste management unit receives the known final volume of non-hazardous wastes, or if there is a reasonable possibility that the hazardous waste management unit will receive additional non-hazardous wastes, no later than one year after the date on which the unit received the most recent volume of non-hazardous wastes. If the owner or operator can demonstrate to the Regional Administrator that the hazardous waste management unit has the capacity to receive additional non-hazardous wastes and he has taken, and will continue to take, all steps to prevent threats to human health and the environment, including compliance with all applicable interim status requirements, the Regional Administrator may approve an extension to this one-year limit.

* * * * *

9. Section 265.113 is amended by revising paragraphs (a) introductory text, (a)(1)(ii)(A), (b) introductory text, (b)(1)(ii)(A), and (c) and adding paragraphs (d) and (e) to read as follows:

§ 265.113 Closure; time allowed for closure.

(a) Within 90 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at a hazardous waste management unit or facility, or within 90 days after approval of the closure plan, whichever is later, the owner or operator must treat, remove from the unit or facility, or dispose of on-site, all hazardous wastes in accordance with the approved closure plan. The Regional Administrator may approve a longer period if the owner or operator demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(b) The owner or operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner or operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Regional Administrator may approve an extension to the closure period if the owner or operator demonstrates that:

(1) * * *

(ii)(A) The hazardous waste management unit or facility has the capacity to receive additional hazardous wastes, or has the capacity to receive non-hazardous wastes if the facility owner or operator complies with paragraphs (d) and (e) of this section; and

* * * * *

(c) The demonstrations referred to in paragraphs (a)(1) and (b)(1) of this section must be made as follows:

(1) The demonstrations in paragraph (a)(1) of this section must be made at least 30 days prior to the expiration of the 90-day period in paragraph (a) of this section; and

(2) The demonstration in paragraph (b)(1) of this section must be made at least 30 days prior to the expiration of the 180-day period in paragraph (b) of this section, unless the owner or operator is otherwise subject to the deadlines in paragraph (d) of this section.

(d) The Regional Administrator may allow an owner or operator to receive non-hazardous wastes in a landfill, land treatment, or surface impoundment unit after the final receipt of hazardous wastes at that unit if:

(1) The owner or operator submits an amended part B application, or a part B application, if not previously required, and demonstrates that:

(i) The unit has the existing design capacity as indicated on the part A application to receive non-hazardous wastes; and

(ii) There is a reasonable likelihood that the owner or operator or another person will receive non-hazardous wastes in the unit within one year after the final receipt of hazardous wastes; and

(iii) The non-hazardous wastes will not be incompatible with any remaining

wastes in the unit or with the facility design and operating requirements of the unit or facility under this part; and

(iv) Closure of the hazardous waste management unit would be incompatible with continued operation of the unit or facility; and

(v) The owner or operator is operating and will continue to operate in compliance with all applicable interim status requirements; and

(2) The part B application includes an amended waste analysis plan, ground-water monitoring and response program, human exposure assessment required under RCRA section 3019, and closure and post-closure plans, and updated cost estimates and demonstrations of financial assurance for closure and post-closure care as necessary and appropriate to reflect any changes due to the presence of hazardous constituents in the non-hazardous wastes, and changes in closure activities, including the expected year of closure if applicable under § 265.112(b)(7), as a result of the receipt of non-hazardous wastes following the final receipt of hazardous wastes; and

(3) The part B application is amended, as necessary and appropriate, to account for the receipt of non-hazardous wastes following receipt of the final volume of hazardous wastes; and

(4) The part B application and the demonstrations referred to in paragraphs (d)(1) and (d)(2) of this section are submitted to the Regional Administrator no later than 180 days prior to the date on which the owner or operator of the facility receives the known final volume of hazardous wastes, or no later than 90 days after the effective date of this rule in the state in which the unit is located, whichever is later.

(e) In addition to the requirements in paragraph (d) of this section, an owner or operator of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system requirements in 42 U.S.C. 3004(o)(1) and 3005(j)(1) or 42 U.S.C. 3004(o)(2) or (3) or 3005(j) (2), (3), (4) or (13) must:

(1) Submit with the part B application:

(i) A contingent corrective measures plan; and

(ii) A plan for removing hazardous wastes in compliance with paragraph (e)(2) of this section; and

(2) Remove all hazardous wastes from the unit by removing all hazardous liquids and removing all hazardous sludges to the extent practicable without impairing the integrity of the liner(s), if any.

(3) Removal of hazardous wastes must be completed no later than 90 days after the final receipt of hazardous wastes. The Regional Administrator may approve an extension to this deadline if the owner or operator demonstrates that the removal of hazardous wastes will, of necessity, take longer than the allotted period to complete and that an extension will not pose a threat to human health and the environment.

(4) If a release that is a statistically significant increase (or decrease in the case of pH) in hazardous oonstituents over background levels is detected in accordance with the requirements in subpart F of this part, the owner or operator of the unit:

(i) Must implement corrective measures in accordance with the approved contingent corrective measures plan required by paragraph (e)(1) of this section no later than one year after detection of the release, or approval of the contingent corrective measures plan, whichever is later;

(ii) May receive wastes at the unit following detection of the release only if the approved corrective measures plan includes a demonstration that continued receipt of wastes will not impede corrective action; and

(iii) May be required by the Regional Administrator to implement corrective measures in less than one year or to cease receipt of wastes until corrective measures have been implemented if necessary to protect human health and the environment.

(5) During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

(6) The Regional Administrator may require the owner or operator to commence closure of the unit if the owner or operator fails to implement corrective action measures in accordance with the approved contingent corrective measures plan within one year as required in paragraph (e)(4) of this section, or fails to make substantial progress in implementing corrective action and achieving the facility's background levels.

(7) If the owner or operator fails to implement corrective measures as required in paragraph (e)(4) of this section, or if the Regional Administrator determines that substantial progress has not been made pursuant to paragraph (e)(6) of this section he shall:

(i) Notify the owner or operator in writing that the owner or operator must begin closure in accordance with the deadline in paragraphs (a) and (b) of this section and provide a detailed statement of reasons for this determination, and

(ii) Provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the decision no later than 20 days after the date of the notice.

(iii) If the Regional Administrator receives no written comments, the decision will become final five days after the close of the comment period. The Regional Administrator will notify the owner or operator that the decision is final, and that a revised closure plan, if necessary, must be submitted within 15 days of the final notice and that closure must begin in accordance with the deadlines in paragraphs (a) and (b) of this section.

(iv) If the Regional Administrator receives written comments on the decision, he shall make a final decision within 30 days after the end of the comment period, and provide the owner or operator in writing and the public through a newspaper notice, a detailed statement of reasons for the final decision. If the Regional Administrator determines that substantial progress has not been made, closure must be initiated in accordance with the deadlines in paragraphs (a) and (b) of this section.

(v) The final determinations made by the Regional Administrator under paragraphs (e)(7) (iii) and (iv) of this section are not subject to administrative appeal.

9a. A parenthetical is added at the end of the last section in subpart G of Part 265 to read as follows:

(The information collection requirements in Subpart G are approved by the Office of Management and Budget under control number 2050–0008)

10. In § 265.142 is amended by revising paragraph (a)(3) and (a)(4) to read as follows:

§ 265.142 Cost estimate for closure.

(a) * * *

(3) The closure cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), facility structures or equipment, land, or other assets associated with the facility at the time of partial or final closure.

(4) The owner or operator may not incorporate a zero cost for hazardous wastes, or non-hazardous wastes if applicable under § 265.113(d), that might have economic value.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

11. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

12. In § 270.42, the list of permit modifications in Appendix I is amended by adding D.1.f. to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

Appendix I to § 270.42—Classification of Permit Modifications

Modifications	Class
* * * * *	
D. * * *	
1. * * *	

Modifications	Class
f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under § 264.113 (d) and (e).....	2
* * * * *	

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Part IV

Environmental Protection Agency

40 CFR Parts 795 and 799
Tributyl Phosphate; Final Test Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42100B; FRL-3627-4]

Tributyl Phosphate; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a final test rule under section 4 of the Toxic Substances Control Act (TSCA) requiring manufacturers and processors of tributyl phosphate (TBP, CAS No. 126-73-8) to perform testing for health effects (oncogenicity, neurotoxicity, reproductive and developmental toxicity, mutagenicity, dermal sensitization, and oral/dermal pharmacokinetics), environmental effects (acute effects on algae, fish and aquatic invertebrates, and triggered chronic effects on fish and aquatic invertebrates and sediment bioassay), and chemical fate (vapor pressure, Koc, and hydrolysis rate). This rule is in response to the TSCA Interagency Testing Committee's (ITC) designation of TBP for priority health effects, chemical fate, and environmental effects testing.

DATES: This rule shall become effective on September 27, 1989. For purposes of judicial review, in accordance with 40 CFR 23.5, this rule shall be promulgated at 1 p.m. eastern (standard or daylight as appropriate) time on August 28, 1989. The incorporation by reference in this rule is approved by the Director of the Federal Register as of September 27, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: EPA is promulgating a final test rule under section 4(a) of TSCA requiring health effects, environmental effects and chemical fate testing of TBP.

I. Introduction

A. Test Rule Development Under TSCA

This final rule is part of the overall implementation of section 4 of TSCA (Pub. L. 94-469, 90 Stat. 2003 et seq., 15 U.S.C. 2601 et seq.), which authorizes EPA to require the development of data relevant to assessing the risk to health and the environment posed by exposure to particular chemical substances or mixtures (chemicals).

Under section 4(a) of TSCA, EPA must require testing of a chemical to develop data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Detailed discussions of the statutory section 4 findings are provided in the EPA's first and second proposed test rules published in the **Federal Register's** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300).

B. Regulatory History

The ITC recommended TBP with intent-to-designate in its eighteenth report published in the **Federal Register** of May 19, 1986 (51 FR 18368), and designated TBP for priority testing consideration in its nineteenth report published in the **Federal Register** of November 16, 1986 (51 FR 41417). In response to this designation, EPA issued a proposed test rule in the **Federal Register** of November 12, 1987 (52 FR 43346) which would require that manufacturers and processors of TBP test the chemical for various health and environmental effects, under sections 4(a)(1)(A) and (B) of TSCA.

II. Response to Comments

EPA received written comments on the TBP proposed test rule from the Tributyl Phosphate Task Force (TBPTF) of the Synthetic Organic Chemical Manufacturers Association (SOCMA) on January 12, 1988 (Ref. 1). The TBPTF also requested a public meeting on their comments which was held on April 7, 1988. The comments received by EPA in response to the proposed rule for TBP are given below.

A. Exposure

1. *TBPTF exposure survey.* The TBPTF commented that the exposure information available to EPA was insufficient to support a finding of significant or substantial human exposure since the data were merely suggestive. The TBPTF proposed to do an industry-wide survey of U.S. sites distributing, processing, and using TBP and products containing TBP to determine the uses, use conditions, and potential worker exposure associated with TBP. EPA agreed to consider the study results in its deliberations for a final rule. TBPTF commissioned Temple, Barker, Sloane, Inc., to conduct and validate the survey. On April 7, 1988, the TBPTF presented EPA with the first part of a report, "1987 U.S. Survey of Tributyl Phosphate Users, Potential Exposure and Safety Procedures" (Ref. 2). The report did not contain an estimate of the number of workers potentially exposed to aircraft hydraulic fluid, a product that accounts for a major part of TBP usage (69 percent by volume). After a public meeting with the TBPTF, EPA granted TBPTF a brief period to estimate the numbers and extent of potential worker exposure to aircraft hydraulic fluid containing TBP from survey and additional data. On July 11, 1988, TBPTF submitted a report to EPA on estimated exposure to TBP-containing aircraft hydraulic fluid (Ref. 3).

The TBPTF reported that the greatest number of workers potentially exposed was in the use of aircraft hydraulic fluid. The three primary uses include aircraft manufacturing, hydraulic system component manufacturing, and commercial airline operations (passenger and freight). The TBPTF reported each type of user exposure in terms of estimated numbers of employees potentially exposed on an infrequent basis (less than once per week for less than one hour) and on a more frequent or routine basis. On the basis of confidential discussions with two major aircraft manufacturers, TBPTF estimates that 740 workers in this industry may be infrequently exposed to fluid, and 241 workers may be frequently exposed to hydraulic fluid containing TBP. On the basis of survey responses from aircraft component manufacturers, the TBPTF estimates that 176 employees in this industry may be frequently exposed to aircraft hydraulic fluid containing TBP, and 411 employees may be infrequently exposed. On the basis of confidential estimates by one of the major airlines, TBPTF estimates that 2,200 employees in this industry are routinely exposed to aircraft hydraulic fluid containing TBP and approximately 43,000 aircraft mechanics at some time could be exposed to aircraft hydraulic fluid. The activities potentially causing exposure include: Venting of pressurized systems at service sites, removal and repair of components, and testing and inspection of components. Aircraft manufacturers report that they require mechanics to use protective equipment (gloves, aprons, sleeve shields, goggles/face shields).

In the survey, the other two types of hydraulic fluid users report these and other methods of protection. However, the survey report indicates that in practice, aircraft mechanics only take minimal precautions to prevent contact even though they are aware of the irritating properties of hydraulic fluid. Also, according to the survey, aircraft mechanics do not wear protective gloves.

Survey respondents reported that 100 distributor workers for 298 worker-hours per year and 200 processor workers for

108,358 worker-hours per year have direct exposure to TBP.

An estimated total of 245 distributor workers (estimated from survey respondents and non-respondents) are potentially exposed for 502 worker-hours per year according to the survey. An estimated total of 345 processor workers (estimated from survey respondents and non-respondents) are potentially exposed for 183,382 worker-hours per year.

Other uses of TBP involve partially enclosed or open operations, and the concentration of TBP in these products is under 10 percent. Of these miscellaneous uses, paint spraying operations represent the most likely exposure potential, but spray booths are often used and the paint is used only by original equipment manufacturers, suggesting that exposure is limited to manufacturing use.

2. *EPA's response to TBPTF's exposure survey.* EPA reviewed the exposure survey performed by the TBPTF and finds the conclusions regarding potential occupational exposure to TBP to be reasonable. EPA has concerns about the completeness and accuracy of the survey but these do not interfere with the adequacy of the study for present purposes (Refs. 4 and 5). The survey results simply confirm EPA's earlier conclusion that potential human exposure to TBP is substantial.

B. Testing

1. *Genotoxicity.* The TBPTF commented that studies of gene mutation in mammalian cells in culture and in vivo cytogenetics, specifically the mouse micronucleus test, should be conducted to determine potential clastogenic effects, and that a program review of the entire genotoxicity data base should precede any considerations for further genotoxicity testing.

EPA agrees that a study of gene mutation in somatic cells in culture is necessary as an early tier teset for gene mutation effects of TBP. However, EPA believes that an in vitro mammalian cytogenetics test and in vivo mammalian bone marrow cytogenetics chromosomal analysis test are necessary early tier tests for cytogenetics effects. EPA is reviewing the mouse micronucleus test as a potential alternative test for cytogenetic effects in future test rules.

2. *Pharmacokinetics.* The TBPTF commented that the rat oral and dermal absorption, distribution and excretion pharmacokinetics, and oral metabolism studies should be performed as proposed. However, the TBPTF recommended dermal absorption testing in the pig (mini-pig or weanling swine) rather than the guinea pig, because pig skin is a better model for human skin than guinea pig skin.

EPA has reviewed the evidence the TBPTF has submitted to support testing the pig over the guinea pig and EPA agrees that the pig (mini-pig or weanling pig) is an acceptable substitute testing model for the guinea pig for dermal absoprption testing (Refs. 6 through 9).

3. *Oncogenicity.* The TBPTF commented that, because potential worker exposure is significant only by the dermal route as indicated by the exposure survey, a pilot 28-day dermal study in the rat should be conducted first to evaluate the feasibility of performing chronic efforts and oncogenicity studies by that route. The TBPTF believes that a decision regarding oncogenicity studies should be deferred pending results of the proposed pilot dermal studies and the completion of pharmacokinetics studies.

EPA reported in the proposed rule that the available data suggest TBP may have oncogenic potential. EPA is requiring an oncogenicity study by the oral route because the comparative oral/dermal pharmacokinetics data will allow analysis of effects related to differences in route of administration. Protocol design for dermal bioassays present many problems including: Selection of appropriate species; estimation and demonstration of absorbed versus applied dose; criteria for defining the maximum tolerated dose, e.g., whether based on skin or systemic effects. EPA is assessing the literature on this subject and has sponsored a workshop on dermal carcinogenesis bioassay problems and protocol development. In the near future EPA hopes to publish a generic protocol for dermal bioassays and publish guidelines on when testing should be done by that route.

4. *Dermal sensitization.* TBPTF commented that additional dermal sensitization testing is unnecessary because a mixture containing TBP has been tested in a human study and no sensitization occurred. TBPTF believes that if TBP were a sensitizer, some reaction would have occurred and results of (any) human study should take precedence over those obtained in animal (guinea pig) studies (Ref. 1).

EPA is requiring a dermal sensitization study because photosensitization was not evaluated in the available human study, and the exact TBP concentration in the test mixture was unknown and may have been too low (reported as "less than 25 percent") to have elicited a reaction.

5. *Developmental toxicity.* TBPTF comments that because the exposure survey indicates there is insignificant exposure potential for women of child-bearing age and because of irritant warning properties and low exposure levels, developmental toxicity testing should not be required.

For purposes of requiring testing under section 4 of TSCA, EPA is not required to take into account gender-specific exposure patterns in its deliberations. EPA does not assume that gender-specific exposure patters will persist. Because there is a potential for substantial human exposure to TBP, developmental toxicity testing is required.

6. *Reproductive toxicity.* TBPTF comments that reproductive testing should be triggered by more general indications of reproductive toxicity such as in vivo genotoxicity tests (*Drosophila* and in vivo cytogenetics) because there are very low levels of exposure of both males and females to TBP. In addition, two long-term studies, an 18-week study by Laham et al. and a 13-week study by FMC, showed no effect on gonadal tissues.

While EPA recognizes that there are situations where short-term tests may be appropriate to screen for reproductive effects, EPA does not agree that in the present situation the in vivo genotoxicity tests are adequate to screen for the reproductive toxicity of TBP. And although the two studies mentioned by TBPTF do not show reproductive effects, they are not adequate by themselves to determine whether TBP has reproductive toxicity. It is well documented that there are effects on reproduction that are not detectable by simple histopathological analysis, i.e. effects on reproductive performance, hormones, outcomes of pregnancy, growth and maturation of offspring postnatally. Therefore testing specific for reproductive toxicity is required.

7. *Neurotoxicity.* The TBPTF suggested a tiered approach consisting of an acute functional observational battery and motor activity screen to be followed by a subchronic behavioral evaluation if required after program reveiw. The TBPTF commented that neurotoxicity testing should be by the dermal route if this route proves feasible from the results of the 28-day study. The TBPTF believes that because available studies conclusively show that TBP is not a delayed neurotoxicant (organophosphorus induced delayed neurotoxicity (OPIDN) is the primary mechanism by which organophosphates act directly on the nerves) a further concern for neuropathy is unwarranted

and requirements for in situ perfusion should be removed from the test rule.

EPA does not agree with TBPTF's tiered approach. Both acute and subchronic tests are necessary because EPA is concerned about acute effects as well as the potential effects following repeated exposure. EPA encourages use of the relevant route of administration when possible. Although the dermal route of administration is theoretically acceptable, there are a number of practical problems which must be addressed before a dermal study would be acceptable. First, there must be a demonstration that a sufficient dose of the compound can be absorbed to produce neurobehavioral changes. Without such a high dose level effect, negative results would not be conclusive. Second, dermal application may interefere with satisfactory interpretation of neurobehavioral information. Dermal application can serve as a stress inducer and produce alterations in various neurobehavioral parameters. To account for this possible confounding effect it would be necessary to use a positive control which can also be applied dermally (e.g., acrylamide). Because these problems have not been addressed, neurotoxicity testing by the oral route is required.

EPA believes that, although available studies indicate that under the conditions tested, TBP does not produce organophosphorus-induced delayed neuropathy (OPIDN), other available literature provides evidence of neurobehavioral changes following exposure to TBP, and a standard battery of tests is still indicated (Refs. 10 through 13).

8. *Environmental effects.* The TBPTF commented that EPA's proposed environmental effects testing is generally reasonable and supportable. TBPTF raised the following points. First, TBP argued that the chronicity ratio of 24- to 96-hour LC50 for fish and certain aquatic invertebrates (e.g., *Gammarus*) or the ratio of the 24- to 48-hour LC50 for daphnid of 2 or greater is extremely stringent and should be modified. Second, TBPTF believes there is no clear need for plant translocation tests because there is no or low level exposure for this environment, as TBP is shown to be readily biodegradable in the OECD screening test, by semi-continuous activated sludge, in a river die-away test and in ultimate biodegradation. Third, with respect to specific guidelines, the TBPTF believes that ascertaining whether the test material is in solution does not require analysis of both the total and filtered concentrations of the test material. The concentration in only a filtered sample should be required except in the algal test, where measurements of the amount of test material associated with the algal cells is required. Centrifuging the samples is better because filtration may trap TBP in the filter medium. Requiring analysis of both total and filtered or centrifuged test medium will double analysis costs without any real need. Fourth, the time allotted (9 months) for the completion of the flow-through acute tests may not be adequate. Flow-through tests with analytical measurement of test solutions tend to experience more problems than simple static tests; 12 months from official notification to final report would be a more reasonable estimate.

EPA does not agree with the TBPTF that the chronicity ratio for fish and invertebrates is too stringent because historical data confirm the predictive capability of this decision criterion. EPA agrees with TBPTF that the plant translocation test is unnecessary and EPA is not requiring this test because human exposure from plant dietary uptake does not appear to be of concern. EPA is considering whether it should propose the early seedling growth test to determine the toxicity of TBP to plants. EPA does not agree that only the filtered sample should require analysis and supports the testing guidelines which require analysis of both total and filtered samples. Testing both the total and filtered samples is necessary to know how much dissolved test substance is available during aquatic toxicity tests. EPA is not requiring that both the total and dissolved chemical be measured for every sample. If the dissolved test substance being measured is consistently greater than or equal to 80 percent of total measured test substance, for all test substance concentrations, then it is necessary to measure only the dissolved or total test substance not both. EPA does not agree with TBPTF that 9 months is inadequate to conduct acute flow-though testing because the TBPTF does not provide adequate evidence to the contrary.

C. Economic Issues

1. *Comment:* The TBPTF has estimated the cost of the testing program at about $2.4 million. The information to be developed by the testing program is not a capital asset; and therefore the cost involved must be treated as current expenses. Using the EPA estimated production volume range of 6 to 9 million pounds during an approximate 2-year test program, the cost of the testing proposed per pound would be $0.15 and $0.20 per pound of TBP produced. TBPTF does not believe this is an inconsequential amount.

Response: EPA's estimate of the test cost is between $1.3 million and $1.7 million. TBPTF's estimate of the oncogenicity test is roughly double EPA's estimate, and accounts for the largest portion of the difference. Some of the other estimates submitted by the TBPTF range from 2 to almost 10 times greater than EPA's estimates.

EPA has developed detailed test cost information for each test included in the rule. TBPTF has provided no such information nor any documentation regarding their test cost estimates. In addition, TBPTF has not addressed the method used by EPA to estimate test cost or any of the detailed estimates. Without any such information, EPA cannot address the estimates provided by TBPTF.

Also, TBPTF confuses the procedures used to determine reimbursement for testing costs under section 4 of TSCA with the analysis used to determine economic impacts of the rule. TBPTF looks at the accounting method used to pay for the costs associated with testing, while EPA's economic analysis employs cost recovery analysis to estimate the likelihood of adverse economic impact. In the economic analysis, test costs are annualized over the assumed market life of the product to estimate the amount which firms will have to increase price of the product to recover the costs associated with testing. This estimate of product price increase, as explained in the economic analysis, is used as an indicator of the potential for adverse economic impact. EPA's analysis method is fully explained in the economic analysis document accompanying the proposed rule.

2. *Comment:* Domestic TBP, and TBP-based end-use products, effectively compete in the international market. Aircraft hydraulic fluids containing TBP are used by every major airline in the free world, and more than one-half of the fluid produced domestically is exported. While these fluids are currently only available from domestic sources, excessive testing requirements and associated costs can only encourage the entry of non-domestic suppliers, thus placing an unfair competitive burden on domestic manufacturers and processors of TBP.

Response: As the TBPTF has indicated, fluids containing TBP are used by every major commercial airline in the free world and there are only U.S. sources of these fluids. TBPTF has not demonstrated that a price increase of 1.4 percent to 2.0 percent to cover the costs of testing will be a great enough

incentive for companies outside of the U.S. to begin production of TBP. In addition, any person who begins to import TBP from the effective date of the rule through the reimbursement period would also be subject to the test rule and therefore would be subject to reimbursement of the test costs.

3. *Comment:* TBPTF comments further that conclusions regarding the burden of testing, which are based on fixed assumptions in the inexact field of economic theory, must be seriously and thoroughly evaluated. The ability to pass through costs under conditions of inelastic demand and stable market conditions may be true, but dramatically increased costs at only some producers or processors creates unstable conditions from both supply and consumption dynamics. In a world-wide market, domestic producers and processors of TBP could be placed at an unfair disadvantage. Even if domestic suppliers were able to pass through costs to domestic customers, it is less likely that such pass-through could be successful in foreign markets, putting a double burden on the domestic marketplace. It is economically more prudent and more realistic to assume demand for TBP to be elastic with little probability of increasing price enough to cover costs of testing in a reasonable time. These increased costs, under such assumptions, will directly impact the profitability of TBP production and may ultimately eliminate one or more producers, or even the product, from the market.

Response: TBPTF has not demonstrated that an increase in price of 1.4 percent to 2.0 percent qualifies as "dramatically increased costs". Moreover, as the TBPTF has indicated, there are no foreign sources of TBP-containing fluids. As a result, all producers of TBP would incur these increased costs. EPA has not been able to identify any viable substitutes for TBP in its largest use. Producers of TBP should be able to pass along the cost of testing to all of these customers and not just to domestic customers.

III. Final Test Rule

EPA is basing its final health and environmental effects testing for TBP on the authority of sections 4(a)(1) (A) and (B) of TSCA.

A. Findings

Under section 4(a)(1)(A), EPA finds that the manufacturing, processing, distribution, use, and disposal of TBP in aircraft hydraulic fluid and other uses may present an unreasonable risk of adverse oncogenic effects, neurotoxic effects, and dermal sensitization. These findings are based on the available toxicity data discussed in Unit II of this preamble and in Unit II.F. of the preamble to the proposed rule (52 FR 43346).

Under section 4(a)(1)(B), EPA finds that TBP is produced in substantial quantities and that there is or may be substantial human exposure to TBP in its manufacture, processing, distribution, use, and disposal. The estimated 1985 production capacity of TBP is 6 to 9 million pounds per year (Ref. 14). Potentially 43,000 aircraft mechanics and another roughly 3000 aircraft industry employees at some time could be exposed to aircraft hydraulic fluid containing TBP (Ref. 3). The exposure of mechanics is mainly dermal exposure from removing and repairing components, venting pressurized systems at service sites, and the testing and visual and manual inspection of components. There is also potential of mainly dermal exposure to TBP of approximately 500 TBP manufacturing, processing, and distribution workers from such operations as handling, transfer and packaging of products, equipment repair, cleaning equipment and spill cleanups. There is also potential limited dermal exposure to users of other TBP-containing products (less than 10 percent concentration representing in total 28 percent of TBP volume) including use in original equipment, paints and coatings, inks, leather finishing, liquid fluorescent penetrant, sewage treatment, vinyl floor finish for commercial and industrial applications, and stripping agents.

Under section 4(a)(1)(B), EPA finds that TBP is produced in substantial quantities, and that it enters or may reasonably be anticipated to enter the environment in substantial quantities as a result of its manufacture, processing, distribution, use, and disposal as indicated by its presence in surface water, sediment and groundwater. As stated in the proposed rule, TBP is expected to enter the environment as a result of wastewater release from sites where it is made or used and from leachate releases from landfills (see Unit II.D. of the proposed rule). EPA believes that the low concentrations of TBP detected in or released to the environment at numerous and widely dispersed locations suggest that the total release is substantial under section 4(a)(1)(B) of TSCA.

1. *Health effects.* EPA finds that the available data for insufficient to reasonably determine or predict the oncogenicity, neurotoxicity, dermal sensitization, developmental toxicity, reproductive and fertility effects, mutagenicity, and oral/dermal pharmacokinetics of TBP resulting from exposure during manufacturing, processing, distribution, use, and disposal. EPA finds that testing is necessary to develop these data. EPA believes that the data resulting from this testing will be relevant to a determination as to whether the manufacturing, processing, distribution, use, or disposal of TBP does or does not present an unreasonable risk of injury to human health.

2. *Environmental effects and chemical fate.* EPA believes that, for chemicals that have substantial production and substantial environmental release, reliable data should be developed to assess their toxicity and persistence. Available data are insufficient to reasonably determine or predict TBP's acute toxicity to algae, fish, and aquatic invertebrates, and chronic toxicity to fish and aquatic invertebrates (free swimming and in sediment). Available data are insufficient to reasonably determine or predict TBP's vapor pressure data at 25°C, Koc, and hydrolysis rate. Vapor pressure data at 25°C are needed to estimate a reliable Henry's Law Constant (Hc) for TBP. Data on Koc are needed to estimate the sorption of TBP to soil and sediments. Finally, hydrolysis rate data, which complement the available biodegradation data, are needed to estimate the persistence of TPB in aquatic systems. EPA finds that testing is necessary to develop environmental effects data and chemical fate data, and believes that the data resulting from these test requirements will be relevant to a determination that the manufacturing, processing, use and disposal of TBP does or does not present an unreasonable risk of injury to the environment.

B. Required Testing, Test Standards and Reporting Requirements

On the basis of these findings EPA is requiring that chemical fate, environmental effects and health effects testing be conducted for TBP in accordance with specific test guidelines set forth in 40 CFR parts 796, 797 and 798, or other published test methods as specified in this test rule as listed in the following table.

REQUIRED TESTING, TEST STANDARDS, AND REPORTING REQUIREMENTS FOR TRIBUTYL PHOSPHATE

Test	Test standard 40 CFR citation	Reporting deadline for final rule [1]	Number interim (6-mo) reports required
Chemical fate:			
Vapor pressure	§ 796.1950	6	0
Hydrolysis rate at 25 °C	§ 796.3500	6	0
Sediment and soil adsorption isotherm	§ 796.2750	9	0
Environmental effects:			
Gammarid acute toxity	§ 795.120	9	0
Selenastrum acute toxicity	§ 797.1050	9	0
Rainbow trout acute toxicity	§ 797.1400	9	0
Daphnid acute toxicity	§ 797.1300	9	0
Daphnid chronic toxicity	§ 797.1330	21	1
Fish early life stage	§ 797.1600	21	1
Sediment invertebrate bioassay	Adams et al. (Ref. 15)	21	1
Health effects:			
Oral/dermal pharmacokinetics	§ 798.228	12	1
Oncogenicity	§ 798.3300	53	8
Reproduction and fertility effects (oral)	§ 798.4700	29	4
Developmental toxicity (oral)	§ 798.4900	12	1
Dermal sensitization	§ 798.4100	6	0
Functional observation battery (acute and subchronic)	§ 798.6050	18	2
Motor activity (acute and subchronic)	§ 798.6200	18	2
Neuropathology	§ 798.6400	18	2
Mammalian cells in culture	§ 798.5300	10	1
Drosophila sex-linked recessive lethal	§ 798.5275	22	1
In vitro cytogenetics	§ 798.5375	10	1
In vivo cytogenetics	§ 798.5385	24	1
Dominant lethal assay	§ 796.5450	36	5
Heritable translocation assay	§ 798.5460	[2] 25	3

[1] Number of months after effective date, except as indicated.
[2] Figure indicates the reporting deadline, in months, calculated from the date of notification of the test sponsor by certified letter or FEDERAL REGISTER notice that following public review of all the existing data for TBP, the Agency has determined that required testing must be performed.

Although the major occupational exposure route for TBP is dermal, EPA is requiring that testing for oncogenicity, neurotoxicity, development toxicity, reproductive and fertility effects shall be by the oral route because (1) the skin irritating effects of TBP could confound the results of dermal testing, (2) existing supporting studies have been done by the oral route, and (3) there are technical problems conducting dermal tests. EPA is also requiring oral/dermal pharmacokinetics. EPA is specifying that the Sprague-Dawley rat be used for both oncogenicity and pharmacokinetics testing because existing data presented in the proposed rule show this species to be sensitive to TBP.

EPA requires that all data developed under this rule be reported in accordance with its TSCA Good Laboratory Practice (GLP) Standards, in 40 CFR part 792.

In accordance with 40 CFR part 790, under single-phase rulemaking procedures, test sponsors are required to submit individual study plans at least 45 days before initiation of each test.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Final testing requirements, test standards and reporting requirements for this TBP test rule are summarized in the preceding table. Interim progress reports for the tests shall be provided to EPA at 6-month intervals after the effective date of this rule until the final report is submitted to EPA.

TSCA section 14(b) governs EPA disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical which is subject to a section 4 test rule are subject to the export reporting requirements of section 12(b) of TSCA. Final regulations interpreting the requirements of section 12(b) are in 40 CFR part 707. In brief, as of the effective date of this test rule, an exporter of TBP must report to EPA the first annual export or intended export of TBP to each country. EPA will notify the foreign country concerning the test rule for TPB.

For the purpose of this test rule, these guidelines are the test standards that must be met by the test sponsors. The route of administration of TBP for all tests shall be oral unless otherwise specified. Data resulting from these tests will assist EPA in conducting health and environmental risk assessments for TBP. The TSCA test guidelines, proposed modifications, and other cited test guidelines discussed in the following paragraphs in III.B. specify generally accepted minimal conditions for determining toxicities and properties of substances such as TBP to which human and aquatic life are expected to be exposed. Conducting the required studies in accordance with these TSCA guidelines will help ensure that the test results are reliable and adequate.

The oral/dermal pharmacokinetics test guideline in the proposed rule has been revised based upon public comments and is promulgated as § 795.228 Oral/dermal pharmacokinetics test.

EPA periodically reviews the TSCA Test Guidelines, according to the process described at 47 FR 41857 (September 22, 1982).

1. *Health effects.* The neurotoxicity testing required will consist of an acute and subchronic functional observation battery specified in § 798.6050, as modified in § 799.4360(c)(1)(i)(A)(*2*), an acute and subchronic motor activity test specified in § 798.6200, as modified in § 799.4360(c)(1)(i)(B)(*2*), and a subchronic neuropathologic evaluation of tissues perfused in situ specified in § 798.6400, as modified in § 799.4360(c)(1)(i)(C)(*2*).

To assess the developmental effects of TBP, EPA is requiring that testing be conducted by gavage according to § 798.4900, as modified in § 799.4360(c)(2)(i)(B).

To assess the reproductive and fertility effects of TBP, EPA is requiring that testing be conducted according to § 798.4700, as modified in § 799.4360(c)(3)(i)(B) (i)(B).

To assess the mutagenic effects of TBP, EPA is requring that testing be conducted in tiers. First-tier testing will consist of the detection of gene mutation in somatic cells in culture using the test guideline § 798.5300, an in vitro mammalian cytogenetics test using the test guideline in § 798.5375, and an in vivo mammalian bone marrow cytogenetics chromosomal analysis test using the test guideline in § 798.5385, as modified in § 799.4360(c)(5)(i)(B)(*2*). Unless the results of the gene mutation in somatic cells in culture are negative, a sex-linked recessive lethal test in *Drosophila melanogaster* will be required. Second-tier testing will consist of a sex-linked recessive lethal assay in *Drosophila melanogaster* using the test guideline in § 798.5275, as modified in § 799.4360(c)(4)(i)(B)(*2*), and a rodent dominant lethal test using the test guideline in § 798.5450; third-tier testing will consist of a rodent heritable translocation test using the test guidelines in § 798.5460, and as modified in § 799.4360(c)(5)(i)(D)(*2*).

In the proposed rule, EPA would have required third-tier testing consisting of a mouse visible specific locus test using the test guideline in § 798.5200 as modified. Positive results in the sex-linked recessive lethal test may have triggered the requirement for conducting a mouse visible specific locus (MVSL) test. EPA believes that the MVSL may be necessary, when these lower-tier tests are positive, to establish definitively whether a substance is capable of eliciting heritable gene mutations. Under the approach proposed, EPA would have considered the positive results in the lower-tier tests in a public program review, together with other relevant information, during which interested persons would be able to give their views to EPA. If, after the review, EPA had determined that the MVSL was still appropriate, EPA would have notified the test sponsors by letter or **Federal Register** notice that they must conduct the test. If EPA had determined that the test was no longer necessary, EPA would have amended the rule to delete the test requirement.

The final test rule for TBP includes requirements to conduct the lower-tier tests for gene mutation. However, EPA is not promulgating the requirement for the MVSL for TBP at this time. EPA has based its proposal to require the MVSL, in part, on information and assumptions about the cost of conducting the test and the availability of laboratories capable of performing the test. The information and assumptions have since proven to be incorrect. Accordingly, EPA is in the process of reexamining the MVSL requirement for all those chemical substances for which the MVSL has been required or proposed to be required. In particular, EPA is reviewing whether any laboratories are available to perform the MVSL for industry in accordance with the TSCA Good Laboratory Practice Standards at 40 CFR part 792 and the cost of such testing, EPA is also reviewing possible alternative tests to the MVSL for which costs may be lower or laboratory availability may be more certain.

EPA has published a notice in the **Federal Register** concerning the MVSL for TBP and other substances subject to proposed and final TSCA section 4 test rules (53 FR 51897). This notice provides up-to-date information on the cost of MVSL testing, availability of laboratories to perform the MVSL, and possible alternative tests to the MVSL together with their costs and laboratory availability. The notice also addresses EPA's intentions about any changes to the MVSL requirements in the various test rules and provides an opportunity for public comment. If, after this proposed rule is finalized and if after lower tier mutagenicity testing of TBP, EPA concludes that the MVSL is appropriate for TBP, EPA will amend this rule to include the MVSL requirements with any appropriate modifications.

Should the gene mutation in somatic cells test prove negative, no further gene-mutation tests will be required. If the sex-linked recessive lethal test is negative, no further gene-mutation test will be required of TBP.

If the results of the in vitro mammalian cytogenetics test are negative, an in vivo mammalian bone marrow cytogenetics, chromosomal analysis test will be required. Unless the results of the in vivo test are negative, a rodent dominant lethal test will be required. A positive result in the rodent dominant lethal test will trigger the requirement that a heritable translocation test be conducted. Should the in vivo mammalian cytogenetics test results prove negative, no further chromosomal effects testing will be required. If the dominant lethal test is negative, no further chromosomal effects testing will be required for TBP.

Under this final rule, if the result of the second-tier rodent dominant lethal test is positive, EPA will hold a public program review before industry will be required to initiate the third-tier heritable translocation test. The public will participate in this program review either by submitting written comments or commenting during a public meeting. A request for public comment or notification of public meeting will be published in the **Federal Register**. Should EPA determine, from the available weight of evidence, that proceeding to the heritable translocation test is no longer warranted, EPA will propose to repeal this testing requirement and, after public comment, issue a final amendment to rescind this requirement. EPA will notify the test sponsors by certified letter or **Federal Register** notice, following the public program review of all the then-existing data for TBP, if the heritable translocation test must be performed. EPA will also conduct internal program reviews of the reports of the gene mutations in somatic cells in culture assay, the in vitro mammalian bone marrow cytogenetics test, and the in vivo mammalian bone marrow cytogenetics test and other available mutagenicity data to evaluate whether the sex-linked recessive lethal and the rodent dominant lethal tests have been triggered.

For a more detailed discussion of mutagenicity tiered testing and public program review procedures, see EPA's final test rule for the C9 aromatic hydrocarbon fraction published in the **Federal Register** of May 17, 1985 (50 FR 20662).

To assess the oncogenic effects of TBP, EPA is requiring that testing be conducted according to § 798.3300 in Sprague-Dawley rats and in mice via the oral route of administration.

To assess the dermal sensitization effects of TBP, EPA is requiring that testing be conducted according to § 798.4100.

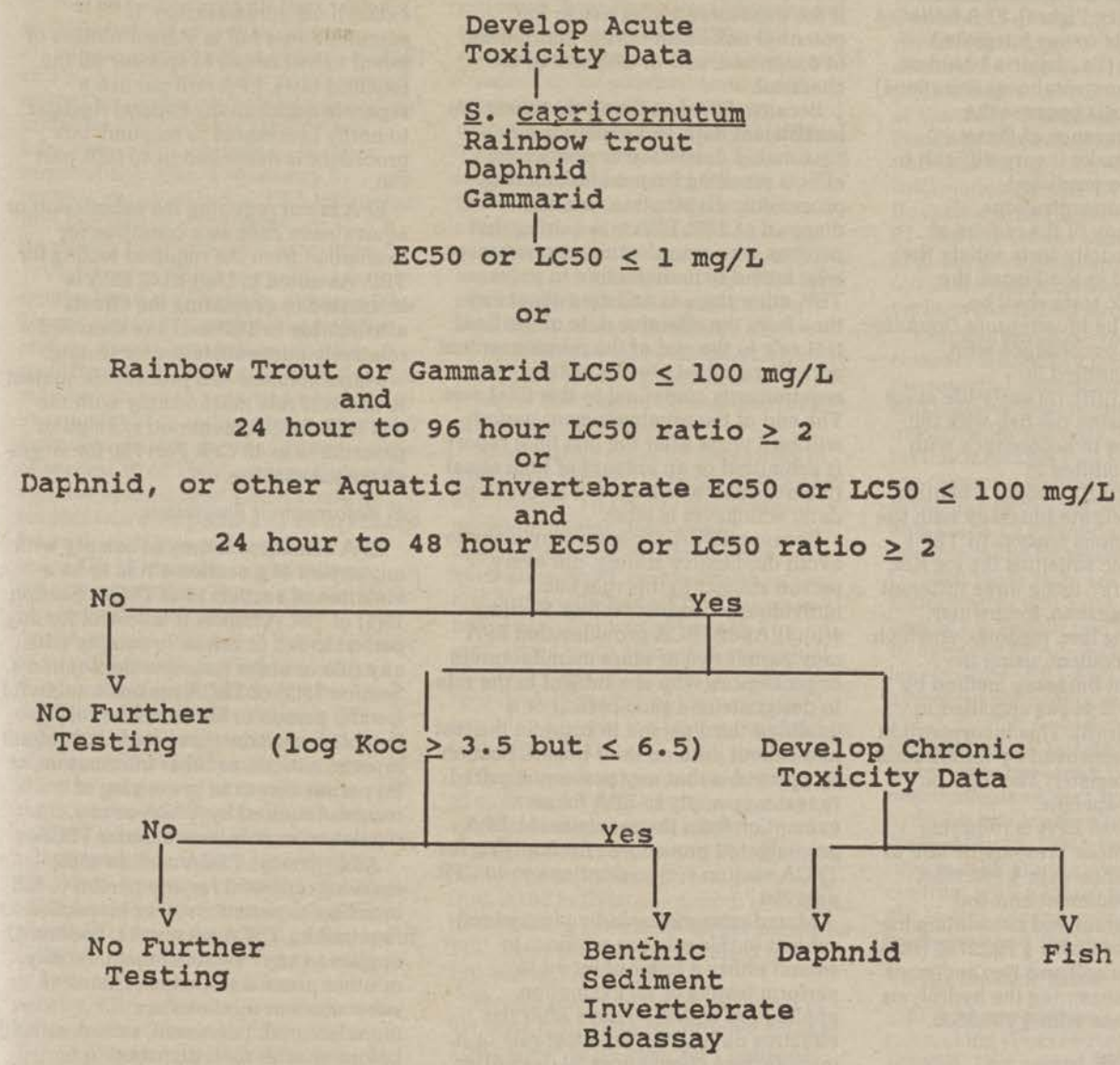
To compare the oral route of administration of TBP in § 798.3300 and the dermal route, in § 798.4100 which is thought to be a primary route of human exposure, EPA is requiring an oral/dermal pharmacokinetic test with TBP to examine absorption, distribution, metabolism, and excretion. EPA is requiring that testing be conducted according to § 798.7485. The decision to require most testing of TBP by the oral route is based on the results of dermal irritation tests showing TBP effects to range from irritating to corrosive (Unit II.F.1. of preamble to proposed rule). Moreover, dermal application of the corrosive TBP could stress the test animals, which may distort test results. TBP is well tolerated by the oral route (Unit II.F. of preamble to proposed rule).

EPA is not requiring the renal effects test recommended by the ITC. Acute and subacute oral studies by Mitomo et al. (Ref. 16) showed kidney tubule damage in rats and mice. However, two oral subchronic rats studies of 90 days and 126 days showed no kidney damage even at dosages higher than the Mitomo studies (Refs. 17 and 18). EPA believes that there are adequate data available to assess the effects of TBP on kidney tubules.

2. *Environmental effects.* EPA is requiring the following environmental effects testing to determine the toxicity of TBP to an alga, a fish, and aquatic invertebrates: (1) *Selenastrum capricornutum,* in accordance with § 797.1050 as modified in § 799.4360(d)(1)(i)(B); (2) rainbow trout in accordance with § 797.1400, as modified in § 799.4360(d)(2)(i)(B); (3) daphnids in accordance with § 797.1300, and as modified in § 799.4360(d)(3)i)(B); and (4) gammarids in accordance with § 795.120, as modified in § 799.4360(d)(4)(i)(B). Only one test species, rainbow trout, is required for the fish acute toxicity test because an acute test for the fathead minnow is available and adequate in combination with the testing required for the rainbow trout for purposes of assessing the acute toxicity of TBP of fish (see Unit II.G.). All the acute aquatic toxicity data from these tests will be used to determine whether chronic aquatic testing is necessary according to the testing scheme presented in the following figure:

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Figure--DECISION LOGIC FOR DEVELOPING ENVIRONMENTAL EFFECTS DATA



BILLING CODE 6560-50-C

EPA believes that, for chemicals with substantial production and ubiquitous environmental distribution, reliable data should be developed to assess their toxicity and persistence. EPA also believes that, for widely distributed chemicals such as TBP, hazard-based decision criteria should be applied to the data to determine the need to conduct further testing (see Figure). EPA believes it is inappropriate to use integrated decision criteria (i.e., criteria based on predicted environmental concentrations) for these chemicals because the widespread occurrence of these chemicals may make it very difficult to calculate reliable predicted environmental concentrations.

Therefore, if any of the results of acute aquatic toxicity tests satisfy the criteria specified in the Figure, the following chronic tests shall be conducted: (1) The invertebrate *Daphnia* life-cycle test in accordance with § 797.1330, as modified in § 799.4360(d)(5)(i)(B); (2) early-life stage toxicity to fish using the fish with the lower LC50 value in accordance with § 797.1600, as modified in § 799.4360(d)(6)(i)(B); and (3) a benthic sediment invertebrate bioassay with the midge, *Chironomous tentans* (if TBP's measured log Koc satisifies the log Koc criterion in Figure), using three different TBP—containing clean, freshwater sediments having low, medium, and high organic carbon content, using the benthic sediment bioassay method by Adams et al. (Ref. 16) as specified in § 799.4360(d)(7)(i)(B). This incorporation by reference is approved by the Director of the Federal Register. The log Koc criterion is TBP-specific.

3. *Chemical fate.* EPA is requiring measuring the vapor pressure of TBP at 25° C in accordance with § 796.1950, measuring the sediment and soil adsorption isotherm and calculating log Koc in accordance with § 796.2750 (EPA will provide two soil and two sediment samples), and measuring the hydrolysis rate in accordance with § 796.3500.

C. Test Substance

EPA is requiring that TBP of at least 99 percent purity shall be used as the test substance. TBP of such purity is commercially available.

D. Persons Required to Test

Section 4(b)(3)(B) specifies that the activities for which EPA makes section 4(a) findings (manufacture, proceeding, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing a chemical. Manufacturers and persons who intend to manufacture the chemical are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors and persons who intend to process the chemical are required to test if the findings are based on processing. Manufacturers and processors and persons who intend to manufacture and process the chemical are required to test if the exposures giving rise to the potential risk occur during distribution in commerce, use, or disposal of the chemical.

Because EPA has found that there are insufficient data and experience to reasonably determine or predict the effects resulting from manufacturing, processing, distribution, use and disposal of TBP, EPA is requiring that persons who manufacture or process, or who intend to manufacture to process TBP, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period are subject to the testing requirements contained in this final rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data, whichever is later.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to the rule to designate one such person or a qualified third person to conduct the test and submit data on their behalf. Section 4(c) provides that any persons required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule or if manufacture commences 30 days after the effective date of the rule but before the end of the reimbursement period, by the date manufacture begins. The required procedures for submitting such letters and applications are described in 40 CFR part 790. Although EPA has not identified any individuals who manufacture TBP as a byproduct, such persons will be subject to the requirements of this test rule.

Processors rule to this subject, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. EPA expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or other reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, EPA will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR part 790.

EPA is not requiring the submission or equivalence data as a condition for exemption from the required testing for TBP. As noted in Unit III.C, EPA is interested in evaluating the effects attributable to TBP and has specified a relatively pure substance for testing.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR Part 790 for single-phase rulemaking.

E. Enforcement Provisions

EPA considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by TSCA section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce * * *" EPA considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by designated representatives of EPA for the purpose of determining compliance with the final rule for TBP. These inspections may be conducted for purposes which include verification that testing has begun, schedules are being met, and reports accurately reflect the

underlying raw data, interpretations, and evaluations, and to determine compliance with TSCA GLP standards and the test standards established in this rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and to include such other requirements as are necessary to provide such assurance. EPA maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provisions of section 16 of TSCA, any person who violates section 15 of TSCA could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers that fail to submit a letter of intent or an exemption request and that continue manufacturing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after EPA has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)). Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation, imprisonment for up to 1 year, or both. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Final Rule

To assess the potential economic impact of this final rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential costs by examining four market characteristics of TBP: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations. If these indications are negative, no further economic analysis is performed. However, if the first level of analysis indicates a potential for significant economic impact, a more comprehensive and detailed analysis is conducted which more precisely predicts the magnitude and distribution of the expected impact.

Total testing costs for the testing of TBP are estimated to range from $1.3 to $1.7 million. To predict the financial decision-making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year.

The annualized test costs (using a cost of capital of 7 percent over a period of 15 years) range from $140,400 to $186,700. Based on 1986 production of 6 million pounds, the unit test costs range from $0.02 to $0.03 per pound. In relation to the selling price of $1.60 per pound for TBP, these costs are equivalent to 1.46 to 1.95 percent of the price.

Though the annualized unit costs of the tests relative to the product price of TBP appear to be high, EPA believes that the potential for adverse economic impact is low. This conclusion is based on the following observations:

1. The demand for TBP appears to be inelastic with respect to price in its largest use, primarily because of the current lack of viable substitutes.

2. The market for TBP appears to be stable.

Refer to the economic analysis which is contained in the public record for this rulemaking for a complete discussion of test costs estimation and potential for economic impact resulting from these costs.

V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule". Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by this section 4 test rule (Ref. 19). Copies of the study, Chemical Testing Industry: Profile of Toxicological Testing, can be obtained through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (PB–82–140773). On the basis of this study, EPA believes that there will be available test facilities and personnel to perform the testing specified in this rule.

EPA has reviewed the availability of contract laboratory facilities to conduct the required neurotoxicity tests (Ref. 20) and believes that facilities will be available for the tests. The laboratory review indicates that few laboratories are currently conducting these tests according to the TSCA test guidelines and TSCA GLP Standards. However, the barriers faced by testing laboratories to conduct these tests are not formidable. Laboratories will have to invest in testing equipment and personnel training but EPA believes that these investments will be recovered as the neurotoxicity testing program under TSCA section 4 continues. EPA's expectations of laboratory availability were borne out under the testing requirements of the C9 aromatic hydrocarbon fraction test rule (50 FR 20675; May 17, 1985). Pursuant to that rule, manufacturers were able to contract with a laboratory to conduct the testing according to TSCA test guidelines and TSCA GLP Standards.

VI. Rulemaking Record

EPA has established a record for this rulemaking (Docket Number OPTS–42100B). This record contains the basic information considered by EPA in developing this proposal and appropriate **Federal Register** notices.

This record includes:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice containing the ITC's intent to designate TBP to the Priority List (51 FR 18368; May 19, 1986), and the designation of TBP to the Priority List (51 FR 41417; November 14, 1986).

(b) Rules requiring TSCA section 8(a) and 8(d) reporting on TBP (51 FR 18323; May 19, 1986).

(c) TSCA test guidelines cited as test standards for this rule.

(2) Economic Impact Analysis of Proposed Test Rule for Tributyl Phosphate.

(3) Communications consisting of: (a) Written public comments and letters.

(b) Contact reports of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished factual materials.

B. References

(1) TBPTF. Tributyl Phosphate Task Force of the Synthetic Organic Chemicals Manufacturers Association. Washington, DC. Comments on EPA's proposed test rule for tributyl phosphate. (January 11, 1988).

(2) TBPTF. 1987 U.S. Survey of Tributyl Phosphate Users, Potential Exposure and Safety Procedures, conducted by Temple, Barker, Sloan Inc. (1987).

(3) TBPTF. Letter from J. Kneiss, Managing Director of the Tributyl Phosphate Task Force to M. McCommas, Office of Toxic Substances, U.S. Environmental Protection Agency, July 11, 1988.

(4) USEPA. U.S. Environmental Protection Agency. Exposure Tech Team notes on TBPTF's exposure survey from S. Shapley to M. McCommas, Office of Toxic Substances (1988).

(5) USEPA. Tributyl Phosphate (TBP) task force exposure estimates for populations handling aircraft hydraulic fluids containing TBP. Memo from V. Rodriguez to M. McCommas. Office of Toxic Substances (1988).

(6) Ainsworth, M. "Methods for measuring percutaneous absorption." *Journal of the Society of Cosmetic Chemistry* 11:69–78 (1960).

(7) Marzulli, F.N., Callahan, J.F., and Brown, D.W.C. "Chemical structure and skin penetrating capacity of a short series of organo phosphates and phosphoric acid." *Journal of Investigative Dermatology* 44:339–344 (1965).

(8) Tregar, R. "The permeability of mammalian skin to ions." *Journal of Investigative Dermatology* 46:16–23 (1966).

(9) Marzulli, F.N. et al. "Techniques for studying skin penetration." *Toxicology and Applied Pharmacology* Supplement 2, 3:76–83 (1969).

(10) Robertson, D.G., Mattson, A.M., Bestervelt, L.L., Richardson, and R.J., Anderson, R.J., "Time course of electrophysiological effects induced by di-n-butyl-2,2-dichlorovinyl phosphate (DBCV) in the adult hen." *Journal of Toxicology and Environmental Health* 23:283–294 (1988).

(11) Roberts, D.V. "A longitudinal electromyographic study of six men occupationally exposed to organophosphorus compounds." *International Archives of Occupational and Environmental Health* 38:221–229 (1977).

(12) Brown, D.R. and Murphy, S.D. "Factors influencing dimethoate and trimethyl phosphate-induced narcosis in rats and mice." *Toxicology and Applied Pharmacology* 18:895–906 (1971).

(13) Deichmann, W.B. and Witherup, S. "Observations on the effects of trimethyl phosphate upon experimental animals." *Journal of Pharmacology and Experimental Therapeutics* 88:338–347 (1946).

(14) USEPA. Aggregated production volume for CASRN 126–73–8, 1985. U.S. Environmental Protection Agency, Confidential Data Branch, Office of Toxic Substances, Washington, DC (1987).

(15) Adams, W.J., Kimmerle, R.A., and Mosher, R.G. "Aquatic safety assessment of chemicals sorbed to sediments." Published in Aquatic Toxicology and Hazard Assessment Seventh Symposium, ASTM STP 854, American Society for Testing and Materials, Philadelphia, PA pp. 429–453 (1985).

(16) Mitomo, I., Ito, T., Ueno, Y., and Terao, K. "Toxicological studies on tributyl phosphate. I. Acute and Subacute Toxicities." *Journal of Toxicological Services* 5:270–271 (1969).

(17) Laham, S., Long, G., and Broxup, B. "Induction of urinary bladder hyperplasia in Sprague–Dawley rats orally administered tri-n-butyl phosphate." *Archives of Environmental Health* 40:301–306 (1985).

(18) FMC Corporation. TSCA 8(d) submission 86800000106, Thirteen week feeding study of tributyl phosphate in rats. Office of Toxic Substances, U.S. EPA, Washington, DC (1986).

(19) NTIS. National Technical Information Service. Chemical Testing Industry: Profile of Toxicological Testing (PB 82–140773). Springfield, VA (1986).

(20) USEPA. Evaluation of TSCA test guidelines for neurotoxicity testing. Mathtech, Inc. Contract Number 68–02–4235. Regulatory Impact Branch. Office of Toxic Substances, Washington, DC. (April 4, 1987).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the OPTS Reading Room G–004, NE Mall, 401 M Street, SW., Washington, DC, from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in costs or prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprise to compete with foreign enterprises.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA responses to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 *et seq.* and have been assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 486 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., 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."

List of Subjects in 40 CFR Parts 795 and 799

Chemicals, Environmental protection, Hazardous substances, Testing, Laboratories, Recordkeeping and reporting requirements, Incorporation by reference.

Dated: August 3, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Chapter I, Subchapter R is amended as follows:

PART 795—[AMENDED]

1. In part 795:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603.

b. Section 795.228 is added to subpart D, to read as follows:

§ 795.228 Oral/dermal pharmacokinetics.

(a) *Purpose.* The purpose of these studies are to: (1) Ascertain whether the pharmacokinetics and metabolism of a chemical substance or mixture ("test substance") are similar after oral and dermal administration.

(2) Determine bioavailability of a test substance after oral and dermal administration.

(3) Examine the effects of repeated dosing on the pharmacokinetics and metabolism of the test substance.

(b) *Definitions.* (1)"Bioavailability" refers to the rate and relative amount of administered test substance which reaches the systemic circulation.

(2) "Metabolism" means the study of the sum of the processes by which a particular substance is handled in the body and includes absorption, tissue distribution, biotransformation, and excretion.

(3) "Percent absorption" means 100 times the ratio between total excretion of radioactivity following oral or dermal administration and total excretion following intravenous administration of test substance.

(4) "Pharmacokinetics" means the study of the rates of absorption, tissue distribution, biotransformation, and excretion.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species.* The rat shall be used for pharmacokinetics testing because it has been used extensively for metabolic and toxicological studies. For dermal bioavailability studies, the rat and the mini-pig shall be used.

(ii) *Test animals.* For pharmacokinetics testing and dermal studies, adult male and female Sprague-Dawley rats, 7 to 9 weeks of age, shall be used. For dermal studies, young adult mini-pigs shall also be used. The animals should be purchased from a reputable dealer and shall be identified upon arrival at the testing laboratory. The animals shall be selected at random for the test groups and any animal showing signs of ill health shall not be used. In all studies, unless otherwise specified, each test group shall contain at least 4 animals of each sex for a total of at least 8 animals.

(iii) *Animal care.* (A) The animals shall be housed in environmentally controlled rooms with at least 10 air changes per hour. The rooms shall be maintained at a temperature of 24 ± 2 °C and humidity of 50 ± 20 percent with a 12-hour light/dark cycle per day. The animals shall be kept in a quarantine facility for at least 7 days prior to use and shall be acclimated to the experimental environment for a minimum of 48 hours prior to administration of the test substance.

(B) During the acclimatization period, the animals shall be housed in suitable cages. All animals shall be provided with certified feed and tap water *ad libitum.* The mini-pig diet shall be supplemented with adequate amounts of ascorbic acid in the drinking water.

(2) *Administration of test substance*—(i) *Test substance.* The use of a radioactive test substance is required for all studies. Ideally, the purity, radioactive and nonradioactive, is greater than 99 percent. The radioactive and nonradioactive test substances shall be chromatographed separately and together to establish purity and identity. If the purity is less than 99 percent or if the chromatograms differ significantly, EPA should be consulted.

(ii) *Dosage and treatment*—(A) *Intravenous.* The low dose of test substance, in an appropriate vehicle, shall be administered intravenously to groups of rats and mini-pigs of each sex. If feasible, the same low dose should be used for intravenous, oral, and dermal studies.

(B) *Oral.* Two doses of text substance shall be used in the oral study, a low dose and a high dose. The high dose should ideally induce some overt toxicity, such as weight loss. The low dose should correspond to a no-observed effect level. The oral dosing shall be accomplished by gavage or by administering the encapsulated test substance. If feasible, the same high and low doses should be used for oral and dermal studies.

(C) *Dermal.* (*1*) Dermal treatment. For dermal treatment, two doses, comparable to the low and high oral doses, shall be dissolved in a suitable vehicle and applied in volumes adequate to deliver comparable doses. The backs of the animals should be lightly shaved with an electric clipper 24 hours before treatment. The test substance shall be applied to the intact shaven skin (approximately 2 cm^2 for rats, 5 cm^2 for mini-pigs). The dosed areas shall be protected with a suitable porous covering which is secured in place, and the animals shall be housed separately.

(*2*) Washing efficacy study. Before initiation of the dermal absorption studies, an initial washing efficacy experiment shall be conducted to assess the removal of the applied low dose of the test substance by washing the exposed skin area with soap and water and an appropriate organic solvent. The low dose shall be applied to 4 rats and 4 mini-pigs in accordance with paragraph (c)(2)(ii)(C)(*1*) of this section. After application (5 to 10 minutes), the treated areas of 2 rats and 2 mini-pigs shall be washed with soap and water and the treated areas of the remaining rats and pigs shall be washed with an appropriate solvent. The amounts of test substance recovered in the washings shall be determined to assess efficacy of its removal by washing.

(iii) *Dosing and sampling schedule*—(A) *Rat studies.* After administration of the test substance, each rat shall be placed in a metabolic unit to facilitate collection of excreta. For the dermal studies, excreta from the rats shall also be collected during the 6 hour exposure periods. At the end of each collection period, the metabolic units shall be cleaned to recover any excreta that might adhere to them. All studies, except the repeated dosing study, shall be terminated at 7 days or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(*1*) *Intravenous study.* Group A shall be dosed once intravenously at the low dose of test substance.

(*2*) *Oral study.* (*i*) Group B shall be dosed once per os with the low dose of test substance.

(*ii*) Group C shall be dosed once per os with the high dose of test substance.

(*3*) *Dermal studies.* Unless precluded by corrosivity, the test substance shall be applied and kept on the skin for a minimum of 6 hours. At the time of removal of the porous covering, the treated area shall be washed with an appropriate solvent to remove any test substance that may be on the skin surface. Both the covering and the washing shall be assayed to recover residual radioactivity. At the termination of the studies, each animal shall be sacrificed and the exposed skin area removed. An appropriate section of the skin shall be solubilized and assayed for radio-activity to ascertain if the skin acts as a reservoir for the test substance. Studies on the dermal absorption of corrosive test substances should be discussed with EPA prior to initiation.

(*i*) Group D shall be dosed once dermally with the low dose of test compound.

(*ii*) Group E shall be dosed once dermally with the high dose of the test substance.

(*4*) *Repeated dosing study.* Group F shall receive a series of single daily oral low doses of nonradioactive test substance over a period of at least 7 days. Twenty-four hours after the last nonradioactive dose, a single oral low dose of radioactive test substance shall be administered. Following dosing with

the radioactive substance, the rats shall be placed in individual metabolic units as described in paragraph (c)(2)(iii) of this section. The study shall be terminated at 7 days after the last dose, or after at least 90 percent of the radioactivity has been recovered in the excreta, whichever occurs first.

(B) *Mini-Pig studies.* For all mini-pig studies, the test groups shall consist of four young adult animals. After administration of the test substance, each mini-pig shall be kept in a metabolic unit to facilitate collection of excreta. At the end of each collection period, the metabolic units are to be cleaned to recover any excreta that might adhere to them. All studies shall be terminated at 7 days, or after at least 90 percent of the radio-activity has been recovered in the excreta, whichever occurs first.

(1) *Intravenous study.* Group G is to be dosed once intravenously at the low dose of the test substance.

(2) *Dermal studies.* Following the experimental guidance described in (c)(2)(iii)(A)(*3*) of this section:

(*i*) Group H shall be dosed once dermally with the low dose of test substance.

(*ii*) Group I shall be dosed once dermally with the high dose of the test substance.

(3) *Types of studies*—(i) *Pharmacokinetics studies*—(A) *Rat studies.* Groups A through F shall be used to determine the kinetics of absorption of the test substance. In the group administered the test substance by intravenous routes, (i.e., Group A), the concentration of radioactivity in blood and excreta shall be measured following administration. In groups administered the test substance by the oral and dermal route (i.e., Groups B, C, D, E and F), the concentration of radioactivity in blood and excreta shall be measured at selected time intervals during and following the exposure period.

(B) *Mini-Pig studies.* Groups G, H, and I shall be used to determine the extent of dermal absorption of the test substance. The amount of radioactivity in excreta shall be determined at selected time intervals.

(ii) *Metabolism studies—Rat studies.* Groups A through F shall be used to determine the metabolism of the test substance. Urine, feces, and expired air shall be collected for identification and quantification of the test substance and metabolites.

(4) *Measurements*—(i) *Pharmacokinetics.* Four animals from each group shall be used for these purposes.

(A) *Rat studies*—(*1*) *Bioavailability.* The levels of radioactivity shall be determined in whole blood, blood plasma or blood serum at 15 and 30 minutes and at 1, 2, 8, 24, 48, and 96 hours after initiation of dosing.

(*2*) *Extent of absorption.* The total quantities of radioactivity shall be determined for excerta collected daily for 7 days or until at least 90 percent of the radioactivity has been recovered in the excreta.

(*3*) *Excretion.* The quantities of radioactivity eliminated in the urine, feces, and expired air shall be determined separately at appropriate time intervals. The collection of carbon dioxide may be discontinued when less than one percent of the dose is found to be exhaled as radioactive carbon dioxide in 24 hours.

(*4*) *Tissue distribution.* At the termination of each study, the quantities of radioactivity in blood and in various tissues, including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lungs, muscle, skin, and residual carcass of each animal shall be determined.

(*5*) *Changes in pharmacokinetics.* Results of pharmacokinetics measurements (i.e., bioavailability and extent of absorption, tissue distribution, and excretion) obtained in rats receiving the single low oral dose of the test substance (Groups B and C) shall be compared to the corresponding results obtained in rats receiving repeated oral doses of the test substance (Group F).

(B) *Mini-Pig studies—Extent of absorption.* The total quantities of radioactivity shall be determined for excreta daily for 7 days or until at least 90 percent of the test substance has been excreted.

(ii) *Metabolism.* Four animals from each group shall be used for these purposes.

(A) *Rat studies*—(*1*) *Biotransformation.* Appropriate qualitative and quantitative methods shall be used to assay urine, feces, and expired air collected from rats. Efforts shall be made to identify any metabolite which comprises 5 percent or more of the administered dose and the major radioactive components of blood.

(*2*) *Changes in biotransformation.* Appropriate qualitative and quantitative assay methodology shall be used to compare the composition of radioactive compounds in excreta from rats receiving a single oral dose (Groups B and C) with those in the excreta from rats receiving repeated oral doses (Group H).

(d) *Data and reporting.* The final test report shall include the following:

(1) *Presentation of results.* Numerical data shall be summarized in tabular form. Pharmacokinetic data shall also be presented in graphical form. Qualitative observations shall also be reported.

(2) *Evaluation of results.* All quantitative results shall be evaluated by an appropriate statistical method.

(3) *Reporting results.* In addition to the reporting requirements as specified in 40 CFR part 792, the following specific information shall be reported:

(i) Species and strains of laboratory animals.

(ii) Chemical characterization of the test substance, including:

(A) For the radioactive test substances, information on the site(s) and degree of radiolabeling, including type of label, specific activity, chemical purity, and radiochemical purity.

(B) For the nonradioactive compound, information on chemical purity.

(C) Results of chromatography.

(iii) A full description of the sensitivity, precision, and accuracy of all procedures used to generate the data.

(iv) Percent of absorption of test substance after oral and dermal exposures to rats and dermal exposure to mini-pigs.

(v) Quantity and percent recovery of radioactivity in feces, urine, expired air, and blood. In dermal studies on rats and mini-pigs, include recovery data for skin, skin washings, and residual radioactivity in the covering as well as results of the washing efficacy study.

(vi) Tissue distribution reported as quantity of radioactivity in blood and in various tissues, including bone, brain, fat, gastrointestinal tract, gonads, heart, kidney, liver, lung, muscle, skin and in residual carcass of rats.

(vii) Materials balance developed from each study involving the assay of body tissues and excreta.

(viii) Biotransformation pathways and quantities of test substance and metabolites in excreta collected after administering single high and low doses to rats.

(ix) Biotransformation pathways and quantities of the test substance and metabolites in excreta collected after administering repeated low doses to rats.

(x) Pharmacokinetics model(s) developed from the experimental data.

PART 799—[AMENDED]

2. In part 799:

a. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

b. Section 799.4360 is added to subpart B to read as follows:

§ 799.4360 Tributyl phosphate.

(a) *Identification of test substance.* (1) Tributyl phosphate (TBP, CAS No. 126–73–8) shall be tested in accordance with this section.

(2) TBP of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import and byproduct manufacture) or process or intend to manufacture or process TBP, other than as an impurity, from the effective date of the final rule to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in this section, subpart A of this part, and part 790 of this chapter for single-phase rulemaking.

(c) *Health effects testing*—(1) *Neurotoxicity*—(i) *Required testing.* (A)(*1*) An acute and subchronic functional observational battery shall be conducted with TBP in accordance with § 798.6050 of this chapter except for the provisions of paragraphs (d) (5) and (6) of § 798.6050.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Animal selection.* Testing shall be performed in laboratory rats.

(*ii*) *Duration of testing.* For the acute testing, the substance shall be administered over a period not to exceed 24 hours; for the subchronic testing, test species shall be exposed daily for at least 90 days.

(*iii*) *Route of exposure.* Animals shall be exposed to TBP orally.

(B)(*1*) An acute and subchronic motor activity test shall be conducted with TBP in accordance with § 798.6200 of this chapter except for the provisions of paragraphs (d) (5) and (6) of § 798.6200.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Animal selection.* Testing shall be performed in laboratory rats.

(*ii*) *Duration of testing.* For the acute testing, the substance shall be administered over a period not to exceed 24 hours; for the subchronic testing, test species shall be exposed daily for at least 90 days.

(*iii*) *Route of administration.* Animals shall be exposed to TBP orally.

(C)(*1*) A neuropathology test shall be conducted with TBP in accordance with § 798.6400 of this chapter except for the provision of paragraphs (d)(1)(i) (5) and (6) of § 798.6400.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Animal selection.* Testing shall be performed in laboratory rats.

(*ii*) *Duration of testing.* Animals shall be exposed for at least a 90-day period.

(*iii*) *Route of administration.* Animals shall be exposed to TBP orally.

(*ii*) *Reporting requirements*—(A) The neurotoxicity tests required under paragraph (c)(1)(i) (A), (B), and (C) of this section shall be completed and final reports submitted to EPA within 18 months of the effective date of the final rule.

(B) An interim progress report for these neurotoxicity tests shall be submitted to EPA 6 months after the effective date of the final rule.

(2) *Developmental toxicity*—(i) *Required testing.* (A) A developmental toxicity study shall be conducted with TBP in accordance with § 798.4900 of this chapter, except for the provisions of paragraph (e)(5) of § 798.4900.

(B) for the purpose of this section, the following provision also applies:

(*1*) *Route of administration.* The animals shall be exposed to TBP by gavage.

(*2*) [*Reserved*]

(ii) *Reporting requirements.* (A) The developmental toxicity study required under paragraph (c)(2) of this section shall be completed and a final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final rule.

(3) *Reproductive and fertility*—(i) *Required testing.* (A) A reproduction and fertility study shall be conducted with TBP in accordance with § 798.4700 of this chapter, except for the provisions of paragraph (c)(5)(i)(A) of § 798.4700.

(B) for the purpose of this section, the following provisions also apply:

(*1*) *Route of administration.* Animals should be exposed to TBP by gavage.

(*2*) [*Reserved*]

(ii) *Reporting requirements.* (A) The reproduction and fertility effects study required under paragraph (c)(3) of this section shall be completed and a final report submitted to EPA within 29 months of the effective date of the final rule.

(B) Interim program reports shall be submitted to EPA at 6 month intervals, beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(4) *Mutagenic effects—Gene mutation*—(i) *Required testing.* (A) A detection of gene mutation in somatic cells in culture test shall be conducted with TBP in accordance with § 798.5300 of this chapter.

(B)(*1*) If TBP produces a positive result in the assay conducted pursuant to paragraph (c)(4)(i)(A) of this section, a sex-linked recessive lethal test in *Drosophila melanogaster* shall be conducted with TBP in accordance with § 798.5275 of this chapter, except for the provisions of paragraph (d)(5)(iii) of § 798.5275.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to TBP orally.

(*ii*) [Reserved]

(*iii*) *Reporting requirements.* (*A*) The somatic cells in culture assay shall be completed and the final report submitted to EPA, within 10 months after the effective date of the final rule. If required, the *Drosophila* sex-linked recessive lethal assay shall be completed and the final report submitted to EPA within 22 months after the effective date of the final rule.

(*B*) Interim progress reports shall be submitted to EPA at 6 month intervals beginning 6 months after initiation of the sex-linked recessive lethal test in *Drosophila* until the applicable final reports are submitted to EPA.

(5) *Mutagenic effects—Chromosomal aberration*—(i) *Required testing.* (A) An in vitro mammalian cytogenetics test shall be conducted with TBP in accordance with § 798.5375 of this chapter.

(B)(*1*) If TBP produces a negative result in the in vitro cytogenetics test conducted pursuant to paragraph (c)(5)(i)(A) of this section, an in vivo mammalian bone marrow cytogenetics test shall be conducted with TBP in accordance with § 798.5385 of this chapter, except for the provisions of paragraph (d)(5)(iii) of § 798.5385.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to TBP orally.

(*ii*) [*Reserved*]

(C)(*1*) If TBP produces a positive result in either the in vitro or the in vivo cytogenetics test conducted pursuant to paragraphs (c)(5)(i) (A) and (B) of this section, a rodent dominant-lethal assay shall be conducted with TBP in accordance with § 798.5450 of this chapter, except for the provisions of paragraph (d)(5)(iii) of § 798.5450.

(*2*) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed orally to TBP.

(*ii*) [*Reserved*]

(D)(*1*) A rodent heritable translocation assay shall be conducted with TBP if the dominant-lethal assay conducted for TBP pursuant to paragraph (c)(5)(i)(C) of this section produces a positive result, and if, after a public program review, EPA issues a **Federal Register** notice or sends a certified letter to the test

sponsor specifying that the testing shall be initiated. This test shall be conducted in accordance with § 798.5460 of this chapter except for the provisions of paragraph (d)(5)(iii) of § 798.5460.

(2) For the purpose of this section, the following provisions also apply:

(*i*) *Route of administration.* Animals shall be exposed to TBP orally.

(*ii*) [*Reserved*]

(ii) *Reporting requirements.* (A)(*1*) The in vitro mammalian cytogenetics test shall be completed and the final report submitted to EPA within 10 months after the effective date of the final rule.

(*2*) If required, the in vivo mammalian bone-marrow cytogenetics test shall be completed and the final report submitted to EPA within 24 months after the effective date of the final rule.

(*3*) If required, the dominant lethal assay shall be completed and the final report submitted to EPA within 36 months after the effective date of the final rule.

(*4*) If required, the heritable translocation assay shall be completed and the final report submitted to EPA within 25 months after the date of EPA's notification of the test sponsor under paragraph (c)(5)(i)(D) of this section that testing shall be initiated.

(B) Interim progress reports shall be submitted to EPA at 6 month intervals beginning 6 months after initiation of the rodent dominant lethal assay and the rodent heritable translocation assay respectively, if required, until the applicable final reports are submitted to EPA.

(6) *Oncogenicity*—(i) *Required testing.* (A) An oncogenicity test shall be conducted with TBP in accordance with § 798.3300 of this chapter except for the provisions of paragraphs (b) (1)(i) and (6)(i) of § 798.3300.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Animal selection.* TBP shall be tested in Sprague-Dawley rats and in mice.

(*2*) *Route of administration.* Animals shall be exposed to TBP orally.

(ii) *Reporting requirements.* (A) The oncogenicity test required under paragraph (c)(6) of this section shall be completed and a final report submitted to EPA within 53 months of the effective date of the final rule.

(B) Interim progress reports shall be submitted to EPA at 6 month intervals beginning 6 months after the effective date of the final rule, until the final report is submitted to EPA.

(7) *Dermal sensitization*—(i) *Required testing.* A dermal sensitization test shall be conducted with TBP in accordance with § 798.4100 for this chapter.

(ii) *Reporting requirements.* The dermal sensitization test shall be completed and the final report submitted to EPA within 6 months of the effective date of the final rule.

(8) *Oral/Dermal Pharmacokinetics*—(i) *Required testing.* A pharmacokinetics test shall be conducted with TBP in accordance with § 795.228 of this chapter.

(ii) *Reporting requirements.* (A) The pharmacokinetics test required in paragraph (c)(8)(i) of this section shall be completed and the final report submitted to EPA within 12 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final rule.

(d) *Environmental effects testing*—(1) *Algal acute toxicity*—(i) *Required testing.* (A) Algal acute toxicity testing shall be conducted with TBP using *Selenastrum capricornutum* in accordance with § 797.1050 of this chapter except for the provisions of paragraphs (c)(6)(i)(A),(B), and (ii) of § 797.1050.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Summary of the test.* The algal cells at the end of 24, 48, and 72 hours shall be enumerated.

(*2*) *Chemical measurement.* The final separation of the algal cells from the test solution shall be done using an ultrafiltration (e.g., 0.45 micrometer pore size) technique. The total and dissolved (e.g., filtered) concentrations of the test substance shall be measured in each test chamber and the delivery chamber before the test and in each test chamber at 0 and 96 hours.

(ii) *Reporting requirements.* The algal acute toxicity test required in paragraph (d)(1) of this section shall be completed and the final report submitted to EPA within 9 months of effective date of the final rule.

(2) *Fish acute toxicity*—(i) *Required testing.* (A) Fish acute toxicity testing shall be conducted with TBP using *Salmo gairdneri* (rainbow trout) in accordance with § 797.1400 of this chapter.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Chemical measurement.* The total and dissolved (e.g., filtered) concentrations of the test substance shall be measured in each test chamber delivery chamber before the test. If the dissolved test substance concentration is greater than 80 percent of total test substance concentration, then only total or dissolved test concentration shall be measured in each chamber at 0, 48, and 96 hours. If the dissolved test substance concentration is less than or equal to 80 percent of total test substance, then total and dissolved test substance concentration shall be measured at 0, 48 and 96 hours.

(*2*) *Test procedures.* The test shall be performed under flow-through conditions.

(ii) *Reporting requirements.* The fish acute toxicity test shall be completed and the final report submitted to EPA within 9 months of the effective date of the final rule.

(3) *Daphnid acute toxicity*—(i) *Required testing.* (A) Daphnid acute toxicity testing shall be conducted with TBP using *Daphnia magna* or *D. pulex* in accordance with § 797.1300 of this chapter.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Chemical measurement.* The total and dissolved (e.g., filtered) concentrations of the test substance shall be measured in each test chamber and the delivery chamber before the test. If the dissolved test substance concentration is greater than 80 percent of total test substance concentration, then only total or dissolved test concentration shall be measured in each chamber at 0, 24, and 48 hours. If the dissolved test substance concentration is less than or equal to 80 percent of total test substance, then total and dissolved test substance concentration shall be measured at 0, 29, and 48 hours.

(*2*) *Test procedures.* The test shall be performed under flow-through conditions.

(ii) *Reporting requirements.* The daphnid acute toxicity test shall be completed and the final report submitted to EPA within 9 months of the effective date of the final rule.

(4) *Gammarid acute toxicity*—(i) *Required testing.* (A) *Gammarid* acute toxicity testing shall be conducted with TBP using *Gammarus lacustris, G. fasciatus,* or *G. pseudolimnaeus* in accordance with § 795.120 of this chapter.

(B) For the purpose of this section, the following provisons also apply:

(*1*) *Chemical measurement.* The total and dissolved (e.g., filtered) concentrations of the test substance shall be measured in each test chamber and the delivery chamber before the test. If the dissolved test substance concentration is greater than 80 percent of total test substance concentration, then only total or dissolved test concentration shall be measured in each chamber at 0, 48, and 96 hours. If the dissolved test substance concentration is less than or equal to 80 percent of total test substance, then total and

dissolved test substance concentration shall be measured at 0, 48, and 96 hours.

(2) *Test procedures.* The test shall be performed under flow-through conditions.

(ii) *Reporting requirements.* The *Gammarid* acute toxicity test shall be completed and the final report submitted to EPA within 9 months of the effective date of the final rule.

(5) *Daphnid chronic toxicity*—(i) *Required testing.* (A) Daphnid chronic toxicity testing shall be conducted with TBP using *Daphnia magna* or *D. pulex* in accordance with § 797.1330 of this chapter, if the algal EC50, the rainbow trout LC50, the daphnid EC50, or the gammarid LC50 determined in accordance with paragraphs (d)(1), (2), (3) and (4) of this section satisfy the following criteria: Any such value is < 1 mg/L; or any fish or aquatic invertebrate EC50 or LC50 is < 100 mg/L and either the rainbow trout or gammarid 24-hour to 96-hour LC50 ratio > 2, or the daphnid 24-hour to 48-hour EC50 or LC50 ratio is > 2.

(B) For the purpose of this section, the following provisions also apply:

(1) *Chemical measurement.* The total and dissolved (e.g., filtered) concentrations of the test substance shall be measured in each test chamber and the delivery chamber before the test. If the dissolved test substance concentration is greater than 80 percent of total test substance concentration, then only total or dissolved test substance concentration shall be measured in each test chamber at 0, 7, 14, and 21 days. If the dissolved test substance concentration is less than or equal to 80 percent of total test substance concentration, then total and dissovled test substance concentration shall be measured at 0, 7, 14, and 21 days.

(2) *Test procedures.* The test shall be performed under flow-through conditions.

(ii) *Reporting requirements.* (A) The daphnid chronic toxicity test, if required, shall be completed and the final report submitted to EPA within 21 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the initiation of the test.

(6) *Fish early-life stage toxicity*—(i) *Required testing.* A fish early-life stage toxicity test shall be conducted with TBP in accordance with § 797.1600 of this chapter, using the fish with the lower LC50 value (either the rainbow trout (*Salmo gairdneri*) or the fathead minnow (*Pimephales promelas*)), if the algal EC50, the rainbow trout LC50, the gammarid LC50 or the daphnid EC50 determined in accordance with paragraphs (d)(1), (2), (3), and (4) of this section satisfy the following criteria: Any such value is < 1 mg/L; or any fish or aquatic invertebrate EC50 or LC50 is < 100 mg/L and either the rainbow trout or gammarid 24 hour to 96 hour LC50 ratio > 2, or the daphnid 24-hour to 48-hour EC50 ratio is > 2.

(ii) *Reporting requirements.* (A) The fish early-life stage flow-through toxicity test shall be completed and the final report submitted to EPA within 21 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA 6 months after the initiation of the test.

(7) *Benthic sediment invertebrate bioassay*—(i) *Required testing.* (A) A benthic sediment invertebrate bioassay shall be conducted on TBP with the midge (*Chironomus tentans*) if chronic toxicity testing is required pursuant to paragraph (d)(5) of this section and if the log Koc calculated according to paragraph (e)(2)(B)(1) of this section is greater than or equal to 3.5 but less than or equal to 6.5. The total aqueous sediment concentrations and interstitial water concentrations of the test substance shall be measured in each test chamber at 0, 4, 7, 10, and 14 days. The aqueous concentrations of the test substance in the delivery chamber shall be measured at 0, 4, 7, 10, and 14 days. TBP-spiked clean freshwater sediments containing low, medium, and high organic carbon content shall be used.

(B) The benthic sediment invertebrate bioassay shall be conducted according to the test procedure specified in the American Society for Testing and Materials, Special Technical Publication 854 (ASTM STP 854) entitled, "Aquatic Safety Assessment of Chemicals Sorbed to Sediments," by W.J. Adams, R.A. Kimerle, and R.G. Mosher, published in *Aquatic Toxicity and Hazard Assessment: Seventh Symposium,* ASTM STP 854, pp. 429–453, R.D. Caldwell, R. Purdy, and R.C. Bahner, Eds., 1985 which is incorporated by reference. This published procedure is available for public inspection at the Office of Federal Register, Room 8301, 1100 L St., NW., Washington, DC 20408, and copies may be obtained from the EPA TSCA Public Docket Office in Rm. G–004, NE Mall, 401 M St., SW., Washington, DC 20460. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. The method is incorporated as it exists on the effective date of this rule and a notice of any change to the method will be published in the **Federal Register.**

(ii) *Reporting requirements.* (A) The benthic sediment invertebrate bioassay, if required, shall be completed and the final report submitted to EPA within 21 months of the effective date of the final rule.

(B) An interim progress report shall be submitted to EPA for the benthic sediment invertebrate bioassy 6 months after the initiation of the test.

(e) *Chemical fate testing*—(1) *Vapor pressure*—(i) *Required testing.* Vapor pressure testing shall be conducted with TBP in accordance with § 796.1950 of this chapter.

(ii) *Reporting requirements.* The vapor pressure test required in paragraph (d)(1) of this section shall be completed and the final report submitted to EPA within 6 months of the effective date of the final rule.

(2) *Sediment and soil adsorption isotherm*—(i) *Required testing.* Sediment and soil absorption isotherm testing shall be conducted with TBP in accordance with § 796.2750 of this chapter and EPA will provide two soil and two sediment samples.

(ii) *Reporting requirements.* (A) The sediment and soil absorption isotherm test required under paragraph (d)(2) of this section shall be completed and the final report submitted to EPA within 6 months of the effective date of the final rule.

(B) For the purpose of this section, the following provisions also apply:

(1) A Koc value shall be calculated for each test sediment using the equation Koc=K/ (percent of organic carbon in test sediment).

(2) [*Reserved*]

(3) *Hydrolysis as a function of pH at 25°C*—(i) *Required testing.* Hydrolysis testing shall be completed with TBP in accordance with § 796.3500 of this chapter.

(ii) *Reporting requirements.* The hydrolysis test required under paragraph (e)(3) of this section shall be completed and the final report submitted to EPA within 6 months of the effective date of the final rule.

(f) *Effective date.* (1) The effective date of the final rule is September 27, 1989.

(2) The guidelines and other test methods cited in this section are referenced here as they exist on September 27, 1989.

(Information collection requirements have been approved by the Office of Management and Budget under Control Number 2070–0033.)

[FR Doc. 89–18850 Filed 8–11–89; 8:45 am]

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federal register

Monday
August 14, 1989

Part V

Environmental Protection Agency

40 CFR Parts 116, 117, and 302
Reportable Quantity Adjustments; Delisting of Ammonium Thiosulfate; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[SW H-FRL 3281-8]

Reportable Quantity Adjustments

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Sections 103(a) and (b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, require that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than their reportable quantities (RQs) immediately notify the National Response Center of the release. Section 102(b) sets an RQ of one pound for hazardous substances, except those substances for which different RQs have been established pursuant to section 311(b)(4) of the Clean Water Act (CWA). In addition to these reporting requirements section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) Title III requires that releases of hazardous substances in quantities equal to or greater than their RQs (or one pound if a reporting trigger is not established by regulation) be reported to State and local authorities.

Section 102(a) of CERCLA authorizes the U.S. Environmental Protection Agency (EPA or "the Agency") to adjust RQs for hazardous substances and to designate as hazardous substances those substances that, when released into the environment, may present substantial danger to the public health or welfare or the environment. Currently there are 725 CERCLA hazardous substances.[1] In this rulemaking, EPA is promulgating the RQ adjustments for six of the 273 hazardous substances whose RQs were proposed to be adjusted in a March 16, 1987 Notice of Proposed Rulemaking (NPRM). These six substances are: 1,4-dioxane, 2-ethoxyethanol, ethylene oxide, 2-nitropropane, perchloroethylene, and saccharin. By making the adjustments contained in this rulemaking, the Agency will be able to focus its resources on those releases which are most likely to pose potential threats to public health or welfare or the environment. In addition, by making these adjustments, EPA will relieve the regulated community of the burden of reporting releases which are unlikely to pose such threats.

EFFECTIVE DATE: August 14, 1989.

ADDRESSES: The toll-free telephone number of the National Response Center is 1–800/424–8802; in the Washington, DC metropolitan area the number is 1–202/267–2675.

Docket: Copies of materials relevant to this rulemaking are contained in Room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 (Docket Number 102 RQ–273C). The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. To review docket materials, you may make an appointment by calling 1–202/382–3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: Ivette O. Vega, Response Standards and Criteria Branch, Emergency Response Division, U.S. Environmental Protection Agency (OS–210), 401 M Street, SW, Washington, DC 20460, or the RCRA/Superfund Hotline at 1–800/424–9346; in the Washington, DC metropolitan area at 1–202/382–3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background of this Rulemaking
II. Reportable Quantity Adjustments
  A. Introduction
  B. Reportable Quantity Adjustment Methodology
    1. Summary of the Methodology
    2. Responses to Comments Received on the Methodology
      a. Carcinogen Hazard Ranking Methodology and the 100–Pound Maximum RQ
      b. Use of NTP and IARC Determinations
      c. Application of EPA's Carcinogen Assessment Guidelines
  C. Substances for Which RQs Are Adjusted
    1. Summary
    2. Response to Comments
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List of Subjects

I. Introduction

A. Statutory Authority

Section 102(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96–510), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99–499), establishes reportable quantities (RQs) of one pound for releases of hazardous substances, except for hazardous substances whose RQs were established at a different level pursuant to section 311 of the CWA. Section 102(a) of CERCLA authorizes EPA to adjust all of these RQs by regulation.

Sections 103(a) and (b) of CERCLA require that the person in charge of a vessel or facility notify the National Response Center immediately when there is a release of a hazardous substance in an amount equal to or greater than the RQ for that substance. This notification requirement serves as a trigger for informing the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion. Under section 104 of CERCLA, the Federal government may respond whenever there is a release or substantial threat of a release of a hazardous substance into the environment. Responses are to be taken, to the extent practicable, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR Part 300), which was originally developed under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA.

[1] EPA proposed RQ adjustments for the hazardous substances whose RQs are promulgated in this final rule on March 16, 1987. As of that date, there were 717 CERCLA hazardous substances. Changes to the list of CERCLA hazardous substances since March 16, 1987 are described below. Four hazardous waste streams (K123, K124, K125, and K126) were added in a final rule (51 FR 37725) that became effective on April 24, 1987, bringing the total number of CERCLA hazardous substances to 721. EPA removed iron dextran and strontium sulfide from the list in two final rules (53 FR 43878 and 53 FR 43881) effective October 31, 1988, thus reducing the number of CERCLA hazardous substances to 719. Six hazardous substances (waste streams K064, K065, K066, K088, K090, and K091) were added to the CERCLA list in a final rule (53 FR 35412) that became effective on March 13, 1989, increasing the number of CERCLA hazardous substances to 725, which is the current total. Lastly, based on a final rule published elsewhere in today's **Federal Register**, ammonium thiosulfate will be removed from the CERCLA list 60 days from today's date, thus reducing the number of CERCLA hazardous substances to 724.

If a release meets certain statutory criteria set out in CERCLA section 103(f)(2), the release may be subject to more limited reporting requirements. Specifically, a release is subject to these limited requirements if the release: (1) Is continuous and stable in quantity and rate, and is from a facility for which notification has been given under CERCLA section 103(c), or (2) is a release for which notification has been given under CERCLA sections 103(a) and (b) for a period sufficient to establish continuity, quantity, and regularity of the release. Notification must still be given annually and when there is a statistically significant increase in the release. In addition, CERCLA section 103 provides a reporting exemption for federally permitted releases. The definition of federally permitted release in CERCLA section 101(10) specifically identifies releases permitted under certain other Federal or State programs. Several commenters claimed that their particular releases are subject to continuous and/or federally permitted release treatment. EPA published proposed regulations to clarify the reduced reporting requirement for continuous releases on April 19, 1988 (53 FR 12868). EPA also clarified the reporting exemption for federally permitted releases in proposed regulations published on July 19, 1988 (53 FR 27268). Comments on continuous and federally permitted release issues submitted in response to the March 16, 1987 NPRM will be addressed in the upcoming final rules for continuous and federally permitted releases.

In addition to the reporting requirements established by CERCLA, section 304 of SARA Title III requires the owners and operators of certain facilities to report releases of CERCLA hazardous substances to State and local authorities. SARA Title III section 304 notification must be given immediately after the release of an RQ or more (one pound or more if a reporting trigger is not established by regulation) to the community emergency coordinator for each local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release. These notification requirements apply only to releases that have potential for off-site exposure and that are from facilities at which a "hazardous chemical" (defined by regulations under the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and section 311 of SARA Title III) is produced, used, or stored.

Section 109 of CERCLA and section 325 of SARA Title III authorize EPA to assess civil penalties for failure to report releases of hazardous substances that equal or exceed their RQs. Section 103 of CERCLA, as amended, authorizes EPA to seek criminal penalties for submitting false or misleading information in a notification made pursuant to CERCLA section 103, and increases the maximum penalties and years of imprisonment for violation of the CERCLA section 103 reporting requirement.

B. Background of This Rulemaking

On May 25, 1983, EPA proposed a rule (48 FR 23552) to clarify procedures for reporting releases of CERCLA hazardous substances and to adjust RQs for 387 of the then 696 hazardous substances.[2] In the May 25, 1983 Notice of Proposed Rulemaking (NPRM) EPA also compiled for the first time the list of "hazardous substances" defined under section 101(14) of CERCLA. In the preamble to that NPRM, EPA discussed in detail the CERCLA notification provisions, the methodology and criteria used to adjust the RQ levels, and the RQ adjustments proposed under section 102 of CERCLA and under section 311 of the CWA. EPA promulgated final RQ adjustments for 340 hazardous substances in an April 4, 1985 final rule (50 FR 13456) and for an additional 102 substances in a September 29, 1986 final rule (51 FR 34534). In an NPRM published on March 16, 1987 (52 FR 8140), EPA proposed RQ adjustments for 273 hazardous substances. The March 16, 1987 **Federal Register** also contained an NPRM in which EPA proposed RQ adjustments for radionuclides.[3] In addition, in an NPRM published on March 2, 1988 (53 FR 6762), EPA reproposed RQ adjustments for lead metal and four lead compounds, and proposed to delist ammonium thiosulfate as a CERCLA hazardous substance.

This rulemaking finalizes the RQ adjustments for six of the 273 hazardous substances whose RQs were proposed for adjustment in the March 16, 1987 NPRM. This rule contains EPA's responses to all issues raised by the commenters relating to the RQ adjustment methodology for potential carcinogenicity, except those methodology issues not relevant to the six RQ adjustments promulgated in this final rule (for further discussion, see Section II.B.2 of this preamble). This rule also contains responses to public comments received on the specific RQ adjustments for the hazardous substances in this rulemaking. Comments were received on the proposed RQ adjustments for only three hazardous substances (1,4-dioxane, perchloroethylene, and saccharin) of the six hazardous substances for which RQ adjustments are promulgated in this rule.

RQ adjustments for 258 hazardous substances, including 254 of the 273 hazardous substances whose RQs were proposed for adjustment in the March 16, 1987 NPRM, are contained in a final rule published elsewhere in today's **Federal Register**. As explained in Section II.C.2.i of the preamble to the other final RQ adjustment rule published in today's **Federal Register**, EPA will address the RQs for the remaining 13 substances of the 273 substances that were the subject of the March 16, 1987 NPRM in a future action.

Section 306(a) of CERCLA, as amended by SARA section 202, requires the U.S. Department of Transportation (DOT) to list and regulate CERCLA hazardous substances as hazardous materials under the Hazardous Materials Transportation Act. Pursuant to this requirement, DOT promulgated on November 21, 1986, a final rule (51 FR 42174) providing that, when a hazardous substance is shipped in a quantity equal to or greater than its RQ, it must be identified as such in shipping papers and by package markings. This rule became effective on July 1, 1987 (51 FR 46672). The rule requires shippers of hazardous substances in quantities at or above their RQs to place the notation "RQ" and the name of the substance on shipping papers and package markings.

RQs for many of the hazardous substances proposed for adjustment in the March 16, 1987 NPRM (including the six substances whose adjusted RQs are being promulgated today) were proposed to be adjusted upward from their statutory RQs. The estimated production volume for the six hazardous substances whose adjusted RQs are being promulgated today is 4.6 billion

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[2] Since the May 25, 1983 NPRM, 31 substances have been added and two substances have been deleted from the CERCLA list, bringing the total number of CERCLA hazardous substances to 725. The 31 substances added to the list are: waste stream F024 (49 FR 5308); coke oven emissions (49 FR 36560); waste streams F020, F021, F022, F023, F026, F027, and F028 (50 FR 1978); waste streams K111, K112, K113, K114, K115, and K116, o-toluidine and p-toluidine (50 FR 42936); waste streams K117, K118, and K136 (51 FR 5327); 2-ethoxyethanol (51 FR 6537); waste streams K123, K124, K125, and K126 (51 FR 37725); and waste streams K064, K065, K066, K088, K090, and K091 (53 FR 35412). The two substances deleted from the list are: iron dextran (53 FR 43878) and strontium sulfide (53 FR 43881).

[3] RQ adjustments for radionuclides were promulgated in a final rule published on May 24, 1989 (54 FR 22524).

pounds annually. Because this amount represents a relatively large proportion of the total production volume of all 273 hazardous substances proposed for RQ adjustment in the March 16, 1987 NPRM, many shippers would be subject to a regulatory burden that is not justified by the hazards that these substances pose to human health and the environment. Once final RQ adjustments are promulgated for these six hazardous substances, shippers of less than the adjusted RQ of a substance will not be subject to DOT regulations relating to shipping papers and package markings. Accordingly, EPA is expediting the promulgation of a final rule adjusting RQs for these substances by making this rule effective immediately upon promulgation. Because this rule "grants or recognizes an exemption or relieves a restriction" under section 553(d)(1) of the Administrative Procedure Act (APA), the APA requirement that final rules become effective no less than 30 days after publication does not apply.

In finalizing these RQ adjustments, this rule amends Table 302.4 of 40 CFR Part 302. Section II of this preamble discusses the RQ adjustments promulgated in this rulemaking and the methodology used in making these adjustments. Section II also includes EPA's responses to public comments on the March 16, 1987 NPRM that are relevant to the six RQ adjustments made in this rule and to the RQ adjustment methodology on which these six adjustments are based. Section III provides a summary of the analyses supporting this rulemaking.

II. Reportable Quantity Adjustments

A. Introduction

In this rulemaking, the Agency adjusts RQs based upon specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance at certain levels. The quantity released is but one factor considered by the government when assessing the need to respond to such a release. Other factors, assessed on a case-by-case basis, include but are not limited to: (1) The location of the release; (2) its proximity to drinking water supplies or other valuable resources; and (3) the likelihood of exposure or injury to nearby populations. The RQ adjustments made today will enable the Agency to focus its resources on those releases that are most likely to pose potential threats to public health or welfare or the environment. These adjustments will also relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases that are unlikely to pose such threats.

In this final rule, the Agency is adjusting RQs for 1,4-dioxane, 2-ethoxyethanol, ethylene oxide, 2-nitropropane, perchloroethylene, and saccharin. With the exception of 2-ethoxyethanol (which was not identified as a potential carcinogen under the identification methodology discussed in Section II.B. below), all of these hazardous substances have been evaluated for potential carcinogenicity as well as other primary criteria. The final RQ adjustments promulgated today are based on the results of this evaluation. In the case of 2-ethoxyethanol, its final RQ adjustment is based on the primary criterion of chronic toxicity (see the discussion below).

B. Reportable Quantity Adjustment Methodology

1. Summary of the Methodology

The Agency has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations. The Agency's methodology for adjusting RQs begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity,[4] and potential carcinogenicity.

The Agency ranks hazardous substances for each intrinsic property (except potential carcinogenicity) on a five-tier scale, associating a specific range of values on each scale with a particular RQ value.[5] This five-tier scale uses the five RQ levels of one, 10, 100, 1000, and 5000 pounds, originally established pursuant to CWA section 311 (see 40 CFR 117 and 44 FR 50776). For hazardous substances evaluated for potential carcinogenicity, each substance is assigned a hazard ranking of "high," "medium," or "low." These hazard rankings correspond to RQ levels of one, 10, and 100 pounds, respectively (see below). Each hazardous substance evaluated under the various primary criteria is assigned several tentative RQ values based on its particular properties as data allow. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance. After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). For further discussion of BHP, see Section II.B.2.a of the preamble to the final rule in which EPA promulgates RQ adjustments for 258 hazardous substances, published elsewhere in today's Federal Register.

If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes,[6] its RQ (as determined by the primary RQ adjustment criteria) is raised one level. This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased as a result of BHP.

To identify those CERCLA hazardous substances that may be potential carcinogens, EPA reviewed four sources of human epidemiologic and/or animal bioassay data on hazardous substances that suggest possible carcinogenic effect. These sources are: (1) The Annual Reports on Carcinogens of the National Toxicology Program (NTP), U.S. Department of Health and Human Services; (2) the Monographs of the International Agency for Research on Cancer (IARC); (3) final Agency determinations published in the **Federal Register** identifying substances as potential carcinogens; and (4) ongoing determinations by the Agency's Office of Health and Environmental

[4] EPA is aware that some chronic effects result from acute (short-term) exposures and considers such data in the chronic toxicity evaluations. The Agency is further evaluating data on chronic effects resulting from acute exposures to ensure that such data receive adequate consideration in the RQ adjustment process.

[5] All of the RQs promulgated in this rulemaking are subject to the Agency's review of the most recent systemic (i.e., relating to a particular organ system) toxicity data. These RQs will be revised, if necessary, in a future rulemaking based on the results of this review.

[6] The specific thresholds for the application of BHP to hazardous substances are discussed in the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, March 1985, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Assessment that substances may be potential carcinogens, based on either published or unpublished data.[7] The Agency compared the list of substances derived from these four sources with the list of the CERCLA hazardous substances to determine which hazardous substances should be evaluated for potential carcinogenicity.

Not all of the substances so identified are subsequently ranked for potential carcinogenicity. Only those substances that fall within the Agency's weight-of-evidence Groups A, B, or C discussed below (i.e., known, probable, or possible human carcinogens) are ranked and assigned tentative RQs based on potential carcinogenicity.

The evaluation of hazardous substances for potential carcinogenicity initially involves a qualitative assessment of the available scientific literature on the substance. The data are reviewed to determine the degree of certainty or weight of evidence that a particular hazardous substance is a human carcinogen. The substance is then classified in an overall weight-of-evidence category (A, B, C, D, or E).

A hazardous substance is placed in Group A (known human carcinogen) only if "sufficient" evidence from human epidemiologic studies supports a causal connection between exposure to the hazardous substance and cancer. Group B (probable human carcinogen) is divided into two subgroups, B1 and B2. Group B1 includes hazardous substances for which the weight of evidence of human carcinogenicity based on epidemiologic studies is "limited." Group B2 includes hazardous substances for which there is "no data," "inadequate evidence," or "no evidence" of human carcinogenicity from epidemiologic studies, but for which the weight of evidence of carcinogenicity based on animal studies is "sufficient." Group C (possible human carcinogen) includes hazardous substances with "limited" evidence of carcinogenicity in animals and "inadequate evidence," "no data," or "no evidence" from human epidemiologic studies. As mentioned in the March 16, 1987 NPRM (52 FR 8144), Group D substances (not classifiable for human carcinogenicity) and Group E substances (evidence of noncarcinogenicity for humans) are not considered potential carcinogens for purposes of this rulemaking.

The evaluation of hazardous substances for potential carcinogenicity also involves a quantitative assessment of the available data to calculate the relative strength of a hazardous substance to elicit a carcinogenic response (i.e., the "potency factor").[8] This quantitative assessment allows the Agency to rank potential carcinogens on a numerical scale by identifying the most potent substances as the most hazardous. Group 1 includes those hazardous substances with the highest potencies. Other potential carcinogens with medium and low potencies are placed in Groups 2 and 3, respectively.

The final step in the hazard ranking procedure is to combine the qualitative weight-of-evidence groups and the quantitative potency factor groups using a matrix to yield a relative hazard ranking for each substance. Thus, hazard rankings are based on two factors—weight of evidence and potency—that the Agency believes are important in describing carcinogenic hazards. The following is the matrix used to assign hazard rankings to potential carcinogens in today's two final rules:

HAZARD RANKING

Weight-of-evidence group	Potency group		
	1 (highest)	2	3 (lowest)
A	High	High	Medium.
B	High	Medium	Low.
C	Medium	Low	Low.
D	No hazard ranking is made. The other primary criteria are used to assign the RQ.		
E	No hazard ranking is made. The other primary criteria are used to assign the RQ.		

The matrix is used to group the potential carcinogens into "high," "medium," and "low" hazard categories, and is arranged so that as the weight of evidence and the potency decrease, the hazard ranking also decreases. RQ levels are then assigned to the hazard rankings as follows: high—one-pound RQ; medium—10-pound RQ; and low—100-pound RQ.

For a more detailed discussion of the RQ adjustment methodology based on the primary criterion of potential carcinogenicity, see the preamble to the March 16, 1987 NPRM (52 FR 8140) and the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

EPA stated in the March 16, 1987 NPRM (see 52 FR 8146) that it was reviewing its position on consideration of benign tumors and pooling of tumor sites and types, as set forth in the Agency's Guidelines for Carcinogen Risk Assessment.[9] The effect of this review on RQs for potential carcinogens is discussed in the preamble to the final rule published elsewhere in today's **Federal Register** in which EPA promulgates RQ adjustments for 258 hazardous substances.

2. Responses to Comments Received on the Methodology

The Agency received 35 comment letters on the March 16, 1987 NPRM (52 FR 8140). Ten of these letters contain comments that address the RQ adjustment methodology proposed in that NPRM for evaluating CERCLA hazardous substances for potential carcinogenicity. The comments on the RQ adjustment methodology are grouped into five categories: (1) Carcinogen hazard ranking methodology and the 100-pound maximum RQ; (2) the use of NTP and IARC publications in the Agency's identification methodology; (3) the Agency's use of its Guidelines for Carcinogen Risk Assessment to derive RQs; (4) the application of the secondary RQ adjustment criteria of BHP to potential carcinogens; and (5) the application of the CWA mixture rule to hazardous waste streams. Because none of the six hazardous substances that are the subject of this final rule meets the criteria for applying BHP and none are hazardous waste streams, the following discussion focuses on the first three comment categories. Comments that fall within the last two categories are addressed in a final rule published elsewhere in today's **Federal Register** that promulgates RQ adjustments for 254 of the 273 hazardous substances proposed for adjustment in the March 16, 1987 NPRM.

[7] In addition to this application of unpublished data to identify potential carcinogens, EPA intends to use such data for the purpose of ranking potential carcinogens under the CERCLA RQ methodology. Currently, the Agency is evaluating unpublished data received on the weight of evidence and potency of certain potential carcinogens and will present the results of this evaluation, along with any RQ adjustments, in a future rulemaking.

[8] For an explanation of how potency factors are calculated, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[9] As discussed in Section II.B.2.c below, the Guidelines provide that benign tumors should be considered along with malignant tumors unless there is evidence that the benign tumors do not have the potential to progress to malignancies of the same histogenic origin. The Agency pools tumor sites and types when each site or type, viewed separately, shows a tumor incidence that is elevated significantly above the incidence in control animals (51 FR 33992, September 24, 1986).

a. Carcinogen Hazard Ranking Methodology and the 100-Pound Maximum RQ. In the March 16, 1987 NPRM (52 FR 8140), EPA proposed RQ adjustments for potential carcinogens of one, 10, and 100 pounds. Several commenters objected to the proposed 100-pound maximum RQ for potential carcinogens. The commenters recommended that hazardous substances with no greater than "inadequate" evidence of cancer in humans and "limited" evidence of cancer in animals receive 1000- or 5000-pound RQs.

EPA disagrees with the commenters for the reasons discussed below. First, as stated in the March 16, 1987 NPRM, although cancer is a unique health effect with its own special properties, it is also a type of chronic effect. EPA, therefore, has determined that reference to the Agency's chronic toxicity methodology is appropriate in assigning RQs to potential carcinogens. Under the chronic toxicity methodology, each substance is assigned two rating values, one based on the dose that causes a particular effect, and one based on the severity of the effect. The dose ratings range from one to 10, with 10 representing the most toxic substances. The effect ratings also range from one to 10, with 10 representing the most severe effect. The product of the dose and effect ratings for each substance yields a composite ranking score between one and 100. Because cancer is a life-threatening effect, the effect rating for cancer would be 10 if cancer were ranked on the chronic toxicity scale. Therefore, the composite score for any potential carcinogen would be at least 10. A composite score of 10 corresponds to an RQ of 1000 pounds. Thus, a 5000-pound RQ for a potential carcinogen would be inappropriate based on the Agency's chronic toxicity scale (see 52 FR 8145).

Two commenters stated that this analogy between chronic toxicity and potential carcinogenicity is not valid because chronic toxicants have *known* human health effects, whereas the human health effects of potential carcinogens are often determined by speculation based on animal data. EPA believes that these commenters have exaggerated the distinction between the data for chronic toxicity and the data for potential carcinogenicity. The human health effects of both chronic toxicants and potential carcinogens are based to a large degree on observation of health effects in experimental animals. Therefore, the Agency believes that reference to its chronic toxicity methodology in determining the RQ levels for potential carcinogens is appropriate.

Second, EPA believes that the special properties of potential carcinogens are important in assigning RQ levels to these substances. These special properties are: (1) The lack of a demonstrated threshold level below which a potential carcinogen presents no risk of cancer; (2) the cumulative nature of cancer risks; and (3) the fact that cancer has a latent period that does not allow direct observation of carcinogenic risks from substances newly released into the environment (52 FR 8145, March 16, 1987).

These three special properties of potential carcinogens suggest a conservative approach by the Agency in assigning RQ levels to these substances. Where a potential carcinogen does not have a threshold level of exposure below which it presents no risk of cancer, each individual exposure, regardless of amount, may cause irreversible health effects. The lack of demonstrated threshold levels for potential carcinogens also means that an individual may develop cancer (an irreversible health effect) at doses that cause no other physical effects. The cumulative nature of cancer risks means that each additional exposure, at any dose, further increases the likelihood of a carcinogenic response. Additionally, for substances that have a latent period that does not allow direct observation of carcinogenic risks, the Agency has greater reason to be conservative in assessing the health risks accompanying exposure at any dose. In particular, the latent period of cancer, when taken together with the fact that cancer may develop from doses too small to cause other physical effects, means that individuals may not be aware that they need to leave release sites at which they may be exposed to dangerous levels of potential carcinogens. The Agency, therefore, has determined that the special properties of potential carcinogens justify assigning lower RQs (i.e., one, 10, and 100 pounds) to potential carcinogens than the RQs that are assigned to other hazardous substances (i.e., one, 10, 100, 1000, and 5000 pounds).

In summary, a 100-pound maximum RQ for potential carcinogens is retained because (1) reference to the Agency's chronic toxicity scale shows that a 5000-pound RQ would be inappropriate for any potential carcinogen; and (2) the Agency believes that the special properties of potential carcinogens justify a more conservative approach in setting RQ levels for these substances than for other hazardous substances.

Several commenters objected to the fact that the Agency assigns the same "low" hazard ranking (and resultant 100-pound RQ) to weight-of-evidence Group C, potency Group 3 potential carcinogens that it assigns to weight-of-evidence Group B2, potency Group 3 potential carcinogens. Thus, the commenters disagreed with the proposed 100-pound maximum RQ for potential carcinogens. The commenters recommended that hazardous substances with no greater than "inadequate" evidence of cancer in humans and "limited" evidence of cancer in animals (i.e., weight-of-evidence Group C) receive 1000- or 5000-pound RQs.

At this time, EPA has decided to retain the 100-pound maximum RQ for potential carcinogens. However, EPA plans to evaluate the RQ adjustment methodology for potential carcinogens, particularly the weight-of-evidence Group C, potency Group 3 substances.[10] The results of this evaluation will be addressed in a future Agency action. Note that this continuing investigation does not alter today's determination that these substances be assigned RQs of no more than 100 pounds.

b. Use of NTP and IARC Determinations. Several commenters suggested that the Agency not rely on NTP and IARC determinations as a basis for RQ rulemakings and recommended that EPA independently evaluate the qualitative evidence of carcinogenicity for each hazardous substance. In the March 16, 1987 NPRM (52 FR 8143), the Agency proposed a procedure for screening the list of CERCLA hazardous substances to identify hazardous substances that might require assessment for potential carcinogenicity. The NTP annual reports and IARC monographs are used only as an initial screen for substances to be evaluated for potential carcinogenicity by the Agency. The conclusions reached by IARC or NTP on specific chemicals do not determine directly whether a hazardous substance is considered a potential carcinogen for purposes of establishing RQs. Rather, EPA follows

[10] Five individual hazardous substances are in this category: 5-nitro-o-toluidine; saccharin; p-toluidine; 1,1,1,2-tetrachloroethane; and 1,1,2-trichloroethane. EPA is promulgating an RQ adjustment of 100 pounds for saccharin in this final rule. RQ adjustments of 100 pounds for the other four weight-of-evidence Group C, potency Group 3 substances are promulgated in a final rule published elsewhere in today's Federal Register. In that same final rule, EPA also promulgates RQ adjustments for seven waste streams (F002, K073, K095, K096, K112, K113, and K114) that contain one or more of the five weight-of-evidence Group C, potency Group 3 substances.

the procedures set out in its Guidelines for Carcinogen Risk Assessment to make this determination.

c. Application of EPA's Carcinogen Assessment Guidelines. EPA's methodology for adjusting RQs for potential carcinogens is derived from the Agency's Guidelines on Carcinogen Risk Assessment. The comments addressed in this section are directed toward the Guidelines' classification of potential carcinogens. Although the discussion of these issues below is not an independent defense of the Guidelines, the Agency's responses to public comments in this rulemaking are fully consistent with EPA's response to comments received during preparation of the final Guidelines.

Two commenters objected to the Agency's lack of distinction between the B1 and B2 weight-of-evidence Groups for hazard ranking purposes. These commenters suggested that weight-of-evidence Groups B1 and B2 be distinguished by assigning B2 potential carcinogens hazard rankings one level higher than the hazard rankings for B1 potential carcinogens.

As discussed in Section II.B.1 above, the Agency has divided weight-of-evidence Group B into two subgroups, B1 and B2. Where there is limited evidence of carcinogenicity from epidemiologic studies, a hazardous substance usually is placed in Group B1. Hazardous substances for which there is "sufficient" evidence from animal studies and "inadequate" evidence or "no data" from human epidemiologic studies are usually placed in Group B2. The decision to divide Group B into two subgroups reflects only the type of evidence of carcinogenicity, not a judgment that B2 substances are of lesser concern than B1 substances. Furthermore, because it is reasonable to treat hazardous substances for which there is sufficient evidence of carcinogenicity in animals (Group B2) as if they present a carcinogenic risk to humans, such substances, along with other substances for which there is limited evidence from human epidemiologic studies (Group B1), are classified as probable human carcinogens (Group B). Thus, the Agency believes that, for RQ adjustment purposes, no distinction in levels of concern is warranted between Group B1 and Group B2 substances.

Two commenters suggested that the Agency not count benign tumors equally with malignant tumors when there is no evidence that the benign tumors are precursors of malignant tumors or are life threatening. EPA agrees with the commenters that benign tumors should not be treated equally with malignant tumors if there is no evidence that the benign tumors will progress to malignancies of the same histogenic origin. It is recognized, however, that benign tumors frequently induce malignant tumors and that benign tumors often progress to malignant tumors (see 51 FR 33992, 33994, citing Interdisciplinary Panel on Carcinogenicity, 1984, Science 225:686, note 4). In such cases, the Agency's consideration of benign tumor data in assessing potential carcinogenicity is appropriate.

Several commenters disagreed with the Agency's use of body surface area ratios for deriving human potency values from animal potency calculations and recommended the use of body-weight ratios instead. The commenters argued that the use of body surface area as an interspecies scaling factor is based on data relating to the noncarcinogenic effects of drugs. The Agency's use of body surface area to extrapolate from animals to humans was discussed in the response to comments on the Proposed Guidelines for Carcinogen Risk Assessment. In that response, the Agency concluded that the choice of the body surface area scaling factor could be justified by the data on effects of drugs in various species, and that EPA would continue to use this scaling factor unless data on a specific agent suggests that a different scaling factor is justified. Furthermore, because RQs are based on a relative ranking of substances, the consistent application of scaling factors to all substances should not have a material effect on the relative rankings.

Two commenters objected to the Agency's policy of pooling tumors at different sites. The Agency pools tumor sites, however, only when each site, viewed separately, shows a significant elevated tumor incidence. EPA believes that pooling of tumor sites is justified in these limited circumstances because an agent that induces cancer in two locations is of greater concern than an agent that induces cancer in only one location.

The same two commenters objected to the Agency's use of effective dose (which takes into account absorption, distribution, metabolism, and excretion of potential carcinogens) to calculate potency. The commenters argued that administered dose (the actual experimental dose) should be used to estimate relative carcinogenic potency for purposes of assigning RQs. The commenters acknowledged that effective dose is appropriate for estimating absolute measures of risk. The commenters failed to demonstrate, however, that effective dose is inappropriate for measuring relative risk. As a practical matter, for most hazardous substances (approximately 90 percent), EPA uses administered dose because the Agency lacks information necessary to distinguish between administered dose and effective dose. Nevertheless, where such information is available, the Agency prefers to use effective dose rather than administered dose, because the former is more appropriate for measuring relative levels of risk (e.g., RQ levels). Effective dose is used to determine carcinogenic potency only when a substance has undergone extensive studies that have been subject to peer review.

One commenter stated that the Agency proposed to regulate animal carcinogens in the same manner as known human carcinogens and that regulation should focus on exposures to substances with known human health effects. This commenter is mistaken in believing that the RQ adjustment methodology treats animal and human carcinogens equally. The hazard ranking methodology used to establish RQs for potential carcinogens assigns lower RQs to known human carcinogens of the same potency as known animal carcinogens for which the human evidence is limited or inadequate. Moreover, EPA does not believe that its regulation of potential carcinogens should be limited to those which have *known* human health effects, because the Agency strongly believes that animal data are relevant to predict the potential for a carcinogenic response at some dose in humans.

One commenter argued that extrapolation from continuous low-dose exposure studies to effects of one-time releases cannot be made. The Agency acknowledges that estimating the absolute effect of one-time releases from experimental data is difficult. However, the establishment of RQs is not based on an assessment of absolute effects, and the Agency believes that the Guidelines for Carcinogen Risk Assessment (which were followed in this rulemaking) provide a reasonable basis for determining a relative ranking of potential carcinogens. These guidelines have been peer reviewed and revised based on public comments and therefore provide a reasonable basis for carcinogenic assessment. Furthermore, the commenter failed to note certain implications of the relationship between one-time releases and one-time exposures. One-time releases can contaminate water or soil, resulting in continuous low-dose exposures over a period of years. Thus, the Agency's extrapolation from continuous low-dose

exposure studies to effects of one-time releases is reasonable.

This commenter also noted that there are significant uncertainties involved in low-dose extrapolation. EPA agrees and, therefore, has developed an RQ methodology that does not use low-dose extrapolation. The methodology relies instead on the ED10, that is, the dose that causes an increased cancer incidence of 10 percent. Use of the ED10 is advantageous because it eliminates the issue of low-dose extrapolation for RQ adjustment purposes.

The same commenter argued that low doses of certain heavy metals are essential to human health, and that low exposures to suspected carcinogens may not pose significant incremental risks. Thus, according to the commenter, extrapolation over a wide range of doses may not be appropriate.

EPA agrees with the commenter that certain substances can have both beneficial effects at low doses and toxic effects at high doses. In addition, low doses can have both beneficial and toxic effects simultaneously. The question of whether a particular release will cause exposed individuals to experience toxic effects, however, is a question of risk assessment to be made by the Federal On-Scene Coordinator (OSC) based on all available information pertinent to the particular release. As stated earlier, the establishment and adjustment of RQs is intended to be a reporting trigger rather than a risk assessment.

For the reasons discussed above, EPA has decided at this time that no changes to the Agency's Guidelines for Carcinogen Risk Assessment are necessary. Nevertheless, the Agency continually reviews the Guidelines; if new information or procedures become available, the Agency will consider whether revisions are warranted.

C. Substances for Which RQs Are Adjusted

1. Summary

Today's final rule adjusts the RQs for six of the 273 hazardous substances whose RQs were proposed to be adjusted in the March 16, 1987 NPRM. These six RQ adjustments are shown in the following table:

Hazardous substance	Statutory RQ	Proposed and final RQ adjustment
1,4-Dioxane	1	100
2-Ethoxyethanol	1	1000
Ethylene oxide	1	10
2-Nitropropane	1	10
Perchloroethylene	1	100
Saccharin and salts	1	100

EPA has promulgated the proposed RQ adjustments without change for each of these six substances. For the reasons discussed in Section I.B. of this preamble, the Agency has decided to expedite the promulgation of RQ adjustments for these six substances.

2. Response to Comments

Public comments on the March 16, 1987 NPRM addressed proposed RQ adjustments for three of the six hazardous substances in this rulemaking: 1,4-dioxane, saccharin, and perchloroethylene. No comments were received on the proposed RQ adjustments for 2-ethoxyethanol, ethylene oxide, and 2-nitropropane.

Two commenters supported adjusting the RQ for 1,4-dioxane from the one-pound statutory level to 100 pounds. One commenter supported the proposed RQ adjustment of 100 pounds for saccharin because, the commenter suggested, the new reporting level would be consistent with public health concerns in general, and with the lack of hazard posed by a potential release of between one and 100 pounds of saccharin during transportation. The Agency agrees that the one-pound statutory RQ for saccharin does not appropriately reflect its carcinogenic potential. Saccharin is a weight-of-evidence Group C, potency Group 3 substance which therefore receives a low hazard ranking and a 100-pound RQ.

Three commenters recommended that perchloroethylene should be classified as a weight-of-evidence Group C substance, rather than as a Group B2 substance as proposed in the March 16, 1987 NPRM. The available rat tumor data and mouse tumor data, when considered together, support the Agency's current position that perchloroethylene should fall into the B2 category based on sufficient animal evidence of carcinogenicity (see Addendum to Health Assessment Document for Tetrachloroethylene (Perchloroethylene), External Review Draft, April 2, 1986; NTIS #PB86-174489). EPA's position on this issue is consistent with the IARC classification of perchloroethylene. However, it is important to note that EPA's B2 classification for perchloroethylene is based on a draft carcinogenicity assessment that has not yet been finalized. If this classification changes based on the final assessment, and the change warrants an adjustment of the RQ for perchloroethylene, the RQ will be adjusted in a future rulemaking. Pending the results of the Agency's final carcinogenicity assessment, the B2 classification and 100-pound RQ adjustment for perchloroethylene will be maintained in this final rule.

In a final rule published elsewhere in today's **Federal Register**, the Agency responds to public comments on 254 of the 273 RQ adjustments proposed in the March 16, 1987 NPRM. As explained in Section II.C.2.i of the preamble to that final rule, EPA will address the RQs for the remaining 13 substances that were the subject of the March 16, 1987 NPRM in a future action.

III. SUMMARY OF SUPPORTING ANALYSES

A. Executive Order No. 12291

Executive Order (E.O.) 12291 requires that regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic analysis performed by the Agency, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460, shows that today's final rule is nonmajor, because the rule will result in estimated net cost savings of $1.5 million annually. The annual net cost savings of all RQ adjustments promulgated or proposed to date (including those contained in this final rule) is estimated to be $34.7 million. It should be noted that these net cost savings reflect only those effects of the RQ adjustments that are: (1) Readily quantifiable in dollars; and (2) associated with the notification requirements under CERCLA section 103 and SARA section 304 (including the associated activities of recordkeeping, notification processing, monitoring, and response).

This final rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." To determine whether a Regulatory Flexibility Analysis was necessary for today's final rule, a preliminary analysis was conducted using a computer model that simulated the typical operation of a small U.S. chemical company.

The results of the simulation indicate that the upper-bound total cost of compliance to small firms is negligible. See the Regulatory Impact Analysis of Reportable Quantity Adjustments Under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act, Volume I, March 1985, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460. Therefore, because today's final rule is not expected to have a significant impact on small entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

EPA requires an Information Impact Analysis for all rules that impose a paperwork burden on the public. This analysis estimates the burden imposed on parties outside EPA for activities such as notification or recordkeeping. Today's final rule will provide a decrease in the paperwork burden imposed on the regulated community for information collection associated with fewer releases being reportable. Because the effect of this final rule on the paperwork burden is a reduction, EPA has determined that no further Information Impact Analysis need be performed.

The information collection requirements contained in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. Section 3501 *et seq.*, and have been assigned OMB control number 2050–0046.

The public reporting burden for this collection of information is estimated to vary from 8 to 11 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Oil pollution, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 26, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, 40 CFR Part 302 is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

2. Section 302.4 is amended by revising the following entries in Table 302.4 and Appendix A to read as set forth below. The note preceding Table 302.4 is republished without change.

* * * * *

Note: The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations are provided in the "Regulatory Synonyms" column. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Code" column indicates the statutory source for designating each substance as a CERCLA hazardous substance: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, and "4" indicates that the source is RCRA section 3001. The "RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters "X," "A," "B," "C," and "D," which are associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the reportable quantity adjustment for each hazardous substance in pounds and kilograms.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*	*	*	*
1,2-Benzisothiazolin-3-one, 1,1-dioxide, and salts	81072	Saccharin and salts	1*	4	U202	B	100 (45.4)
*	*	*	*	*	*	*	*
1,4-Diethylene dioxide	123911	1,4-Dioxane	1*	4	U108	B	100 (45.4)
*	*	*	*	*	*	*	*
1,4-Dioxane	123911	1,4-Diethylene dioxide	1*	4	U108	B	100 (45.4)
*	*	*	*	*	*	*	*
Ethene, 1,1,2,2-tetrachloro-	127184	Perchloroethylene Tetrachloroethene Tetrachloroethylene	1*	2,4	U210	B	100 (45.4)
*	*	*	*	*	*	*	*
2-Ethoxyethanol	110805	Ethylene glycol monoethyl ether	1*	4	U359	C	1000 (454)
*	*	*	*	*	*	*	*
Ethylene glycol monoethyl ether	110805	2-Ethoxyethanol	1*	4	U359	C	1000 (454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code†	RCRA waste No.	Category	Pounds (Kg)
* * *	*	* * *			*		
Ethylene oxide	75218	Oxirane	1*	4	U115	A	10 (4.54)
* * *	*	* * *			*		
2-Nitropropane	79469	Propane, 2-nitro-	1*	4	U171	A	10 (4.54)
* * *	*	* * *			*		
Oxirane	75218	Ethylene oxide	1*	4	U115	A	10 (4.54)
* * *	*	* * *			*		
Perchloroethylene	127184	Ethene, 1,1,2,2-tetrachloro- Tetrachloroethene Tetrachloroethylene	1*	2,4	U210	B	100 (45.4)
* * *	*	* * *			*		
Propane, 2-nitro-	79469	2-Nitropropane	1*	4	U171	A	10 (4.54)
* * *	*	* * *			*		
Saccharin and salts	81072	1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts	1*	4	U202	B	100 (45.4)
* * *	*	* * *			*		
Tetrachloroethene	127184	Ethene, 1,1,2,2-tetrachloro- Perchloroethylene Tetrachloroethylene	1*	2,4	U210	B	100 (45.4)
Tetrachloroethylene	127184	Ethene, 1,1,2,2-tetrachloro- Perchloroethylene Tetrachloroethene	1*	2,4	U210	B	100 (45.4)
* * *	*	* * *			*		

†—indicates the statutory source as defined by 1, 2, 3, or 4 below:
1—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4)
2—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a)
3—indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112
4—indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001
1*—indicates that the 1-pound RQ is a CERCLA statutory RQ

Appendix A

SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
* * * * *	
75218	Ethylene oxide Oxirane
* * * * *	
79469	Propane, 2-nitro- 2-Nitropropane
* * * * *	
81072	1,2-Benzisothiazolin-3-one,1,1-dioxide, and salts Saccharin and salts
* * * * *	
110805	Ethylene glycol monoethyl ether 2-Ethoxyethanol
* * * * *	
123911	1,4-Diethylene dioxide 1,4-Dioxane
* * * * *	
127184	Ethene, 1,1,2,2-tetrachloro- Perchloroethylene Tetrachloroethene Tetrachloroethylene
* * * * *	

[FR Doc. 89-15745 Filed 8-11-89; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 116, 117, and 302

[SW H-FRL 3372-8]

Reportable Quantity Adjustments; Delisting of Ammonium Thiosulfate

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Sections 103(a) and (b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, require that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than their reportable quantities (RQs) immediately notify the National Response Center of the release. Section 102(b) sets an RQ of one pound for hazardous substances, except those substances for which different RQs have been established pursuant to section 311(b)(4) of the Clean Water Act (CWA). In addition to these reporting requirements, section 304 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) Title III requires that releases of hazardous substances in quantities equal to or greater than their RQs (or one pound if a reporting trigger is not established by regulation) be reported to State and local authorities.

Section 102(a) of CERCLA authorizes the U.S. Environmental Protection Agency (EPA or "the Agency") to adjust RQs for hazardous substances and to designate as hazardous substances those substances that, when released into the environment, may present substantial danger to the public health or welfare or the environment. Currently, there are 725 CERCLA hazardous substances.[1] In this rulemaking, EPA is promulgating final RQ adjustments for 258 hazardous substances. Of these 258 hazardous substances, 254 had RQs proposed for adjustment by EPA in a Notice of Proposed Rulemaking (NPRM) published on March 16, 1987 (52 FR 8140).[2] RQs for four additional hazardous substances that were not proposed for adjustment in the March 16, 1987 NPRM are also included in this final rule. These four hazardous substances are waste streams that were listed as hazardous under section 3001 of the Resource Conservation and Recovery Act (RCRA)

[1] See Note 1 at the end of the text of this preamble.

[2] See Note 2 at the end of the text of this preamble.

(and, therefore, were designated as hazardous under CERCLA) after the March 16, 1987 proposal was published.[3]

By making the adjustments contained in this rulemaking, the Agency will be able to focus its resources on those releases that are most likely to pose potential threats to public health or welfare or the environment. In addition, by making these adjustments, EPA will relieve the regulated community of the burden of reporting releases that are unlikely to pose such threats.

EFFECTIVE DATE: October 13, 1989.

ADDRESSES: The toll-free telephone number of the National Response Center is 1-800/424-8802; in the Washington, DC metropolitan area the number is 1-202/267-2675.

Docket: Copies of materials relevant to this rulemaking are contained in Room M2427 at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 102 RQ-273C). The docket is available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, you may make an appointment by calling 1-202/382-3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: Ivette O. Vega, Response Standards and Criteria Branch, Emergency Response Division, U.S. Environmental Protection Agency (OS-210), 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline at 1-800/424-9346; in the Washington, DC metropolitan area at 1-202/382-3000.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Introduction
  A. Statutory Authority
  B. Background of this Rulemaking
II. Reportable Quantity Adjustments
  A. Introduction
  B. Reportable Quantity Adjustment Methodology
    1. Summary of the Methodology
    2. Responses to Comments Received on the Methodology
      a. Application of BHP to Potential Carcinogens
      b. Application of CWA Mixture Rule to Hazardous Waste Streams
  C. Substances for Which RQs Are Adjusted
    1. Summary
    2. Responses to Comments on Proposed RQs for Specific Substances
      a. Acrylonitrile
      b. Arsenic
      c. Asbestos
      d. Bis(2-ethylhexyl)phthalate
      e. Carbon tetrachloride
      f. Chloroform
      g. Chromium and chromium compounds
      h. Hexachlorobutadiene
      i. Lead and lead compounds
      j. Methyl chloride
      k. Nickel and nickel compounds
      l. Polychlorinated biphenyls
      m. Trichloroethylene
      n. Vinyl chloride
      o. Waste streams
  D. Update on Methyl Isocyanate
III. RQ Adjustments Under CWA Section 311
IV. Delisting of Ammonium Thiosulfate as a Hazardous Substance
V. Replacement of the Registered Trademark, "Kelthane," with the Generic Name, Dicofol
VI. List of Hazardous Substances and Adjusted RQs
VII. Summary of Supporting Analyses
  A. Executive Order No. 12291
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
List of Subjects

I. Introduction

A. Statutory Authority

Section 102(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (Pub. L. 96-510), 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499), establishes reportable quantities (RQs) of one pound for releases of hazardous substances, except for hazardous substances whose RQs were established at a different level pursuant to section 311 of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes the Administrator of the U.S. Environmental Protection Agency (EPA or "the Agency") to adjust all of these RQs by regulation.

Sections 103(a) and (b) of CERCLA require that the person in charge of a vessel or facility notify the National Response Center immediately when there is a release of a hazardous substance in an amount equal to or greater than the RQ for that substance. This notification requirement serves as a trigger for informing the government of a release so that Federal personnel can evaluate the need for a Federal removal or remedial action and undertake any necessary action in a timely fashion. Under section 104 of CERCLA, the Federal government may respond whenever there is a release or a substantial threat of a release of a hazardous substance into the environment. Response activities are to be taken, to the extent practicable, in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300), which was originally developed under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA.

If a release meets certain statutory criteria set forth in CERCLA section 103(f)(2), the release may be subject to more limited reporting requirements. Specifically, a release is subject to these limited requirements if the release: (1) Is continuous and stable in quantity and rate, and is from a facility for which notification has been given under CERCLA section 103(c), or (2) is a release for which notification has been given under CERCLA sections 103(a) and (b) for a period sufficient to establish the continuity, quantity, and regularity of the release. Notification must still be given annually and when there is a statistically significant increase in the release. In addition, CERCLA section 103 provides a reporting exemption for federally permitted releases. The definition of federally permitted release in CERCLA section 101(10) specifically identifies releases permitted under certain other Federal or State programs. Several commenters claimed that their particular releases are subject to continuous and/or federally permitted release treatment. EPA published proposed regulations to clarify the reduced reporting requirement for continuous releases on April 19, 1988 (53 FR 12868). EPA also clarified the reporting exemption for federally permitted releases in proposed regulations published on July 19, 1988 (53 FR 27268). Comments on continuous and federally permitted release issues submitted in response to the March 16, 1987 NPRM will be addressed in the upcoming final rules for continuous and federally permitted releases.

In addition to the reporting requirements established by CERCLA, section 304 of SARA Title III requires the owners or operators of certain facilities to report releases of CERCLA hazardous substances to State and local authorities. SARA Title III section 304 notification must be given immediately after the release of an RQ or more (one pound or more if a reporting trigger is not established by regulation) to the community emergency coordinator for each local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release. These notification requirements apply

[3] See Note 3 at the end of the text of this preamble

only to releases that have potential for off-site exposure and that are from facilities at which a "hazardous chemical" (defined by regulations under the Occupational Safety and Health Act of 1970 (29 CFR 1910.1200(c)) and section 311 of SARA Title III) is produced, used, or stored.

Section 109 of CERCLA and section 325 of SARA Title III authorize EPA to assess civil penalties for failure to report releases of hazardous substances that equal or exceed their RQs. Section 103 of CERCLA, as amended, authorizes EPA to seek criminal penalties for submitting false or misleading information in a notification made pursuant to CERCLA section 103, and increases the maximum penalties and years of imprisonment for violation of the CERCLA section 103 reporting requirement.

B. Background of this Rulemaking

On May 25, 1983, EPA proposed a rule (48 FR 23552) to clarify procedures for reporting releases of CERCLA hazardous substances and to adjust RQs for 387 of the then 696 hazardous substances.[4] In the May 25, 1983 NPRM, EPA also compiled for the first time the list of "hazardous substances" defined under section 101(14) of CERCLA. In the preamble to that NPRM, EPA discussed in detail the CERCLA notification provisions, the methodology and criteria used to adjust the RQ levels, and the RQ adjustments proposed under section 102 of CERCLA and under section 311 of the CWA. EPA promulgated final RQ adjustments for 340 hazardous substances in an April 4, 1985 final rule (50 FR 13456) and for an additional 102 hazardous substances in a September 29, 1986 final rule (51 FR 34534). In an NPRM published on March 16, 1987 (52 FR 8140), EPA proposed RQ adjustments for 273 hazardous substances. The March 16, 1987 Federal Register also contained an NPRM in which EPA proposed RQ adjustments for radionuclides.[5] In addition, in an NPRM published on March 2, 1988 (53 FR 6762), EPA reproposed RQ adjustments for lead metal and four lead compounds, and proposed to delist ammonium thiosulfate as a CERCLA hazardous substance.

In this rulemaking, EPA is promulgating final RQ adjustments for 258 hazardous substances, including 254 of the 273 substances proposed for adjustment in the March 16, 1987 NPRM.[6] EPA promulgates final RQ adjustments for six of these 273 hazardous substances elsewhere in today's Federal Register. As explained in Section II.C.2.i below, EPA will address RQ adjustments for the remaining 13 of the 273 hazardous substances in a future action.

Section II of this preamble discusses the RQ adjustments promulgated in this rulemaking and the methodology used in making these adjustments. Section I also includes EPA's responses to public comments on the March 16, 1987 NPRM that are relevant to the 258 RQ adjustments made in this rule and to the RQ adjustment methodology on which these 258 adjustments are based. Section III discusses RQ adjustments made under section 311 of the CWA. In finalizing these RQ adjustments, this rule amends Table 302.4 of 40 CFR Part 302 and Table 117.3 of 40 CFR Part 117. Section IV explains the delisting of ammonium thiosulfate as a hazardous substance. Section V discusses the replacement of the registered trademark, "Kelthane," with the generic name, dicofol. In making these changes concerning ammonium thiosulfate and dicofol, this rule amends Tables 116.4A and 116.4B of 40 CFR Part 116. Section VI provides a summary of the analyses supporting this rulemaking.

II. Reportable Quantity Adjustments

A. Introduction

In this rulemaking, the Agency adjusts RQs based upon specific scientific and technical criteria that relate to the possibility of harm from the release of a hazardous substance at certain levels. The quantity released is but one factor considered by the government when assessing the need to respond to such a release. Other factors, assessed on a case-by-case basis, include but are not limited to: (1) The location of the release; (2) its proximity to drinking water supplies or other valuable resources; and (3) the likelihood of exposure or injury to nearby populations. The RQ adjustments made today will enable the Agency to focus its resources on those releases that are most likely to pose potential threats to public health or welfare or the environment. These adjustments will also relieve the regulated community and emergency response personnel from the burden of making and responding to reports of releases that are unlikely to pose such threats.

B. Reportable Quantity Adjustment Methodology

1. Summary of the Methodology

The Agency has wide discretion in adjusting the statutory RQs for hazardous substances under CERCLA. Administrative feasibility and practicality are important considerations. The Agency's methodology for adjusting RQs begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined—called "primary criteria"—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity,[7] and potential carcinogenicity.

The Agency ranks hazardous substances for each intrinsic property (except potential carcinogenicity) on a five-tier scale, associating a specific range of values on each scale with a particular RQ value.[8] This five-tier scale uses the five RQ levels of one, 10, 100, 1000, and 5000 pounds, originally established pursuant to CWA section 311 (see 40 CFR 117 and 44 FR 50776). For hazardous substances evaluated for potential carcinogenicity, each substance is assigned a hazard ranking of "high," "medium," or "low." These hazard rankings correspond to RQ levels of one, 10, and 100 pounds, respectively (see Section II.B.2.a of the preamble to the final RQ adjustment rule published elsewhere in today's Federal Register). Each hazardous substance evaluated under the various primary criteria is assigned several tentative RQ values based on its particular intrinsic properties as data allow. The lowest of the tentative RQs becomes the "primary

[4] Since the May 25, 1983 NPRM, 31 substances have been added and two substances have been deleted from the CERCLA list, bringing the total number of CERCLA hazardous substances to 725. The 31 substances added to the list are: waste stream F024 (49 FR 5308); coke oven emissions (49 FR 36560); waste streams F020, F021, F022, F023, F026, F027, and F028 (50 FR 1978); waste streams K111, K112, K113, K114, K115, and K116, o-toluidine and p-toluidine (50 FR 42936); waste streams K117, K118, and K136 (51 FR 5327); 2-ethoxyethanol (51 FR 6537); waste streams K123, K124, K125, and K126 (51 FR 37725); and waste streams K064, K065, K066, K088, K090, and K091 (53 FR 35412). The two substances deleted from the list are: iron dextran (53 FR 43878) and strontium sulfide (53 FR 43881).

[5] RQ adjustments for radionuclides were promulgated in a final rule published on May 24, 1989 (54 FR 22524).

[6] For an explanation of the four additional substances in this final rulemaking, see the "Summary" above.

[7] EPA is aware that some chronic effects result from acute (short-term) exposures and considers such data in the chronic toxicity evaluations. The Agency is further evaluating data on chronic effects resulting from acute exposures to ensure that such data receive adequate consideration in the RQ adjustment process.

[8] All of the RQs promulgated in this rulemaking are subject to the Agency's review of the most recent systemic (i.e., relating to a particular organ system) toxicity data. These RQs will be revised, if necessary, in a future rulemaking based on the results of this review.

criteria RQ" for that substance. After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary RQ adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). (For discussion of the application of BHP to potential carcinogens, see Section II.B.2.a of this preamble.)

If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes,[9] its RQ (as determined by the primary RQ adjustment criteria) is raised one level. This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous product after its release, the original substance is assigned an RQ equal to the RQ for the more hazardous substance, which may be one or more levels lower than the RQ for the original substance. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased as a result of BHP.

To identify those CERCLA hazardous substances that may be potential carcinogens, EPA reviewed four sources of human epidemiologic and/or animal bioassay data on hazardous substances that suggest possible carcinogenic effect. These sources are: (1) The Annual Reports on Carcinogens of the National Toxicology Program (NTP), U.S. Department of Health and Human Services; (2) the Monographs of the International Agency for Research on Cancer (IARC); (3) final Agency determinations published in the **Federal Register** identifying substances as potential carcinogens; and (4) ongoing determinations by the Agency's Office of Health and Environmental Assessment that substances may be potential carcinogens, based on either published or unpublished data.[10] The Agency compared the list of substances derived from these four sources with the list of CERCLA hazardous substances to determine which hazardous substances should be evaluated for potential carcinogenicity.

Not all of the substances so identified are subsequently ranked for potential carcinogenicity. Only those substances that fall within the Agency's weight-of-evidence Groups A, B, or C discussed below (i.e., known, probable, or possible human carcinogens) are ranked and assigned tentative RQs based on potential carcinogenicity.

The evaluation of hazardous substances for potential carcinogenicity initially involves a qualitative assessment of the available scientific literature on the substance. The data are reviewed to determine the degree of certainty or weight of evidence that a particular hazardous substance is a human carcinogen. The substance is then classified in an overall weight-of-evidence category (A, B, C, D, or E).

A hazardous substance is placed in Group A (known human carcinogen) only if "sufficient" evidence from human epidemiologic studies supports a causal connection between exposure to the hazardous substance and cancer. Group B (probable human carcinogen) is divided into two subgroups, B1 and B2. Group B1 includes hazardous substances for which the weight of evidence of human carcinogenicity based on epidemiologic studies is "limited." Group B2 includes hazardous substances for which there is "no data," "inadequate evidence," or "no evidence" of human carcinogenicity from epidemiologic studies, but for which the weight of evidence of carcinogenicity based on animal studies is "sufficient." Group C (possible human carcinogen) includes hazardous substances with "limited" evidence of carcinogenicity in animals and "inadequate evidence," "no data," or "no evidence" from human epidemiologic studies. As mentioned in the March 16, 1987 NPRM (52 FR 8144), Group D substances (not classifiable for human carcinogenicity) and Group E substances (evidence of noncarcinogenicity for humans) are not considered potential carcinogens for purposes of this rulemaking.

The evaluation of hazardous substances for potential carcinogenicity also involves a quantitative assessment of the available data to calculate the relative strength of a hazardous substance to elicit a carcinogenic response (i.e., the "potency factor").[11] This quantitative assessment allows the Agency to rank potential carcinogens on a numerical scale by identifying the most potent substances as the most hazardous. Group 1 includes those hazardous substances with the highest potencies. Other potential carcinogens with medium and low potencies are placed in Groups 2 and 3, respectively.

The final step in the hazard ranking procedure is to combine the qualitative weight-of-evidence groups and the quantitative potency factor groups using a matrix to yield a relative hazard ranking for each substance. Thus, hazard rankings are based on two factors—weight of evidence and potency—that the Agency believes are important in describing carcinogenic hazards. The hazard ranking matrix (see Section II.B.1 of the final RQ adjustment rule published elsewhere in today's **Federal Register**) is used to group the potential carcinogens into "high," "medium," and "low" hazard categories. The matrix is arranged so that as the weight of evidence decreases and the potency factors decrease, the hazard ranking also decreases. RQ levels for potential carcinogens are then assigned to the hazard rankings as follows: high—one-pound RQ; medium—10-pound RQ; and low—100-pound RQ. See Section II.B.2.a of this preamble for a discussion of the application of BHP to potential carcinogen RQs.

For a more detailed discussion of the RQ adjustment methodology based on the primary criterion of potential carcinogenicity, see the preamble to the March 16, 1987 NPRM (52 FR 8140) and the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460. For a discussion of the Agency's response to public comments on the proposed one-, 10-, and 100-pound RQs for potential carcinogens, see Section II.B.2.a of the preamble to the final RQ adjustment rule published elsewhere in today's **Federal Register**.

EPA stated in the March 16, 1987 NPRM (see 52 FR 8146) that it was reviewing its position on consideration of benign tumors and pooling of tumor sites and types, as set forth in the Agency's Guidelines for Carcinogen

[9] The specific thresholds for the application of BHP to hazardous substances are discussed in the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 1, March 1985, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

[10] In addition to this application of unpublished data to identify potential carcinogens, EPA intends to use such data for the purpose of ranking potential carcinogens under the CERCLA RQ methodology. Currently, the Agency is evaluating unpublished data received on the weight of evidence and potency of certain potential carcinogens and will present the results of this evaluation, along with any RQ adjustments, in a future rulemaking.

[11] For an explanation of how potency factors are calculated, see the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460.

Risk Assessment.[12] This process is now complete, and one substance (1,2-propylenimine) will have its final RQ (one pound) different from its proposed level (10 pounds) as a result of the review (see Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, and Evaluation of the Potential Carcinogenicity of 1,2-Propylenimine, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460).[13]

2. Responses to Comments Received on the Methodology

The Agency received 35 comment letters on the March 16, 1987 NPRM (52 FR 8140). Ten of these letters contained comments that address the RQ adjustment methodology proposed in that NPRM for evaluating CERCLA hazardous substances for potential carcinogenicity. The comments on the RQ adjustment methodology are grouped into five categories: (1) Carcinogen hazard ranking methodology and the 100-pound maximum RQ; (2) the use of NTP and IARC publications in the Agency's identification methodology; (3) the Agency's use of its Guidelines for Carcinogen Risk Assessment to derive RQs; (4) the application of the secondary RQ adjustment criteria of BHP to potential carcinogens; and (5) the application of the CWA mixture rule to hazardous waste streams. Public comments on the first three of these categories are addressed in a final rule published elsewhere in today's **Federal Register**. In that final rule, EPA promulgates RQ adjustments for six of the 273 hazardous substances whose RQs were proposed to be adjusted in the March 16, 1987 NPRM, and addresses all public comments relevant to those six RQ adjustments, including the first three comment categories mentioned above.

In the final rule published elsewhere in today's **Federal Register**, the Agency promulgates a carcinogen hazard ranking methodology that assigns 100-pound RQs to substances in weight-of-evidence Group C and potency Group 3.[14] However, as mentioned in Section II.B.2.a of the preamble to that final rule, the Agency plans to evaluate the RQ adjustment methodology for potential carcinogens, particularly the weight-of-evidence Group C, potency Group 3 substances. The results of this evaluation will be addressed in a future action.

The following discussion contains Agency responses to public comments on the application of BHP to potential carcinogens and the application of the CWA mixture rule to hazardous waste streams.

a. Application of BHP to Potential Carcinogens. In the March 16, 1987 NPRM, sufficient data were available to justify a one-level RQ increase, based on BHP, for six hazardous substances identified as potential carcinogens (bis(chloromethyl)ether, chloromethyl methyl ether, dimethyl sulfate, formaldehyde, 2-naphthalenamine, and waste stream K017). No comments were received on these proposed adjustments and, therefore, the RQs of these six hazardous substances are increased to 10, 10, 100, 100, 10, and 10 pounds, respectively, in this final rule. These increases are from the one-level-lower primary criteria RQs.

In the March 16, 1987 NPRM, however, the Agency proposed not to apply BHP to certain substances that had been identified as potential carcinogens. Specifically, an upward RQ adjustment based on BHP was not applied to any potential carcinogen with a primary criteria RQ of 100 pounds. In other words, the proposed 100-pound maximum RQ level for potential carcinogens was retained, regardless of the rate of degradation of potential carcinogens in the environment.

Several commenters on the March 16, 1987 NPRM stated that EPA's proposal to apply BHP to potential carcinogens with one- and 10-pound primary criteria RQs, but to preclude application of BHP to those potential carcinogens with primary criteria RQs of 100 pounds, appeared "illogical" because in the commenters' view the decision was not sufficiently explained. The commenters argued that potential carcinogens with 100-pound primary criteria RQs should be eligible for a one-level RQ increase to 1000 pounds based on BHP.

EPA disagrees with the commenters that BHP should be applied to increase RQs for potential carcinogens from 100 to 1000 pounds. Such an approach conflicts with the Agency's decision to not apply BHP to raise the RQ of any substance above the maximum level permitted to be assigned to that substance by the RQ adjustment methodology (i.e., 100 pounds for potential carcinogens and 5000 pounds for other hazardous substances). Thus, just as BHP is not applied to increase RQs for substances other than potential carcinogens above 5000 pounds (see 50 FR 13469, April 4, 1985), BHP is not applied to raise the RQs of potential carcinogens above 100 pounds. The Federal On-Scene Coordinator (OSC) should be notified of releases of 100 pounds or more of potential carcinogens.[15] The OSC can then decide whether a response to releases of these substances should be taken. If the OSC determines that a release of a potential carcinogen at or above the 100-pound RQ level has degraded to a less hazardous, noncarcinogenic substance, and therefore the special properties of potential carcinogens do not apply, the OSC may decide that a Federal response is unnecessary. Accordingly, the Agency has not applied BHP to adjust upward the 100-pound primary criteria RQs of potential carcinogens.

In this final rule, BHP has been applied to raise the primary criteria RQs of the following substances for which BHP was not proposed to be applied in the March 16, 1987 NPRM: acrylonitrile; compounds, waste streams, and unlisted hazardous wastes containing chromium (VI); and 3,3'-dimethoxybenzidine. BHP has been applied to compounds, waste streams, and unlisted hazardous wastes containing chromium (VI) as a result of public comments on the March 16, 1987 NPRM. BHP has been applied to acrylonitrile and 3,3'-dimethoxybenzidine for reasons independent of public comment.[16] For further discussion of the reasons for applying BHP to these substances in this final rule, see Sections II.C.1 and II.C.2.

[12] The Guidelines provide that benign tumors should be considered along with malignant tumors unless there is evidence that the benign tumors do not have the potential to progress to malignancies of the same histogenic origin. The Agency pools tumor sites and types when each site or type, viewed separately, shows a tumor incidence that is elevated significantly above the incidence in control animals (51 FR 33992, September 24, 1986).

[13] EPA announced the RQ revision for 1,2-propylenimine, along with the reasons for the revision, in a supplement to the March 16, 1987 NPRM [see 53 FR 11890, April 11, 1988]. Public comments on that supplement do not affect the RQ adjustment for this hazardous substance. Therefore, the RQ for 1,2-propylenimine is promulgated at one pound, as stated in the April 11, 1988 supplement.

[14] Five individual hazardous substances are in this category: 5-nitro-o-toluidine; saccharin; p-toluidine; 1,1,1,2-tetrachloroethane; and 1,1,2-trichloroethane. EPA is promulgating an RQ adjustment of 100 pounds for saccharin in the final rule published elsewhere in today's **Federal Register**. RQ adjustments of 100 pounds for the other four weight-of-evidence Group C, potency Group 3 substances are promulgated in this final rule. EPA also promulgates RQ adjustments in this final rule for seven waste streams (F002, K073, K095, K096, K112, K113, and K114) that contain one or more of the five weight-of-evidence Group C, potency Group 3 substances. The RQ adjustments promulgated in this final rule are discussed in Section II.C of this preamble.

[15] Section II.B.2.a of the preamble to the final RQ adjustment rule published elsewhere in today's **Federal Register** contains the reasons for this determination.

[16] The change in the proposed RQ for acrylonitrile as a result of applying BHP was announced in a supplement to the proposed rule published on April 11, 1988 (53 FR 11890).

One commenter suggested that end products should determine the RQ of a parent hazardous substance, even when the RQ of a substance would be increased more than one level based on the characteristics of the end products. The Agency considered this possibility before deciding to raise by only one level the RQs of those substances that transform in the environment to less hazardous substances (see 50 FR 13470, April 4, 1985). The Agency selected the one-level upward adjustment because BHP processes are not instantaneous and, while degradation is in process, a large quantity of the more hazardous parent substance may pose a threat to public health or welfare or the environment. The Agency believes that the OSC should have the opportunity to decide whether to respond to the release of a hazardous substance that may persist long enough to pose such a threat before degrading to a less hazardous substance.

b. Application of CWA Mixture Rule to Hazardous Waste Streams. Under 40 CFR 302.6, if a person in charge of a vessel or facility knows the percentage composition of a waste stream, the CWA mixture rule may be applied. The CWA mixture rule provides that "[d]ischarges of mixtures and solutions are subject to [regulation] only where a component hazardous substance of the mixture or solution is discharged in a quantity equal to or greater than its RQ" (44 FR 50767, August 29, 1979). The RQs for different hazardous substances are not additive under the mixture rule, so that the release of a mixture containing half an RQ of one hazardous substance and half an RQ of another hazardous substance does not trigger the CERCLA section 103 reporting requirements (see 50 FR 13463, April 4, 1985). Reporting is required, however, if the concentrations of all of the hazardous constituents present in the mixture are not known and the total quantity released exceeds the RQ of the hazardous constituent within the mixture that has the lowest RQ.

One commenter supported the Agency's application of the CWA mixture rule. Another commenter expressed the understanding that the RQs for waste streams F001 through F005 would be based on the hazardous constituents present in the waste streams. Thus, according to this commenter, if the only hazardous constituent in an F001 waste stream were perchloroethylene, the applicable RQ would be the 100-pound RQ for perchloroethylene rather than the 10-pound RQ for waste stream F001.

This commenter is correct, provided that perchloroethylene is the only hazardous constituent in the waste stream. It should be emphasized, however, that if the person in charge does not know the constituents contained in the waste stream and, pursuant to 40 CFR 261, the waste is identified as waste stream F001, the 10-pound RQ for waste stream F001 would apply.

In response to these comments and to several other inquiries, the Agency is revising 40 CFR 302.6 in this final rule to clarify reporting requirements for mixtures and solutions (e.g., hazardous waste streams).

C. Substances for Which RQs Are Adjusted

1. Summary

In this final rule, EPA adjusts RQs for 258 hazardous substances, including 254 substances whose RQs were proposed to be adjusted in the March 16, 1987 NPRM. EPA in this rule lowers the RQs of 54 hazardous substances, raises the RQs of 121 hazardous substances, and leaves the RQs of 83 hazardous substances at their statutory levels. The hazardous substances include 187 individual hazardous substances and 71 hazardous waste streams.

The bases for the adjusted RQs of the 187 individual hazardous substances are as follows: 133 on the basis of potential carcinogenicity alone, 23 on the basis of potential carcinogenicity and at least one other primary criterion, and 31 on the basis of criteria other than potential carcinogenicity. The primary criteria RQs for 18 of the 187 individual hazardous substances were adjusted upward one level by applying BHP.

Of the 71 waste streams for which RQs are being adjusted in this rule, 67 were proposed for RQ adjustment in the March 16, 1987 NPRM. The four other hazardous waste streams for which RQs are promulgated in this rulemaking (K123, K124, K125, and K126) were listed as hazardous under section 3001 of RCRA in a final rule that became effective on April 24, 1987 (51 FR 37725, October 24, 1986). Therefore, these hazardous waste streams became CERCLA hazardous substances after publication of the March 16, 1987 NPRM, and their RQs consequently were not proposed for adjustment in that NPRM.

As stated in the October 24, 1986 final rule, if a waste stream contains only one constituent of concern, the RQ for the waste stream will be the same as the RQ for that constituent. The only constituent of concern present in waste streams K123, K124, K125, and K126 is ethylene thiourea (ETU). The Agency retained the statutory one-pound RQ for ETU in the April 4, 1985 final rule (50 FR 13487), pending completion of the Agency's analysis of ETU for potential carcinogenicity. In the March 16, 1987 NPRM, EPA proposed to readjust the RQ for ETU to 10 pounds based on potential carcinogenicity. No comments were received on this proposed RQ adjustment and EPA is promulgating a 10-pound RQ adjustment for ETU in this final rule. Because the RQ for a hazardous waste stream with only one hazardous constituent is the RQ for that constituent, the Agency today also is promulgating RQ adjustments of 10 pounds for waste streams K123, K124, K125, and K126.

In addition to individual hazardous substances and hazardous waste streams, EPA today adjusts RQs for five of the constituents used to determine the RCRA characteristic of extraction procedure (EP) toxicity for unlisted hazardous wastes.[17] Five of the constituents used to determine EP toxicity have been assigned RQs as follows: one pound for arsenic, 10 pounds for hexavalent chromium, and 10 pounds for cadmium, each on the basis of potential carcinogenicity; and one pound for lindane and toxaphene on the basis of aquatic toxicity. An unlisted hazardous waste that exhibits EP toxicity has the RQ stated in Table 302.4 for the contaminant on which the characteristic of EP toxicity is based. The RQ applies to the unlisted waste itself, not merely to the toxic contaminant used as a reference substance for RQ purposes. The RQ for the metal constituents is based on the RQ for soluble metal salts, and not the metal itself.

The final RQ adjustments for 18 hazardous substances have changed from those proposed in the March 16, 1987 NPRM for reasons independent of public comment. These hazardous substances are listed below in Table 1.

TABLE 1.—PROPOSED AND FINAL RQS

Hazardous Substance	Proposed RQ (lbs.)	Final RQ (lbs.)
Acetamide, N-9H-fluoren-2-yl	10	1
Acrylonitrile	10	100
Azaserine	10	1
Benz(c)acridine	10	100
Benzotrichloride	1	10
Chrysene	10	100

[17] Under 40 CFR 302.4(b), a solid waste as defined in 40 CFR 261.4(b) is a CERCLA hazardous substance if (1) it is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b), and (2) it exhibits any of the characteristics identified in 40 CFR 261.20 through 261.24. EP toxicity is one of these characteristics (see 40 CFR 261.24).

TABLE 1.—PROPOSED AND FINAL RQs—Continued

Hazardous Substance	Proposed RQ (lbs.)	Final RQ (lbs.)
1,2-Dibromo-3-chloropropane	10	1
P-dimethylaminoazobenzene	1	10
3,3'-Dimethylbenzidine	100	10
N-nitroso-N-ethylurea	10	1
1,2 Propylenimine	10	1
Vinyl chloride	10	1
F002	100	10
K019	10	1
K020	10	1
K028	10	1
K029	10	1
K096	10	100

The availability of the data on which these adjusted RQs are based was announced in a supplement to the proposed rule published on April 11, 1988 (53 FR 11890). The RQ revisions for 15 of these 18 hazardous substances are based on consideration of new weight-of-evidence and potency studies, and revisions to the original potency calculations.[18] The revised RQ profiles for these 15 hazardous substances are available for inspection in the public docket for the March 16, 1987 NPRM. The docket is contained in Room M2427, U.S. EPA, 401 M Street, SW, Washington, DC 20460 (Docket Number 102 RQ–273C). An explanation of the reasons for the potency and weight-of-evidence changes and citations to the studies relied on by the Agency for these changes are provided in the Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, available for inspection at the same location.

RQs for two of the hazardous substances listed in Table 1 (waste streams F002 and K096) have been revised for technical reasons. The Agency today is promulgating an adjusted RQ of 10 pounds for waste stream F002. Although a 100-pound RQ adjustment was proposed for F002 in the March 16, 1987 NPRM, the final RQ adjustment of 10 pounds is consistent with EPA's revised definition of waste stream F002. In a final rule promulgated on December 31, 1985, EPA broadened the definition of F002 to include (in addition to the wastes already listed as constituents of F002) "* * * all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more" of the substances listed in waste streams F001, F004, and F005 (50 FR 53319). In effect, the Agency provided in the December 31, 1985 rule that all substances listed as constituents of waste streams F001, F004, and F005 are included as constituents of waste stream F002 when they are components of these spent solvent mixtures.[19]

Carbon tetrachloride is explicitly listed under waste stream F001, and benzene and 2-nitropropane are explicitly listed under waste stream F005.[20] Thus, under the policy announced in the December 31, 1985 rule, these three hazardous substances are considered part of the definition of waste stream F002. In this final rule, the Agency is promulgating 10-pound adjusted RQs for carbon tetrachloride, benzene, and 2-nitropropane, as proposed in the March 16, 1987 NPRM. The adjusted RQ for these three substances (10 pounds), therefore, becomes the RQ for waste stream F002.

Although a 10-pound RQ adjustment was not proposed for waste stream F002 in the March 16, 1987 NPRM, 10-pound RQ adjustments were proposed for benzene, carbon tetrachloride, and 2-nitropropane. The public has had an opportunity to comment on the proposed RQ adjustments for these three constituents of waste stream F002, and on the RQ for F002 in the supplement to the proposed rule (53 FR 11890). No comments were received on the proposed 10-pound RQ for benzene and 2-nitropropane, and the comments received on carbon tetrachloride did not warrant a change in the proposed RQ (see Section II.C.2.e). EPA, therefore, is promulgating an adjusted RQ of 10 pounds for waste stream F002 in this final rule.

As a result of the December 31, 1985 final rule and the RQ adjustments for benzene, carbon tetrachloride, and 2-nitropropane in this final rule, the RQs for waste streams F001, F003, F004, and F005 must also be adjusted to 10 pounds. The RQ for waste stream F001 is promulgated at 10 pounds, as proposed, in this final rule. RQ adjustments for waste streams F003, F004, and F005 (100, 1000, and 100 pounds, respectively) were promulgated in previous RQ rulemakings (see 50 FR 13501, April 4, 1985, and 51 FR 34544, September 29, 1986). The RQs for these three waste streams will be adjusted to 10 pounds in a future rulemaking.

The RQ for waste stream K096 was erroneously proposed to be adjusted to 10 pounds in the March 16, 1987 NPRM. The lowest RQ of any of the hazardous constituents present in this waste stream is 100 pounds. Therefore, a 100-pound RQ adjustment for waste stream K096 is promulgated in this final rule.

The Agency has decided that available data support application of BHP to acrylonitrile, the remaining substance whose RQ has been revised independent of public comment. The RQ for acrylonitrile was proposed to be adjusted to 10 pounds based on potential carcinogenicity, but its RQ is being promulgated at 100 pounds in this rulemaking due to the application of BHP. Although comments were received on the original 10-pound proposed RQ for acrylonitrile in the March 16, 1987 NPRM, the comments did not address the BHP issue. The final RQ adjustment for acrylonitrile is discussed further in Section II.C.2.a of this preamble.

In addition to these 16 hazardous substances, there is one substance (3,3'-dimethoxybenzidine) for which the basis for the RQ, but not the RQ level, has changed from the proposed to the final rule for reasons independent of public comment.

Although BHP is applied in this rule to raise by one level the RQ for 3,3'-dimethoxybenzidine, the RQ for this substance remains at its proposed 100-pound level because its primary criteria RQ has been lowered from 100 pounds to 10 pounds based on a potency factor recalculation. After reviewing the studies concerning 3,3'-dimethoxybenzidine, EPA has decided that a different study should be used to estimate the potency for this hazardous substance, yielding a medium (10-pound RQ) rather than a low (100-pound RQ) hazard ranking, as proposed. However, 3,3'-dimethoxybenzidine meets the Agency's criteria for applying BHP. With the application of the secondary RQ adjustment criteria of BHP, the final RQ adjustment for this substance is raised one level from its primary criteria level of 10 pounds to 100 pounds.

[18] These 15 hazardous substances are: acetamide, N-9H-fluoren-2-yl; azaserine; benz[c]acridine; benzotrichloride; chrysene; 1,2-dibromo-3-chloropropane; p-dimethylaminoazobenzene; 3,3'-dimethylbenzidine; N-nitroso-N-ethylurea; 1,2-propylenimine; vinyl chloride; and waste streams K019, K020, K028, and K029.

[19] The change made by the December 31, 1985 rule to the definition of F002, as well as similar changes to the definitions of F001, F003, F004, and F005, allows EPA to regulate more comprehensively certain solvent mixtures. Previously, only high-concentration solvents before use (i.e., pure, technical grade, and practical grade) were covered. For a detailed discussion of the significance of this change and the scope of the revised definitions of waste streams F001, F002, F003, F004, and F005, see 50 FR 53315, December 31, 1985.

[20] Benzene and 2-nitropropane were added to waste stream F005 by a final rule published on February 25, 1986 (51 FR 6537). The February 25, 1986 rule also added 1,1,2-trichloroethane to F002 and 2-ethoxyethanol to F005, but these two substances are not discussed above because their proposed RQs (100 and 1000 pounds, respectively) do not affect the RQ for waste stream F002.

2. Responses to Comments on Proposed RQs for Specific Substances

a. Acrylonitrile. Two commenters stated that the proposed 10-pound RQ for acrylonitrile should be adjusted upward to 100 pounds, based on assertions that a 10-pound release of acrylonitrile would not result in a government response, and that more recent data on the potential carcinogenicity of acrylonitrile support a 100-pound RQ. The commenters also cited the standard of the Occupational Safety and Health Administration (OSHA) for worker exposure to acrylonitrile of two parts per million (ppm) on an eight-hour time-weighted average.

One of these commenters also argued that the 10-pound proposed RQ for acrylonitrile is contrary to law as interpreted by the U.S. Supreme Court. This commenter stated that the Court's decisions in *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607 (1980) (the Benzene case) and *American Textile Manufacturers* v. *Donovan*, 452 U.S. 490 (1981) (the Cotton Dust case) require that health and safety standards for toxic substances, including potential carcinogens, be designed to alleviate a truly significant risk of harm.

The decisions cited by the commenter are based on the Supreme Court's interpretation of the Occupational Safety and Health Act of 1970 (OSH Act) which requires OSHA to promulgate standards for toxic chemicals that reduce material health impairment to the extent feasible. These decisions do not apply to all Federal regulations that set standards for toxic chemicals. In requiring EPA to promulgate RQ adjustments for hazardous substances under section 102(a) of CERCLA, for example, Congress established a standard for toxic chemical regulations different from the OSHA standard. The CERCLA RQ standard requires EPA to establish a reporting trigger for each hazardous substance, the release of which may present a substantial danger to public health and welfare and the environment. Thus, RQs are relative rankings of the hazards associated with releases of hazardous substances, rather than determinations of absolute levels of risk or permanent health and safety standards (e.g., the OSHA standards). Thus, EPA is required to adjust RQs under the standards set by CERCLA and not those established by the OSH Act.

The Agency also disagrees with the commenter's position that the most recent data on acrylonitrile support a 100-pound RQ based on the primary RQ adjustment criterion of potential carcinogenicity. The commenter provided no support for this position nor for the assertion that a 10-pound release of acrylonitrile would not result in a government response. An RQ is merely a trigger for notification of a release to the OSC, who then decides whether a government response is necessary. The OSC may or may not decide that such a response is needed to protect public health and welfare and the environment from a release of acrylonitrile, depending on the circumstances of the release. As mentioned in Section II.B.2.a of this preamble and in the supplement to the proposed rule (53 FR 11891, April 11, 1988), however, EPA has decided that the data do support application of the secondary RQ adjustment criterion of BHP, resulting in a final RQ adjustment of 100 pounds for acrylonitrile. One commenter on the supplement to the proposed rule supported the 100-pound RQ adjustment for acrylonitrile as consistent with the Agency's BHP methodology and the degradation data on this hazardous substance.

b. Arsenic. One commenter stated that no direct evidence exists that arsenic compounds other than arsenic trioxide and potassium arsenite are carcinogenic. Therefore, according to this commenter, the proposal to treat all arsenic compounds as carcinogenic may be inappropriate.

In the literature on inorganic arsenic, positive tumor incidence is shown in several studies.[21] The Agency has determined that sufficient evidence exists to implicate arsenic and its inorganic compounds as known human carcinogens. Because arsenic is chemically convertible among the various forms, all inorganic forms of arsenic are of equal concern. Accordingly, ranking all hazardous substances containing arsenic on the basis of potential carcinogenicity is appropriate to protect human health and welfare and the environment.

c. Asbestos. One commenter stated that the proposed one-pound RQ for asbestos is "unrealistically low." The commenter argued that because a 24-hour period is used to determine whether an RQ or more had been released (see 50 FR 13463, April 4, 1985), it would be impossible to determine whether the RQ for asbestos had been exceeded under many circumstances. Moreover, the commenter argued, every asbestos cleanup effort, such as in schools or public buildings, would be subject to reporting if a one-pound RQ for asbestos were promulgated. Finally, the commenter claimed that quarry operations that encounter asbestos formations would be adversely affected by a one-pound RQ.

The Agency recognizes that the detection of a release of one pound or more of asbestos over a 24-hour period may be difficult, given asbestos' fibrous nature and the current state of detection technology. Qualified asbestos contractors conducting abatement activities in conformance with EPA regulations (see 52 FR 15875, April 30, 1987), however, should be able to avoid such releases. Therefore, the Agency does not agree with the assertion that response activities involving asbestos in schools or public buildings routinely will involve releases of asbestos in quantities that will require Federal notification. At the same time, if such releases of asbestos occur, the OSC should have the opportunity to determine whether a Federal response action may be required.

As stated in previous rulemakings, CERCLA itself does not impose any requirement to test for the release of a hazardous substance (see 50 FR 13463, April 4, 1985). Nevertheless, persons in charge should be aware that failure to test does not mean that there is no requirement to report if the person in charge knows that asbestos has been released in an amount equal to or greater than one pound.

Concerning the possible adverse effect of a one-pound RQ for asbestos on quarry operations, it should be noted that the Agency does not establish different RQs on the basis of different release circumstances. If "continuous" and "stable in quantity and rate," however, releases from quarry operations may qualify for reduced reporting under CERCLA section 103(f)(2) (for further discussion of these reduced reporting requirements, see 53 FR 12868, April 19, 1988).

It should be noted that the RQ for asbestos applies only to releases from friable asbestos-containing materials; releases from nonfriable materials are not subject to the reporting requirements of section 103 of CERCLA.

d. Bis(2-ethylhexyl)phthalate. One commenter stated that because bis(2-ethylhexyl)phthalate (DEHP) is nongenotoxic, its RQ should be based on criteria other than potential carcinogenicity. The commenter also suggested that if the RQ for DEHP is based on potential carcinogenicity, the linear model should not be used to estimate potency (i.e., the dose that would produce an excess risk of cancer)

[21] See Health Assessment Document for Inorganic Arsenic, Final Report, EPA 600/8–83–021F, March 1984.

because a threshold dose is required to cause cancer. The commenter supported these assertions by submitting the 1985 report of the Chronic Hazard Advisory Panel (CHAP) commissioned by the Consumer Product Safety Commission.

Whether or not a substance is genotoxic is considered by the Agency in establishing RQs. The evidence submitted by the commenter, however, does not establish conclusively the nongenotoxicity of DEHP. The CHAP report found that "[t]he evidence for tumor initiating activity is inadequate for conclusions to be drawn. Because oral administration of DEHP to rats and mice produces tumors by *some* mechanism, DEHP or its metabolites must be presumed to have both *initiating and promoting* activity" (emphasis added). Thus, the commenter's contention that DEHP is nongenotoxic is at odds with the report cited by the commenter. Moreover, DEHP has been shown conclusively to induce tumors in animals, acting either alone or as a synergist. Accordingly, the Agency has determined that the establishment of an RQ for DEHP on the basis of potential carcinogenicity is appropriate.

The Agency also disagrees with the contention that a linear model should not be applied in establishing the RQ for DEHP based on potential carcinogenicity. Since publication of the March 16, 1987 NPRM, EPA invited scientists from other Federal agencies to discuss interpretation of the potential carcinogenicity studies of DEHP. These government scientists all agreed that a linear model should be applied to DEHP.[22] Moreover, the Guidelines for Carcinogen Risk Assessment state that, "[w]hen data and information are limited * * * and when much uncertainty exists regarding the mechanism of carcinogenic action, models or procedures that incorporate low-dose linearity are preferred when compatible with the limited information." (51 FR 33992, September 24, 1986). Because the data on DEHP are limited and are consistent with a linear model, the application of such a model is appropriate, as provided in the Guidelines.

The commenter also stated that BHP should be applied to raise the RQ for DEHP above its primary criteria level of 100 pounds. As discussed above in Section II.B.2.a of this preamble, however, the Agency has decided not to apply BHP to adjust upward the RQs of potential carcinogens that are assigned primary criteria RQs of 100 pounds. Therefore, the RQ for DEHP will remain at 100 pounds, as proposed.

e. Carbon tetrachloride. One commenter objected to the proposed 10-pound RQ for carbon tetrachloride, arguing that it would result in a requirement to report a release of less than one gallon of this CERCLA hazardous substance. The commenter noted that EPA's risk estimate for exposure to potential carcinogens normally assumes a 70-year lifetime exposure, whereas the exposure to a 10-pound release of a volatile hazardous substance is acute rather than chronic. The commenter claimed that carbon tetrachloride is a low-potency animal carcinogen and poses "no risk to the public health" in amounts between one and 10 pounds.

EPA disagrees with the commenter that exposure to a hazardous substance resulting from episodic releases is acute rather than chronic, because one-time releases can result in chronic exposure through long-term contamination of environmental media such as ground water. In addition, although the commenter is correct that EPA's analysis assumes a 70-year lifetime exposure, the purpose of the analysis is to establish a relative ranking, not to assess absolute risk, as the commenter mistakenly implies. This analysis is performed in accordance with the Agency's Guidelines for Carcinogen Risk Assessment. Uniform application of these Guidelines is necessary to establish valid relative rankings for all potential carcinogens. After a re-examination of the Agency's analysis of carbon tetrachloride, EPA remains convinced that this hazardous substance was properly classified; therefore, the final RQ adjustment for carbon tetrachloride is being promulgated at 10 pounds, as proposed. Likewise, the final RQ adjustment for waste stream F002, which contains carbon tetrachloride as a constituent, is being promulgated today at 10 pounds (see Section II.C.1 of this preamble).

f. Chloroform. Three commenters stated that the proposed 10-pound RQ for chloroform would result in frequent and burdensome reporting of small releases of chloroform incidental to normal manufacturing operations. The commenters urged retention of the statutory 5000-pound RQ. One of these commenters stated that because millions of gallons of process wastewater are handled at bleached paper facilities in the course of their normal manufacturing operations, reportable quantities of chloroform would be released every day that such facilities are in operation.

Congress has provided for reduced reporting of releases of an RQ or more of a hazardous substance that are continuous and stable in quantity and rate. The commenter may wish to evaluate whether the releases of chloroform-containing wastewater qualify for this reduced reporting under CERCLA section 103(f)(2). If the releases meet the criteria set forth in that section (see Section I.A of this preamble for a summary of the criteria), the commenter need only report its releases annually or when there is a statistically significant increase in the amount released. A proposed rule published on April 19, 1988 (53 FR 12868) describes the reduced reporting requirements for continuous releases in greater detail.

The same commenter claimed that EPA data contained in Volume 3 of the Technical Background Document overstate the risks associated with chloroform because: (1) The Agency erroneously relied on a National Cancer Institute (NCI) mouse study where chloroform was administered through corn oil, despite data showing that corn oil alters absorption and metabolism of the test substance and acts independently as a tumor promoter; and (2) EPA used a 95-percent upper confidence limit generated by a linearized multi-stage model even though the weight of the evidence indicates that chloroform is not genotoxic and, therefore, nonlinearity should be used in modeling procedures.

The Agency acknowledges that data exist indicating that corn oil may enhance the tumor yield of specific chemical agents in certain cases. In this case, however, the increased tumor incidence in the chloroform-treated animals far exceeded any tumor-promoting effect that reasonably can be ascribed to corn oil. Furthermore, use of corn oil to administer chloroform may have a beneficial effect for predicting human responses, because the corn oil helps to spread the daily chloroform doses over a longer duration which more closely correlates with anticipated human exposure patterns. Accordingly, the Agency believes that it appropriately considered the NCI study noted above in assessing the potential carcinogenicity of chloroform.

The mechanism of chloroform carcinogenicity has not been determined conclusively. Likewise, there is insufficient evidence to conclude that chloroform is nongenotoxic. The Agency disagrees with the assertion that use of a linear model to predict the potency of chloroform is inappropriate for the same reasons stated above in the response to a similar comment regarding DEHP.

[22] U.S. EPA "Workshop on DEHP Risk Assessment," Bethesda, MD, April 19–20, 1988.

One commenter argued that chloroform "is extremely biodegradable" and, therefore, should receive a 100-pound RQ based on the application of BHP. The Agency, however, has not identified data on chloroform that support the commenter's assertion, nor did the commenter provide such data.

g. Chromium and chromium compounds. Several commenters objected to the Agency's classification of chromium metal and any form of chromium other than hexavalent chromium as a potential carcinogen. The commenters claimed that the Agency provided insufficient justification for its decision not to differentiate between hexavalent chromium compounds and other chromium compounds. The commenters also claimed that the Agency improperly failed to distinguish between potentially airborne forms of hexavalent chromium and other forms because the predominant evidence supporting the carcinogenicity of hexavalent chromium is based on inhalation studies. Commenters also questioned the potential for exposure to hexavalent chromium. For instance, commenters argued that EPA concluded in its own technical background document for chromium that hexavalent chromium (i.e., chromium (VI)) is readily reduced in the environment to trivalent chromium (i.e., chromium (III)).

The Agency agrees that the carcinogenic chromium (VI) is rapidly reduced to the more innocuous chromium (III) when exposed to the environment. Thus, as mentioned in Section II.B.2.a, the proposed one-pound RQ adjustment for chromium (VI) compounds has been raised to 10 pounds in this final rule based on the application of the secondary RQ adjustment criterion of BHP. This change affects the final RQs for 10 hexavalent chromium compounds,[23] seven waste streams that contain such compounds as constituents,[24] and unlisted hazardous wastes that are EP toxic by virtue of their chromium (VI) constituents, all of whose proposed one-pound RQs have been raised to 10 pounds in this final rule. EPA disagrees, however, with the commenter's suggestion that the Agency should distinguish between potential exposure to chromium (VI) compounds through air and through other media. EPA establishes a single RQ for each hazardous substance, regardless of the medium into which the substance is released.

After reviewing the comments and the technical basis for proposing a one-pound RQ adjustment for chromium metal, the Agency has determined that there is no evidence implicating chromium metal as a potential carcinogen. The Agency also has determined that chromium metal is biologically inert. Accordingly, the final RQ adjustment for chromium metal is being promulgated today at 5000 pounds.

h. Hexachlorobutadiene. One commenter stated that the proposed one-pound RQ for hexachlorobutadiene (HCBD) was inconsistent with the RQ profile document for this substance, which indicated an RQ of 100 pounds. The commenter stated that the RQs for HCBD and waste streams K016 and K030 (both of which contain HCBD) should also be adjusted to 100 pounds. The Agency disagrees that the RQ for HCBD should be 100 pounds. Although the RQ profile for HCBD does indicate a 100-pound RQ based on potential carcinogenicity, the aquatic toxicity data for HCBD support a one-pound RQ. The Agency therefore is promulgating final RQ adjustments of one pound for HCBD and waste streams K016 and K030 based on the lowest primary criteria RQ for these substances.

i. Lead and lead compounds. In the March 16, 1987 NPRM (52 FR 8140), EPA proposed 10-pound RQs for lead acetate and lead phosphate based on potential carcinogenicity. As discussed in a second NPRM published on March 2, 1988 (53 FR 6762), the Agency reproposed the RQs for these two substances from 10 pounds to 100 pounds based on additional evaluation of the carcinogenicity of lead metal and lead compounds by the Agency's Human Health Assessment Group, or HHAG (formerly the Carcinogen Assessment Group, or CAG). On November 30, 1988, EPA's Science Advisory Board (SAB) formally requested the opportunity to review the basis for the HHAG's determination that lead and lead compounds are potential carcinogens. EPA has decided to retain the statutory RQs for lead acetate and lead phosphate (5000 pounds and one pound, respectively) pending the completion of SAB review. Final RQ adjustments for these two substances, as well as the public comments on the proposed RQ adjustments for these substances, will be addressed in a future action.

RQ adjustments for three other hazardous substances—lead metal, lead stearate, and lead sulfide—also were proposed in the March 2, 1988 NPRM. SAB review of the potential carcinogenicity of lead and lead compounds may affect the RQ adjustments for these three substances as well as the RQ adjustments for lead acetate and lead phosphate. Therefore, the statutory RQ for lead metal (one pound), the current adjusted RQ for lead stearate (5000 pounds), and the current adjusted RQ for lead sulfide (5000 pounds) will remain in effect pending completion of SAB review (lead stearate and lead sulfide were assigned final RQ adjustments of 5000 pounds in the September 29, 1986 final rule). The final RQ adjustment for lead metal, the RQ readjustments for lead stearate and lead sulfide, and the public comments on the RQ adjustments for these three substances will be addressed in the future action mentioned above.

In addition, 11 waste streams (K002, K003, K005, K048, K049, K051, K061, K062, K069, K086, and K100) [25] may contain as constituents lead metal and the four lead compounds (lead acetate, lead phosphate, lead stearate, and lead sulfide) whose existing (i.e., statutory or final adjusted) RQs are being retained in this final rule. The existing RQs for two of these substances—lead metal and lead phosphate—are one pound. Because the RQ for a waste stream is the lowest RQ of any of its constituents, the one-pound existing RQs for lead metal and lead phosphate result in one-pound RQs for the 11 waste streams that may contain these substances as constituents. Thus, the Agency is retaining the one-pound statutory RQs for these 11 waste streams pending the completion of SAB review of the potential carcinogenicity of lead and lead compounds. Final RQ adjustments for these 11 waste streams will be addressed in the future action mentioned above.

j. Methyl chloride. One commenter objected to the proposed 100-pound RQ for methyl chloride on the basis of both ignitability and potential carcinogenicity. The commenter stated that there is no reasonable possibility that a release of 100 pounds of methyl chloride could create an ignitable condition because this substance diffuses rapidly. The commenter also stated that a Federal response to such a release would never be warranted.

The Agency disagrees. Although it is true that methyl chloride diffuses

[23] These 10 compounds are: ammonium bichromate, ammonium chromate, calcium chromate, chromic acid, lithium chromate, potassium bichromate, potassium chromate, sodium bichromate, sodium chromate, and strontium chromate.

[24] These seven waste streams are: waste streams F006, F019, K004, K006, K007, K008, and K050.

[25] Comments on the RQs proposed in the March 16, 1987 NPRM for three of these waste streams—K048, K049, and K051—are addressed in Section II.C.2.o of this preamble.

rapidly, as it dissipates it mixes with air, thus increasing the probability of ignition. The Agency also cannot agree that a release of less than 1000 pounds of methyl chloride would never warrant a Federal response. As stated earlier, the likelihood of such a response depends on the circumstances of a release. Accordingly, the Agency is promulgating a final RQ adjustment of 100 pounds for methyl chloride based on both ignitability and, as discussed below, potential carcinogenicity.

The commenter further stated that methyl chloride is nongenotoxic and, therefore, should be ranked for RQ adjustment based on criteria other than potential carcinogenicity. The data cited by the commenter as demonstrating that methyl chloride is not genotoxic, however, do not support the commenter's conclusion. Rather, the data indicate that methyl chloride is a weak genotoxicant that causes a degree of genetic damage. Moreover, methyl chloride has been shown conclusively to induce tumors in animals, acting either alone or as a synergist. Accordingly, the Agency has determined that promulgating an RQ for methyl chloride on the basis of potential carcinogenicity is appropriate.

The commenter also suggested that, if the RQ for methyl chloride is based on potential carcinogenicity, the linear model should not be applied because a minimum dose is required to cause cancer. The Agency disagrees with the argument that use of a linear model to predict the potency of methyl chloride is inappropriate for the same reasons stated above in the response to a similar comment regarding DEHP.

k. Nickel and nickel compounds. In the March 16, 1987 NPRM, the Agency proposed the following RQ adjustments from the statutory RQs for nickel metal and nickel compounds:

Substance	Statutory RQ	Proposed RQ
Nickel metal	1	1
Nickel ammonium sulfate	5000	100
Nickel carbonyl	1	10
Nickel chloride	5000	100
Nickel cyanide	1	10
Nickel hydroxide	1000	10
Nickel nitrate	5000	100
Nickel sulfate	5000	100

The Agency received no comments on the proposed RQ adjustments for nickel carbonyl and nickel cyanide but received several comments on the proposed RQ adjustments for nickel metal, nickel ammonium sulfate, nickel chloride, nickel nitrate, nickel sulfate, and nickel hydroxide. For the reasons that follow, the Agency is promulgating final RQ adjustments as proposed for all nickel compounds, but is raising the RQ adjustment for nickel metal from the proposed one-pound level to 100 pounds.

Several commenters asserted that the Agency erred in characterizing nickel metal as a potential carcinogen on the basis of epidemiological data from studies of nickel refinery dust because nickel metal, if present at all, is only a minor component of nickel refinery dust.

The proposed one-pound RQ for nickel metal was based on an epidemiological study of nickel refinery workers that indicated a weight-of-evidence Group A classification. The Agency agrees with the commenters that it would be inappropriate to base the RQ for nickel metal on this study because the carcinogenic effects observed can be attributed primarily to nickel compounds such as nickel subsulfide. Therefore, after reviewing its Health Assessment Document for nickel metal, EPA has decided to revise the weight-of-evidence classification of nickel metal from Group A to Group C based on limited animal evidence and inadequate human evidence of nickel metal's carcinogenicity. This change results in a 100-pound final RQ for nickel metal.[26]

In the March 16, 1987 NPRM, the Agency proposed to adjust the RQs of nickel ammonium sulfate, nickel chloride, nickel nitrate, and nickel sulfate to 100 pounds on the basis of potential carcinogenicity. These compounds are soluble nickel salts that contain nickel (II) ion, which has been implicated as a potential carcinogen on the basis of experimental data from studies of nickel acetate.

One commenter stated that the Agency improperly relied upon the nickel ion hypothesis as the basis for proposing RQ adjustments for these four nickel compounds. The commenter asserted that the hypothesis is speculative and that the data on the carcinogenicity of the nickel (II) ion relied upon by the Agency to establish its potential carcinogenicity are similar to data on the ions of other metals (e.g., copper, zinc, iron, manganese, cobalt, lead, and mercury) that were not implicated as potential carcinogens. Other commenters stated that no data exist directly implicating soluble nickel salts as potential carcinogens.

The Agency disagrees. Although not all soluble nickel salts have been tested for animal carcinogenicity, there is limited evidence to support the carcinogenicity of nickel acetate. EPA believes that the solubility of nickel compounds affects cellular uptake of the nickel ion, which in turn affects carcinogenesis because the nickel ion is believed to be the ultimate carcinogenic form of nickel, and because (as the commenter acknowledges) the nickel compounds whose RQs are adjusted in this rule all are relatively soluble. In addition, the solubilities of these nickel compounds are not necessarily compound-specific.[27] The Agency, therefore, believes that the evidence on nickel acetate supports the hypothesis that the nickel ion is carcinogenic, which in turn justifies the treatment of other soluble nickel compounds as potential carcinogens. The Agency believes that for nickel ammonium sulfate, nickel chloride, nickel nitrate, and nickel sulfate (all soluble nickel salts), there is "limited" evidence of animal carcinogenicity and "inadequate" evidence of human carcinogenicity; these hazardous substances are therefore placed in weight-of-evidence Group C. Because there are no data on which to base potency calculations, they are classified as potency Group 2, providing a hazard ranking of "low." Thus, the RQs of these soluble nickel salts, based on potential carcinogenicity (as well as chronic toxicity), are adjusted to 100 pounds in this rule.

In the March 16, 1987 NPRM, the Agency proposed a 10-pound RQ for nickel hydroxide, a nickel compound that is only slightly water soluble, on the basis of chronic toxicity. There are no chronic toxicity data on this substance; thus, the Agency relied on an analogous substance to adjust the statutory one-pound RQ. The surrogate substance chosen was nickel subsulfide, which is slightly less water-soluble than nickel hydroxide. One commenter indicated that the solubility of substances in water is not necessarily analogous to the solubility of substances in body fluids, and that it is the solubility of a compound in biological fluids, not in water, that affects absorption of a compound. The Agency agrees. In the absence of data to the contrary (which is the case here), however, the Agency's policy is to use the closest possible analogy. The Agency, therefore, is basing the 10-pound final RQ adjustment for nickel hydroxide on data from studies of nickel subsulfide.

[26] This final RQ for nickel metal, which is based on potential carcinogenicity, is subject to change pending the Agency's analysis of the most recent ignitability data for this hazardous substance.

[27] This is in contrast to insoluble nickel compounds, for which the Agency believes that carcinogenicity and other forms of toxicity are compound-specific.

l. Polychlorinated biphenyls. In the March 16, 1987 NPRM, EPA proposed to lower the statutory 10-pound RQ for polychlorinated biphenyls (PCBs) to one pound, based on aquatic toxicity (see 52 FR 8147). Several commenters objected to the proposed one-pound RQ adjustment for PCBs on both technical and policy grounds.

Several commenters suggested that a one-pound RQ for PCBs is inconsistent with other EPA regulations and policies. For instance, commenters argued that a one-pound RQ is duplicative of requirements under the Toxic Substances Control Act (TSCA) for reporting of spills of PCBs in amounts greater than 50 ppm (see 40 CFR 761). These commenters stated that a one-pound RQ for PCBs would increase significantly the reporting burden without promoting the Agency's goal of environmental protection. The commenters further claimed that in the PCB regulations under TSCA, the Agency has acknowledged that the normal operation of PCB-containing electrical equipment (which includes routine leaks) does not present an unreasonable risk to human health or the environment.

Reporting of PCB releases under both CERCLA and TSCA is not duplicative because the cleanup authority under the two statutory schemes is different: CERCLA reporting authorizes and ensures timely cleanup of releases by or under the supervision of the Federal government, whereas no explicit Federal cleanup authority exists under TSCA.[28] Furthermore, reporting under both CERCLA and TSCA is required very rarely and only with respect to the most serious releases. Under TSCA, spills of more than 10 pounds of *PCB-containing material* must be reported to the appropriate EPA Regional Administrator (40 CFR 761.125). This reporting requirement is limited to spills of material containing PCBs at concentrations of 50 ppm or greater. Under CERCLA, a release of one pound or more of *pure PCBs* must be reported to the National Response Center. For CERCLA notification purposes, the CWA mixture rule may be applied. Thus, for example, a release of 15 pounds of transformer fluid known to contain 50 ppm PCBs is generally reportable under TSCA but not under CERCLA. In order for a release of transformer fluid containing PCBs at a concentration of 50 ppm to be reportable under CERCLA, assuming a one-pound RQ for PCBs, the release generally would have to be equal to or greater than 20,000 pounds. Under these extreme circumstances, the Agency does not view a requirement to notify both the National Response Center and the appropriate EPA Regional Administrator as an undue burden.

It is true that, when the concentration of PCBs is unknown, TSCA (as well as CERCLA) requires that a substance be treated as pure PCBs. However, EPA believes that in most cases users of PCB-containing equipment are aware of its PCB concentration levels. Because the use of PCB-containing electrical equipment is authorized only when such equipment contains certain specified concentrations of PCBs (see 40 CFR 761.30), users of such equipment must know its PCB concentrations in order to avail themselves of exemptions from the ban against the use of PCBs (see TSCA section 6(e)) that would otherwise apply. Thus, owners or operators of PCB-containing equipment should have the information necessary to apply the CWA mixture rule when determining whether a release of PCBs requires reporting under CERCLA. Because most PCB-containing equipment contains PCBs in concentrations much lower than 100 percent, the Agency believes that a one-pound RQ for PCBs will not result in a significant overlap in reporting under CERCLA and TSCA.

In addition, EPA does not believe that its decision to permit the use of PCB-containing equipment that leaks under normal operating conditions, if the concentration of PCBs is 50 ppm or less, is equivalent to a determination that PCBs do not pose a hazard to human health and welfare and the environment. The regulations promulgated under TSCA balance the need to minimize exposure to PCBs with the costs of removing PCB-containing equipment from service. Although it is true that these regulations (40 CFR 761.30(e)) authorize the use of PCBs in hydraulic systems, such authorization is limited to equipment containing PCBs in concentrations of 50 ppm or less and includes strict handling requirements. Under no circumstances does EPA allow the use of equipment that leaks under normal operating conditions if the equipment contains more than 50 ppm PCBs.

For the reasons discussed above, the Agency has determined that the serious hazards that PCBs pose to human health, welfare, and the environment warrant the one-pound reporting requirement established by this rule.

Several commenters argued that, because PCBs rarely are released directly into surface water, aquatic toxicity is an inappropriate basis for establishing the RQ for PCBs. Moreover, according to these commenters, should such releases occur, there is little chance that PCB concentrations in natural aquatic systems would ever approach levels that are found in the laboratory to be acutely toxic to fish, because of the adsorption of PCBs to sediments and organic matter. Alternatively, commenters suggested that the Agency consider establishing one RQ for releases of PCBs into surface water and a higher RQ for other releases of PCBs.

The Agency disagrees with the assertion that, because releases of PCBs into surface water are rare, the RQ for PCBs should be based on criteria other than aquatic toxicity. Even if most PCB releases occur on land, releases of PCBs into surface water also occur. In addition, PCB releases onto land often are mobilized by surface runoff and flow into water bodies. Such releases also can be carried into ground water and eventually reach sources of drinking water. Moreover, RQs are not intended to reflect the most likely release scenario or the degree of hazard associated with a particular release. Rather, RQ levels serve as threshold levels of notification that, once exceeded, enable the Federal government to determine whether a response is warranted.

The Agency also disagrees with the argument that one RQ should be established for releases of PCBs into surface water and another RQ for releases of PCBs into other media. A single RQ for PCBs will provide a relatively simple reporting system that does not unduly burden either EPA or the regulated community. It should be noted that CERCLA section 102(a) expressly authorizes the Agency to establish a single RQ for each hazardous substance. The legislative history cites simplicity and administrative convenience as reasons why this approach is preferred.[29] Moreover, the Agency lacks the resources necessary to obtain the vast quantity of technical data that would be required to tailor RQs to each release situation and, at the same time, to ensure that RQs are consistent, equitable, and sufficiently protective of human health and welfare and the environment.

[28] The Agency's PCB spill cleanup policy under TSCA, however, provides that Agency-imposed penalties can be avoided if a spill is cleaned up in accordance with the standards set in the policy (see 40 CFR 761.125).

[29] See Senate Report No. 848, 96th Congress, 2d Session 29 (1980).

EPA also disagrees with the statement that concentrations of PCBs lethal to fish achieved in a laboratory setting cannot occur in the environment. One study used by the Agency to establish the RQ for PCBs used raw Lake Superior water. This study therefore duplicated a naturally-occurring environment in the laboratory, including the presence of suspended solids, and still produced toxicity values supporting a one-pound RQ for PCBs.[30]

The Agency further believes that the commenters' statements regarding the low water solubility of PCBs and the mitigating effects of adsorption to organic matter and sediments do not invalidate the proposed one-pound RQ. EPA agrees with the commenters that PCBs may adsorb to the surface of organic and inorganic particles. The literature clearly shows that PCBs are strongly adsorbed to certain solid surfaces, including glass and metal surfaces in laboratory apparatus and soils, sediments, and particulates in the environment. PCBs' properties of low water solubility and adsorption do not affect toxicity, however, because it is likely that stable emulsions of PCBs (i.e., stable suspensions of finely dispersed PCBs in water) are created in the environment through the action of naturally occurring emulsifiers (i.e., organic sediments). Such emulsions may be just as threatening to aquatic life forms as PCBs in true solution. Because stable emulsions of PCBs at concentrations that are lethal to newly-hatched fish have been created in the laboratory without emulsifiers, it is likely that such emulsions could form in the environment where natural emulsifiers are present.

Several commenters objected to the studies cited by the Agency in support of the proposed one-pound RQ for PCBs, claiming that they were poorly designed and that they overestimate toxicity because they use acetone, which contributes to toxicity, as a carrier solvent. Commenters cited an aquatic toxicity study to show that when acetone is employed as a carrier for PCBs, it has a confounding effect on efforts to interpret the results from studies of PCB toxicity.[31] The primary purpose of the study cited by the commenters, however, was to determine how the presence of acetone affects the growth and uptake of PCBs by lake trout, rather than how acetone might influence the toxicity of PCBs. The investigators concluded that statistical analyses revealed no significant differences in mortality in the following four treatment groups: (1) A control group; (2) a group that received acetone only; (3) a group that received acetone and PCBs; and (4) a group that received only PCBs.

Because this study found no difference in mortality between groups of fish exposed to PCBs dissolved in acetone and fish exposed to PCBs alone, and because there are data that support the proposed one-pound RQ for PCBs that were derived without using acetone or any other solvent as a carrier,[32] the data the Agency used to assign a one-pound RQ for PCBs are not invalidated by the commenters' argument regarding the use of acetone as a carrier solvent in studies of the aquatic toxicity of PCBs.

One commenter asserted that inadequate data were provided in the studies regarding the actual concentrations of PCBs used in the testing and that the reported concentrations appear to be the result of a single analysis. The Agency disagrees that the data were inadequate. In fact, in the studies, duplicate samples for each test concentration were collected and then analyzed for their PCB concentrations.

Several commenters asserted that most data on aquatic toxicity support a 10-pound RQ for PCBs. The reason that the greater quantity of data, viewed in isolation, appears to support a 10-pound RQ is that more tests have been performed on life stages of fish that are less susceptible to the toxic effects of PCBs than on life stages that are more sensitive. Indeed, *all* of the data from tests performed on newly-hatched fish support a one-pound RQ.

Several commenters disputed the Agency's reliance on data from tests using early life stages because these stages represent a relatively small portion of a fish's life. Commenters claimed that the Agency incorrectly applied EPA's 1985 National Water Quality Guidelines by using the most sensitive life stage when adjusting the RQ for PCBs. The commenters stated that the Guidelines only require data concerning effects on the most resistant life stage (in this case adult fish) to be rejected when the effects differ by a factor of two or more from effects on the most sensitive life stage (juvenile fish), and that this does not appear to be the case with PCBs.

EPA disagrees with the argument that the RQ for PCBs should not be based on the most sensitive life stage of fish. From the standpoint of population survival, the individuals of greatest value are those that have not yet reached reproductive maturity and those that are capable of reproducing. Individuals no longer capable of reproducing do not significantly influence the survival of the species or the local population. On the other hand, early life stage individuals will mature into reproductive adults and produce new generations. Therefore, protection of the juvenile life stages of fish is of critical importance to the environment.

Moreover, in the Guidelines, EPA states the circumstances under which data from tests using the most resistant life stages should *not* be used. The Guidelines allow the use of data from tests using the least resistant life stage even when such data differ by less than a factor of two from other data on the same species. In fact, in the Guidelines, the Agency encourages the use of data from tests using sensitive species and sensitive life stages (see the Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, pp. 24 and 29, NTIS Document #PB85–227049, January 1985). In addition, the acute aquatic toxicity literature on PCBs does, in fact, contain at least one study that meets the Guidelines' criteria for rejecting the most resistant life-stage data (i.e., the data indicate that toxicity values are two times greater for the most sensitive life stage than for the most resistant).[33]

One commenter argued that it is inappropriate to base the RQ for PCBs, in part, on the fact that PCBs are bioaccumulative insoluble sinkers. This commenter also stated that recent data indicate that PCBs are dechlorinated in sediments by anaerobic bacteria, rendering them less hazardous. Another commenter argued that not only is the proposed downward RQ adjustment for PCBs inappropriate on the basis that PCBs are bioaccumulative insoluble sinkers, but these properties actually make releases of PCBs *less* hazardous. This commenter's statement is premised upon the claimed tendency of bioaccumulative insoluble sinkers "to adsorb to particulates and sediments, * * * [to] have low bioavailability to organisms from the dissolved phase, and * * * [to] remain with the sediments, even if spilled as pure compounds." Therefore, according to this commenter, "the fact that PCBs are insoluble sinkers

[30] See Nebeker et al., 1974. Effect of Polychlorinated Biphenyl Compounds on Survival and Reproduction of the Fathead Minnow and Flagfish. *Trans. Am. Fish. Soc.* 103:562.

[31] See Mac, M.J. et al., 1981. Potential Influence of Acetone in Aquatic Biosassays Testing the Dynamics and Effects of PCBs. *Bull. Env. Contam. Toxicol.* 27:359.

[32] Birge, W.J. et al., 1979. Toxicity of Organic Chemicals to Embryo-Larval Stages of Fish, Ecological Research Service, EPA 560/11–79–007.

[33] Ibid.

acts as a *protective mechanism* compared to chemicals that are more soluble in water" (emphasis in original). Furthermore, the commenter argued, the tendency of PCBs to bioaccumulate also results from the fact that PCBs generally are metabolized relatively slowly. Therefore, bioaccumulation per se does not represent an adverse health effect and is not predictive of adverse health effects on aquatic organisms.

The Agency disagrees. An insoluble chemical that sinks in water (such as PCBs) can accumulate in a way that slowly contaminates the surrounding water, perhaps over a period of years. Therefore, a release of PCBs that is not remedied could cause gradual long-term environmental damage. The dechlorination data cited by the commenter and mentioned above provide no information concerning the rate at which dechlorination of PCBs occurs in the environment. In the absence of data indicating that PCBs degrade at a rate sufficient to meet the criteria for application of BHP, the Agency will not apply BHP to raise the RQ for PCBs. The degree of hazard posed by the bioaccumulation of PCBs contributed to the Agency's decision to rely on data from studies of early life stages, in accordance with the Agency's 1985 National Water Quality Guidelines mentioned above. The primary basis for the RQ of PCBs, however, is toxicity to aquatic organisms. For these reasons, the Agency does not agree with the commenter that the physical properties of PCBs will serve to protect the environment in all release circumstances.

None of the public comments received on the proposed one-pound RQ adjustment for PCBs warrants a different final RQ adjustment. Accordingly, the Agency is promulgating a final adjusted RQ of one pound for PCBs in this rule.

m. Trichloroethylene. Two commenters stated that EPA's classification of trichloroethylene as a potential carcinogen is contrary to the findings of the Agency's Science Advisory Board (SAB) that the bioassay data for this substance constitute only limited evidence of animal carcinogenicity and are inadequate for the evaluation of human cancer risk.

In March 1988, the SAB, commenting on EPA's 1987 risk-assessment for trichloroethylene, stated that the weight of evidence for male mouse hepatocellular carcinoma indicates a range between Group C and Group B2.

In the Technical Background Document for the March 16, 1987 NPRM (Technical Background Document to Support Rulemaking Pursuant to CERCLA Section 102, Volume 3, December 1986), EPA noted that trichloroethylene was classified as a weight-of-evidence Group B2 substance because of "sufficient" evidence of carcinogenicity from animal studies. Because of its Group 3 potency ranking, trichloroethylene received a low hazard ranking and a 100-pound proposed RQ. The Agency's most recent draft updated assessment for trichloroethylene (June 1987) provides additional support for a Group B2 classification. This B2 classification is consistent with the SAB's finding that the weight of evidence for trichloroethylene indicates a range between Group C and Group B2. However, it is important to note that EPA's classification for trichloroethylene is based on a draft carcinogenicity assessment that has not yet been finalized. If this classification changes based on the final assessment, and the change warrants an adjustment of the RQ for trichloroethylene, the RQ will be adjusted in a future rulemaking. Pending the results of EPA's final carcinogenicity assessment, a 100-pound RQ for trichloroethylene is promulgated in this rule based on a weight-of-evidence Group B2, potency Group 3 determination.

n. Vinyl chloride. The 10-pound RQ for vinyl chloride originally proposed in the March 16, 1987 NPRM was revised to one pound in a supplement to the proposed rule published on April 11, 1988 (53 FR 11890). One commenter on the supplement to the proposed rule suggested that EPA promulgate a 10-pound rather than a one-pound RQ for vinyl chloride because the epidemiological studies that support the one-pound RQ used "extremely high concentrations" of vinyl chloride. The commenter also noted that since the studies were performed, workplace exposure to vinyl chloride has been lowered substantially. The commenter further claimed that the lower one-pound reporting trigger is unjustified because plant personnel who should be free to clean up small releases of vinyl chloride will instead be required to spend time discussing these releases on the telephone.

EPA disagrees with the commenter on each of these points. Vinyl chloride has been shown to produce a significantly increased incidence of brain, lung, liver, and kidney tumors in studies of three different animal species. Similar carcinogenic effects have been observed in epidemiological studies of workers exposed to vinyl chloride. Although evidence of the carcinogenic effect of vinyl chloride in humans has come from studies of workers exposed to high doses of vinyl chloride, there is no evidence of an exposure level below which no increased risk of cancer would occur in humans.[34] Thus, neither the high doses during the period over which these epidemiological studies were performed nor any subsequent reduction in these doses negates the positive carcinogenic effects of vinyl chloride. EPA also disagrees with the commenter's suggestion that the requirement to notify the National Response Center by telephone of a release of vinyl chloride in an amount equal to or greater than one pound interferes with any efforts the person in charge may make to prevent a further release. EPA encourages plant personnel to take any appropriate measures to minimize releases of hazardous substances. While skilled personnel are working to stop a release, the management of the organization may designate any other employee to communicate information about the release to the National Response Center. As a practical matter, then, the obligation to make a telephone report of the release of an RQ or more of a hazardous substance should not divert resources from cleaning up an existing release or preventing a further release.

o. Waste streams. One commenter stated that an error was made in the Agency's derivation of RQs for the pentachlorophenol-containing waste streams F021, F027, and F028, because the Agency wrongly indicated that 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) is present in these waste streams. The commenter stated that this dioxin isomer does not occur in the production of pentachlorophenol and, therefore, would not be present in these waste streams.

The Agency disagrees. Although studies analyzed by the Agency do not indicate that 2,3,7,8-TCDD is contained in waste stream F021, isomers of a closely related substance, hexachlorodibenzo-p-dioxin, are hazardous constituents of this waste stream as set forth in Appendix VII of 40 CFR 261. The Agency has determined that when there are hazardous constituents of a RCRA waste stream that are not CERCLA hazardous substances, an RQ should be developed for these constituents in order to assign an appropriate RQ to the waste stream (see 48 FR 23565, May 25, 1983). In other words, the Agency derives the RQ for waste streams based upon the lowest RQ of all of the hazardous constituents,

[34] IARC Monograph on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, 1979, Volume 19, pp. 377–437, cited in the Fourth Annual NTP Report (1985).

regardless of whether they are CERCLA hazardous substances. The "reference RQ" developed for non-CERCLA substances is for ranking purposes only; no releases of such substances need to be reported to the National Response Center. Isomers of hexachlorodibenzo-p-dioxin would have an RQ of one pound based on their mammalian toxicity. Accordingly, the RQ of waste stream F021 is adjusted to one pound in this final rule.

Waste stream F027 and waste stream F028 contain 2,3,7,8-TCDD as well as hexachlorodibenzo-p-dioxins and tetrachlorodibenzofurans. The latter substance is not a CERCLA hazardous substance but is assigned a reference RQ of one pound as a means of assigning an RQ to these waste streams. Accordingly, even if 2,3,7,8-TCDD were not present in any particular waste identified as F027 or F028, the RQ for the waste streams would still be one pound based on one or more other hazardous constituents present in the waste.

One commenter disputed the Agency's proposal to assign an adjusted RQ of one pound to waste streams K016 and K030. Relying on the potential carcinogenicity profile for hexachlorobutadiene (a constituent of these waste streams), the commenter stated that the "low" hazard ranking for this substance corresponds to an RQ of 100 pounds. Therefore, the commenter suggested, the RQ of these waste streams should be adjusted to 100 pounds.

The Agency disagrees. The RQ for hexachlorobutadiene is based on aquatic toxicity data that support a one-pound RQ. Because hexachlorobutadiene has the lowest RQ of all the constituents in these waste streams, the adjusted RQs for waste streams K016 and K030 are being promulgated today at one pound.

Another commenter stated that the proposed one-pound RQs for waste streams K048, K049, K050, and K051 are unnecessarily low, because a release of 2000 pounds of these waste streams would have to occur before the RQ of one pound for chromium (VI) or lead metal (the constituents on which the RQs for these waste streams are based, according to the commenter) would be exceeded. The commenter suggested that EPA establish an RQ of 1000 pounds for these four waste streams. The Agency disagrees with the suggestion that the proposed one-pound RQs for these waste streams should be raised to 1000 pounds.

With respect to waste stream K050, the commenter is mistaken that the RQ is partially based on the RQ for lead metal: the Agency has determined that waste stream K050 does not contain lead metal or lead compounds. Rather, the RQ for this waste stream is based solely on the RQ for chromium (VI) compounds. Because the RQ for chromium (VI) compounds is being raised from the proposed one-pound level to 10 pounds in this final rule (see Section II.B.2.a of this preamble), the RQ for waste stream K050 also is promulgated at 10 pounds. Following the CWA mixture rule, if the concentration of chromium (VI) compounds in this waste stream is known, reporting is required when a quantity of 10 pounds or more of chromium (VI) compounds is released. In the absence of such knowledge, reporting is required when an RQ (10 pounds) or more of waste stream K050 is released.

With respect to waste streams K048, K049, and K051, EPA disagrees that the proposed RQs for these waste streams were based on the RQs for lead metal and lead compounds. Rather, the RQs for these waste streams were proposed at one pound in the March 16, 1987 NPRM based on the proposed one-pound RQ for chromium (VI) compounds. As explained in Section II.B.2.a of this preamble, the final RQ for chromium (VI) compounds has been adjusted upward one level to 10 pounds based on the application of BHP.

Also, as explained in Section II.C.2.i of this preamble, EPA has decided since publication of the March 16, 1987 NPRM to retain the current adjusted RQs for lead stearate and lead sulfide (5000 pounds) and the statutory RQs for lead metal (one pound), lead phosphate (one pound), and lead acetate (5000 pounds). Therefore, the Agency has decided to retain the statutory one-pound RQs for waste streams K048, K049, and K051 along with the other eight waste streams that contain lead metal or lead compounds.[35]

Of course, if the concentrations of the constituents of the waste stream are known, the CWA mixture rule may be applied. The commenter has stated that 2000 pounds of waste streams K048, K049, and K051 would have to be released before an RQ of chromium (VI) compounds is reached. Thus, the commenter apparently knows the concentrations of chromium (VI) compounds in these waste streams. If the concentrations of the constituents of a waste stream are known, reporting is required only when an RQ (e.g., 10 pounds for chromium (VI) compounds) or more of one of these constituents is released. If the concentrations of the constituents are not known, reporting is required when an RQ or more of the waste stream is released (one pound for waste streams K048, K049, and K051).

One commenter believed that the 10-pound RQ for waste stream F002 proposed in the April 11, 1988 supplement (see 53 FR 11890 and the discussion in Section II.C.1 above) represents an incorrect interpretation of EPA's December 31, 1985 final rule (50 FR 53315). The commenter stated that the Agency had rejected the approach of consolidating waste streams F001, F002, F004, and F005 into a single listing in that rule.

EPA disagrees that the Agency's interpretation of the reporting requirements for waste stream F002 discussed in the April 11, 1988 supplement (and summarized in Section III.C.1 above) is incorrect. On April 30, 1985 (50 FR 18378), EPA proposed to delete waste streams F002 through F005 and to modify waste stream F001 to include all hazardous constituents previously listed under waste streams F001 through F005. The purposes of this proposed action were to simplify recordkeeping and avoid confusion regarding the appropriate waste number to use for reporting solvent mixtures containing several listed solvents.

Commenters on the April 30, 1985 proposed rule indicated that the proposed change would increase compliance costs and cause confusion in recordkeeping. As a result, the Agency retained the original listings for waste streams F001–F005, but modified their definitions to include mixtures containing, before use, one or more of the solvents listed under the other waste numbers.

When assigning an RQ to a waste stream, the Agency considers the RQ of the constituents of the waste stream (48 FR 23565, May 25, 1983). The Agency determines the RQ of each waste stream constituent and assigns the lowest of these to the waste stream itself. Because, by virtue of the December 31, 1985 final rule, the definitions of waste streams F001–F005 now include mixtures of solvents that contain one or more solvents listed under the other waste numbers, the Agency must consider the RQs of these other solvents when determining the RQs for waste streams. To determine the appropriate RQ for waste stream F002, the Agency considers not only RQs of the solvents listed under F002, but also the RQs of those solvents listed under waste streams F001, F004, and F005. Because waste streams F001 and F005 contain solvents that have 10-pound RQs, the RQ for waste stream F002 is 10 pounds.

[35] These eight waste streams are: K002, K003, K005, K061, K062, K069, K086, and K100.

If the concentrations of the hazardous constituents of waste stream F002 are unknown, reporting is required when 10 pounds or more of F002 is released. If the concentrations of all of the constituents are known, reporting is required only when an RQ or more of one of the individual constituents is released.

The commenter further suggested that when a waste contains constituents listed under more than one waste stream, the waste has "dual listing status." The commenter used as an example of a spent solvent containing five percent benzene and five percent chlorobenzene. The commenter claimed that such a waste "would have both F005 and F002 listing status," and therefore would have an RQ of 10 pounds. The Agency agrees that the waste described by the commenter would have a 10-pound RQ, but disagrees with the commenter's reasoning. First, a single waste cannot be listed under more than one waste number (e.g., F002 and F005). If the person in charge knows the concentrations of two constituents in a waste, as in the example provided, the CWA mixture rule should be applied to determine the appropriate RQ. Because benzene has a 10-pound final RQ and chlorobenzene has a 100-pound final RQ, reporting is required when 10 pounds or more of benzene or 100 pounds or more of chlorobenzene is released.

After promulgation of this final rule, the RQs for the five mixed solvent waste streams will be: F001—10 pounds, F002—10 pounds, F003—100 pounds, F004—1000 pounds, and F005—100 pounds. As described above in Section III.C.1, the Agency intends to adjust RQs for waste streams F003, F004, and F005 to 10 pounds in a future rulemaking. When 10-pound RQs are promulgated for all of these waste streams, releases of mixtures of any of the solvent constituents will be required at or above the 10-pound level when the concentrations of the solvents are unknown.

D. Update on Methyl Isocyanate.

EPA initially proposed to adjust the statutory one-pound RQ for methyl isocyanate (MIC) to 100 pounds in the May 25, 1983 NPRM. After the December 3, 1984 release of MIC in Bhopal, India and the resultant loss of human life, EPA withdrew this proposed RQ adjustment in the April 4, 1985 final rule (50 FR 13456) and retained the statutory one-pound RQ, pending further analysis of the data on MIC.

In a March 2, 1988 proposed rule (53 FR 6765), the Agency announced that it had obtained additional toxicological data on MIC, including new animal studies documented in *Environmental Health Perspectives*, Volume 72, and that it was awaiting human toxicological and epidemiological data associated with the release of MIC in Bhopal. The Agency stated in the March 2, 1988 NPRM that it has decided to retain the statutory one-pound RQ for MIC pending completion of this analysis, rather than propose an RQ adjustment without first completing a thorough evaluation of the human toxicity data.

III. RQ Ajustments Under CWA Section 311

In the April 4, 1985 final rule (50 FR 13456), EPA amended 40 CFR 117.3 to make RQs adjusted under CERCLA the applicable RQs for notification of discharges of hazardous substances pursuant to CWA section 311. Thus, the RQ adjustments contained in this rulemaking apply to both CERCLA and CWA section 311 RQs. Of the 187 individual hazardous substances in this rulemaking, 67 were originally listed as hazardous substances and assigned RQs under section 311 of the CWA. The final RQ adjustments promulgated today lower the statutory CWA RQs of 52 of these substances, raise the statutory RQs of two of the substances, and leave the RQs of 13 of the substances at the statutory level. RQs under both CERCLA and the CWA are set forth in Table 302.4. Where there is a release of a hazardous substance into navigable waters, a single report to the National Response Center by the person in charge will satisfy the notification requirements of both statutes. For further discussion of the relationship between CERCLA RQs and CWA section 311 RQs, see the preambles to the May 25, 1983 proposed rule (48 FR 23569) and the April 4, 1985 final rule (50 FR 13473).

IV. Delisting of Ammonium Thiosulfate as a Hazardous Substance

On March 7, 1986, Kerley Industries, Inc. filed a petition requesting the Agency to delist ammonium thiosulfate as a hazardous substance under section 311 of the CWA, and, as a result, also under section 101(14) of CERCLA. Kerley Industries stated that the classification of ammonium thiosulfate as a hazardous substance under the CWA was based on aquatic toxicity by inference from an inappropriate reference compound, ammonium sulfite. Kerley further claimed that the toxicological test data on other more closely related alkali metal thiosulfate salts indicate that the thiosulfate chemical family is physiologically innocuous.

Based on the available information, the Agency in the March 2, 1988 NPRM (see 53 FR 6766) determined that ammonium thiosulfate does not meet the listing criteria for aquatic toxicity, and, therefore, proposed to delist ammonium thiosulfate as a hazardous substance under section 311 of the CWA, 40 CFR 116.4, and 40 CFR 117.3. As a result of the delisting under section 311, the substance would be a "hazardous substance" under section 101(14) of CERCLA only by virtue of its designation under section 102 of CERCLA (section 101(14)(B)). In the March 2, 1988 NPRM, EPA solicited public comments with supporting data on whether ammonium thiosulfate should be delisted as a hazardous substance under the CWA and CERCLA.

All of the commenters who addressed the ammonium thiosulfate issue supported EPA's proposed delisting of ammonium thiosulfate as a hazardous substance. Five commenters stated that the current classification of ammonium thiosulfate as a hazardous substance has resulted in increased insurance costs to transport this substance. Four commenters suggested that toxicological data derived from tests conducted on ammonium thiosulfate demonstrate that the LC_{50} for the substance is well above the 500 mg/l for aquatic toxicity—the threshold listing criterion under the CWA. EPA agrees with the commenters that ammonium thiosulfate does not meet the listing criteria for aquatic toxicity. In addition, the Agency has analyzed ammonium thiosulfate under the primary criteria other than aquatic toxicity and determined that there is no independent basis for listing this substance as hazardous under CERCLA section 102. Therefore, EPA is revoking in this rule its listing of ammonium thiosulfate under CWA section 311, 40 CFR 116.4, and 40 CFR 117.3 and its designation as a CERCLA hazardous substance under section 102(a) of CERCLA and 40 CFR 302.4(a).

V. Replacement of the Registered Trademark, "Kelthane," With the Generic Name, Dicofol

In response to a July 28, 1987 petition from Rohm and Haas Company, EPA today is changing the registered trademark, "Kelthane," to the generic name, dicofol in Table 116.4 of 40 CFR Part 116, Table 117.3 of 40 CFR Part 117, and Table 302.4 of 40 CFR Part 302. The term Kelthane is on these lists because it originally was listed as a hazardous substance under section 311 of the CWA. Kelthane has been assigned a final adjusted RQ of 10 pounds (50 FR

13489, April 4, 1985). The Agency believes that listing this hazardous substance by its generic or chemical name is appropriate because there are companies other than Rohm and Haas that manufacture or generate dicofol. This listing by generic name (dicofol) should reduce the likelihood that Rohm and Haas would be considered liable under section 107(a) of CERCLA for releases of this hazardous substance into the environment for which it is not responsible.

VI. List of Hazardous Substances and Adjusted RQs

The following table lists the RQ adjustments for the hazardous substances whose RQs are being adjusted in this final rule.

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
Acetaldehyde, trichloro-	75876	5000 (2270)
Acetamide, N-(4-ethoxyphenyl)-	62442	100 (45.4)
Acetamide, N-9H-fluoren-2-yl	53963	1 (0.454)
2-Acetylaminofluorene	53963	1 (0.454)
Acrylonitrile	107131	100 (45.4)
Aldrin	309002	1 (0.454)
Amitrole	61825	10 (4.54)
Ammonium bichromate	7789095	10 (4.54)
Ammonium chromate	7788989	10 (4.54)
Aroclor 1016	12674112	1 (0.454)
Aroclor 1221	11104282	1 (0.454)
Aroclor 1232	11141165	1 (0.454)
Aroclor 1242	53469219	1 (0.454)
Aroclor 1248	12672296	1 (0.454)
Aroclor 1254	11097691	1 (0.454)
Aroclor 1260	11096825	1 (0.454)
Arsenic ††	7440382	1 (0.454)
		1 (0.454)
Arsenic acid	1327522	
	7778394	
Arsenic acid H3AsO4	1327522	
	7778394	1 (0.454)
Arsenic disulfide	1303328	1 (0.454)
Arsenic oxide As2O3	1327533	1 (0.454)
Arsenic oxide As2O5	1303282	1 (0.454)
Arsenic pentoxide	1303282	1 (0.454)
Arsenic trichloride	7784341	1 (0.454)
Arsenic trioxide	1327533	1 (0.454)
Arsenic trisulfide	1303339	1 (0.454)
Arsine, diethyl-	692422	1 (0.454)
Arsinic acid, dimethyl	75605	1 (0.454)
Arsonous dichloride, phenyl-	696286	1 (0.454)
Asbestos †††	1332214	1 (0.454)
Auramine	492808	100 (45.4)
Azaserine	115026	1 (0.454)
Aziridine	151564	1 (0.454)
Aziridine, 2-methyl-	75558	1 (0.454)
Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta,8aalpha,8balpha)]-	50077	10 (4.54)
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56495	10 (4.54)
Benz[c]acridine	225514	100 (45.4)
Benz[a]anthracene	56553	10 (4.54)
1,2-Benzanthracene	56553	10 (4.54)
Benz[a]anthracene, 7,12-dimethyl-	57976	1 (0.454)
Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	492808	100 (45.4)
Benzenamine, 4-chloro-2-methyl-, hydrochloride	3165933	100 (45.4)
Benzenamine, 2-methyl-	95534	100 (45.4)
Benzenamine, 4-methyl-	106490	100 (45.4)
Benzenamine, 4,4'-methylenebis(2-chloro-	101144	10 (4.54)
Benzenamine, 2-methyl-, hydrochloride	636215	100 (45.4)
Benzenamine, 2-methyl-5-nitro-	99558	100 (45.4)
Benzenamine, N,N-dimethyl-4-(phenylazo)-	60117	10 (4.54)
Benzene	71432	10 (4.54)
Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-,ethyl ester	510156	10 (4.54)
Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	305033	10 (4.54)
Benzene, chloromethyl-	100447	100 (45.4)
Benzenediamine, ar-methyl-	95807	
	496720	
	823405	
	25376458	10 (4.54)
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117817	100 (45.4)
Benzene,1,1'-(2,2-dichloroethylidene)bis[4-chloro-	72548	1 (0.454)
Benzene, hexachloro-	118741	10 (4.54)
Benzene, 1-methyl-2,4-dinitro-	121142	10 (4.54)
Benzene, 2-methyl-1,3-dinitro-	606202	100 (45.4)
Benzene, pentachloronitro-	82688	100 (45.4)
Benzene,1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	50293	1 (0.454)
Benzene, (trichloromethyl)-	98077	10 (4.54)

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
Benzidine	92875	1 (0.454)
Benzo[a]anthracene	56553	10 (4.54)
1,3-Benzodioxole, 5-(2-propenyl)-	94597	100 (45.4)
1,3-Benzodioxole, 5-(1-propenyl)-	120581	100 (45.4)
1,3-Benzodioxole,5-propyl-	94586	10 (4.54)
Benzo[b]fluoranthene	205992	1 (0.454)
Benzo(k)fluoranthene	207089	5000 (2270)
Benzo[rst]pentaphene	189559	10 (4.54)
Benzo[a]pyrene	50328	1 (0.454)
3,4-Benzopyrene	50328	1 (0.454)
Benzotrichloride	98077	10 (4.54)
1,2-Benzphenanthrene	218019	100 (45.4)
Benzyl chloride	100447	100 (45.4)
Beryllium [1]	7440417	10 (4.54)
Beryllium chloride	7787475	1 (0.454)
Beryllium dust [1]	7440417	10 (4.54)
Beryllium fluoride	7787497	1 (0.454)
Beryllium nitrate	13597994	
	7787555	1 (0.454)
alpha—BHC	319846	10 (4.54)
beta—BHC	319857	1 (0.454)
gamma—BHC	58899	1 (0.454)
2,2'Bioxirane	1464535	10 (4.54)
(1,1'-Biphenyl)-4,4'diamine	92875	1 (0.454)
(1,1'-Biphenyl)-4,4'diamine,3,3'dichloro-	91941	1 (0.454)
(1,1'-Biphenyl)-4,4'diamine,3,3'dimethoxy-	119904	100 (45.4)
(1,1'Biphenyl)-4,4'-diamine,3,3'-dimethyl-	119937	10 (4.54)
Bis(2-chloroethyl) ether	111444	10 (4.54)
Bis(2-ethylhexyl) phthalate	117817	100 (45.4)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87683	1 (0.454)
1-Butanamine, N-butyl-N-nitroso-	924163	10 (4.54)
2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-	303344	10 (4.54)
Cacodylic acid	75605	1 (0.454)
Cadmium [1]	7440439	10 (4.54)
Cadmium acetate	543908	10 (4.54)
Cadmium bromide	7789426	10 (4.54)
Cadmium chloride	10108642	10 (4.54)
Calcium arsenate	7778441	1 (0.454)
Calcium arsenite	52740166	1 (0.454)
Calcium chromate	13765190	10 (4.54)
Camphene, octachloro-	8001352	1 (0.454)
Carbamic acid, ethyl ester	51796	100 (45.4)
Carbamic acid, methylnitroso-, ethyl ester	615532	1 (0.454)
Carbamic chloride, dimethyl-	79447	1 (0.454)
Carbamothioic acid, bis(1-methylethyl)-, S(2,3-dichloro-2-propenyl) ester	2303164	100 (45.4)
Carbon tetrachloride	56235	10 (4.54)
Chloral	75876	5000 (2270)
Chlorambucil	305033	10 (4.54)
Chlordane	57749	1 (0.454)
Chlordane, alpha & gamma isomers	57749	1 (0.454)
Chlordane, technical	57749	1 (0.454)
Chlornaphazine	494031	100 (45.4)
Chlorobenzilate	510156	10 (4.54)
Chloroform	67663	10 (4.54)
Chloromethyl methyl ether	107302	10 (4.54)
4-Chloro-o-toluidine, hydrochloride	3165933	100 (45.4)
Chromic acid	11115745	10(4.54)
	7738945	
Chromic acid H2CrO4, calcium salt	13765190	10 (4.54)
Chromium ††	7440473	5000 (2270)
Chrysene	218019	100 (45.4)
Coke Oven Emissions	N.A.	1 (0.454)
Creosote	8001589	1 (0.454)
Cupric acetoarsenite	12002038	1 (0.454)
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	58899	1 (0.454)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77474	10 (4.54)
Cyclophosphamide	50180	10 (4.54)
Daunomycin	20830813	10 (4.54)
DDD	72548	1 (0.454)
4,4'-DDD	72548	1 (0.454)
DDE	72559	1 (0.454)
4,4'-DDE	72559	1 (0.454)
DDT	50293	1 (0.454)
4,4'-DDT	50293	1 (0.454)
Diallate	2303164	100 (45.4)
Dibenz[a,h]anthracene	53703	1 (0.454)
1,2:5,6-Dibenzanthracene	53703	1 (0.454)

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
Dibenzo[a,h]anthracene	53703	1 (0.454)
Dibenzo[a,i]pyrene	189559	10 (4.54)
1,2-Dibromo-3-chloropropane	96128	1 (0.454)
3,3'-Dichlorobenzidine	91941	1 (0.454)
1,2-Dichloroethane	107062	100 (45.4)
1,1-Dichloroethylene	75354	100 (45.4)
Dichloroethyl ether	111444	10 (4.54)
Dichloromethyl ether	542881	10 (4.54)
Dichlorophenylarsine	696286	1 (0.454)
Dicofol	115322	10 (4.54)
Dieldrin	60571	1 (0.454)
1,2:3,4-Diepoxybutane	1464535	10 (4.54)
Diethylarsine	692422	1 (0.454)
N,N'-Diethylhydrazine	1615801	10 (4.54)
Diethylstilbestrol	56531	1 (0.454)
Dihydrosafrole	94586	10 (4.54)
1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-,(1alpha,4alpha,4abeta,5alpha,8alpha,8beta)-	309002	1 (0.454)
2,7:3,6-Dimethanonaphth[2,3-b]oxirene,3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octa-hydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-	60571	1 (0.454)
3,3'-Dimethoxybenzidine	119904	100 (45.4)
Dimethylaminoazobenzene	60117	10 (4.54)
7,12-Dimethylbenz[a]anthracene	57976	1 (0.454)
3,3'-Dimethylbenzidine	119937	10 (4.54)
Dimethylcarbamoyl chloride	79447	1 (0.454)
1,1-Dimethylhydrazine	57147	10 (4.54)
1,2-Dimethylhydrazine	540738	1 (0.454)
Dimethyl sulfate	77781	100 (45.4)
Dinitrotoluene	25321146	10 (4.54)
3,4-Dinitrotoluene	610399	
2,4-Dinitrotoluene	121142	10 (4.54)
2,6-Dinitrotoluene	606202	100 (45.4)
1,2-Diphenylhydrazine	122667	10 (4.54)
Di-n-propylnitrosamine	621647	10 (4.54)
Epichlorohydrin	106898	100 (45.4)
Ethanamine, N-ethyl-N-nitroso-	55185	1 (0.454)
Ethane, 1,2-dibromo-	106934	1 (0.454)
Ethane, 1,2-dichloro-	107062	100 (45.4)
Ethane, hexachloro-	67721	100 (45.4)
Ethane, 1,1'-oxybis[2-chloro-	111444	10 (4.54)
Ethane, pentachloro-	76017	10 (4.54)
Ethane, 1,1,1,2-tetrachloro-	630206	100 (45.4)
Ethane, 1,1,2,2-tetrachloro-	79345	100 (45.4)
Ethanethioamide	62555	10 (4.54)
Ethane, 1,1,2-trichloro-	79005	100 (45.4)
Ethanol, 2,2'-(nitrosoimino)bis-	1116547	1 (0.454)
Ethenamine, N-methyl-N-nitroso-	4549400	10 (4.54)
Ethene, chloro-	75014	1 (0.454)
Ethene, 1,1-dichloro-	75354	100 (45.4)
Ethene, trichloro-	79016	100 (45.4)
Ethyl carbamate (urethane)	51796	100 (45.4)
Ethylene dibromide	106934	1 (0.454)
Ethylene dichloride	107062	100 (45.4)
Ethylenethiourea	96457	10 (4.54)
Ethylenimine	151564	1 (0.454)
Ethyl methanesulfonate	62500	1 (0.454)
Formaldehyde	50000	100 (45.4)
D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)carbonyl]amino]-	18883664	1 (0.454)
Glycidylaldehyde	765344	10 (4.54)
Guanidine, N-methyl-N'-nitro-N-nitroso-	70257	10 (4.54)
Heptachlor	76448	1 (0.454)
Heptachlor epoxide	1024573	1 (0.454)
Hexachlorobenzene	118741	10 (4.54)
Hexachlorobutadiene	87683	1 (0.454)
Hexachlorocyclohexane (gamma isomer)	58899	1 (0.454)
Hexachlorocyclopentadiene	77474	10 (4.54)
Hexachloroethane	67721	100 (45.4)
Hydrazine	302012	1 (0.454)
Hydrazine, 1,2-diethyl-	1615801	10 (4.54)
Hydrazine, 1,1-dimethyl-	57147	10 (4.54)
Hydrazine, 1,2-dimethyl-	540738	1 (0.454)
Hydrazine, 1,2-diphenyl-	122667	10 (4.54)
2-Imidazolidinethione	96457	10 (4.54)
Indeno[1,2,3-cd]pyrene	193395	100 (45.4)
Isosafrole	120581	100 (45.4)
Kepone	143500	1 (0.454)
Lasiocarpine	303344	10 (4.54)
		1 (0.454)

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
Lead arsenate	7784409	
	7645252	
	10102484	
Lead, bis(acetato-O)tetrahydroxytri-	1335326	100 (45.4)
Lead subacetate	1335326	100 (45.4)
Lindane	58899	1 (0.454)
Lithium chromate	14307358	10 (4.54)
Melphalan	148823	1 (0.454)
Methanamine, N-methyl-N-nitroso-	62759	10 (4.54)
Methane, chloro-	74873	100 (45.4)
Methane, chloromethoxy-	107302	10 (4.54)
Methane, iodo-	74884	100 (45.4)
Methane, isocyanato-	624839	# #
Methane, oxybis(chloro-	542881	10 (4.54)
Methanesulfonic acid, ethyl ester	62500	1 (0.454)
Methane, tetrachloro-	56235	10 (4.54)
Methane, trichloro-	67663	10 (4.54)
1,3,4-Metheno 2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	143500	1 (0.454)
4,7-Methano-1H-indene,1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76448	1 (0.454)
4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57749	1 (0.454)
Methyl chloride	74873	100 (45.4)
3-Methylcholanthrene	56495	10 (4.54)
4,4'-Methylenebis(2-chloroaniline)	101144	10 (4.54)
Methyl iodide	74884	100 (45.4)
Methyl isocyanate	624839	# #
Methylthiouracil	56042	10 (4.54)
Mitomycin C	50077	10 (4.54)
MNNG	70257	10 (4.54)
5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6-trideoxy)-alpha-L-]oxy-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	20830813	10 (4.54)
1-Naphthalenamine	134327	100 (45.4)
2-Naphthalenamine	91598	10 (4.54)
Naphthalenamine, N,N'-bis(2-chloroethyl)-	494031	100 (45.4)
2,7-Naphthalenedisulfonic acid,3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'-diyl)-bis(azo)]bis[5-amino-4-hydroxy-,tetrasodium salt	72571	10 (4.54)
alpha-Naphthylamine	134327	100 (45.4)
beta-Naphthylamine	91598	10 (4.54)
Nickel ††	7440020	100 (45.4)
Nickel ammonium sulfate	15699180	100 (45.4)
Nickel carbonyl	13463393	10 (4.54)
Nickel carbonyl Ni(CO)4, (T-4)-	13463393	10 (4.54)
		100 (45.4)
Nickel chloride	7718549	10 (4.54)
	37211055	
Nickel cyanide	557197	
Nickel cyanide Ni(CN)2	557197	10 (4.54)
Nickel hydroxide	12054487	10 (4.54)
Nickel nitrate	14216752	100 (45.4)
Nickel sulfate	7786814	100 (45.4)
N-Nitrosodi-n-butylamine	924163	10 (4.54)
N-Nitrosodiethanolamine	1116547	1 (0.454)
N-Nitrosodiethylamine	55185	1 (0.454)
N-Nitrosodimethylamine	62759	10 (4.54)
N-Nitroso-N-ethylurea	759739	1 (0.454)
N-Nitroso-N-methylurea	684935	1 (0.454)
N-Nitroso-N-methylurethane	615532	1 (0.454)
N-Nitrosomethylvinylamine	4549400	10 (4.54)
N-Nitrosopiperidine	100754	10 (4.54)
N-Nitrosopyrrolidine	930552	1 (0.454)
5-Nitro-o-toluidine	99558	100 (45.4)
1,2-Oxathiolane, 2,2-dioxide	1120714	10 (4.54)
2H-1,3,2-Oxazaphosphorin,2-amine,N,N-bis(2-chloroethyl)tetrahydro-,2-oxide	50180	10 (4.54)
Oxiranecarboxyaldehyde	765344	10 (4.54)
Oxirane, (chloromethyl)-	106898	100 (45.4)
Parathion	56382	10 (4.54)
Pentachloroethane	76017	10 (4.54)
Pentachloronitrobenzene (PCNB)	82688	100 (45.4)
Pentachlorophenol	87865	10 (4.54)
Phenacetin	62442	100 (45.4)
Phenol,4,4'-(1,2-diethyl-1,2-ethenediyl)bis-,(E)-	56531	1 (0.454)
Phenol, pentachloro-	87865	10 (4.54)
Phenol, 2,4,5-trichloro-	95954	10 (4.54)
Phenol, 2,4,6-trichloro-	88062	10 (4.54)
L-Phenylalanine, 4-[bis(2-chloroethyl)aminol]	148823	1 (0.454)
1,10-(1,2-Phenylene)pyrene	193395	100 (45.4)
Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	56382	10 (4.54)
Piperidine, 1-nitroso-	100754	10 (4.54)
Polychlorinated Biphenyls (PCBs)	1336363	1 (0.454)
Polychlorinated Biphenyls (PCBs)	12674112	1 (0.454)
Polychlorinated Biphenyls (PCBs)	11104282	1 (0.454)

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
Polychlorinated Biphenyls (PCBs)	11141165	1 (0.454)
Polychlorinated Biphenyls (PCBs)	53469219	1 (0.454)
Polychlorinated Biphenyls (PCBs)	12672296	1 (0.454)
Polychlorinated Biphenyls (PCBs)	11097691	1 (0.454)
Polychlorinated Biphenyls (PCBs)	11096825	1 (0.454)
Potassium arsenate	7784410	1 (0.454)
Potassium arsenite	10124502	1 (0.454)
Potassium bichromate	7778509	10 (4.54)
Potassium chromate	7789006	10 (4.54)
1-Propanamine, N-nitroso-N-propyl-	621647	10 (4.54)
Propane, 1,2-dibromo-3-chloro-	96128	1 (0.454)
1,3-Propane sultone	1120714	10 (4.54)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	126727	10 (4.54)
2-Propenenitrile	107131	100 (45.4)
1,2-Propylenimine	75558	1 (0.454)
2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	66751	10 (4.54)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56042	10 (4.54)
Pyrrolidine, 1-nitroso-	930552	1 (0.454)
Safrole	94597	100 (45.4)
Selenium sulfide	7488564	10 (4.54)
Selenium sulfide SeS2	7488564	10 (4.54)
L-Serine, diazoacetate (ester)	115026	1 (0.454)
Sodium arsenate	7631892	1 (0.454)
Sodium arsenite	7784465	1 (0.454)
Sodium bichromate	10588019	10 (4.54)
Sodium chromate	7775113	10 (4.54)
Streptozotocin	18883664	1 (0.454)
Strontium chromate	7789062	10 (4.54)
Sulfuric acid, dimethyl ester	77781	100 (45.4)
TDE	72548	1 (0.454)
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	1746016	1 (0.454)
1,1,1,2-Tetrachloroethane	630206	100 (45.4)
1,1,2,2-Tetrachloroethane	79345	100 (45.4)
Thioacetamide	62555	10 (4.54)
Thiourea	62566	10 (4.54)
Toluenediamine		10 (4.54)
	95807	
	496720	
	823405	
	25376458	
o-Toluidine	95534	100 (45.4)
p-Toluidine	106490	100 (45.4)
o-Toluidine hydrochloride	636215	100 (45.4)
Toxaphene	8001352	1 (0.454)
1H-1,2,4-Triazol-3-amine	61825	10 (4.54)
1,1,2-Trichloroethane	79005	100 (45.4)
Trichloroethene	79016	100 (45.4)
Trichloroethylene	79016	100 (45.4)
Trichlorophenol	25167822	10 (4.54)
2,3,4-Trichlorophenol	15950660	
2,3,5-Trichlorophenol	933788	
2,3,6-Trichlorophenol	933755	
2,4,5-Trichlorophenol	95954	10 (4.54)
2,4,6-Trichlorophenol	88062	10 (4.54)
3,4,5-Trichlorophenol	609198	
2,4,5-Trichlorophenol	95954	10 (4.54)
2,4,6-Trichlorophenol	88062	10 (4.54)
Tris(2,3-dibromopropyl) phosphate	126727	10 (4.54)
Trypan blue	72571	10 (4.54)
Unlisted Hazardous Wastes Characteristic of EP Toxicity	N.A.	
Arsenic D004	N.A.	1 (0.454)
Cadmium D006	N.A.	10 (4.54)
Chromium D007	N.A.	10 (4.54)
Lindane D013	N.A.	1 (0.454)
Toxaphene D015	N.A.	1 (0.454)
Uracil mustard	66751	10 (4.54)
Urea,N-ethyl-N-nitroso-	759739	1 (0.454)
Urea, N-methyl-N-nitroso-	684935	1 (0.454)
Vinyl chloride	75014	1 (0.454)
Vinylidene chloride	75354	100 (45.4)
F001	N.A.	10 (4.54)
F002	N.A.	10 (4.54)
F006	N.A.	10 (4.54)
F019	N.A.	10 (4.54)
F020	N.A.	1 (0.454)
F021	N.A.	1 (0.454)
F022	N.A.	1 (0.454)
F023	N.A.	1 (0.454)
F024	N.A.	1 (0.454)

TABLE 2.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

Hazardous Substance	CASRN	Final RQ Pounds (Kg)
F026	N.A.	1 (0.454)
F027	N.A.	1 (0.454)
F028	N.A.	1 (0.454)
K001	N.A.	1 (0.454)
K004	N.A.	10 (4.54)
K006	N.A.	10 (4.54)
K007	N.A.	10 (4.54)
K008	N.A.	10 (4.54)
K009	N.A.	10 (4.54)
K010	N.A.	10 (4.54)
K011	N.A.	10 (4.54)
K013	N.A.	10 (4.54)
K015	N.A.	10 (4.54)
K016	N.A.	1 (0.454)
K017	N.A.	10 (4.54)
K018	N.A.	1 (0.454)
K019	N.A.	1 (0.454)
K020	N.A.	1 (0.454)
K021	N.A.	10 (4.54)
K022	N.A.	1 (0.454)
K025	N.A.	10 (4.54)
K027	N.A.	10 (4.54)
K028	N.A.	1 (0.454)
K029	N.A.	1 (0.454)
K030	N.A.	1 (0.454)
K031	N.A.	1 (0.454)
K032	N.A.	10 (4.54)
K033	N.A.	10 (4.54)
K034	N.A.	10 (4.54)
K035	N.A.	1 (0.454)
K038	N.A.	10 (4.54)
K040	N.A.	10 (4.54)
K041	N.A.	1 (0.454)
K042	N.A.	10 (4.54)
K043	N.A.	10 (4.54)
K050	N.A.	10 (4.54)
K060	N.A.	1 (0.454)
K073	N.A.	10 (4.54)
K084	N.A.	1 (0.454)
K085	N.A.	10 (4.54)
K095	N.A.	100 (45.4)
K096	N.A.	100 (45.4)
K097	N.A.	1 (0.454)
K098	N.A.	1 (0.454)
K099	N.A.	10 (4.54)
K101	N.A.	1 (0.454)
K102	N.A.	1 (0.454)
K104	N.A.	10 (4.54)
K105	N.A.	10 (4.54)
K111	N.A.	10 (4.54)
K112	N.A.	10 (4.54)
K113	N.A.	10 (4.54)
K114	N.A.	10 (4.54)
K115	N.A.	10 (4.54)
K116	N.A.	10 (4.54)
K117	N.A.	1 (0.454)
K118	N.A.	1 (0.454)
K123	N.A.	10 (4.54)
K124	N.A.	10 (4.54)
K125	N.A.	10 (4.54)
K126	N.A.	10 (4.54)
K136	N.A.	1 (0.454)

†† No reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

††† The RQ for asbestos is limited to friable forms only.

The Agency may adjust the RQs for these hazardous substances in a future rulemaking; until that time the statutory RQ will be retained.

N.A.—Not applicable.

VII. Summary of Supporting Analyses

A. Executive Order No. 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). According to E.O. No. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

As demonstrated by an economic analysis performed by the Agency, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460, this final rule is nonmajor, because the rule will result in estimated net cost savings of $15.4 million annually. The annual net cost savings of all RQ adjustments promulgated or proposed to date (including those contained in this final rule) are estimated to be $34.7 million. These net cost savings reflect only those effects of RQ adjustments that are: (1) Readily quantifiable in dollars; and (2) associated with the release notification requirements under CERCLA section 103 and SARA section 304 (including the associated activities of recordkeeping, notification processing, monitoring, and response).

This final rule has been submitted to OMB for review, as required by E.O. No. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." To determine whether a Regulatory Flexibility Analysis is necessary for this final rule, a preliminary analysis was conducted using a computer model that simulated the typical operation of a small U.S. chemical company.

The results of the simulation indicate that the upper-bound total cost of compliance to small firms is negligible. See the "Regulatory Impact Analysis of Reportable Quantity Adjustments Under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act," Volume I, March 1985, available for inspection at Room M2427, U.S. EPA, 401 M Street, SW., Washington, DC 20460. Therefore, because this final rule is not expected to have a significant impact on small entities, EPA certifies that no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

EPA requires an Information Impact Analysis for all rules that impose a paperwork burden on the public. This analysis estimates the burden imposed on parties outside EPA for activities such as notification or recordkeeping. This final rule will provide a decrease in the paperwork burden imposed on the regulated community for information collection associated with fewer releases being reportable. Because the effect of this final rule on the paperwork burden is a reduction, EPA has determined that no further Information Impact Analysis need be performed.

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2050–0046.

The public reporting burden for this collection of information is estimated to vary from eight to 11 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Notes

Note 1: EPA proposed RQ adjustments for most of the hazardous substances whose RQs are promulgated in this final rule on March 16, 1987. As of that date, there were 717 CERCLA hazardous substances. Changes to the list of CERCLA hazardous substances since March 16, 1987 are described below. Four hazardous waste streams (K123, K124, K125, and K126) were added in a final rule (51 FR 37725) that became effective on April 24, 1987, bringing the total number of CERCLA hazardous substances to 721. EPA removed iron dextran and strontium sulfide from the list in two final rules (53 FR 43878 and 53 FR 43881) effective October 31, 1988, thus reducing the number of CERCLA hazardous substances to 719. Six hazardous substances (waste streams K064, K065, K066, K088, K090, and K091) were added in a final rule (53 FR 35412) that became effective on March 13, 1989, increasing the number of CERCLA hazardous substances to 725, which is the current total. Lastly, based on this final rule, ammonium thiosulfate will be removed from the CERCLA list 60 days from today's date, thus reducing the number of CERCLA hazardous substances to 724.

Note 2: RQs for 273 hazardous substances were proposed for adjustment on March 16, 1987 in a Notice of Proposed Rulemaking (NPRM). RQs for 254 of these 273 hazardous substances are being promulgated in this rule. RQs for six of these 273 hazardous substances are promulgated elsewhere in today's **Federal Register**. These six hazardous substances are: 1,4-dioxane, 2-ethoxyethanol, ethylene oxide, 2-nitropropane, perchloroethylene, and saccharin. As explained in Section II.C.2.i of this preamble, EPA will also address the RQs for the remaining 13 of the 273 hazardous substances in a future action.

Note 3: These four hazardous substances (waste streams K123, K124, K125, and K126) were listed in a final rule that became effective on April 24, 1987 (see 51 FR 37725, October 24, 1986). Although RQs for these four waste streams were not proposed in the March 16, 1987 NPRM, the RQ for the only hazardous substance in these waste streams (ethylene thiourea), which determines the RQ for the waste streams themselves, was proposed for adjustment in the March 16, 1987 NPRM. For further discussion of the RQ adjustments for these four hazardous waste streams, see Section II.C.1 of this preamble.

List of Subjects

40 CFR Part 116

Hazardous substances, Penalties, Water pollution control.

40 CFR Part 117

Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Oil pollution, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: June 26, 1989.

William K. Reilly,

Administrator.

For the reasons set forth in the preamble, chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 302 is revised to read as follows:

Authority: 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

2. Section 302.4 is amended by revising Table 302.4 and Appendix A to Table 302.4 to read as set forth below. The appropriate footnotes to Table 302.4 are republished without change and footnote "# #" is revised as set forth below. Included in these amendments to Table 302.4 and Appendix A to Table 302.4 is the removal of the entry for "Ammonium thiosulfate," CASRN 7783188, as well as the removal of the term "Kelthane," CASRN 115322, and the insertion in its place of the term "Dicofol." The note preceding Table 302.4 is republished without change.

§ 302.4 [Amended]

* * * * *

Note—The numbers under the column headed "CASRN" are the Chemical Abstracts Service Registry Numbers for each hazardous substance. Other names by which each hazardous substance is identified in other statutes and their implementing regulations are provided in the "Regulatory Synonyms" column. The "Statutory RQ" column lists the RQs for hazardous substances established by section 102 of CERCLA. The "Statutory Code" column indicates the statutory source for designating each substance as a CERCLA hazardous substance: "1" indicates that the statutory source is section 311(b)(4) of the Clean Water Act, "2" indicates that the source is section 307(a) of the Clean Water Act, "3" indicates that the source is section 112 of the Clean Air Act, and "4" indicates that the source is RCRA section 3001. The "RCRA Waste Number" column provides the waste identification numbers assigned to various substances by RCRA regulations. The column headed "Category" lists the code letters "X," "A," "B," "C," and "D," which are associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively. The "Pounds (kg)" column provides the reportable quantity adjustment for each hazardous substance in pounds and kilograms.

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Acenaphthene	83329		1*	2		B	100 (45.4)
Acenaphthylene	208968		1*	2		D	5000 (2270)
Acetaldehyde	75070	Ethanal	1000	1,4	U001	C	1000 (454)
Acetaldehyde, chloro-	107200	Chloroacetaldehyde	1*	4	P023	C	1000 (454)
Acetaldehyde, trichloro-	75876	Chloral	1*	4	U034	D	5000 (2270)
Acetamide, N-(aminothioxomethyl)-	591082	1-Acetyl-2-thiourea	1*	4	P002	C	1000 (454)
Acetamide, N-(4-ethoxyphenyl)-	62442	Phenacetin	1*	4	U187	B	100 (45.4)
Acetamide, 2-fluoro-	640197	Fluoroacetamide	1*	4	P057	B	100 (45.4)
Acetamide, N-9H-fluoren-2-yl-	53963	2-Acetylaminofluorene	1*	4	U005	X	1 (0.454)
Acetic acid	64197		1000	1		D	5000 (2270)
Acetic acid (2,4-dichlorophenoxy)-	94757	2,4-D Acid 2,4-D, salts and esters	100	1,4	U240	B	100 (45.4)
Acetic acid, lead(2+) salt	301042	Lead acetate	5000	1,4	U144		#
Acetic acid, thallium(1+) salt	563688	Thallium(I) acetate	1*	4	U214	B	100 (45.4)
Acetic acid, (2,4,5-trichlorophenoxy)	93765	2,4,5-T 2,4,5-T acid	100	1,4	U232	C	1000 (454)
Acetic acid, ethyl ester	141786	Ethyl acetate	1*	4	U112	D	5000 (2270)
Acetic acid, fluoro-, sodium salt	62748	Fluoroacetic acid, sodium salt	1*	4	P058	A	10 (4.54)
Acetic anhydride	108247		1000	1		D	5000 (2270)
Acetone	67641	2-Propanone	1*	4	U002	D	5000 (2270)
Acetone cyanohydrin	75865	Propanenitrile, 2-hydroxy-2-methyl-2-Methyllactonitrile	10	1,4	P069	A	10 (4.54)
Acetonitrile	75058		1*	4	U003	D	5000 (2270)
Acetophenone	98862	Ethanone, 1-phenyl-	1*	4	U004	D	5000 (2270)
2-Acetylaminofluorene	53963	Acetamide, N-9H-fluoren-2-yl-	1*	4	U005	X	1 (0.454)
Acetyl bromide	506967		5000	1		D	5000 (2270)
Acetyl chloride	75365		5000	1,4	U006	D	5000 (2270)
1-Acetyl-2-thiourea	591082	Acetamide, N-(aminothioxomethyl)-	1*	4	P002	C	1000 (454)
Acrolein	107028	2-Propenal	1	1,2,4	P003	X	1 (0.454)
Acrylamide	79061	2-Propenamide	1*	4	U007	D	5000 (2270)
Acrylic acid	79107	2-Propenoic acid	1*	4	U008	D	5000 (2270)
Acrylonitrile	107131	2-Propenenitrile	100	1,2,4	U009	B	100 (45.4)
Adipic acid	124049		5000	1		D	5000 (2270)
Aldicarb	116063	Propanal, 2-methyl-2-(methylthio)-,O-[(methylamino)carbonyl]oxime	1*	4	P070	X	1 (0.454)
Aldrin	309002	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha, 4alpha,4abeta,5alpha,8alpha,8abeta)-	1	1,2,4	P004	X	1 (0.454)
Allyl alcohol	107186	2-Propen-1-ol	100	1,4	P005	B	100 (45.4)
Allyl chloride	107051		1000	1		C	1000 (454)
Aluminum phosphide	20859738		1*	4	P006	B	100 (45.4)
Aluminum sulfate	10043013		5000	1		D	5000 (2270)
5-(Aminomethyl)-3-isoxazolol	2763964	Muscimol 3(2H)-Isoxazolone, 5-(aminomethyl)-	1*	4	P007	C	1000 (454)
4-Aminopyridine	504245	4-Pyridinamine	1*	4	P008	C	1000 (454)
Amitrole	61825	1H-1,2,4-Triazol-3-amine	1*	4	U011	A	10 (4.54)
Ammonia	7664417		100	1		B	100 (45.4)
Ammonium acetate	631618		5000	1		D	5000 (2270)
Ammonium benzoate	1863634		5000	1		D	5000 (2270)
Ammonium bicarbonate	1066337		5000	1		D	5000 (2270)
Ammonium bichromate	7789095		1000	1		A	10 (4.54)
Ammonium bifluoride	1341497		5000	1		B	100 (45.4)
Ammonium bisulfite	10192300		5000	1		D	5000 (2270)
Ammonium carbamate	1111780		5000	1		D	5000 (2270)
Ammonium carbonate	506876		5000	1		D	5000 (2270)
Ammonium chloride	12125029		5000	1		D	5000 (2270)
Ammonium chromate	7788989		1000	1		A	10 (4.54)
Ammonium citrate, dibasic	3012655		5000	1		D	5000 (2270)
Ammonium fluoborate	13826830		5000	1		D	5000 (2270)
Ammonium fluoride	12125018		5000	1		B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Ammonium hydroxide	1336216		1000	1		C	1000 (454)
Ammonium oxalate	6009707		5000	1		D	5000 (2270)
	5972736						
	14258492						
Ammonium picrate	131748	Phenol, 2,4,6-trinitro-, ammonium salt	1*	4	P009	A	10 (4.54)
Ammonium silicofluoride	16919190		1000	1		C	1000 (454)
Ammonium sulfamate	7773060		5000	1		D	5000 (2270)
Ammonium sulfide	12135761		5000	1		B	100 (45.4)
Ammonium sulfite	10196040		5000	1		D	5000 (2270)
Ammonium tartrate	14307438		5000	1		D	5000 (2270)
	3164292						
Ammonium thiocyanate	1762954		5000	1		D	5000 (2270)
Ammonium vanadate	7803556	Vanadic acid, ammonium salt	1*	4	P119	C	1000 (454)
Amyl acetate	628637		1000	1		D	5000 (2270)
iso-Amyl acetate	123922						
sec-Amyl acetate	626380						
tert-Amyl acetate	625161						
Aniline	62533	Benzenamine	1000	1,4	U012	D	5000 (2270)
Anthracene	120127		1*	2		D	5000 (2270)
Antimony ††	7440360		1*	2		D	5000 (2270)
ANTIMONY AND COMPOUNDS	N.A.		1*	2			**
Antimony pentachloride	7647189		1000	1		C	1000 (454)
Antimony potassium tartrate	28300745		1000	1		B	100 (45.4)
Antimony tribromide	7789619		1000	1		C	1000 (454)
Antimony trichloride	10025919		1000	1		C	1000 (454)
Antimony trifluoride	7783564		1000	1		C	1000 (454)
Antimony trioxide	1309644		5000	1		C	1000 (454)
Argentate(1-), bis(cyano-C)-, potassium	506616	Potassium silver cyanide	1*	4	P099	X	1 (0.454)
Aroclor 1016	12674112	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1221	11104282	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1232	11141165	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1242	53469219	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1248	12672296	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1254	11097691	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Aroclor 1260	11096825	POLYCHLORINATED BIPHENYLS (PCBs)	10	1,2		X	1 (0.454)
Arsenic ††	7440382		1*	2,3		X	1 (0.454)
Arsenic acid	1327522	Arsenic acid H3AsO4	1*	4	P010	X	1 (0.454)
	7778394						
Arsenic acid H3AsO4	1327522	Arsenic acid	1*	4	P010	X	1 (0.454)
	7778394						
ARSENIC AND COMPOUNDS	N.A.		1*	2			**
Arsenic disulfide	1303328		5000	1		X	1 (0.454)
Arsenic oxide As2O3	1327533	Arsenic trioxide	5000	1,4	P012	X	1 (0.454)
Arsenic oxide As2O5	1303282	Arsenic pentoxide	5000	1,4	P011	X	1 (0.454)
Arsenic pentoxide	1303282	Arsenic oxide As2O5	5000	1,4	P011	X	1 (0.454)
Arsenic trichloride	7784341		5000	1		X	1 (0.454)
Arsenic trioxide	1327533	Arsenic oxide As2O3	5000	1,4	P012	X	1 (0.454)
Arsenic trisulfide	1303339		5000	1		X	1 (0.454)
Arsine, diethyl-	692422	Diethylarsine	1*	4	P038	X	1 (0.454)
Arsinic acid, dimethyl-	75605	Cacodylic acid	1*	4	U136	X	1 (0.454)
Arsonous dichloride, phenyl-	696286	Dichlorophenylarsine	1*	4	P036	X	1 (0.454)
Asbestos †††	1332214		1*	2,3		X	1 (0.454)
Auramine	492808	Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	1*	4	U014	B	100 (45.4)
Azaserine	115026	L-Serine, diazoacetate (ester)	1*	4	U015	X	1 (0.454)
Aziridine	151564	Ethylenimine	1*	4	P054	X	1 (0.454)
Aziridine, 2-methyl-	75558	1,2-Propylenimine	1*	4	P067	X	1 (0.454)
Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[(aminocarbonyloxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-,[1aS-(1aalpha,8beta,8aalpha,8balpha)]-	50077	Mitomycin C	1*	4	U010	A	10 (4.54)
Barium cyanide	542621		10	1,4	P013	A	10 (4.54)
Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56495	3-Methylcholanthrene	1*	4	U157	A	10 (4.54)
Benz[c]acridine	225514		1*	4	U016	B	100 (45.4)
Benzal chloride	98873	Benzene, dichloromethyl-	1*	4	U017	D	5000 (2270)
Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-.	23950585	Pronamide	1*	4	U192	D	5000 (2270)
Benz[a]anthracene	56553	Benzo[a]anthracene 1,2-Benzanthracene	1*	2,4	U018	A	10 (4.54)
1,2-Benzanthracene	56553	Benz[a]anthracene Benzo[a]anthracene	1*	2,4	U018	A	10 (4.54)
Benz[a]anthracene, 7,12-dimethyl-	57976	7,12-Dimethylbenz[a]anthracene	1*	4	U094	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Benzenamine	62533	Aniline	1000	1,4	U012	D	5000 (2270)
Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl-	492808	Auramine	1*	4	U014	B	100 (45.4)
Benzenamine, 4-chloro-	106478	p-Chloroaniline	1*	4	P024	C	1000 (454)
Benzenamine, 4-chloro-2-methyl-, hydrochloride	3165933	4-Chloro-o-toluidine, hydrochloride	1*	4	U049	B	100 (45.4)
Benzenamine, N,N-dimethyl-4-(phenylazo-)	60117	p-Dimethylaminoazobenzene	1*	4	U093	A	10 (4.54)
Benzenamine, 2-methyl-	95534	o-Toluidine	1*	4	U328	B	100 (45.4)
Benzenamine, 4-methyl-	106490	p-Toluidine	1*	4	U353	B	100 (45.4)
Benzenamine, 4,4'-methylenebis(2-chloro-	101144	4,4'-Methylenebis(2-chloroaniline)	1*	4	U158	A	10 (4.54)
Benzenamine, 2-methyl-, hydrochloride	636215	o-Toluidine hydrochloride	1*	4	U222	B	100 (45.4)
Benzenamine, 2-methyl-5-nitro-	99558	5-Nitro-o-toluidine	1*	4	U181	B	100 (45.4)
Benzenamine, 4-nitro-	100016	p-Nitroaniline	1*	4	P077	D	5000 (2270)
Benzene	71432		1000	1,2,3,4	U109	A	10 (4.54)
Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510156	Chlorobenzilate	1*	4	U038	A	10 (4.54)
Benzene, 1-bromo-4-phenoxy-	101553	4-Bromophenyl phenyl ether	1*	2,4	U030	B	100 (45.4)
Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	305033	Chlorambucil	1*	4	U035	A	10 (4.54)
Benzene, chloro-	108907	Chlorobenzene	100	1,2,4	U037	B	100 (45.4)
Benzene, chloromethyl-	100447	Benzyl chloride	100	1,4	P028	B	100 (45.4)
Benzenediamin, ar-methyl-	95807 496720 823405	Toluenediamine	1*	4	U221	A	10 (4.54)
1,2-Benzenedicarboxylic acid, dioctyl ester	117840	Di-n-octyl phthalate	1*	2,4	U107	D	5000 (2270)
1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)]-ester.	117817	Bis (2-ethylhexyl)phthalate Diethylhexyl phthalate	1*	2,4	U028	B	100 (45.4)
1,2-Benzenedicarboxylic acid, dibutyl ester	84742	Di-n-butyl phthalate Dibutyl phthalate n-Butyl phthalate	100	1,2,4	U069	A	10 (4.54)
1,2-Benzenedicarboxylic acid, diethyl ester	84662	Diethyl phthalate	1*	2,4	U088	C	1000 (454)
1,2-Benzenedicarboxylic acid, dimethyl ester	131113	Dimethyl phthalate	1*	2,4	U102	D	5000 (2270)
Benzene, 1,2-dichloro-	95501	o-Dichlorobenzene 1,2-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)
Benzene, 1,3-dichloro-	541731	m-Dichlorobenzene 1,3-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
Benzene, 1,4-dichloro-	106467	p-Dichlorobenzene 1,4-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-	72548	DDD TDE 4,4' DDD	1	1,2,4	U060	X	1 (0.454)
Benzene, dichloromethyl-	98873	Benzal chloride	1*	4	U017	D	5000 (2270)
Benzene, 1,3-diisocyanatomethyl-	584849 91087 26471625	Toluene diisocyanate	1*	4	U223	B	100 (45.4)
Benzene, dimethyl	1330207	Xylene (mixed)	1000	1,4	U239	C	1000 (454)
m-Benzene, dimethyl	108383	m-Xylene					
o-Benzene, dimethyl	95476	o-Xylene					
p-Benzene, dimethyl	106423	p-Xylene					
1,3-Benzenediol	108463	Resorcinol	1000	1,4	U201	D	5000 (2270)
1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]-	51434	Epinephrine	1*	4	P042	C	1000 (454)
Benzeneethanamine, alpha,alpha-dimethyl-	122098	alpha,alpha-Dimethylphenethylamine	1*	4	P046	D	5000 (2270)
Benzene, hexachloro-	118741	Hexachlorobenzene	1*	2,4	U127	A	10 (4.54)
Benzene, hexahydro-	110827	Cyclohexane	1000	1,4	U056	C	1000 (454)
Benzene, hydroxy-	108952	Phenol	1000	1,2,4	U188	C	1000 (454)
Benzene, methyl-	108883	Toluene	1000	1,2,4	U220	C	1000 (454)
Benzene, 2-methyl-1,3-dinitro-	606202	2,6-Dinitrotoluene	1000	1,2,4	U106	B	100 (45.4)
Benzene, 1-methyl-2,4-dinitro-	121142	2,4-Dinitrotoluene	1000	1,2,4	U105	A	10 (4.54)
Benzene, 1-methylethyl-	98828	Cumene	1*	4	U055	D	5000 (2270)
Benzene, nitro-	98953	Nitrobenzene	1000	1,2,4	U169	C	1000 (454)
Benzene, pentachloro-	608935	Pentachlorobenzene	1*	4	U183	A	10 (4.54)
Benzene, pentachloronitro-	82688	Pentachloronitrobenzene (PCNB)	1*	4	U185	B	100 (45.4)
Benzenesulfonic acid chloride	98099	Benzenesulfonyl chloride	1*	4	U020	B	100 (45.4)
Benzenesulfonyl chloride	98099	Benzenesulfonic acid chloride	1*	4	U020	B	100 (45.4)
Benzene, 1,2,4,5-tetrachloro-	95943	1,2,4,5-Tetrachlorobenzene	1*	4	U207	D	5000 (2270)
Benzenethiol	108985	Thiophenol	1*	4	P014	B	100 (45.4)
Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	50293	DDT 4,4'DDT	1	1,2,4	U061	X	1 (0.454)
Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-methoxy-	72435	Methoxychlor	1	1,4	U247	X	1 (0.454)
Benzene, (trichloromethyl)-	98077	Benzotrichloride	1*	4	U023	A	10 (4.54)
Benzene, 1,3,5-trinitro-	99354	1,3,5-Trinitrobenzene	1*	4	U234	A	10 (4.54)
Benzidine	92875	(1,1'-Biphenyl)-4,4'diamine	1*	2,4	U021	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	81072	Saccharin and salts	1*	4	U202	B	100 (45.4)
Benzo[a]anthracene	56553	Benz[a]anthracene 1,2-Benzanthracene	1*	2,4	U018	A	10 (4.54)
Benzo[b]fluoranthene	205992		1*	2		X	1 (0.454)
Benzo(k)fluoranthene	207089		1*	2		D	5000 (2270)
Benzo[j,k]fluorene	206440	Fluoranthene	1*	2,4	U120	B	100 (45.4)
1,3-Benzodioxole, 5-)1-propenyl)-	120581	Isosafrole	1*	4	U141	B	100 (45.4)
1,3-Benzodioxole,5-(2-propenyl)-	94597	Safrole	1*	4	U203	B	100 (45.4)
1,3-Benzodioxole, 5-propyl-	94586	Dihydrosafroie	1*	4	U090	A	10 (4.54)
Benzoic acid	65850		5000	1		D	5000 (2270)
Benzonitrile	100470		1000	1		D	5000 (2270)
Benzo [rst]pentaphene	189559	Dibenz[a,i]pyrene	1*	4	U064	A	10 (4.54)
Benzo[ghi]perylene	191242		1*	2		D	5000 (2270)
2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3%	81812	Warfarin, & salts, when present at concentrations greater than 0.3%	1*	4	P001	B	100 (45.4)
Benzo[a]pyrene	50328	3,4-Benzopyrene	1*	2,4	U022	X	1 (0.454)
3,4-Benzopyrene	50328	Benzo[a]pyrene	1*	2,4	U022	X	1 (0.454)
p-Benzoquinone	106514	2,5-Cyclohexadiene-1,4-dione	1*	4	U197	A	10 (4.54)
Benzotrichloride	98077	Benzene, (trichloromethyl)-	1*	4	U023	A	10 (4.54)
Benzoyl chloride	98884		1000	1		C	1000 (454)
1,2-Benzphenanthrene	218019	Chrysene	1*	2,4	U050	B	100 (45.4)
Benzyl chloride	100447	Benzene, chloromethyl-	100	1,4	P028	B	100 (45.4)
Beryllium ††	7440417	Beryllium dust ††	1*	2,3,4	P015	A	10 (4.54)
BERYLLIUM AND COMPOUNDS	N.A.		1*	2			**
Beryllium chloride	7787475		5000	1		X	1 (0.454)
Beryllium dust ††	7440417	Beryllium ††	1*	2,3,4	P015	A	10 (4.54)
Beryllium fluoride	7787497		5000	1		X	1 (0.454)
Beryllium nitrate	13597994 7787555		5000	1		X	1 (0.454)
alpha—BHC	319846		1*	2		A	10 (4.54)
beta—BHC	319857		1*	2		X	1 (0.454)
delta—BHC	319868		1*	2		X	1 (0.454)
gamma—BHC	58899	Cyclohexane, 1,2,3,4,5,6-hexachloro-,(1alpha, 2alpha,3beta,4alpha,5alpha,6beta)- Hexachlorocyclohexane (gamma isomer) Lindane	1	1,2,4	U129	X	1 (0.454)
2,2'-Bioxirane	1464535	1,2:3,4-Diepoxybutane	1*	4	U085	A	10 (4.54)
(1,1'-Biphenyl)-4,4'diamine	92875	Benzidine	1*	2,4	U021	X	1 (0.454)
[1,1'-Biphenyl]-4,4'diamine,3,3'dichloro-	91941	3,3'-Dichlorobenzidine	1*	2,4	U073	X	1 (0.454)
[1,1'-Biphenyl]-4,4'diamine,3,3'dimethoxy-	119904	3,3'-Dimethoxybenzidine	1*	4	U091	B	100 (45.4)
[1,1'Biphenyl]-4,4'-diamine,3,3'-dimethyl-	119937	3,3'-Dimethylbenzidine	1*	4	U095	A	10 (4.54)
Bis (2-chloroethyl) ether	111444	Dichloroethyl ether Ethane,1,1'-oxybis[2-chloro-	1*	2,4	U025	A	10 (4.54)
Bis(2-chloroethoxy) methane	111911	Dichloromethoxy ethane Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	1*	2,4	U024	C	1000 (454)
Bis (2-ethylhexyl)phthalate	117817	Diethylhexyl phthalate 1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester	1*	2,4	U028	B	100 (45.4)
Bromoacetone	598312	2-Propanone, 1-bromo-	1*	4	P017	C	1000 (454)
Bromoform	75252	Methane, tribromo-	1*	2,4	U225	B	100 (45.4)
4-Bromophenyl phenyl ether	101553	Benzene, 1-bromo-4-phenoxy-	1*	2,4	U030	B	100 (45.4)
Brucine	357573	Strychnidin-10-one, 2,3-dimethoxy-	1*	4	P018	B	100 (45.4)
1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87683	Hexachlorobutadiene	1*	2,4	U128	X	1 (0.454)
1-Butanamine, N-butyl-N-nitroso-	924163	N-Nitrosodi-n-butylamine	1*	4	U172	A	10 (4.54)
1-Butanol	71363	n-Butyl alcohol	1*	4	U031	D	5000 (2270)
2-Butanone	78933	Methyl ethyl ketone (MEK)	1*	4	U159	D	5000 (2270)
2-Butanone peroxide	1338234	Methyl ethyl ketone peroxide	1*	4	U160	A	10 (4.54)
2-Butanone, 3,3-dimethyl-1-(methylthio)-, O[(methylamino)carbonyl] oxime.	39196184	Thiofanox	1*	4	P045	B	100 (45.4)
2-Butenal	123739 4170303	Crotonaldehyde	100	1,4	U053	B	100 (45.4)
2-Butene, 1,4-dichloro-	764410	1,4-Dichloro-2-butene	1*	4	U074	X	1 (0.454)
2-Butenoic acid, 2-methyl-, 7[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-	303344	Lasiocarpine	1*	4	U143	A	10 (4.54)
Butyl acetate	123864		5000	1		D	5000 (2270)
iso-Butyl acetate	110190						
sec-Butyl acetate	105464						
tert-Butyl acetate	540885						

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
n-Butyl alcohol	71363	1-Butanol	1*	4	U031	D	5000 (2270)
Butylamine	109739		1000	1		C	1000 (454)
iso-Butylamine	78819						
sec-Butylamine	513495						
	13952846						
tert-Butylamine	75649						
Butyl benzyl phthalate	85687		1*	2		B	100 (45.4)
n-Butyl phthalate	84742	Di-n-butyl phthalate	100	1,2,4	U069	A	10 (4.54)
		Dibutyl phthalate					
		1,2-Benzenedicarboxylic acid, dibutyl ester					
Butyric acid	107926		5000	1		D	5000 (2270)
iso-Butyric acid	79312						
Cacodylic acid	75605	Arsinic acid, dimethyl-	1*	4	U136	X	1 (0.454)
Cadmium ††	7440439		1*	2		A	10 (4.54)
Cadmium acetate	543908		100	1		A	10 (4.54)
CADMIUM AND COMPOUNDS	N.A.		1*	2			••
Cadmium bromide	7789426		100	1		A	10 (4.54)
Cadmium chloride	10108642		100	1		A	10 (4.54)
Calcium arsenate	7778441		1000	1		X	1 (0.454)
Calcium arsenite	52740166		1000	1		X	1 (0.454)
Calcium carbide	75207		5000	1		A	10 (4.54)
Calcium chromate	13765190	Chromic acid H2CrO4, calcium salt	1000	1,4	U032	A	10 (4.54)
Calcium cyanide	592018	Calcium cyanide Ca(CN)2	10	1,4	P021	A	10 (4.54)
Calcium cyanide Ca(CN)2	592018	Calcium cyanide	10	1,4	P021	A	10 (4.54)
Calcium dodecylbenzenesulfonate	26264062		1000	1		C	1000 (454)
Calcium hypochlorite	7778543		100	1		A	10 (4.54)
Camphene, octachloro-	8001352	Toxaphene	1	1,2,4	P123	X	1 (0.454)
Captan	133062		10	1		A	10 (4.54)
Carbamic acid, ethyl ester	51796	Ethyl carbamate (urethane)	1*	4	U238	B	100 (45.4)
Carbamic acid, methylnitroso-, ethyl ester	615532	N-Nitroso-N-methylurethane	1*	4	U178	X	1 (0.454)
Carbamic chloride, dimethyl-	79447	Dimethylcarbamoyl chloride	1*	4	U097	X	1 (0.454)
Carbamodithioic acid, 1,2-ethanediylbis, salts & esters	111546	Ethylenebisdithiocarbamic acid, salts & esters	1*	4	U114	D	5000 (2270)
Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	2303164	Diallate	1*	4	U062	B	100 (45.4)
Carbaryl	63252		100	1		B	100 (45.4)
Carbofuran	1563662		10	1		A	10 (4.54)
Carbon disulfide	75150		5000	1,4	P022	B	100 (45.4)
Carbon oxyfluoride	353504	Carbonic difluoride	1*	4	U033	C	1000 (454)
Carbon tetrachloride	56235	Methane, tetrachloro-	5000	1,2,4	U211	A	10 (4.54)
Carbonic acid, dithallium(1+) salt	6533739	Thallium(I) carbonate	1*	4	U215	B	100 (45.4)
Carbonic dichloride	75445	Phosgene	5000	1,4	P095	A	10 (4.54)
Carbonic difluoride	353504	Carbon oxyfluoride	1*	4	U033	C	1000 (454)
Carbonochloridic acid, methyl ester	79221	Methyl chlorocarbonate	1*	4	U156	C	1000 (454)
		Methyl chloroformate					
Chloral	75876	Acetaldehyde, trichloro-	1*	4	U034	D	5000 (2270)
Chlorambucil	305033	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	1*	4	U035	A	10 (4.54)
Chlordane	57749	Chlordane, alpha & gamma isomers	1	1,2,4	U036	X	1 (0.454)
		Chlordane, technical					
		4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-					
CHLORDANE (TECHNICAL MIXTURE AND METABOLITES)	N.A.		1*	2			••
Chlordane, alpha & gamma isomers	57749	Chlordane	1	1,2,4	U036	X	1 (0.454)
		Chlordane, technical					
		4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-					
Chlordane, technical	57749	Chlordane	1	1,2,4	U036	X	1 (0.454)
		Chlordane, alpha & gamma isomers					
		4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-					
CHLORINATED BENZENES	N.A.		1*	2			••
CHLORINATED ETHANES	N.A.		1*	2			••
CHLORINATED NAPHTHALENE	N.A.		1*	2			••
CHLORINATED PHENOLS	N.A.		1*	2			••
Chlorine	7782505		10	1		A	10 (4.54)
Chlornaphazine	494031	Naphthalenamine, N,N'-bis(2-chloroethyl)-	1*	4	U026	B	100 (45.4)
Chloroacetaldehyde	107200	Acetaldehyde, chloro-	1*	4	P023	C	1000 (454)
CHLOROALKYL ETHERS	N.A.		1*	2			••
p-Chloroaniline	106478	Benzenamine, 4-chloro-	1*	4	P024	C	1000 (454)
Chlorobenzene	108907	Benzene, chloro-	100	1,2,4	U037	B	100 (45.4)
Chlorobenzilate	510156	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	1*	4	U038	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
4-Chloro-m-cresol	59507	p-Chloro-m-cresol	1*	2,4	U039	D	5000 (2270)
p-Chloro-m-cresol	59507	Phenol, 4-chloro-3-methyl- Phenol, 4-chloro-3-methyl- 4-Chloro-m-cresol	1*	2,4	U039	D	5000 (2270)
Chlorodibromomethane	124481		1*	2		B	100 (45.4)
Chloroethane	75003		1*	2		B	100 (45.4)
2-Chloroethyl vinyl ether	110758	Ethene, 2-chloroethoxy-	1*	2,4	U042	C	1000 (454)
Chloroform	67663	Methane, trichloro-	5000	1,2,4	U044	A	10 (4.54)
Chloromethyl methyl ether	107302	Methane, chloromethoxy-	1*	4	U046	A	10 (4.54)
beta-Chloronaphthalene	91587	Naphthalene, 2-chloro- 2-Chloronaphthalene	1*	2,4	U047	D	5000 (2270)
2-Chloronaphthalene	91587	beta-Chloronaphthalene Naphthalene, 2-chloro-	1*	2,4	U047	D	5000 (2270)
2-Chlorophenol	95578	o-Chlorophenol Phenol, 2-chloro-	1*	2,4	U048	B	100 (45.4)
o-Chlorophenol	95578	Phenol, 2-chloro- 2-Chlorophenol	1*	2,4	U048	B	100 (45.4)
4-Chlorophenyl phenyl ether	7005723		1*	2		D	5000 (2270)
1-(o-Chlorophenyl)thiourea	5344821	Thiourea, (2-chlorophenyl)-	1*	4	P026	B	100 (45.4)
3-Chloropropionitrile	542767	Propanenitrile, 3-chloro-	1*	4	P027	C	1000 (454)
Chlorosulfonic acid	7790945		1000	1		C	1000 (454)
4-Chloro-o-toluidine, hydrochloride	3165933	Benzenamine, 4-chloro-2-methyl-, hydrochloride	1*	4	U049	B	100 (45.4)
Chlorpyrifos	2921882		1	1		X	1 (0.454)
Chromic acetate	1066304		1000	1		C	1000 (454)
Chromic acid	11115745 7738945		1000	1		A	10 (4.54)
Chromic acid H2CrO4, calcium salt	13765190	Calcium chromate	1000	1,4	U032	A	10 (4.54)
Chromic sulfate	10101538		1000	1		C	1000 (454)
Chromium ††	7440473		1*	2		D	5000 (2270) **
CHROMIUM AND COMPOUNDS	N.A.		1*	2			
Chromous chloride	10049055		1000	1		C	1000 (454)
Chrysene	218019	1,2-Benzphenanthrene	1*	2,4	U050	B	100 (45.4)
Cobaltous bromide	7789437		1000	1		C	1000 (454)
Cobaltous formate	544183		1000	1		C	1000 (454)
Cobaltous sulfamate	14017415		1000	1		C	1000 (454)
Coke Oven Emissions	N.A.		1*	3		X	1 (0.454)
Copper cyanide CuCN	544923	Copper cyanide	1*	4	P029	A	10 (4.54)
Copper ††	7440508		1*	2		D	5000 (2270) **
COPPER AND COMPOUNDS	N.A.		1*	2			
Copper cyanide	544923	Copper cyanide CuCN	1*	4	P029	A	10 (4.54)
Coumaphos	56724		10	1		A	10 (4.54)
Creosote	8001589		1*	4	U051	X	1 (0.454)
Cresol(s)	1319773	Cresylic acid Phenol, methyl-	1000	1,4	U052	C	1000 (454)
m-Cresol	108394	m-Cresylic acid					
o-Cresol	95487	o-Cresylic acid					
p-Cresol	106445	p-Cresylic acid					
Cresylic acid	1319773	Cresol(s) Phenol, methyl-	1000	1,4	U052	C	1000 (454)
m-Cresol	108394	m-Cresylic acid					
o-Cresol	95487	o-Cresylic acid					
p-Cresol	106445	p-Cresylic acid					
Crotonaldehyde	123739 4170303	2-Butenal	100	1,4	U053	B	100 (45.4)
Cumene	98828	Benzene, 1-methylethyl-	1*	4	U055	D	5000 (2270)
Cupric acetate	142712		100	1		B	100 (45.4)
Cupric acetoarsenite	12002038		100	1		X	1 (0.454)
Cupric chloride	7447394		10	1		A	10 (4.54)
Cupric nitrate	3251238		100	1		B	100 (45.4)
Cupric oxalate	5893663		100	1		B	100 (45.4)
Cupric sulfate	7758987		10	1		A	10 (4.54)
Cupric sulfate, ammoniated	10380297		100	1		B	100 (45.4)
Cupric tartrate	815827		100	1		B	100 (45.4)
CYANIDES	N.A.		1*	2			**
Cyanides (soluble salts and complexes) not otherwise specified	57125		1*	4	P030	A	10 (4.54)
Cyanogen	460195	Ethanedinitrile	1*	4	P031	B	100 (45.4)
Cyanogen bromide	506683	Cyanogen bromide (CN)Br	1*	4	U246	C	1000 (454)
Cyanogen bromide (CN)Br	506683	Cyanogen bromide	1*	4	U246	C	1000 (454)
Cyanogen chloride	506774	Cyanogen chloride (CN)Cl	10	1,4	P033	A	10 (4.54)
Cyanogen chloride (CN)Cl	506774	Cyanogen chloride	10	1,4	P033	A	10 (4.54)
2,5-Cyclohexadiene-1,4-dione	106514	p-Benzoquinone	1*	4	U197	A	10 (4.54)
Cyclohexane	110827	Benzene, hexahydro-	1000	1,4	U056	C	1000 (454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha, 6beta)-	58899	gamma—BHC Hexachlorocyclohexane (gamma isomer) Lindane	1	1,2,4	U129	X	1 (0.454)
Cyclohexanone	108941		1*	4	U057	D	5000 (2270)
2-Cyclohexyl-4,6-dinitrophenol	131895	Phenol, 2-cyclohexyl-4,6-dinitro-	1*	4	P034	B	100 (45.4)
1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77474	Hexachlorocyclopentadiene	1	1,2,4	U130	A	10 (4.54)
Cyclophosphamide	50180	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-,2-oxide	1*	4	U058	A	10 (4.54)
2,4-D Acid	94757	Acetic acid (2,4-dichlorophenoxy)-2,4-D, salts and esters	100	1,4	U240	B	100 (45.4)
2,4-D Ester	94111 94791 94804 1320189 1928387 1928616 1929733 2971382 25168267 53467111		100	1		B	100 (45.4)
2,4-D, salts and esters	94757	Acetic acid (2,4-dichlorophenoxy)-2,4-D Acid	100	1,4	U240	B	100 (45.4)
Daunomycin	20830813	5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6- trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10- tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	1*	4	U059	A	10 (4.54)
DDD	72548	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro- TDE 4,4' DDD	1	1,2,4	U060	X	1 (0.454)
4,4' DDD	72548	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro- DDD TDE	1	1,2,4	U060	X	1 (0.454)
DDE	72559	4,4' DDE	1*	2		X	1 (0.454)
4,4' DDE	72559	DDE	1*	2		X	1 (0.454)
DDT	50293	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro- 4,4'DDT	1	1,2,4	U061	X	1 (0.454)
4,4'DDT	50293	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro- DDT	1	1,2,4	U061	X	1 (0.454)
DDT AND METABOLITES	N.A.		1*	2			**
Diallate	2303164	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	1*	4	U062	B	100 (45.4)
Diazinon	333415		1	1		X	1 (0.454)
Dibenz[a,h]anthracene	53703	Dibenzo[a,h]anthracene 1,2:5,6-Dibenzanthracene	1*	2,4	U063	X	1 (0.454)
1,2:5,6-Dibenzanthracene	53703	Dibenz[a,h]anthracene Dibenzo[a,h]anthracene	1*	2,4	U063	X	1 (0.454)
Dibenzo[a,h]anthracene	53703	Dibenz[a,h]anthracene 1,2:5,6-Dibenzanthracene	1*	2,4	U063	X	1 (0.454)
Dibenz[a,i]pyrene	189559	Benzo[rst]pentaphene	1*	4	U064	A	10 (4.54)
1,2-Dibromo-3-chloropropane	96128	Propane, 1,2-dibromo-3-chloro-	1*	4	U066	X	1 (0.454)
Dibutyl phthalate	84742	Di-n-butyl phthalate n-Butyl phthalate 1,2-Benzenedicarboxylic acid, dibutyl ester	100	1,2,4	U069	A	10 (4.54)
Di-n-butyl phthalate	84742	Dibutyl phthalate n-Butyl phthalate 1,2-Benzenedicarboxylic acid, dibutyl ester	100	1,2,4	U069	A	10 (4.54)
Dicamba	1918009		1000	1		C	1000 (454)
Dichlobenil	1194656		1000	1		B	100 (45.4)
Dichlone	117806		1	1		X	1 (0.454)
Dichlorobenzene	25321226		100	1		B	100 (45.4)
1,2-Dichlorobenzene	95501	Benzene, 1,2-dichloro- o-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)
1,3-Dichlorobenzene	541731	Benzene, 1,3-dichloro m-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
1,4-Dichlorobenzene	106467	Benzene, 1,4-dichloro p-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
m-Dichlorobenzene	541731	Benzene, 1,3-dichloro 1,3-Dichlorobenzene	1*	2,4	U071	B	100 (45.4)
o-Dichlorobenzene	95501	Benzene, 1,2-dichloro 1,2-Dichlorobenzene	100	1,2,4	U070	B	100 (45.4)
p-Dichlorobenzene	106467	Benzene,1,4-dichloro 1,4-Dichlorobenzene	100	1,2,4	U072	B	100 (45.4)
DICHLOROBENZIDINE	N.A.		1*	2			**
3,3'-Dichlorobenzidine	91941	[1,1'-Biphenyl]-4,4'diamine,3,3'dichloro-	1*	2,4	U073	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Dichlorobromomethane	75274		1*	2		D	5000 (2270)
1,4-Dichloro-2-butene	764410	2-Butene, 1,4-dichloro-	1*	4	U074	X	1 (0.454)
Dichlorodifluoromethane	75718	Methane, dichlorodifluoro-	1*	4	U075	D	5000 (2270)
1,1-Dichloroethane	75343	Ethane, 1,1-dichloro- Ethylidene dichloride	1*	2,4	U076	C	1000 (454)
1,2-Dichloroethane	107062	Ethane, 1,2-dichloro- Ethylene dichloride	5000	1,2,4	U077	B	100 (45.4)
1,1-Dichloroethylene	75354	Ethene, 1,1-dichloro- Vinylidene chloride	5000	1,2,4	U078	B	100 (45.4)
1,2-Dichloroethylene	156605	Ethene, 1,2-dichloro- (E)	1*	2,4	U079	C	1000 (454)
Dichloroethyl ether	111444	Bis (2-chloroethyl) ether Ethane, 1,1'-oxybis[2-chloro-	1*	2,4	U025	A	10 (4.54)
Dichloroisopropyl ether	108601	Propane, 2,2'-oxybis[2-chloro-	1*	2,4	U027	C	1000 (454)
Dichloromethoxy ethane	111911	Bis(2-chloroethoxy) methane Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	1*	2,4	U024	C	1000 (454)
Dichloromethyl ether	542881	Methane, oxybis(chloro-	1*	4	P016	A	10 (4.54)
2,4-Dichlorophenol	120832	Phenol, 2,4-dichloro-	1*	2,4	U081	B	100 (45.4)
2,6-Dichlorophenol	87650	Phenol, 2,6-dichloro-	1*	4	U082	B	100 (45.4)
Dichlorophenylarsine	696286	Arsonous dichloride, phenyl-	1*	4	P036	X	1 (0.454)
Dichloropropane	26638197		5000	1		C	1000 (454)
1,1-Dichloropropane	78999						
1,3-Dichloropropane	142289						
1,2-Dichloropropane	78875	Propane, 1,2-dichloro- Propylene dichloride	5000	1,2,4	U083	C	1000 (454)
Dichloropropane—Dichloropropene (mixture)	8003198		5000	1		B	100 (45.4)
Dichloropropene	26952238		5000	1		B	100 (45.4)
2,3-Dichloropropene	78886						
1,3-Dichloropropene	542756	1-Propene, 1,3-dichloro-	5000	1,2,4	U084	B	100 (45.4)
2,2-Dichloropropionic acid	75990		5000	1		D	5000 (2270)
Dichlorvos	62737		10	1		A	10 (4.54)
Dicofol	115322		5000	1		A	10 (4.54)
Dieldrin	60571	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-	1	1,2,4	P037	X	1 (0.454)
1,2:3,4-Diepoxybutane	1464535	2,2'-Bioxirane	1*	4	U085	A	10 (4.54)
Diethylamine	109897		1000	1		B	1000 (45.4)
Diethylarsine	692422	Arsine, diethyl-	1*	4	P038	X	1 (0.454)
1,4-Diethylenedioxide	123911	1,4-Dioxane	1*	4	U108	B	100 (45.4)
Diethylhexyl phthalate	117817	Bis (2-ethylhexyl)phthalate 1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)] ester	1*	2,4	U028	B	100 (45.4)
N,N'-Diethylhydrazine	1615801	Hydrazine, 1,2-diethyl-	1*	4	U086	A	10 (4.54)
O,O-Diethyl S-methyl dithiophosphate	3288582	Phosphorodithioic acid, O,O-diethyl S-methyl ester	1*	4	U087	D	5000 (2270)
Diethyl-p-nitrophenyl phosphate	311455	Phosphoric acid, diethyl 4-nitrophenyl ester	1*	4	P041	B	100 (45.4)
Diethyl phthalate	84662	1,2-Benzenedicarboxylic acid, diethyl ester	1*	2,4	U088	C	1000 (454)
O,O-Diethyl O-pyrazinyl phosphorothioate	297972	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	1*	4	P040	B	100 (45.4)
Diethylstilbestrol	56531	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)	1*	4	U089	X	1 (0.454)
Dihydrosafrole	94586	1,3-Benzodioxole, 5-propyl-	1*	4	U090	A	10 (4.54)
Diisopropylfluorophosphate	55914	Phosphorofluoridic acid, bis(1-methylethyl) ester	1*	4	P043	B	100 (45.4)
1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha,	309002	Aldrin	1	1,2,4	P004	X	1 (0.454)
8abeta)-1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro, (1alpha,4alpha,4abeta,5abeta,8beta,	465736	Isodrin	1*	4	P060	X	1 (0.454)
8abeta)-2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,	60571	Dieldrin	1	1,2,4	P037	X	1 (0.454)
6aalpha,7beta,7aalpha)-2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octa-hydro-, (1aalpha,2beta,2abeta,3alpha,6alpha,	72208	Endrin Endrin, & metabolites	1	1,2,4	P051	X	1 (0.454)
6abeta,7beta,7aalpha)-Dimethoate	60515	Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester	1*	4	P044	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
3,3'-Dimethoxybenzidine	119904	[1,1'-Biphenyl]-4,4'diamine,3,3'dimethoxy-	1*	4	U091	B	100 (45.4)
Dimethylamine	124403	Methanamine, N-methyl-	1000	1,4	U092	C	1000 (454)
p-Dimethylaminoazobenzene	60117	Benzenamine, N,N-dimethyl-4-(phenylazo-)	1*	4	U093	A	10 (4.54)
7,12-Dimethylbenz[a]anthracene	57976	Benz[a]anthracene, 7,12-dimethyl-	1*	4	U094	X	1 (0.454)
3,3'-Dimethylbenzidine	119937	[1,1'Biphenyl]-4,4'-diamine,3,3'-dimethyl-	1*	4	U095	A	10 (4.54)
alpha,alpha-Dimethylbenzylhydroperoxide	80159	Hydroperoxide, 1-methyl-1-phenylethyl-	1*	4	U096	A	10 (4.54)
Dimethylcarbamoyl chloride	79447	Carbamic chloride, dimethyl-	1*	4	U097	X	1 (0.454)
1,1-Dimethylhydrazine	57147	Hydrazine, 1,1-dimethyl-	1*	4	U098	A	10 (4.54)
1,2-Dimethylhydrazine	540738	Hydrazine, 1,2-dimethyl-	1*	4	U099	X	1 (0.454)
alpha,alpha-Dimethylphenethylamine	122098	Benzeneethanamine, alpha,alpha-dimethyl-	1*	4	P046	D	5000 (2270)
2,4-Dimethylphenol	105679	Phenol, 2,4-dimethyl-	1*	2,4	U101	B	100 (45.4)
Dimethyl phthalate	131113	1,2-Benzenedicarboxylic acid, dimethyl ester	1*	2,4	U102	D	5000 (2270)
Dimethyl sulfate	77781	Sulfuric acid, dimethyl ester	1*	4	U103	B	100 (45.4)
Dinitrobenzene (mixed)	25154545		1000	1		B	100 (45.4)
m-Dinitrobenzene	99650						
o-Dinitrobenzene	528290						
p-Dinitrobenzene	100254						
4,6-Dinitro-o-cresol and salts	534521	Phenol, 2-methyl-4,6-dinitro-	1*	2,4	P047	A	10 (4.54)
Dinitrophenol	25550587		1000	1		A	10 (4.54)
2,5-Dinitrophenol	329715						
2,6-Dinitrophenol	573568					A	
2,4-Dinitrophenol	51285	Phenol, 2,4-dinitro-	1000	1,2,4	P048	A	10 (4.54)
Dinitrotoluene	25321146		1000	1,2		A	10 (4.54)
3,4-Dinitrotoluene	610399						
2,4-Dinitrotoluene	121142	Benzene, 1-methyl-2,4-dinitro-	1000	1,2,4	U105	A	10 (4.54)
2,6-Dinitrotoluene	606202	Benzene, 2-methyl-1,3-dinitro-	1000	1,2,4	U106	B	100 (45.4)
Dinoseb	88857	Phenol, 2-(1-methylpropyl)-4,6-dinitro	1*	4	P020	C	1000 (454)
Di-n-octyl phthalate	117840	1,2-Benzenedicarboxylic acid, dioctyl ester	1*	2,4	U107	D	5000 (2270)
1,4-Dioxane	123911	1,4-Diethylenedioxide	1*	4	U108	B	100 (45.4)
DIPHENYLHYDRAZINE	N.A.		1*	2			**
1,2-Diphenylhydrazine	122667	Hydrazine, 1,2-diphenyl-	1*	2,4	U109	A	10 (4.54)
Diphosphoramide, octamethyl-	152169	Octamethylpyrophosphoramide	1*	4	P085	B	100 (45.4)
Diphosphoric acid, tetraethyl ester	107493	Tetraethyl pyrophosphate	100	1,4	P111	A	10 (4.54)
Dipropylamine	142847	1-Propanamine, N-propyl-	1*	4	U110	D	5000 (2270)
Di-n-propylnitrosamine	621647	1-Propanamine, N-nitroso-N-propyl-	1*	2,4	U111	A	10 (4.54)
Diquat	85007		1000	1		C	1000 (454)
	2764729						
Disulfoton	298044	Phosphorodithioic acid, o,o-diethyl S-[2-(ethylthio)ethyl]ester	1	1,4	P039	X	1 (0.454)
Dithiobiuret	541537	Thioimidodicarbonic diamide [(H2N) C(S)]2NH	1*	4	P049	B	100 (45.4)
Diuron	330541		100	1		B	100 (45.4)
Dodecylbenzenesulfonic acid	27176870		1000	1		C	1000 (454)
Endosulfan	115297	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	1	1,2,4	P050	X	1 (0.454)
alpha - Endosulfan	959988		1*	2		X	1 (0.454)
beta - Endosulfan	33213659		1*	2		X	1 (0.454)
ENDOSALFAN AND METABOLITES	N.A.		1*	2			**
Endosulfan sulfate	1031078		1*	2		X	1 (0.454)
Endothall	145733	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	1*	4	P088	C	1000 (454)
Endrin	72208	Endrin, & metabolites 2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9 -hexachloro-1a,2,2a,3, 6,6a,7,7a-octa-hydro-, (1aalpha, 2beta,2abeta,3alpha,6alpha, 6abeta,7beta, 7aalpha)-	1	1,2,4	P051	X	1 (0.454)
Endrin aldehyde	7421934		1*	2		X	1 (0.454)
ENDRIN AND METABOLITES	N.A.		1*	2			**
Endrin, & metabolites	72208	Endrin 2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3, 6,6a,7,7a-octa-hydro-, (1aalpha, 2beta,2abeta,3alpha,6alpha, 6abeta,7beta, 7aalpha)-	1	1,2,4	P051	X	1 (0.454)
Epichlorohydrin	106898	Oxirane, (chloromethyl)-	1000	1,4	U041	B	100 (45.4)
Epinephrine	51434	1,2-Benzenediol,4-[1-hydroxy-2-(methylamino)ethyl]-	1*	4	P042	C	1000 (454)
Ethanal	75070	Acetaldehyde	1000	1,4	U001	C	1000 (454)
Ethanamine, N-ethyl-N-nitroso-	55185	N-Nitrosodiethylamine	1*	4	U174	X	1 (0.454)
1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91805	Methapyrilene	1*	4	U155	D	5000 (2270)
Ethane, 1,2-dibromo-	106934	Ethylene dibromide	1000	1,4	U067	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Ethane, 1,1-dichloro-	75343	Ethylidene dichloride 1,1-Dichloroethane	1*	2,4	U076	C	1000 (454)
Ethane, 1,2-dichloro-	107062	Ethylene dichloride 1,2-Dichloroethane	5000	1,2,4	U077	B	100 (45.4)
Ethanedinitrile	460195	Cyanogen	1*	4	P031	B	100 (45.4)
Ethane, hexachloro-	67721	Hexachloroethane	1*	2,4	U131	B	100 (45.4)
Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-	111911	Bis(2-chloroethoxy) methane Dichloromethoxy ethane	1*	2,4	U024	C	1000 (454)
Ethane, 1,1'-oxybis-	60297	Ethyl ether	1*	4	U117	B	100 (45.4)
Ethane, 1,1'-oxybis[2-chloro-	111444	Bis (2-chloroethyl) ether Dichloroethyl ether	1*	2,4	U025	A	10 (4.54)
Ethane, pentachloro-	76017	Pentachloroethane	1*	4	U184	A	10 (4.54)
Ethane, 1,1,1,2-tetrachloro-	630206	1,1,1,2-Tetrachloroethane	1*	4	U208	B	100 (45.4)
Ethane, 1,1,2,2-tetrachloro-	79345	1,1,2,2-Tetrachloroethane	1*	2,4	U209	B	100 (45.4)
Ethanethioamide	62555	Thioacetamide	1*	4	U218	A	10 (4.54)
Ethane, 1,1,1-trichloro-	71556	Methyl chloroform 1,1,1-Trichloroethane	1*	2,4	U226	C	1000 (454)
Ethane, 1,1,2-trichloro-	79005	1,1,2-Trichloroethane	1*	2,4	U227	B	100 (45.4)
Ethanimidothioic acid, N-[[(methylamino)carbonyl]oxy]-, methyl ester	16752775	Methomyl	1*	4	P066	B	100 (45.4)
Ethanol, 2-ethoxy-	110805	Ethylene glycol monoethyl ether	1*	4	U359	C	1000 (454)
Ethanol, 2,2'-(nitrosoimino)bis-	1116547	N-Nitrosodiethanolamine	1*	4	U173	X	1 (0.454)
Ethanone, 1-phenyl-	98862	Acetophenone	1*	4	U004	D	5000 (2270)
Ethene, chloro-	75014	Vinyl chloride	1*	2,3,4	U043	X	1 (0.454)
Ethene, 2-chloroethoxy-	110758	2-Chloroethyl vinyl ether	1*	2,4	U042	C	1000 (454)
Ethene, 1,1-dichloro-	75354	Vinylidene chloride 1,1-Dichloroethylene	5000	1,2,4	U078	B	100 (45.4)
Ethene, 1,2-dichloro- (E)	156605	1,2-Dichloroethylene	1*	2,4	U079	C	1000 (454)
Ethene, tetrachloro-	127184	Perchloroethylene Tetrachloroethene Tetrachloroethylene	1*	2,4	U210	B	100 (45.4)
Ethene, trichloro-	79016	Trichloroethene Trichloroethylene	1000	1,2,4	U228	B	100 (45.4)
Ethion	563122		10	1		A	10 (4.54)
Ethyl acetate	141786	Acetic acid, ethyl ester	1*	4	U112	D	5000 (2270)
Ethyl acrylate	140885	2-Propenoic acid, ethyl ester	1*	4	U113	C	1000 (454)
Ethylbenzene	100414		1000	1,2		C	1000 (454)
Ethyl carbamate (urethane)	51796	Carbamic acid, ethyl ester	1*	4	U238	B	100 (45.4)
Ethyl cyanide	107120	Propanenitrile	1*	4	P101	A	10 (4.54)
Ethylenebisdithiocarbamic acid, salts & esters	111546	Carbamodithioic acid, 1,2-ethanediylbis, salts & esters	1*	4	U114	D	5000 (2270)
Ethylenediamine	107153		1000	1		D	5000 (2270)
Ethylenediamine-tetraacetic acid (EDTA)	60004		5000	1		D	5000 (2270)
Ethylene dibromide	106934	Ethane, 1,2-dibromo-	1000	1,4	U067	X	1 (0.454)
Ethylene dichloride	107062	Ethane, 1,2-dichloro- 1,2-Dichloroethane	5000	1,2,4	U077	B	100 (45.4)
Ethylene glycol monoethyl ether	110805	Ethanol, 2-ethoxy-	1*	4	U359	C	1000 (454)
Ethylene oxide	75218	Oxirane	1*	4	U115	A	10 (4.54)
Ethylenethiourea	96457	2-Imidazolidinethione	1*	4	U116	A	10 (4.54)
Ethylenimine	151564	Aziridine	1*	4	P054	X	1 (0.454)
Ethyl ether	60297	Ethane, 1,1'-oxybis-	1*	4	U117	B	100 (45.4)
Ethylidene dichloride	75343	Ethane, 1,1-dichloro- 1,1-Dichloroethane	1*	2,4	U076	C	1000 (454)
Ethyl methacrylate	97632	2-Propenoic acid, 2-methyl-, ethyl ester	1*	4	U118	C	1000 (454)
Ethyl methanesulfonate	62500	Methanesulfonic acid, ethyl ester	1*	4	U119	X	1 (0.454)
Famphur	52857	Phosphorothioic acid, O,[4-[(di- methylamino) sulfonyl] phenyl] O,O-dimethyl ester	1*	4	P097	C	1000 (454)
Ferric ammonium citrate	1185575		1000	1		C	1000 (454)
Ferric ammonium oxalate	2944674		1000	1		C	1000 (454)
	55488874						
Ferric chloride	7705080		1000	1		C	1000 (454)
Ferric fluoride	7783508		100	1		B	100 (45.4)
Ferric nitrate	10421484		1000	1		C	1000 (454)
Ferric sulfate	10028225		1000	1		C	1000 (454)
Ferrous ammonium sulfate	10045893		1000	1		C	1000 (454)
Ferrous chloride	7758943		100	1		B	100 (45.4)
Ferrous sulfate	7720787		1000	1		C	1000 (454)
	7782630						
Fluoranthene	206440	Benzo[j,k]fluorene	1*	2,4	U120	B	100 (45.4)
Fluorene	86737		1*	2		D	5000 (2270)
Fluorine	7782414		1*	4	P056	A	10 (4.54)
Fluoroacetamide	640197	Acetamide, 2-fluoro-	1*	4	P057	B	100 (45.4)
Fluoroacetic acid, sodium salt	62748	Acetic acid, fluoro-, sodium salt	1*	4	P058	A	10 (4.54)
Formaldehyde	50000		1000	1,4	U122	B	100 (45.4)
Formic acid	64186		5000	1,4	U123	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Fulminic acid, mercury(2+)salt	628864	Mercury fulminate	1*	4	P065	A	10 (4.54)
Fumaric acid	110178		5000	1		D	5000 (2270)
Furan	110009	Furfuran	1*	4	U124	B	100 (45.4)
Furan, tetrahydro-	109999	Tetrahydrofuran	1*	4	U213	C	1000 (454)
2-Furancarboxaldehyde	98011	Furfural	1000	1,4	U125	D	5000 (2270)
2,5-Furandione	108316	Maleic anhydride	5000	1,4	U147	D	5000 (2270)
Furfural	98011	2-Furancarboxaldehyde	1000	1,4	U125	D	5000 (2270)
Furfuran	110009	Furan	1*	4	U124	B	100 (45.4)
Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	18883664	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino] Streptozotocin	1*	4	U206	X	1 (0.454)
D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-.	18883664	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)- Streptozotocin	1*	4	U206	X	1 (0.454)
Glycidylaldehyde	765344	Oxiranecarboxyaldehyde	1*	4	U126	A	10 (4.54)
Guanidine, N-methyl-N'-nitro-N-nitroso-	70257	MNNG	1*	4	U163	A	10 (4.54)
Guthion	86500		1	1		X	1 (0.454)
HALOETHERS	N.A.		1*	2			**
HALOMETHANES	N.A.		1*	2			**
Heptachlor	76448	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	1	1,2,4	P059	X	1 (0.454)
HEPTACHLOR AND METABOLITES	N.A.		1*	2			**
Heptachlor epoxide	1024573		1*	2		X	1 (0.454)
Hexachlorobenzene	118741	Benzene, hexachloro-	1*	2,4	U127	A	10 (4.54)
Hexachlorobutadiene	87683	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	1*	2,4	U128	X	1 (0.454)
HEXACHLOROCYCLOHEXANE (all isomers).	608731		1*	2			**
Hexachlorocyclohexane (gamma isomer)	58899	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha, 6beta)-gamma-BHC Lindane	1	1,2,4	U129	X	1 (0.454)
Hexachlorocyclopentadiene	77474	1,3-Cyclopentadiene,1,2,3,4,5,5-hexachloro-	1	1,2,4	U130	A	10 (4.54)
Hexachloroethane	67721	Ethane, hexachloro-	1*	2,4	U131	B	100 (45.4)
Hexachlorophene	70304	Phenol, 2,2'-methylenebis[3,4,6-trichloro-	1*	4	U132	B	100 (45.4)
Hexachloropropene	1888717	1-Propene, 1,1,2,3,3,3-hexachloro-	1*	4	U243	C	1000 (454)
Hexaethyl tetraphosphate	757584	Tetraphosphoric acid, hexaethyl ester	1*	4	P062	B	100 (45.4)
Hydrazine	302012		1*	4	U133	X	1 (0.454)
Hydrazine, 1,2-diethyl-	1615801	N,N'-Diethylhydrazine	1*	4	U086	A	10 (4.54)
Hydrazine, 1,1-dimethyl-	57147	1,1-Dimethylhydrazine	1*	4	U098	A	10 (4.54)
Hydrazine, 1,2-dimethyl-	540738	1,2-Dimethylhydrazine	1*	4	U099	X	1 (0.454)
Hydrazine, 1,2-diphenyl-	122667	1,2-Diphenylhydrazine	1*	2,4	U109	A	10 (4.54)
Hydrazine, methyl-	60344	Methyl hydrazine	1*	4	P068	A	10 (4.54)
Hydrazinecarbothioamide	79196	Thiosemicarbazide	1*	4	P116	B	100 (45.4)
Hydrochloric acid	7647010	Hydrogen chloride	5000	1		D	5000 (2270)
Hydrocyanic acid	74908	Hydrogen cyanide	10	1,4	P063	A	10 (4.54)
Hydrofluoric acid	7664393	Hydrogen fluoride	5000	1,4	U134	B	100 (45.4)
Hydrogen chloride	7647010	Hydrochloric acid	5000	1		D	5000 (2270)
Hydrogen cyanide	74908	Hydrocyanic acid	10	1,4	P063	A	10 (4.54)
Hydrogen fluoride	7664393	Hydrofluoric acid	5000	1,4	U134	B	100 (45.4)
Hydrogen sulfide	7783064	Hydrogen sulfide H2S	100	1,4	U135	B	100 (45.4)
Hydrogen sulfide H2S	7783064	Hydrogen sulfide	100	1,4	U135	B	100 (45.4)
Hydroperoxide, 1-methyl-1-phenylethyl-	80159	alpha,alpha-Dimethylbenzylhydroperoxide	1*	4	U096	A	10 (4.54)
2-Imidazolidinethione	96457	Ethylenethiourea	1*	4	U116	A	10 (4.54)
Indeno(1,2,3-cd)pyrene	193395	1,10-(1,2-Phenylene)pyrene	1*	2,4	U137	B	100 (45.4)
1,3-Isobenzofurandione	85449	Phthalic anhydride	1*	4	U190	D	5000 (2270)
Isobutyl alcohol	78831	1-Propanol, 2-methyl-	1*	4	U140	D	5000 (2270)
Isodrin	465736	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro, (1alpha,4alpha,4abeta,5beta, 8beta,8abeta)-	1*	4	P060	X	1 (0.454)
Isophorone	78591		1*	2		D	5000 (2270)
Isoprene	78795		1000	1		B	100 (45.4)
Isopropanolamine dodecylbenzenesulfonate	42504461		1000	1		C	1000 (454)
Isosafrole	120581	1,3-Benzodioxole, 5-)1-propenyl)-	1*	4	U141	B	100 (45.4)
3(2H)-Isoxazolone, 5-(aminomethyl)-	2763964	Muscimol 5-(Aminomethyl)-3-isoxazolol	1*	4	P007	C	1000 (454)
Kepone	143500	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	1	1,4	U142	X	1 (0.454)
Lasiocarpine	303344	2-Butenoic acid, 2-methyl-, 7[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z), 7(2S*,3R*),7aalpha]]-	1*	4	U143	A	10 (4.54)
Lead ††	7439921		1*	2			#

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Lead acetate	301042	Acetic acid, lead(2+) salt	5000	1,4	U144		#
LEAD AND COMPOUNDS	N.A.		1*	2			**
Lead arsenate	7784409		5000	1		X	1 (0.454)
	7645252						
	10102484						
Lead, bis(acetato-O)tetrahydroxytri	1335326	Lead subacetate	1*	4	U146	B	100 (45.4)
Lead chloride	7758954		5000	1		B	100 (45.4)
Lead fluoborate	13814965		5000	1		B	100 (45.4)
Lead fluoride	7783462		1000	1		B	100 (45.4)
Lead iodide	10101630		5000	1		B	100 (45.4)
Lead nitrate	10099748		5000	1		B	100 (45.4)
Lead phosphate	7446277	Phosphoric acid, lead(2+) salt (2:3)	1*	4	U145		#
Lead stearate	7428480		5000	1		D	5000# (2270)
	1072351						
	52652592						
	56189094						
Lead subacetate	1335326	Lead, bis(acetato-O)tetrahydroxytri	1*	4	U146	B	100 (45.4)
Lead sulfate	15739807		5000	1		B	100 (45.4)
	7446142						
Lead sulfide	1314870		5000	1		D	5000# (2270)
Lead thiocyanate	592870		5000	1		B	100 (45.4)
Lindane	58899	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	1	1,2,4	U129	X	1 (0.454)
		gamma-BHC					
		Hexachlorocyclohexane (gamma isomer)					
Lithium chromate	14307358		1000	1		A	10 (4.54)
Malathion	121755		10	1		B	100 (45.4)
Maleic acid	110167		5000	1		D	5000 (2270)
Maleic anhydride	108316	2,5-Furandione	5000	1,4	U147	D	5000 (2270)
Maleic hydrazide	123331	3,6-Pyridazinedione, 1,2-dihydro-	1*	4	U148	D	5000 (2270)
Malononitrile	109773	Propanedinitrile	1*	4	U149	C	1000 (454)
Melphalan	148823	L-Phenylalanine, 4-[bis(2-chloroethyl) aminol]	1*	4	U150	X	1 (0.454)
Mercaptodimethur	2032657		100	1		A	10 (4.54)
Mercuric cyanide	592041		1	1		X	1 (0.454)
Mercuric nitrate	10045940		10	1		A	10 (4.54)
Mercuric sulfate	7783359		10	1		A	10 (4.54)
Mercuric thiocyanate	592858		10	1		A	10 (4.54)
Mercurous nitrate	10415755		10	1		A	10 (4.54)
	7782867						
Mercury	7439976		1*	2,3,4	U151	X	1 (0.454)
MERCURY AND COMPOUNDS	N.A.		1*	2			**
Mercury, (acetate-O)phenyl-	62384	Phenylmercury acetate	1*	4	P092	B	100 (45.4)
Mercury fulminate	628864	Fulminic acid, mercury(2+)salt	1*	4	P065	A	10 (4.54)
Methacrylonitrile	126987	2-Propenenitrile, 2-methyl-	1*	4	U152	C	1000 (454)
Methanamine, N-methyl-	124403	Dimethylamine	1000	1,4	U092	C	1000 (454)
Methanamine, N-methyl-N-nitroso-	62759	N-Nitrosodimethylamine	1*	2,4	P082	A	10 (4.54)
Methane, bromo-	74839	Methyl bromide	1*	2,4	U029	C	1000 (454)
Methane, chloro-	74873	Methyl chloride	1*	2,4	U045	B	100 (45.4)
Methane, chloromethoxy-	107302	Chloromethyl methyl ether	1*	4	U046	A	10 (4.54)
Methane, dibromo-	74953	Methylene bromide	1*	4	U068	C	1000 (454)
Methane, dichloro-	75092	Methylene chloride	1*	2,4	U080	C	1000 (454)
Methane, dichlorodifluoro-	75718	Dichlorodifluoromethane	1*	4	U075	D	5000 (2270)
Methane, iodo-	74884	Methyl iodide	1*	4	U138	B	100 (45.4)
Methane, isocyanato-	624839	Methyl isocyanate	1*	4	P064		##
Methane, oxybis(chloro-	542881	Dichloromethyl ether	1*	4	P016	A	10 (4.54)
Methanesulfenyl chloride, trichloro-	594423	Trichloromethanesulfenyl chloride	1*	4	P118	B	100 (45.4)
Methanesulfonic acid, ethyl ester	62500	Ethyl methanesulfonate	1*	4	U119	X	1 (0.454)
Methane, tetrachloro-	56235	Carbon tetrachloride	5000	1,2,4	U211	A	10 (4.54)
Methane, tetranitro-	509148	Tetranitromethane	1*	4	P112	A	10 (4.54)
Methane, tribromo-	75252	Bromoform	1*	2,4	U225	B	100 (45.4)
Methane, trichloro-	67663	Chloroform	5000	1,2,4	U044	A	10 (4.54)
Methane, trichlorofluoro-	75694	Trichloromonofluoromethane	1*	4	U121	D	5000 (2270)
Methanethiol	74931	Methylmercaptan	100	1,4	U153	B	100 (45.4)
		Thiomethanol					
6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	115297	Endosulfan	1	1,2,4	P050	X	1 (0.454)
1,3,4-Methano-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlor-octahydro-	143500	Kepone	1	1,4	U142	X	1 (0.454)
4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76448	Heptachlor	1	1,2,4	P059	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57749	Chlordane Chlordane, alpha & gamma isomers Chlordane, technical	1	1,2,4	U036	X	1 (0.454)
Methanol	67561	Methyl alcohol	1*	4	U154	D	5000 (2270)
Methapyrilene	91805	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	1*	4	U155	D	5000 (2270)
Methomyl	16752775	Ethanimidothioic acid, N-[[(methylamino)carbonyl]oxy]-, methyl ester	1*	4	P066	B	100 (45.4)
Methoxychlor	72435	Benzene, 1,1'-(2,2,2-trichloroethylidene) bis[4-methoxy-	1	1,4	U247	X	1 (0.454)
Methyl alcohol	67561	Methanol	1*	4	U154	D	5000 (2270)
Methyl bromide	74839	Methane, bromo-	1*	2,4	U029	C	1000 (454)
1-Methylbutadiene	504609	1,3-Pentadiene	1*	4	U186	B	100 (45.4)
Methyl chloride	74873	Methane, chloro-	1*	2,4	U045	B	100 (45.4)
Methyl chlorocarbonate	79221	Carbonochloridic acid, methyl ester Methyl chloroformate	1*	4	U156	C	1000 (454)
Methyl chloroform	71556	Ethane, 1,1,1-trichloro- 1,1,1-Trichloroethane	1*	2,4	U226	C	1000 (454)
Methyl chloroformate	79221	Carbonochloridic acid, methyl ester Methyl chlorocarbonate	1*	4	U156	C	1000 (454)
3-Methylcholanthrene	56495	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	1*	4	U157	A	10 (4.54)
4,4'-Methylenebis(2-chloroaniline)	101144	Benzenamine, 4,4'-methylenebis(2-chloro-	1*	4	U158	A	10 (4.54)
Methylene bromide	74953	Methane, dibromo-	1*	4	U068	C	1000 (454)
Methylene chloride	75092	Methane, dichloro-	1*	2,4	U080	C	1000 (454)
Methyl ethyl ketone (MEK)	78933	2-Butanone	1*	4	U159	D	5000 (2270)
Methyl ethyl ketone peroxide	1338234	2-Butanone peroxide	1*	4	U160	A	10 (4.54)
Methyl hydrazine	60344	Hydrazine, methyl-	1*	4	P068	A	10 (4.54)
Methyl iodide	74884	Methane, iodo-	1*	4	U138	B	100 (45.4)
Methyl isobutyl ketone	108101	4-Methyl-2-pentanone	1*	4	U161	D	5000 (2270)
Methyl isocyanate	624839	Methane, isocyanato-	1*	4	P064		# #
2-Methyllactonitrile	75865	Acetone cyanohydrin Propanenitrile, 2-hydroxy-2-methyl-	10	1,4	P069	A	10 (4.54)
Methylmercaptan	74931	Methanethiol Thiomethanol	100	1,4	U153	B	100 (45.4)
Methyl methacrylate	80626	2-Propenoic acid, 2-methyl-, methyl ester	5000	1,4	U162	C	1000 (454)
Methyl parathion	298000	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	100	1,4	P071	B	100 (45.4)
4-Methyl-2-pentanone	108101	Methyl isobutyl ketone	1*	4	U161	D	5000 (2270)
Methylthiouracil	56042	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	1*	4	U164	A	10 (4.54)
Mevinphos	7786347		1	1		A	10 (4.54)
Mexacarbate	315184		1000	1		C	1000 (454)
Mitomycin C	50077	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta, 8aalpha, 8balpha)]-	1*	4	U010	A	10 (4.54)
MNNG	70257	Guanidine, N-methyl-N'-nitro-N-nitroso-	1*	4	U163	A	10 (4.54)
Monoethylamine	75047		1000	1		B	100 (45.4)
Monomethylamine	74895		1000	1		B	100 (45.4)
Muscimol	2763964	3(2H)-Isoxazolone, 5-(aminomethyl)- 5-(Aminomethyl)-3-isoxazolol	1*	4	P007	C	1000 (454)
Naled	300765		10	1		A	10 (4.54)
5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-	20830813	Daunomycin	1*	4	U059	A	10 (4.54)
1-Naphthalenamine	134327	alpha-Naphthylamine	1*	4	U167	B	100 (45.4)
2-Naphthalenamine	91598	beta-Naphthylamine	1*	4	U168	A	10 (4.54)
Naphthalenamine, N,N'-bis(2-chloroethyl)-	494031	Chlornaphazine	1*	4	U026	B	100 (45.4)
Naphthalene	91203		5000	1,2,4	U165	B	100 (45.4)
Naphthalene, 2-chloro-	91587	beta-Chloronaphthalene 2-Chloronaphthalene	1*	2,4	U047	D	5000 (2270)
1,4-Naphthalenedione	130154	1,4-Naphthoquinone	1*	4	U166	D	5000 (2270)
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-(1,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.	72571	Trypan blue	1*	4	U236	A	10 (4.54)
Naphthenic acid	1338245		100	1		B	100 (45.4)
1,4-Naphthoquinone	130154	1,4-Naphthalenedione	1*	4	U166	D	5000 (2270)
alpha-Naphthylamine	134327	1-Naphthalenamine	1*	4	U167	B	100 (45.4)
beta-Naphthylamine	91598	2-Naphthalenamine	1*	4	U168	A	10 (4.54)
alpha-Naphthylthiourea	86884	Thiourea, 1-naphthalenyl-	1*	4	P072	B	100 (45.4)
Nickel ††	7440020		1*	2		B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Nickel ammonium sulfate	15699180		5000	1		B	100 (45.4)
NICKEL AND COMPOUNDS	N.A.		1*	2			**
Nickel carbonyl	13463393	Nickel carbonyl Ni(CO)4, (T-4)-	1*	4	P073	A	10 (4.54)
Nickel carbonyl Ni(CO)4, (T-4)-	13463393	Nickel carbonyl	1*	4	P073	A	10 (4.54)
Nickel chloride	7718549		5000	1		B	100 (45.4)
	37211055						
Nickel cyanide	557197	Nickel cyanide Ni(CN)2	1*	4	P074	A	10 (4.54)
Nickel cyanide Ni(CN)2	557197	Nickel cyanide	1*	4	P074	A	10 (4.54)
Nickel hydroxide	12054487		1000	1		A	10 (4.54)
Nickel nitrate	14216752		5000	1		B	100 (45.4)
Nickel sulfate	7786814		5000	1		B	100 (45.4)
Nicotine, & salts	54115	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-	1*	4	P075	B	100 (45.4)
Nitric acid	7697372		1000	1		C	1000 (454)
Nitric acid, thallium (1+) salt	10102451	Thallium (I) nitrate	1*	4	U217	B	100 (45.4)
Nitric oxide	10102439	Nitrogen oxide NO	1*	4	P076	A	10 (4.54)
p-Nitroaniline	100016	Benzenamine, 4-nitro-	1*	4	P077	D	5000 (2270)
Nitrobenzene	98953	Benzene, nitro-	1000	1,2,4	U169	C	1000 (454)
Nitrogen dioxide	10102440	Nitrogen oxide NO2	1000	1,4	P078	A	10 (4.54)
	10544726						
Nitrogen oxide NO	10102439	Nitric oxide	1*	4	P076	A	10 (4.54)
Nitrogen oxide NO2	10102440	Nitrogen dioxide	1000	1,4	P078	A	10 (4.54)
	10544726						
Nitroglycerine	55630	1,2,3-Propanetriol, trinitrate-	1*	4	P081	A	10 (4.54)
Nitrophenol (mixed)	25154556		1000	1		B	100 (45.4)
m-Nitrophenol	554847					B	100 (45.4)
o-Nitrophenol	88755	2-Nitrophenol					
p-Nitrophenol	100027	Phenol, 4-nitro- 4-Nitrophenol					
o-Nitrophenol	88755	2-Nitrophenol	1000	1,2		B	100 (45.4)
p-Nitrophenol	100027	Phenol, 4-nitro- 4-Nitrophenol	1000	1,2,4	U170	B	100 (45.4)
2-Nitrophenol	88755	o-Nitrophenol	1000	1,2		B	100 (45.4)
4-Nitrophenol	100027	p-Nitrophenol Phenol, 4-nitro-	1000	1,2,4	U170	B	100 (45.4)
NITROPHENOLS	N.A.		1*	2			**
2-Nitropropane	79469	Propane, 2-nitro-	1*	4	U171	A	10 (4.54)
NITROSAMINES	N.A.		1*	2			**
N-Nitrosodi-n-butylamine	924163	1-Butanamine, N-butyl-N-nitroso-	1*	4	U172	A	10 (4.54)
N-Nitrosodiethanolamine	1116547	Ethanol, 2,2'-(nitrosoimino)bis-	1*	4	U173	X	1 (0.454)
N-Nitrosodiethylamine	55185	Ethanamine, N-ethyl-N-nitroso-	1*	4	U174	X	1 (0.454)
N-Nitrosodimethylamine	62759	Methanamine, N-methyl-N-nitroso-	1*	2,4	P082	A	10 (4.54)
N-Nitrosodiphenylamine	86306		1*	2		B	100 (45.4)
N-Nitroso-N-ethylurea	759739	Urea, N-ethyl-N-nitroso-	1*	4	U176	X	1 (0.454)
N-Nitroso-N-methylurea	684935	Urea, N-methyl-N-nitroso	1*	4	U177	X	1 (0.454)
N-Nitroso-N-methylurethane	615532	Carbamic acid, methylnitroso-, ethyl ester	1*	4	U178	X	1 (0.454)
N-Nitrosomethylvinylamine	4549400	Vinylamine, N-methyl-N-nitroso-	1*	4	P084	A	10 (4.54)
N-Nitrosopiperidine	100754	Piperidine, 1-nitroso-	1*	4	U179	A	10 (4.54)
N-Nitrosopyrrolidine	930552	Pyrrolidine, 1-nitroso-	1*	4	U180	X	1 (0.454)
Nitrotoluene	1321126		1000	1		C	1000 (454)
m-Nitrotoluene	99081						
o-Nitrotoluene	88722						
p-Nitrotoluene	99990						
5-Nitro-o-toluidine	99558	Benzenamine, 2-methyl-5-nitro-	1*	4	U181	B	100 (45.4)
Octamethylpyrophosphoramide	152169	Diphosphoramide, octamethyl-	1*	4	P085	B	100 (45.4)
Osmium oxide OsO4 (T-4)-	20816120	Osmium tetroxide	1*	4	P087	C	1000 (454)
Osmium tetroxide	20816120	Osmium oxide OsO4 (T-4)-	1*	4	P087	C	1000 (454)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	145733	Endothall	1*	4	P088	C	1000 (454)
1,2-Oxathiolane, 2,2-dioxide	1120714	1,3-Propane sultone	1*	4	U193	A	10 (4.54)
2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide	50180	Cyclophosphamide	1*	4	U058	A	10 (4.54)
Oxirane	75218	Ethylene oxide	1*	4	U115	A	10 (4.54)
Oxiranecarboxyaldehyde	765344	Glycidylaldehyde	1*	4	U126	A	10 (4.54)
Oxirane, (chloromethyl)-	106898	Epichlorohydrin	1000	1,4	U041	B	100 (45.4)
Paraformaldehyde	30525894		1000	1		C	1000 (454)
Paraldehyde	123637	1,3,5-Trioxane, 2,4,6-trimethyl-	1*	4	U182	C	1000 (454)
Parathion	56382	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	1	1,4	P089	A	10 (4.54)
Pentachlorobenzene	608935	Benzene, pentachloro-	1*	4	U183	A	10 (4.54)
Pentachloroethane	76017	Ethane, pentachloro-	1*	4	U184	A	10 (4.54)
Pentachloronitrobenzene (PCNB)	82688	Benzene, pentachloronitro-	1*	4	U185	B	100 (45.4)
Pentachlorophenol	87865	Phenol, pentachloro-	10	1,2,4	U242	A	10 (4.54)
1,3-Pentadiene	504609	1-Methylbutadiene	1*	4	U186	B	100 (45.4)
Perchloroethylene	127184	Ethene, tetrachloro- Tetrachloro- ethene Tetrachloroethylene	1*	2,4	U210	B	100 (45.4)
Phenacetin	62442	Acetamide, N-(4-ethoxyphenyl)-	1*	4	U187	B	100 (45.4)
Phenanthrene	85018		1*	2		D	5000 (2270)
Phenol	108952	Benzene, hydroxy-	1000	1,2,4	U188	C	1000(454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Phenol, 2-chloro-	95578	o-Chlorophenol 2-Chlorophenol	1*	2,4	U048	B	100 (45.4)
Phenol, 4-chloro-3-methyl-	59507	p-Chloro-m-cresol 4-Chloro-m-cresol	1*	2,4	U039	D	5000 (2270)
Phenol, 2-cyclohexyl-4,6-dinitro-	131895	2-Cyclohexyl-4,6-dinitrophenol	1*	4	P034	B	100 (45.4)
Phenol, 2,4-dichloro-	120832	2,4-Dichlorophenol	1*	2,4	U081	B	100 (45.4)
Phenol, 2,6-dichloro-	87650	2,6-Dichlorophenol	1*	4	U082	B	100 (45.4)
Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)	56531	Diethylstilbestrol	1*	4	U089	X	1 (0.454)
Phenol, 2,4-dimethyl-	105679	2,4-Dimethylphenol	1*	2,4	U101	B	100(45.4)
Phenol, 2,4-dinitro-	51285	2,4-Dinitrophenol	1000	1,2,4	P048	A	10 (4.54)
Phenol, methyl-	1319773	Cresol(s) Cresylic acid	1000	1,4	U052	C	1000 (454)
m-Cresol	108394	m-Cresylic acid					
o-Cresol	95487	o-Cresylic acid					
p-Cresol	106445	p-Cresylic acid					
Phenol, 2-methyl-4,6-dinitro-	534521	4,6-Dinitro-o-cresol and salts	1*	2,4	P047	A	10 (4.54)
Phenol, 2,2'-methylenebis[3,4,6-trichloro-	70304	Hexachlorophene	1*	4	U132	B	100 (45.4)
Phenol, 2-(1-methylpropyl)-4,6-dinitro	88857	Dinoseb	1*	4	P020	C	1000 (454)
Phenol, 4-nitro-	100027	p-Nitrophenol 4-Nitrophenol	1000	1,2,4	U170	B	100 (45.4)
Phenol, pentachloro-	87865	Pentachlorophenol	10	1,2,4	U242	A	10 (4.54)
Phenol, 2,3,4,6-tetrachloro-	58902	2,3,4,6-Tetrachlorophenol	1*	4	U212	A	10 (4.54)
Phenol, 2,4,5-trichloro-	95954	2,4,5-Trichlorophenol	10	1,4	U230	A	10 (4.54)
Phenol, 2,4,6-trichloro-	88062	2,4,6-Trichlorophenol	10	1,2,4	U231	A	10 (4.54)
Phenol, 2,4,6-trinitro-, ammonium salt	131748	Ammonium picrate	1*	4	P009	A	10 (4.54)
L-Phenylalanine, 4-[bis(2-chloroethyl) aminol]	148823	Melphalan	1*	4	U150	X	1 (0.454)
1,10-(1,2-Phenylene)pyrene	193395	Indeno(1,2,3-cd)pyrene	1*	2,4	U137	B	100 (45.4)
Phenylmercury acetate	62384	Mercury, (acetato-O)phenyl-	1*	4	P092	B	100 (45.4)
Phenylthiourea	103855	Thiourea, phenyl-	1*	4	P093	B	100 (45.4)
Phorate	298022	Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester	1*	4	P094	A	10 (4.54)
Phosgene	75445	Carbonic dichloride	5000	1,4	P095	A	10 (4.54)
Phosphine	7803512		1*	4	P096	B	100 (45.4)
Phosphoric acid	7664382		5000	1		D	5000 (2270)
Phosphoric acid, diethyl 4-nitrophenyl ester	311455	Diethyl-p-nitrophenyl phosphate	1*	4	P041	B	100 (45.4)
Phosphoric acid, lead(2+) salt (2:3)	7446277	Lead phosphate	1*	4	U145		#
Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester	298044	Disulfoton	1	1,4	P039	X	1 (0.454)
Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester	298022	Phorate	1*	4	P094	A	10 (4.54)
Phosphorodithioic acid, O,O-diethyl S-methyl ester	3288582	O,O-Diethyl S-methyl dithiophosphate	1*	4	U087	D	5000 (2270)
Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester	60515	Dimethoate	1*	4	P044	A	10 (4.54)
Phosphorofluoridic acid, bis(1-methylethyl) ester	55914	Diisopropylfluorophosphate	1*	4	P043	B	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	56382	Parathion	1	1,4	P089	A	10 (4.54)
Phosphorothioic acid, O,[4-[(dimethylamino) sulfonyl]phenyl]O,O-dimethyl ester	52857	Famphur	1*	4	P097	C	1000 (454)
Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	298000	Methyl parathion	100	1,4	P071	B	100 (45.4)
Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester.	297972	O,O-Diethyl O-pyrazinyl phosphorothioate	1*	4	P040	B	100 (45.4)
Phosphorus	7723140		1	1		X	1 (0.454)
Phosphrous oxycloride	10025873		5000	1		C	1000 (454)
Phosphorus pentasulfide	1314803	Phosphorus sulfide Sulfur phosphide	100	1,4	U189	B	100 (45.4)
Phosphorus sulfide	1314803	Phosphorus pentasulfide Sulfur phosphide	100	1,4	U189	B	100 (45.4)
Phosphorus trichloride	7719122		5000	1		C	1000 (454)
PHTHALATE ESTERS	N.A.		1*	2			**
Phthalic anhydride	85449	1,3-Isobenzofurandione	1*	4	U190	D	5000 (2270)
2-Picoline	109068	Pyridine, 2-methyl-	1*	4	U191	D	5000 (2270)
Piperidine, 1-nitroso-	100754	N-Nitrosopiperidine	1*	4	U179	A	10 (4.54)
Plumbane, tetraethyl-	78002	Tetraethyl lead	100	1,4	P110	A	10 (4.54)
POLYCHLORINATED BIPHENYLS (PCBs)	1336363		10	1,2		X	1 (0.454)
Aroclor 1016	12674112	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1221	11104282	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1232	11141165	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1242	53469219	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1248	12672296	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1254	11097691	POLYCHLORINATED BIPHENYLS (PCBs)					
Aroclor 1260	11096825	POLYCHLORINATED BIPHENYLS (PCBs)					
POLYNUCLEAR AROMATIC HYDROCARBONS.	N.A.		1*	2			**
Potassium arsenate	7784410		1000	1		X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Potassium arsenite	10124502		1000	1		X	1 (0.454)
Potassium bichromate	7778509		1000	1		A	10 (4.54)
Potassium chromate	7789006		1000	1		A	10 (4.54)
Potassium cyanide	151508	Potassium cyanide K (CN)	10	1,4	P098	A	10 (4.54)
Potassium cyanide K(CN)	151508	Potassium cyanide	10	1,4	P098	A	10 (4.54)
Potassium hydroxide	1310583		1000	1		C	1000 (454)
Potassium permanganate	7722647		100	1		B	100 (45.4)
Potassium silver cyanide	506616	Argentate (1-), bis(cyano-C)-, potassium	1*	4	P099	X	1 (0.454)
Pronamide	23950585	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	1*	4	U192	D	5000 (2270)
Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	116063	Aldicarb	1*	4	P070	X	1 (0.454)
1-Propanamine	107108	n-Propylamine	1*	4	U194	D	5000 (2270)
1-Propanamine, N-propyl-	142847	Dipropylamine	1*	4	U110	D	5000 (2270)
1-Propanamine, N-nitroso-N-propyl-	621647	Di-n-propylnitrosamine	1*	2,4	U111	A	10 (4.54)
Propane, 1,2-dibromo-3-chloro-	96128	1,2-Dibromo-3-chloropropane	1*	4	U066	X	1 (0.454)
Propane, 2-nitro-	79469	2-Nitropropane	1*	4	U171	A	10 (4.54)
1,3-Propane sultone	1120714	1,2-Oxathiolane, 2,2-dioxide	1*	4	U193	A	10 (4.54)
Propane, 1,2-dichloro-	78875	Propylene dichloride 1,2-Dichloropropane	5000	1,2,4	U083	C	1000 (454)
Propanedinitrile	109773	Malononitrile	1*	4	U149	C	1000 (454)
Propanenitrile	107120	Ethyl cyanide	1*	4	P101	A	10 (4.54)
Propanenitrile, 3-chloro-	542767	3-Chloropropionitrile	1*	4	P027	C	1000 (454)
Propanenitrile, 2-hydroxy-2-methyl-	75865	Acetone cyanohydrin 2-Methyllactonitrile	10	1,4	P069	A	10 (4.54)
Propane, 2,2'-oxybis[2-chloro-	108601	Dichloroisopropyl ether	1*	2,4	U027	C	1000 (454)
1,2,3-Propanetriol, trinitrate-	55630	Nitroglycerine	1*	4	P081	A	10 (4.54)
1-Propanol, 2,3-dibromo-, phosphate (3:1)	126727	Tris(2,3-dibromopropyl) phosphate	1*	4	U235	A	10 (4.54)
1-Propanol, 2-methyl-	78831	Isobutyl alcohol	1*	4	U140	D	5000 (2270)
2-Propanone	67641	Acetone	1*	4	U002	D	5000 (2270)
2-Propanone, 1-bromo-	598312	Bromoacetone	1*	4	P017	C	1000 (454)
Propargite	2312358		10	1		A	10 (4.54)
Propargyl alcohol	107197	2-Propyn-1-ol	1*	4	P102	C	1000 (454)
2-Propenal	107028	Acrolein	1	1,2,4	P003	X	1 (0.454)
2-Propenamide	79061	Acrylamide	1*	4	U007	D	5000 (2270)
1-Propene, 1,1,2,3,3,3-hexachloro-	1888717	Hexachloropropene	1*	4	U243	C	1000 (454)
1-Propene, 1,3-dichloro-	542756	1,3-Dichloropropene	5000	1,2,4	U084	B	100 (45.4)
2-Propenenitrile	107131	Acrylonitrile	100	1,2,4	U009	B	100 (45.4)
2-Propenenitrile, 2-methyl-	126987	Methacrylonitrile	1*	4	U152	C	1000 (454)
2-Propenoic acid	79107	Acrylic acid	1*	4	U008	D	5000 (2270)
2-Propenoic acid, ethyl ester	140885	Ethyl acrylate	1*	4	U113	C	1000 (454)
2-Propenoic acid, 2-methyl-, ethyl ester	97632	Ethyl methacrylate	1*	4	U118	C	1000 (454)
2-Propenoic acid, 2-methyl-, methyl ester	80626	Methyl methacrylate	5000	1,4	U162	C	1000 (454)
2-Propen-1-ol	107186	Allyl alcohol	100	1,4	P005	B	100 (45.4)
Propionic acid	79094		5000	1		D	5000 (2270)
Propionic acid, 2-(2,4,5-trichlorophenoxy)-	93721	Silvex (2,4,5-TP) 2,4,5-TP acid	100	1,4	U233	B	100 (45.4)
Propionic anhydride	123626		5000	1		D	5000 (2270)
n-Propylamine	107108	1-Propanamine	1*	4	U194	D	5000 (2270)
Propylene dichloride	78875	Propane, 1,2-dichloro- 1,2-Dichloropropane	5000	1,2,4	U083	C	1000 (454)
Propylene oxide	75569		5000	1		B	100 (45.4)
1,2-Propylenimine	75558	Aziridine, 2-methyl-	1*	4	P067	X	1 (0.454)
2-Propyn-1-ol	107197	Propargyl alcohol	1*	4	P102	C	1000 (454)
Pyrene	129000		1*	2		D	5000 (2270)
Pyrethrins	121299 121211 8003347		1000	1		X	1 (0.545)
3,6-Pyridazinedione, 1,2-dihydro-	123331	Maleic hydrazide	1*	4	U148	D	5000 (2270)
4-Pyridinamine	504245	4-Aminopyridine	1*	4	P008	C	1000 (454)
Pyridine	110861		1*	4	U196	C	1000 (454)
Pyridine, 2-methyl-	109068	2-Picoline	1*	4	U191	D	5000 (2270)
Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-	54115	Nicotine, & salts	1*	4	P075	B	100 (45.4)
2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	66751	Uracil mustard	1*	4	U237	A	10 (4.54)
4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56042	Methylthiouracil	1*	4	U164	A	10 (4.54)
Pyrrolidine, 1-nitroso-	930552	N-Nitrosopyrrolidine	1*	4	U180	X	1 (0.454)
Quinoline	91225		1000	1		D	5000 (2270)
RADIONUCLIDES	N.A.		1*	3			§
Reserpine	50555	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy-, methyl ester (3beta, 16beta,17alpha,18beta,20alpha)-	1*	4	U200	D	5000 (2270)
Resorcinol	108463	1,3-Benzenediol	1000	1,4	U201	D	5000 (2270)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Saccharin and salts	81072	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	1*	4	U202	B	100 (45.4)
Safrole	94597	1,3-Benzodioxole, 5-(2-propenyl)-	1*	4	U203	B	100 (45.4)
Selenious acid	7783008		1*	4	U204	A	10 (4.54)
Selenious acid, dithallium (1+) salt	12039520	Thallium selenite	1*	4	P114	C	1000 (454)
Selenium ††	7782492		1*	2		B	100 (45.4)
SELENIUM AND COMPOUNDS	N.A.		1*	2			**
Selenium dioxide	7446084	Selenium oxide	1000	1,4	U204	A	10 (4.54)
Selenium oxide	7446084	Selenium dioxide	1000	1,4	U204	A	10 (4.54)
Selenium sulfide	7488564	Selenium sulfide SeS2	1*	4	U205	A	10 (4.54)
Selenium sulfide SeS2	7488564	Selenium sulfide	1*	4	U205	A	10 (4.54)
Selenourea	630104		1*	4	P103	C	1000 (454)
L-Serine, diazoacetate (ester)	115026	Azaserine	1*	4	U015	X	1 (0.454)
Silver ††	7440224		1*	2		C	1000 (454)
SILVER AND COMPOUNDS	N.A.		1*	2			**
Silver cyanide	506649	Silver cyanide Ag (CN)	1*	4	P104	X	1 (0.454)
Silver cyanide Ag (CN)	506649	Silver cyanide	1*	4	P104	X	1 (0.454)
Silver nitrate	7761888		1	1		X	1 (0.454)
Silvex (2,4,5-TP)	93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)-2,4,5-TP acid	100	1,4	U233	B	100 (45.4)
Sodium	7440235		1000	1		A	10 (4.54)
Sodium arsenate	7631892		1000	1		X	1 (0.454)
Sodium arsenite	7784465		1000	1		X	1 (0.454)
Sodium azide	26628228		1*	4	P105	C	1000 (454)
Sodium bichromate	10588019		1000	1		A	10 (4.54)
Sodium bifluoride	1333831		5000	1		B	100 (45.4)
Sodium bisulfite	7631905		5000	1		D	5000 (2270)
Sodium chromate	7775113		1000	1		A	10 (4.54)
Sodium cyanide	143339	Sodium cyanide Na (CN)	10	1,4	P106	A	10 (4.54)
Sodium cyanide Na (CN)	143339	Sodium cyanide	10	1,4	P106	A	10 (4.54)
Sodium dodecylbenzenesulfonate	25155300		1000	1		C	1000 (454)
Sodium fluoride	7681494		5000	1		C	1000 (454)
Sodium hydrosulfide	16721805		5000	1		D	5000 (2270)
Sodium hydroxide	1310732		1000	1		C	1000 (454)
Sodium hypochlorite	7681529		100	1		B	100 (45.4)
	10022705						
Sodium methylate	124414		1000	1		C	1000 (454)
Sodium nitrite	7632000		100	1		B	100 (45.4)
Sodium phosphate, dibasic	7558794		5000	1		D	5000 (2270)
	10039324						
	10140655						
Sodium phosphate, tribasic	7601549		5000	1		D	5000 (2270)
	7758294						
	7785844						
	10101890						
	10124568						
	10361894						
Sodium selenite	10102188		1000	1		B	100 (45–4)
	7782823						
Streptozotocin	18883664	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-	1*	4	U206	X	1 (0.454)
Strontium chromate	7789062		1000	1		A	10 (4.54)
Strychnidin-10-one	57249	Strychnine, & salts	10	1,4	P108	A	10 (4.54)
Strychnidin-10-one, 2,3-dimethoxy-	357573	Brucine	1*	4	P018	B	100 (45.4)
Strychnine, & salts	57249	Strychnidin-10-one	10	1,4	P108	A	10 (4.54)
Styrene	100425		1000	1		C	1000 (454)
Sulfur monochloride	12771083		1000	1		C	1000 (454)
Sulfur phosphide	1314803	Phosphorus pentasulfide Phosphorus sulfide	100	1,4	U189	B	100 (45.4)
Sulfuric acid	7664939		1000	1		C	1000 (454)
	8014957						
Sulfuric acid, dithallium (1+) salt	7446186	Thallium (I) sulfate	1000	1,4	P115	B	100 (45.4)
	10031591						
Sulfuric acid, dimethyl ester	77781	Dimethyl sulfate	1*	4	U103	B	100 (45.4)
2,4,5-T acid	93765	Acetic acid, (2,4,5-trichlorophenoxy)	100	1,4	U232	C	1000 (454)
2,4,5-T amines	2008460	2,4,5-T	100	1		D	5000 (2270)
	1319728						
	3813147						
	6369966						
	6369977						

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
2,4,5-T esters	93798 1928478 2545597 25168154 61792072		100	1		C	1000 (454)
2,4,5-T salts	13560991		100	1		C	1000 (454)
2,4,5-T	93765	Acetic acid, (2,4,5-trichlorophenoxy) 2,4,5-T acid	100	1,4	U232	C	1000 (454)
TDE	72548	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro- DDD 4,4' DDD	1	1,2,4	U060	X	1 (0.454)
1,2,4,5-Tetrachlorobenzene	95943	Benzene, 1,2,4,5-tetrachloro-	1*	4	U207	D	5000 (2270)
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	1746016		1*	2		X	1 (0.454)
1,1,1,2-Tetrachloroethane	630206	Ethane, 1,1,1,2-tetrachloro-	1*	4	U208	B	100 (45.4)
1,1,2,2-Tetrachloroethane	79345	Ethane, 1,1,2,2-tetrachloro-	1*	2,4	U209	B	100 (45.4)
Tetrachloroethene	127184	Ethene, tetrachloro- Perchloroethylene Tetrachloroethylene	1*	2,4	U210	B	100 (45.4)
Tetrachloroethylene	127184	Ethene, tetrachloro- Perchloroethylene Tetrachloroethene	1*	2,4	U210	B	100 (45.4)
2,3,4,6-Tetrachlorophenol	58902	Phenol, 2,3,4,6-tetrachloro-	1*	4	U212	A	10 (4.54)
Tetraethyl lead	78002	Plumbane, tetraethyl-	100	1,4	P110	A	10 (4.54)
Tetraethyl pyrophosphate	107493	Diphosphoric acid, tetraethyl ester	100	1,4	P111	A	10 (4.54)
Tetraethyldithiopyrophosphate	3689245	Thiodiphosphoric acid, tetraethyl ester	1*	4	P109	B	100 (45.4)
Tetrahydrofuran	109999	Furan, tetrahydro-	1*	4	U213	C	1000 (454)
Tetranitromethane	509148	Methane, tetranitro-	1*	4	P112	A	10 (4.54)
Tetraphosphoric acid, hexaethyl ester	757584	Hexaethyl tetraphosphoate	1*	4	P062	B	100 (45.4)
Thallic oxide	1314325	Thallium oxide Tl203	1*	4	P113	B	100 (45.4)
Thallium ‡	7440280		1*	2		C	1000 (454)
Thallium and compounds	N.A.		1*	2			**
Thallium (I) acetate	563688	Acetic acid, thallium(1+) salt	1*	4	U214	B	100 (45.4)
Thallium (I) carbonate	6533739	Carbonic acid, dithallium(1+) salt	1*	4	U215	B	100 (45.4)
Thallium (I) chloride	7791120	Thallium chloride TlCl	1*	4	U216	B	100 (45.4)
Thallium chloride TlCl	7791120	Thallium(I) chloride	1*	4	U216	B	100 (45.4)
Thallium (I) nitrate	10102451	Nitric acid, thallium (1+) salt	1*	4	U217	B	100 (45.4)
Thallium oxide Tl203	1314325	Thallic oxide	1*	4	P113	B	100 (45.4)
Thallium selenite	12039520	Selenious acid, dithallium(1+) salt	1*	4	P114	C	1000 (454)
Thallium (I) sulfate	7446186 10031591	Sulfuric acid, dithallium(1+) salt	1000	1,4	P115	B	100 (45.4)
Thioacetamide	62555	Ethanethioamide	1*	4	U218	A	10 (4.54)
Thiodiphosphoric acid, tetraethyl ester	3689245	Tetraethyldithiopyrophosphate	1*	4	P109	B	100 (45.4)
Thiofanox	39196184	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O[(methylamino)carbonyl) oxime	1*	4	P045	B	100 (45.4)
Thioimidodicarbonic diamide [(H2N)C(S)] 2NH.	541537	Dithiobiuret	1*	4	P049	B	100 (45.4)
Thiomethanol	74931	Methanethiol Methylmercaptan	100	1,4	U153	B	100 (45.4)
Thioperoxydicarbonic diamide [(H2N)C(S)] 2S2, tetramethyl-	137268	Thiram	1*	4	U244	A	10 (4.54)
Thiophenol	108985	Benzenethiol	1*	4	P014	B	100 (45.4)
Thiosemicarbazide	79196	Hydrazinecarbothioamide	1*	4	P116	B	100 (45.4)
Thiourea	62566		1*	4	U219	A	10 (4.54)
Thiourea, (2-chlorophenyl)-	5344821	1-(o-Chlorophenyl)thiourea	1*	4	P026	B	100 (45.4)
Thiourea, 1-naphthalenyl-	86884	alpha-Naphthylthiourea	1*	4	P072	B	100 (45.4)
Thiourea, phenyl-	103855	Phenylthiourea	1*	4	P093	B	100 (45.4)
Thiram	137268	Thioperoxydicarbonic diamide [(H2N)C(S)] 2S2, tetramethyl-	1*	4	U244	A	10 (4.54)
Toluene	108883	Benzene, methyl-	1000	1,2,4	U220	C	1000 (454)
Toluenediamine	95807 496720 823405 25376458	Benzenediamine, ar-methyl-	1*	4	U221	A	10 (4.54)
Toluene diisocyanate	584849 91087 26471625	Benzene, 1,3-diisocyanatomethyl-	1*	4	U223	B	100 (45.4)
o-Toluidine	95534	Benzenamine, 2-methyl-	1*	4	U328	B	100 (45.4)
p-Toluidine	106490	Benzenamine, 4-methyl-	1*	4	U353	B	100 (45.4)
o-Toluidine hydrochloride	636215	Benzenamine, 2-methyl-, hydrochloride	1*	4	U222	B	100 (45.4)
Toxaphene	8001352	Camphene, octachloro-	1*	1,2,4,	P123	X	1 (0.454)
2,4,5-TP acid	93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)- Silvex (2,4,5-TP)	100	1,4	U233	B	100 (45.4)
2,4,5-TP esters	32534955		100	1		B	100 (45.4)
1H-1,2,4-Triazol-3-amine	61825	Amitrole	1*	4	U011	A	10 (4.54)
Trichlorfon	52686		1000	1		B	100 (45.4)
1,2,4-Trichlorobenzene	120821		1*	2		B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
1,1,1-Trichloroethane	71556	Ethane, 1,1,1-trichloro-	1*	2,4	U226	C	1000 (454)
		Methyl chloroform					
1,1,2-Trichloroethane	79005	Ethane, 1,1,2-trichloro-	1*	2,4	U227	B	100 (45.4)
Trichloroethene	79016	Ethene, trichloro-	1000	1,2,4	U228	B	100 (45.4)
		Trichloroethylene					
Trichloroethylene	79016	Ethene, trichloro-	1000	1,2,4	U228	B	100 (45.4)
		Trichloroethene					
Trichloromethanesulfenyl chloride	594423	Methanesulfenyl chloride, trichloro-	1*	4	P118	B	100 (45.4)
Trichloromonofluoromethane	75694	Methane, trichlorofluoro-	1*	4	U121	D	5000 (2270)
Trichlorophenol	25167822		10	1		A	10 (4.54)
2,3,4-Trichlorophenol	15950660		.....				
2,3,5-Trichlorophenol	933788		.....				
2,3,6-Trichlorophenol	933755		.....				
2,4,5-Trichlorophenol	95954	Phenol, 2,4,5-trichloro-	10*	1,4	U230	A	10 (4.54)
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-	10*	1,2,4	U231	A	10 (4.54)
3,4,5-Trichlorophenol	609198		.....				
2,4,5-Trichlorophenol	95954	Phenol, 2,4,5-trichloro-	10*	1,4	U230	A	10 (4.54)
2,4,6-Trichlorophenol	88062	Phenol, 2,4,6-trichloro-	10	1,2,4	U231	A	10 (4.54)
Triethanolamine dodecylbenzenesulfonate	27323417		1000	1		C	1000 (454)
Triethylamine	121448		5000	1		D	5000 (2270)
Trimethylamine	75503		1000	1		B	100 (45.4)
1,3,5-Trinitrobenzene	99354	Benzene, 1,3,5-trinitro-	1*	4	U234	A	10 (4.54)
1,3,5-Trioxane, 2,4,6-trimethyl-	123637	Paraldehyde	1*	4	U182	C	1000 (454)
Tris(2,3-dibromopropyl) phosphate	126727	1-Propanol, 2,3-dibromo-, phosphate [(3:1)	1*	4	U235	A	10 (4.54)
Trypan blue	72571	2,7-Naphthalenedisulfonic acid, 3,3'-3,3'-dimethyl-(1,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt	1*	4	U236	A	10 (4.54)
Unlisted Hazardous Wastes Characteristic of Corrosivity.	N.A.		1*	4	D002	B	100 (45.4)
Unlisted Hazardous Wastes Characteristic of EP Toxicity.	N.A.		1*	4			
Arsenic D004	N.A.		1*	4	D004	X	1 (0.454)
Barium D005	N.A.		1*	4	D005	C	1000 (454)
Cadmium D006	N.A.		1*	4	D006	A	10 (4.54)
Chromium D007	N.A.		1*	4	D007	A	10 (4.54)
Lead D008	N.A.		1*	4	D008		#
Mercury D009	N.A.		1*	4	D009	X	1 (0.454)
Selenium D010	N.A.		1*	4	D010	A	10 (4.54)
Silver D011	N.A.		1*	4	D011	X	1 (0.454)
Endrin D012	N.A.		1	1,4	D012	X	1 (0.454)
Lindane D013	N.A.		1	1,4	D013	X	1 (0.454)
Methoxychlor D014	N.A.		1	1,4	D014	X	1 (0.454)
Toxaphene D015	N.A.		1	1,4	D015	X	1 (0.454)
2,4-D D016	N.A.		100	1,4	D016	B	100 (45.4)
2,4,5-TP D017	N.A.		100	1,4	D017	B	100 (45.4)
Unlisted Hazardous Wastes Characteristic of Ignitability.	N.A.		1*	4	D001	B	100 (45.4)
Unlisted Hazardous Wastes Characteristic of Reactivity.	N.A.		1*	4	D003	B	100 (45.4)
Uracil mustard	66751	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	1*	4	U237	A	10 (4.54)
Uranyl acetate	541093		5000	1		B	100 (45.4)
Uranyl nitrate	10102064		5000	1		B	100 (45.4)
	36478769						
Urea, N-ethyl-N-nitroso-	759739	N-Nitroso-N-ethylurea	1*	4	U176	X	1 (0.454)
Urea, N-methyl-N-nitroso	684935	N-Nitroso-N-methylurea	1*	4	U177	X	1 (0.454)
Vanadic acid, ammonium salt	7803556	Ammonium vanadate	1*	4	P119	C	1000 (454)
Vanadium oxide V205	1314621	Vanadium pentoxide	1000	1,4	P120	C	1000 (454)
Vanadium pentoxide	1314621	Vanadium oxide V205	1000	1,4	P120	C	1000 (454)
Vanadyl sulfate	27774136		1000	1		C	1000 (454)
Vinyl chloride	75014	Ethene, chloro-	1*	2,3,4	U043	X	1 (0.454)
Vinyl acetate	108054	Vinyl acetate monomer	1000	1		D	5000 (2270)
Vinyl acetate monomer	108054	Vinyl acetate	1000	1		D	5000 (2270)
Vinylamine, N-methyl-N-nitroso-	4549400	N-Nitrosomethylvinylamine	1*	4	P084	A	10 (4.54)
Vinylidene chloride	75354	Ethene, 1,1-dichloro-	5000	1,2,4	U078	B	100 (45.4)
		1,1-Dichloroethylene					
Warfarin, & salts, when present at concentrations greater than 0.3%.	81812	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl-butyl)-, & salts, when present at concentrations greater than 0.3%	1*	4	P001	B	100 (45.4)
Xylene (mixed)	1330207	Benzene, dimethyl	1000	1,4	U239	C	1000 (454)
m-Benzene, dimethyl	108383	m-Xylene					
o-Benzene, dimethyl	95476	o-Xylene					
p-Benzene, dimethyl	106423	p-Xylene					

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Xylenol	1300716		1000	1		C	1000 (454)
Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester (3beta,16beta,17alpha, 18beta, 20alpha)-	50555	Reserpine	1*	4	U200	D	5000 (2270)
Zinc ‖	7440666		1*	2		C	1000 (454)
ZINC AND COMPOUNDS	N.A.		1*	2			**
Zinc acetate	557346		1000	1		C	1000 (454)
Zinc ammonium chloride	52628258		5000	1		C	1000 (454)
	14639975						
	14639986						
Zinc borate	1332076		1000	1		C	1000 (454)
Zinc bromide	7699458		5000	1		C	1000 (454)
Zinc carbonate	3486359		1000	1		C	1000 (454)
Zinc chloride	7646857		5000	1		C	1000 (454)
Zinc cyanide	557211	Zinc cyanide Zn(CN)2	10	1,4	P121	A	10 (4.54)
Zinc cyanide Zn(CN)2	557211	Zinc cyanide	10	1,4	P121	A	10 (4.54)
Zinc flouride	7783495		1000	1		C	1000 (454)
Zinc formate	557415		1000	1		C	1000 (454)
Zinc hydrosulfite	7779864		1000	1		C	1000 (454)
Zinc nitrate	7779886		5000	1		C	1000 (454)
Zinc phenosulfonate	127822		5000	1		D	5000 (2270)
Zinc phosphide	1314847	Zinc phosphide Zn3P2, when present at concentrations greater than 10%	1000	1,4	P122	B	100 (45.4)
Zinc phosphide Zn3P2, when present at concentrations greater than 10%.	1314847	Zinc phosphide	1000	1,4	P122	B	100 (45.4)
Zinc silicofluoride	16871719		5000	1		D	5000 (2270)
Zinc sulfate	7733020		1000	1		C	1000 (454)
Zirconium nitrate	13746899		5000	1		D	5000 (2270)
Zirconium potassium fluoride	16923958		5000	1		C	1000 (454)
Zirconium sulfate	14644612		5000	1		D	5000 (2270)
Zirconium tetrachloride	10026116		5000	1		D	5000 (2270)
F001			1*	4	F001	A	10 (4.54)
The following spent halogenated solvents used in degreasing; all spent solvent mixtures/blends used in degreasing containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.							
(a) Tetrachloroethylene	127184		1*	2,4	U210	B	100 (45.4)
(b) Trichloroethylene	79016		1000	1,2,4	U228	B	100 (45.4)
(c) Methylene chloride	75092		1*	2,4	U080	C	1000 (454)
(d) 1,1,1-Trichloroethane	71556		1*	2,4	U226	C	1000 (454)
(e) Carbon tetrachloride	56235		5000	1,2,4	U211	A	10 (4.54)
(f) Chlorinated fluorocarbons	N.A.					D	5000 (2270)
F002			1*	4	F002	A	10 (4.54)
The following spent halogenated solvents; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.							
(a) Tetrachloroethylene	127184		1*	2,4	U210	B	100 (45.4)
(b) Methylene chloride	75092		1*	2,4	U080	C	1000 (454)
(c) Trichloroethylene	79016		1000	1,2,4	U228	B	100 (45.4)
(d) 1,1,1-Trichloroethane	71556		1*	2,4	U226	C	1000 (454)
(e) Chlorobenzene	108907		100	1,2,4	U037	B	100 (45.4)
(f) 1,1,2-Trichloro-1,2,2-trifluoroethane	76131					D	5000 (2270)
(g) o-Dischlorobenzene	95501		100	1,2,4	U070	B	100 (45.4)
(h) Trichlorofluoromethane	75694		1*	4	U121	D	5000 (2270)
(i) 1,1,2-Thrichloroethane	79005		1*	2,4	U227	B	100 (45.4)
F003			1*	4	F003	B	100 (45.4)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and a total of ten percent or more (by volume) of one or:							
(a) Xylene (mixed)	1330207		1000	1,4	U239	C	1000 (454)
(b) Acetone	67641		1*	4	U002	D	5000 (2270)
(c) Ethyl acetate	141786		1*	4	U112	D	5000 (2270)
(d) Ethylbenzene	100414		1000	1,2		C	1000 (454)
(e) Ethyl ether	60297		1*	4	U117	B	100 (45.4)
(f) Methyl isobutyl ketone	108101		1*	4	U161	D	5000 (2270)
(g) n-Butyl alcohol	71363		1*	4	U031	D	5000 (2270)
(h) Cyclohexanone	108941		1*	4	U057	D	5000 (2270)
(i) Methanol	67561		1*	4	U154	D	5000 (2270)
F004			1*	4	F004	C	1000 (454)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Cresols/Cresylic acid	1319773		1000	1,4	U052	C	1000 (454)
(b) Nitrobenzene	98953		1000	1,2,4	U169	C	1000 (454)
F005			1*	4	F005	B	100 (45.4)
The following spent non-halogenated solvents and the still bottoms from the recovery of these solvents:							
(a) Toluene	108883		1000	1,2,4	U220	C	1000 (454)
(b) Methyl ethyl ketone	78933		1*	4	U159	D	5000 (2270)
(c) Carbon disulfide	75150		5000	1,4	P022	B	100 (45.4)
(d) Isobutanol	78831		1*	4	U140	D	5000 (2270)
(e) Pyridine	110861		1*	4	U196	C	1000 (454)
F006			1*	4	F006	A	10 (4.54)
Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum, (2) tin plating on carbon steel, (3) zinc plating (segregated basis) on carbon steel, (4) aluminum or zinc-aluminum plating on carbon steel, (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel, and (6) chemical etching and milling of aluminum.							
F007			1*	4	F007	A	10 (4.54)
Spent cyanide plating bath solutions from electroplating operations.							
F008			1*	4	F008	A	10 (4.54)
Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.							
F009			1*	4	F009	A	10 (4.54)
Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.							
F010			1*	4	F010	A	10 (4.54)
Quenching bath residues from oil baths from metal heat treating operations where cyanides are used in the process.							
F011			1*	4	F011	A	10 (4.54)
Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations (except for precious metals heat treating spent cyanide solutions from salt bath pot cleaning).							
F012			1*	4	F012	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Quenching wastewater treatment sludges from metal heat treating operations where cyanides are used in the process.							
F019			1*	4	F019	A	10 (4.54)
Wastewater treatment sludges from the chemical conversion coating of aluminum.							
F020			1*	4	F020	X	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri-or-tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. (This listing does not include wastes from the production of hexachlorophene from highly purified 2,4,5-trichlorophenol.)							
F021			1*	4	F021	X	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of pentachlorophenol, or of intermediates used to produce its derivatives.							
F022			1*	4	F022	X	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzenes under alkaline conditions.							
F023			1*	4	F023	X	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- and tetrachlorophenols. (This listing does not include wastes from equipment used only for the production or use of hexachlorophene from highly purified 2,4,5-trichlorophenol.)							
F024			1*	4	F024	X	1 (0.454)
Wastes, including but not limited to distillation residues, heavy ends, tars, and reactor cleanout wastes, from the production of chlorinated aliphatic hydrocarbons, having carbon content from one to five, utilizing free radical catalyzed processes. (This listing does not include light ends, spent filters and filter aids, spent dessicants(sic), wastewater, wastewater treatment sludges, spent catalysts, and wastes listed in Section 261.32.)							
F026			1*	4	F026	X	1 (0.454)
Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production of materials on equipment previously used for the manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tetra-, penta-, or hexachlorobenzene under alkaline conditions.							
F027			1*	4	F027	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. (This listing does not include formulations containing hexachlorophene synthesized from prepurified 2,4,5-trichlorophenol as the sole component.)							
F028			1*	4	F028	X	1 (0.454)
Residues resulting from the incineration or thermal treatment of soil contaminated with EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.							
K001			1*	4	K001	X	1 (0.454)
Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.							
K002			1*	4	K002		#
Wastewater treatment sludge from the production of chrome yellow and orange pigments.							
K003			1*	4	K003		#
Wastewater treatment sludge from the production of molybdate orange pigments.							
K004			1*	4	K004	A	10 (4.54)
Wastewater treatment sludge from the production of zinc yellow pigments.							
K005			1*	4	K005		#
Wastewater treatment sludge from the production of chrome green pigments.							
K006			1*	4	K006	A	10 (4.54)
Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).							
K007			1*	4	K007	A	10 (4.54)
Wastewater treatment sludge from the production of iron blue pigments.							
K008			1*	4	K008	A	10 (4.54)
Oven residue from the production of chrome oxide green pigments.							
K009			1*	4	K009	A	10 (4.54)
Distillation bottoms from the production of acetaldehyde from ethylene.							
K010			1*	4	K010	A	10 (4.54)
Distillation side cuts from the production of acetaldehyde from ethylene.							
K011			1*	4	K011	A	10 (4.54)
Bottom stream from the wastewater stripper in the production of acrylonitrile.							
K013			1*	4	K013	A	10 (4.54)
Bottom stream from the acetonitrile column in the production of acrylonitrile.							
K014			1*	4	K014	D	5000 (2270)
Bottoms from the acetonitrile purification column in the production of acrylonitrile.							
K015			1*	4	K015	A	10 (4.54)
Still bottoms from the distillation of benzyl chloride.							
K016			1*	4	K016	X	1 (0.454)
Heavy ends or distillation residues from the production of carbon tetrachloride.							
K017			1*	4	K017	A	10 (4.54)
Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.							
K018			1*	4	K018	X	1 (0 454)
Heavy ends from the fractionation column in ethyl chloride production.							
K019			1*	4	K019	X	1 (0.454)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production. K020			1*	4	K020	X	1 (0.454)
Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production. K021			1*	4	K021	A	10 (4.54)
Aqueous spent antimony catalyst waste from fluoromethanes production. K022			1*	4	K022	X	1 (0.454)
Distillation bottom tars from the production of phenol/acetone from cumene. K023			1*	4	K023	D	5000 (2270)
Distillation light ends from the production of phthalic anhydride from naphthalene. K024			1*	4	K024	D	5000 (2270)
Distillation bottoms from the production of phthalic anhydride from naphthalene. K025			1*	4	K025	A	10 (4.54)
Distillation bottoms from the production of nitrobenzene by the nitration of benzene. K026			1*	4	K026	C	1000 (454)
Stripping still tails from the production of methyl ethyl pyridines. K027			1*	4	K027	A	10 (4.54)
Centrifuge and distillation residues from toluene diisocyanate production. K028			1*	4	K028	X	1 (0.454)
Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane. K029			1*	4	K029	X	1 (0.454)
Waste from the product steam stripper in the production of 1,1,1-trichloroethane. K030			1*	4	K030	X	1 (0.454)
Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene. K031			1*	4	K031	X	1 (0.454)
By-product salts generated in the production of MSMA and cacodylic acid. K032			1*	4	K032	A	10 (4.54)
Wastewater treatment sludge from the production of chlordane. K033			1*	4	K033	A	10 (4.54)
Wastewater and scrub water from the chlorination of cyclopentadiene in the production of chlordane. K034			1*	4	K034	A	10 (4.54)
Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane. K035			1*	4	K035	X	1 (0.454)
Wastewater treatment sludges generated in the production of creosote. K036			1*	4	K036	X	1 (0.454)
Still bottoms from toluene reclamation distillation in the production of disulfoton. K037			1*	4	K037	X	1 (0.454)
Wastewater treatment sludges from the production of disulfoton. K038			1*	4	K038	A	10 (4.54)
Wastewater from the washing and stripping of phorate production. K039			1*	4	K039	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Filter cake from the filtration of diethylphosphorodithioic acid in the production of phorate. K040			1*	4	K040	A	10 (4.54)
Wastewater treatment sludge from the production of phorate. K041			1*	4	K041	X	1 (0.454)
Wastewater treatment sludge from the production of toxaphene. K042			1*	4	K042	A	10 (4.54)
Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T. K043			1*	4	K043	A	10 (4.54)
2,6-Dichlorophenol waste from the production of 2,4-D. K044			1*	4	K044	A	10 (4.54)
Wastewater treatment sludges from the manufacturing and processing of explosives. K045			1*	4	K045	A	10 (4.54)
Spent carbon from the treatment of wastewater containing explosives. K046			1*	4	K046	B	100 (45.4)
Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds. K047			1*	4	K047	A	10 (4.54)
Pink/red water from TNT operations. K048			1*	4	K048		#
Dissolved air flotation (DAF) float from the petroleum refining industry. K049			1*	4	K049		#
Slop oil emulsion solids from the petroleum refining industry. K050			1*	4	K050	A	10 (4.54)
Heat exchanger bundle cleaning sludge from the petroleum refining industry. K051			1*	4	K051		#
API separator sludge from the petroleum refining industry. K052			1*	4	K052	A	10 (4.54)
Tank bottoms (leaded) from the petroleum refining industry. K060			1*	4	K060	X	1 (0.454)
Ammonia still lime sludge from coking operations. K061			1*	4	K061		#
Emission control dust/sludge from the primary production of steel in electric furnaces. K062			1*	4	K062		#
Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332). K064			1*	4	K064		##
Acid plant blowdown slurry/sludge resulting from thickening of blowdown slurry from primary copper production. K065			1*	4	K065		##
Surface impoundment solids contained in and dredged from surface impoundments at primary lead smelting facilities. K066			1*	4	K066		##

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production.							
K069			1*	4	K069		#
Emission control dust/sludge from secondary lead smelting.							
K071			1*	4	K071	X	1 (0.454)
Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.							
K073			1*	4	K073	A	10 (4.54)
Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes in chlorine production.							
K083			1*	4	K083	B	100 (45.4)
Distillation bottoms from aniline extraction.							
K084			1*	4	K084	X	1 (0.454)
Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.							
K085			1*	4	K085	A	10 (4.54)
Distillation or fractionation column bottoms from the production of chlorobenzenes.							
K086			1*	4	K086		#
Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.							
K087			1*	4	K087	B	100 (45.4)
Decanter tank tar sludge from coking operations.							
K088			1*	4	K088		#
Spent potliners from primary aluminum reduction.							
K090			1*	4	K090		#
Emission control dust or sludge from ferrochromiumsilicon production.							
K091			1	4	K091		#
Emission control dust or sludge from ferrochromium production.							
K093			1*	4	K093	D	5000 (2270)
Distillation light ends from the production of phthalic anhydride from ortho-xylene.							
K094			1*	4	K094	D	5000 (2270)
Distillation bottoms from the production of phthalic anhydride from ortho-xylene.							
K095			1*	4	K095	B	100 (45.4)
Distillation bottoms from the production of 1,1,1-trichloroethane.							
K096			1*	4	K096	B	100 (45.4)
Heavy ends from the heavy ends column from the production of 1,1,1-trichloroethane.							
K097			1*	4	K097	X	1 (0.454)
Vacuum stripper discharge from the chlordane chlorinator in the production of chlordane.							
K098			1*	4	K098	X	1 (0.454)
Untreated process wastewater from the production of toxaphene.							
K099			1*	4	K099	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Untreated wastewater from the production of 2,4-D.							
K100			1*	4	K100		#
Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.							
K101			1*	4	K101	X	1 (0.454)
Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.							
K102			1*	4	K102	X	1 (0.454)
Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.							
K103			1*	4	K103	B	100 (45.4)
Process residues from aniline extraction from the production of aniline.							
K104			1*	4	K104	A	10 (4.54)
Combined wastewater streams generated from nitrobenzene/aniline production.							
K105			1*	4	K105	A	10 (4.54)
Separated aqueous stream from the reactor product washing step in the production of chlorobenzenes.							
K106			1*	4	K106	X	1 (0.454)
Wastewater treatment sludge from the mercury cell process in chlorine production.							
K111			1*	4	K111	A	10 (4.54)
Product washwaters from the production of dinitrotoluene via nitration of toluene.							
K112			1*	4	K112	A	10 (4.54)
Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.							
K113			1*	4	K113	A	10 (4.54)
Condensed liquid light ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.							
K114			1*	4	K114	A	10 (4.54)
Vicinals from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.							
K115			1*	4	K115	A	10 (4.54)
Heavy ends from the purification of toluenediamine in the production of toluenediamine via hydrogenation of dinitrotoluene.							
K116			1*	4	K116	A	10 (4.54)
Organic condensate from the solvent recovery column in the production of toluene diisocyanate via phosgenation of toluenediamine.							
K117			1*	4	K117	X	1 (0.454)
Wastewater from the reaction vent gas scrubber in the production of ethylene bromide via bromination of ethene.							
K118			1*	4	K118	X	1 (0.454)
Spent absorbent solids from purification of ethylene dibromide in the production of ethylene dibromide.							
K123			1*	4	K123	A	10 (4.54)

TABLE 302.4—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES—Continued

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory Synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA Waste Number	Category	Pounds (Kg)
Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.							
K124			1*	4	K124	A	10 (4.54)
Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.							
K125			1*	4	K125	A	10 (4.54)
Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.							
K126			1*	4	K126	A	10 (4.54)
Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.							
K136			1*	4	K136	X	1 (0.454)
Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethene.							

† Indicates the statutory source as defined by 1, 2, 3, or 4 below.

‡ No reporting of releases of this hazardous substance is required if the diameter of the pieces of the solid metal released is equal to or exceeds 100 micrometers (0.004 inches).

††† The RQ for asbestos is limited to friable forms only.

1—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 311(b)(4).

2—indicates that the statutory source for designation of this hazardous substance under CERCLA is CWA Section 307(a).

3—indicates that the statutory source for designation of this hazardous substance under CERCLA is CAA Section 112.

4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

#*—indicates that the 1-pound RQ is a CERCLA statutory RQ.

# Indicates that the RQ is subject to change when the assessment of potential carcinogenicity is completed.

The Agency may adjust the statutory RQ for this hazardous substance in a future rulemaking; until then the statutory RQ applies.

§—The adjusted RQs for radionuclides may be found in Appendix B to this table.

**—indicates that no RQ is being assigned to the generic or broad class.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES

CASRN	Hazardous substance
50000	Formaldehyde.
50077	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione,6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a, 8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta,8aalpha,8balpha)]-
	Mitomycin C.
50180	Cyclophosphamide.
	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide.
50293	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-.
	DDT.
	4,4'DDT.
50328	Benzo[a]pyrene.
	3,4-Benzopyrene.
50555	Reserpine.
	Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3 ,4,5-trimethoxybenzoyl)oxy]-, methyl ester (3beta, 16beta,17alpha,18beta,20alpha)-.
51285	Phenol, 2,4-dinitro-.
	2,4-Dinitrophenol.
51434	Epinephrine.
	1,2-Benzenediol,4-[1-hydroxy-2-(methylamino) ethyl]-.
51796	Carbamic acid, ethyl ester.
	Ethyl carbamate (urethane).
52686	Trichlorfon.
52857	Famphur.
	Phosphorothioic acid, O,[4-[(dimethylamino) sulfonyl]phenyl]O,O-dimethyl ester.
53703	Dibenz[a,h]anthracene.
	Dibenzo[a,h]anthracene.
	1,2:5,6-Dibenzanthracene.
53963	Acetamide, N-9H-fluoren-2-yl-.
	2-Acetylaminofluorene.
54115	Nicotine, & salts.
	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-.
55185	Ethanamine, N-ethyl-N-nitroso-.
	N-Nitrosodiethylamine.
55630	Nitroglycerine.
	1,2,3-Propanetriol, trinitrate-.
55914	Diisopropylfluorophosphate.
	Phosphorofluoridic acid, bis(1-methylethyl) ester.
56042	Methylthiouracil.
	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-.
56235	Carbon tetrachloride.
	Methane, tetrachloro-.
56382	Parathion.
	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester.
56495	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-.
	3-Methylcholanthrene.
56531	Diethylstilbestrol.
	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E).
56553	Benz[a]anthracene.
	Benzo[a]anthracene.
	1,2-Benzanthracene.
56724	Coumaphos.
57125	Cyanides (soluble salts and complexes) not otherwise specified.
57147	Hydrazine, 1,1-dimethyl-.
	1,1-Dimethylhydrazine.
57249	Strychnidin-10-one.
	Strychnine, & salts.
57749	Chlordane.
	Chlordane, alpha & gamma isomers.
	Chlordane, technical.
	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro- 2,3,3a,4,7,7a-hexahydro-.
57976	1,2-Benzanthracene, 7,12-dimethyl-.
	7,12-Dimethylbenz[a]anthracene.
58899	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha, 6beta)-.
	gamma - BHC.
	Hexachlorocyclohexane (gamma isomer).
	Lindane.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
58902	Phenol, 2,3,4,6-tetrachloro-.
	2,3,4,6-Tetrachlorophenol.
59507	p-Chloro-m-cresol.
	Phenol, 4-chloro-3-methyl-.
	4-Chloro-m-cresol.
60004	Ethylenediamine-tetraacetic acid (EDTA).
60117	Benzenamine, N,N-dimethyl-4-(phenylazo-).
	p-Dimethylaminoazobenzene.
60297	Ethane, 1,1'-oxybis-.
	Ethyl ether.
60344	Hydrazine, methyl-.
	Methyl hydrazine.
60515	Dimethoate.
	Phosphorodithioic acid, O,O-dimethyl S-[2(methylamino)-2-oxoethyl] ester.
60571	Dieldrin.
	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2, 2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta, 6aalpha,7beta, 7aalpha)-.
61825	Amitrole.
	1H-1,2,4-Triazol-3-amine.
62384	Mercury, (acetato-O)phenyl-.
	Phenylmercury acetate.
62442	Acetamide, N-(4-ethoxyphenyl)-.
	Phenacetin.
62500	Ethyl methanesulfonate.
	Methanesulfonic acid, ethyl ester.
62533	Aniline.
	Benzenamine.
62555	Ethanethioamide.
	Thioacetamide.
62566	Thiourea.
62737	Dichlorvos.
62748	Acetic acid, fluoro-, sodium salt.
	Fluoroacetic acid, sodium salt.
62759	Methanamine, N-methyl-N-nitroso-.
	N-Nitrosodimethylamine.
63252	Carbaryl.
64186	Formic acid.
64197	Acetic acid.
65850	Benzoic acid.
66751	Uracil mustard.
	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl) amino]-.
67561	Methanol.
	Methyl alcohol.
67641	Acetone.
	2-Propanone.
67663	Chloroform.
	Methane, trichloro-.
67721	Ethane, hexachloro-.
	Hexachloroethane.
70257	Guanidine, N-methyl-N'-nitro-N-nitroso-.
	MNNG.
70304	Hexachlorophene.
	Phenol, 2,2'-methylenebis[3,4,6-trichloro-.
71363	n-Butyl alcohol.
	1-Butanol.
71432	Benzene.
71556	Ethane, 1,1,1-trichloro-.
	Methyl chloroform.
	1,1,1-Trichloroethane.
72208	Endrin.
	Endrin, & metabolites.
	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octa-hydro-, (1aalpha,2beta,2abeta,3alpha,6alpha, 6abeta,7beta,7aalpha)-.
72435	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4- methoxy-.
	Methoxychlor.
72548	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-.
	DDD.
	TDE.
	4,4' DDD.
72559	DDE.
	4,4' DDE.
72571	Trypan blue.
	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-(l,1'-biphenyl)-4,4'-diyl)-bis(azo)]bis(5-amino-4-hydroxy)-tetrasodium salt.
74839	Methane, bromo-.
	Methyl bromide.
74873	Methane, chloro-.
	Methyl chloride.
74884	Methane, iodo-.
	Methyl iodide.
74895	Monomethylamine.
74908	Hydrocyanic acid.
	Hydrogen cyanide.
74931	Methanethiol.
	Methylmercaptan.
	Thiomethanol.
74953	Methane, dibromo-.
	Methylene bromide.
75003	Chloroethane.
75014	Ethene, chloro-.
	Vinyl chloride.
75047	Monoethylamine.
75058	Acetonitrile.
75070	Acetaldehyde.
	Ethanal.
75092	Methane, dichloro-.
	Methylene chloride.
75150	Carbon disulfide.
75207	Calcium carbide.
75218	Ethylene oxide.
	Oxirane.
75252	Bromoform.
	Methane, tribromo-.
75274	Dichlorobromomethane.
75343	Ethane, 1,1-dichloro-.
	Ethylidene dichloride.
	1,1-Dichloroethane.
75354	Ethene, 1,1-dichloro-.
	Vinylidene chloride.
	1,1-Dichloroethylene.
75365	Acetyl chloride.
75445	Carbonic dichloride.
	Phosgene.
75503	Trimethylamine.
75558	Aziridine, 2-methyl-.
	1,2-Propylenimine.
75569	Propylene oxide.
75605	Arsinic acid, dimethyl-.
	Cacodylic acid.
75649	tert-Butylamine.
75694	Methane, trichlorofluoro-.
	Trichloromonofluoromethane.
75718	Dichlorodifluoromethane.
	Methane, dichlorodifluoro-.
75865	Acetone cyanohydrin.
	Propanenitrile, 2-hydroxy-2-methyl-.
	2-Methyllactonitrile.
75876	Acetaldehyde, trichloro-.
	Chloral.
75990	2,2-Dichloropropionic acid.
76017	Ethane, pentachloro-.
	Pentachloroethane.
76448	Heptachlor.
	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-.
77474	Hexachlorocyclopentadiene.
	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-.
77781	Dimethyl sulfate.
	Sulfuric acid, dimethyl ester.
78002	Plumbane, tetraethyl-.
	Tetraethyl lead.
78591	Isophorone.
78795	Isoprene.
78819	iso-Butylamine.
78831	Isobutyl alcohol.
	1-Propanol, 2-methyl-.
78875	Propane, 1,2-dichloro-.
	Propylene dichloride.
	1,2-Dichloropropane.
78886	2,3-Dichloropropene.
78933	Methyl ethyl ketone (MEK).
	2-Butanone.
78999	1,1-Dichloropropane.
79005	Ethane, 1,1,2-trichloro-.
	1,1,2-Trichloroethane.
79016	Ethene, trichloro-.
	Trichloroethene.
	Trichloroethylene-.
79061	Acrylamide.
	2-Propenamide.
79094	Propionic acid.
79107	Acrylic acid.
	2-Propenoic acid.
79196	Hydrazinecarbothioamide.
	Thiosemicarbazide.
79221	Carbonochloridic acid, methyl ester.
	Methyl chlorocarbonate.
	Methyl chloroformate.
79312	iso-Butyric acid.
79345	Ethane, 1,1,2,2-tetrachloro-.
	1,1,2,2-Tetrachloroethane.
79447	Carbamic chloride, dimethyl-.
	Dimethylcarbamoyl chloride.
79469	Propane, 2-nitro-.
	2-Nitropropane.
80159	alpha,alpha-Dimethylbenzylhydroperoxide.
	Hydroperoxide, 1-methyl-1-phenylethyl-.
80626	Methyl methacrylate.
	2-Propenoic acid, 2-methyl-, methyl ester.
81072	Saccharin and salts.
	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide.
81812	Warfarin, & salts, when present at concentrations greater than 0.3%.
	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenyl -butyl)-, & salts, when present at concentrations greater than 0.3%.
82688	Benzene, pentachloronitro-.
	Pentachloronitrobenzene (PCNB).
83329	Acenaphthene.
84662	Diethyl phthalate.
	1,2-Benzenedicarboxylic acid, diethyl ester.
84742	Di-n-butyl phthalate.
	Dibutyl phthalate.
	n-Butyl phthalate.
	1,2-Benzenedicarboxylic acid, dibutyl ester.
85007	Diquat.
85018	Phenanthrene.
85449	Phthalic anhydride.
	1,3-Isobenzofurandione.
85687	Butyl benzyl phthalate.
86306	N-Nitrosodiphenylamine.
86500	Guthion.
86737	Fluorene.
86884	alpha-Naphthylthiourea.
	Thiourea, 1-naphthalenyl-.
87650	Phenol, 2,6-dichloro-.
	2,6-Dichlorophenol.
87683	Hexachlorobutadiene.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-.
87865	Pentachlorophenol.
	Phenol, pentachloro-.
88062	Phenol, 2,4,6-trichloro-.
	2,4,6-Trichlorophenol.
88722	o-Nitrotoluene.
88755	o-Nitrophenol.
	2-Nitrophenol.
88857	Dinoseb.
	Phenol, 2-(1-methylpropyl)-4,6-dinitro.
91087	Benzene, 1,3-diisocyanatomethyl-.
	Toluene diisocyanate.
91203	Naphthalene.
91225	Quinoline.
91587	beta-Chloronaphthalene.
	Naphthalene, 2-chloro-.
	2-Chloronaphthalene.
91598	beta-Naphthylamine.
	2-Naphthalenamine.
91805	Methapyrilene.
	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'- (2-thienylmethyl)-.
91941	[1,1'-Biphenyl]-4,4'diamine,3,3'dichloro-.
	3,3'-Dichlorobenzidine.
92875	(1,1'-Biphenyl)-4,4'diamine.
	Benzidine.
93721	Propionic acid, 2-(2,4,5-trichlorophenoxy)-.
	Silvex (2,4,5-TP).
	2,4,5-TP acid.
93765	Acetic acid, (2,4,5-trichlorophenoxy).
	2,4,5-T.
	2,4,5-T acid.
93798	2,4,5-T esters.
94111	2,4-D Ester.
94586	Dihydrosafrole.
	1,3-Benzodioxole, 5-propyl-.
94597	Safrole.
	1,3-Benzodioxole, 5-(2-propenyl)-.
94757	Acetic acid (2,4-dichlorophenoxy)-.
	2,4-D Acid.
	2,4-D, salts and esters.
94791	2,4-D Ester.
94804	2,4-D Ester.
95476	o-Benzene, dimethyl.
	o-Xylene.
95487	o-Cresol.
	o-Cresylic acid.
95501	Benzene, 1,2-dichloro-.
	o-Dichlorobenzene.
	1,2-Dichlorobenzene.
95534	Benzenamine, 2-methyl-.
	o-Toluidine.
95578	o-Chlorophenol.
	Phenol, 2-chloro-.
	2-Chlorophenol.
95807	Benzenediamine, ar-methyl-.
	Toluenediamine
95943	Benzene, 1,2,4,5-tetrachloro-.
	1,2,4,5-Tetrachlorobenzene.
95954	Phenol, 2,4,5-trichloro-.
	2,4,5-Trichlorophenol.
96128	Propane, 1,2-dibromo-3-chloro-.
	1,2-Dibromo-3-chloropropane.
96184	1,2,3-Trichloropropane.
96457	Ethylenethiourea.
	2-Imidazolidinethione.
97632	Ethyl methacrylate.
	2-Propenoic acid, 2-methyl-, ethyl ester.
98011	Furfural.
	2-Furancarboxaldehyde.
98077	Benzene, (trichloromethyl)-.
	Benzotrichloride.
98099	Benzenesulfonic acid chloride.
	Benzenesulfonyl chloride.
98828	Benzene, 1-methylethyl-.
	Cumene.
98862	Acetophenone.
	Ethanone, 1-phenyl-.
98873	Benzal chloride.
	Benzene, dichloromethyl-.
98884	Benzoyl chloride.
98953	Benzene, nitro-.
	Nitrobenzene.
99081	m-Nitrotoluene.
99354	Benzene, 1,3,5-trinitro-.
	1,3,5-Trinitrobenzene.
99558	Benzenamine, 2-methyl-5-nitro-.
	5-Nitro-o-toluidine.
99650	m-Dinitrobenzene.
99990	p-Nitrotoluene.
100016	Benzenamine, 4-nitro-.
	p-Nitroaniline.
100027	p-Nitrophenol.
	Phenol, 4-nitro-.
	4-Nitrophenol.
100254	p-Dinitrobenzene.
100414	Ethylbenzene.
100425	Styrene.
100447	Benzene, chloromethyl-.
	Benzyl chloride.
100470	Benzonitrile.
100754	N-Nitrosopiperidine.
	Piperidine, 1-nitroso-.
101144	Benzenamine, 4,4'-methylenebis(2-chloro-.
	4,4'-Methylenebis(2-chloroaniline).
101553	Benzene, 1-bromo-4-phenoxy-.
	4-Bromophenyl phenyl ether.
103855	Phenylthiourea.
	Thiourea, phenyl-.
105464	sec-Butyl acetate.
105679	Phenol, 2,4-dimethyl-.
	2,4-Dimethylphenol.
106423	p-Benzene, dimethyl.
	p-Xylene.
106445	p-Cresol.
	p-Cresylic acid.
106467	Benzene, 1,4-dichloro-.
	p-Dichlorobenzene.
	1,4-Dichlorobenzene.
106478	Benzenamine, 4-chloro-.
	p-Chloroaniline.
106490	Benzenamine, 4-methyl-.
	p-Toluidine.
106503	Phenylenediamine (para-isomer).
106514	p-Benzoquinone.
	2,5-Cyclohexadiene-1,4-dione.
106898	Epichlorohydrin.
	Oxirane, (chloromethyl)-.
106934	Ethane, 1,2-dibromo-.
	Ethylene dibromide.
107028	Acrolein.
	2-Propenal.
107051	Allyl chloride.
107062	Ethane, 1,2-dichloro-.
	Ethylene dichloride.
	1,2-Dichloroethane.
107108	n-Propylamine.
	1-Propanamine.
107120	Ethyl cyanide.
	Propanenitrile.
107131	Acrylonitrile.
	2-Propenenitrile.
107153	Ethylenediamine.
107186	Allyl alcohol.
	2-Propen-1-ol.
107197	Propargyl alcohol.
	2-Propyn-1-ol.
107200	Acetaldehyde, chloro-.
	Chloroacetaldehyde.
107302	Chloromethyl methyl ether.
	Methane, chloromethoxy-.
107493	Diphosphoric acid, tetraethyl ester.
	Tetraethyl pyrophosphate.
107926	Butyric acid.
108054	Vinyl acetate.
	Vinyl acetate monomer.
108101	Methyl isobutyl ketone.
	4-Methyl-2-pentanone.
108247	Acetic anhydride.
108316	Maleic anhydride.
	2,5-Furandione.
108383	m-Benzene, dimethyl.
	m-Xylene.
108394	m-Cresol.
	m-Cresylic acid.
108463	Resorcinol.
	1,3-Benzenediol.
108601	Dichloroisopropyl ether.
	Propane, 2,2'-oxybis[2-chloro-.
108883	Benzene, methyl-.
	Toluene.
108907	Benzene, chloro-.
	Chlorobenzene.
108941	Cyclohexanone.
108952	Benzene, hydroxy-.
	Phenol.
108985	Benzenethiol.
	Thiophenol.
109068	Pyridine, 2-methyl-.
	2-Picoline.
109739	Butylamine.
109773	Malononitrile.
	Propanedinitrile.
109897	Diethylamine.
109999	Furan, tetrahydro-.
	Tetrahydrofuran.
110009	Furan.
	Furfuran.
110167	Maleic acid.
110178	Fumaric acid.
110190	Iso-Butyl acetate.
110758	Ethene, 2-chloroethoxy-.
	2-Chloroethyl vinyl ether.
110805	Ethanol, 2-ethoxy-.
	Ethylene glycol monoethyl ether.
110827	Benzene, hexahydro-.
	Cyclohexane.
110861	Pyridine.
111444	Bis (2-chloroethyl) ether.
	Dichloroethyl ether.
	Ethane, 1,1'-oxybis[2-chloro-.
111546	Carbamodithioic acid, 1,2-ethanediylbis, salts & esters.
	Ethylenebisdithiocarbamic acid, salts & esters.
111911	Bis(2-chloroethoxy) methane.
	Dichloromethoxy ethane.
	Ethane, 1,1'-[methylenebis(oxy)]bis(2-chloro-.
115026	Azaserine.
	L-Serine, diazoacetate (ester).
115297	Endosulfan.
	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a- hexahydro-, 3-oxide.
115322	Dicofol.
116063	Aldicarb.
	Propanal, 2-methyl-2-(methylthio)-, 0-[(methylamino)carbonyl]oxime.
117806	Dichlone.
117817	Bis (2-ethylhexyl)phthalate.
	Diethylhexyl phthalate.
	1,2-Benzenedicarboxylic acid, [bis(2-ethylhexyl)]ester.
117840	Di-n-octyl phthalate.
	1,2-Benzenedicarboxylic acid, dioctyl ester.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
118741	Benzene, hexachloro-.
	Hexachlorobenzene.
119904	[1,1'-Biphenyl]-4,4'diamine,3,3'dimethoxy-.
	3,3'-Dimethoxybenzidine.
119937	[1,1'Biphenyl]-4,4'-diamine,3,3'-dimethyl-.
	3,3'-Dimethylbenzidine.
120127	Anthracene.
120581	Isosafrole.
	1,3-Benzodioxole, 5-)1-propenyl)-.
120821	1,2,4-Trichlorobenzene.
120832	Phenol, 2,4-dichloro-.
	2,4-Dichlorophenol.
121142	Benzene, 1-methyl-2,4-dinitro-.
	2,4-Dinitrotoluene.
121211	Pyrethrins.
121299	Pyrethrins.
121448	Triethylamine.
121755	Malathion.
122098	alpha,alpha-Dimethylphenethylamine.
	Benzeneethanamine, alpha,alpha-dimethyl-.
122394	Diphenylamine.
122667	Hydrazine, 1,2-diphenyl-.
	1,2-Diphenylhydrazine.
123331	Maleic hydrazide.
	3,6-Pyridazinedione, 1,2-dihydro-.
123626	Propionic anhydride.
123637	Paraldehyde.
	1,3,5-Trioxane, 2,4,6-trimethyl-.
123739	Crotonaldehyde.
	2-Butenal.
123864	Butyl acetate.
123911	1,4-Diethylenedioxide.
	1,4-Dioxane.
123922	iso-Amyl acetate.
124049	Adipic acid.
124403	Dimethylamine.
	Methanamine, N-methyl-.
124414	Sodium methylate.
124481	Chlorodibromomethane.
126727	Tris(2,3-dibromopropyl) phosphate.
	1-Propanol, 2,3-dibromo-, phosphate (3:1).
126987	Methacrylonitrile.
	2-Propenenitrile, 2-methyl-.
126998	2-Chloro-1,3-butadiene.
127184	Ethene, tetrachloro-.
	Perchloroethylene.
	Tetrachloroethene.
	Tetrachloroethylene.
127822	Zinc phenolsulfonate.
129000	Pyrene.
130154	1,4-Naphthalenedione.
	1,4-Naphthoquinone.
131113	Dimethyl phthalate.
	1,2-Benzenedicarboxylic acid, dimethyl ester.
131748	Ammonium picrate.
	Phenol, 2,4,6-trinitro-, ammonium salt.
131895	Phenol, 2-cyclohexyl-4,6-dinitro-.
	2-Cyclohexyl-4,6-dinitrophenol.
133062	Captan.
134327	alpha-Naphthylamine.
	1-Naphthalenamine.
137268	Thioperoxydicarbonic diamide ([H2N)C(S)]2S2, tetramethyl-.
	Thiram.
140885	Ethyl acrylate.
	2-Propenoic acid, ethyl ester.
141786	Acetic acid, ethyl ester.
	Ethyl acetate.
142289	1,3-Dichloropropane.
142712	Cupric acetate.
142847	Dipropylamine.
	1-Propanamine, N-propyl-.
143339	Sodium cyanide.
	Sodium cyanide Na(CN).
143500	Kepone.
	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachloroctahydro-.
145733	Endothall.
	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid.
148823	L-Phenylalanine, 4-[bis(2-chloroethyl) aminol].
	Melphalan.
151508	Potassium cyanide.
	Potassium cyanide K(CN).
151564	Aziridine.
	Ethylenimine.
152169	Diphosphoramide, octamethyl-.
	Octamethylpyrophosphoramide.
156605	Ethene, 1,2-dichloro- (E).
	1,2-Dichloroethylene.
189559	Benzo [rst]pentaphene.
	Dibenz[a,i]pyrene.
191242	Benzo[ghi]perylene.
193395	Indeno(1,2,3-cd)pyrene.
	1,10-(1,2-Phenylene)pyrene.
205992	Benzo[b]fluoranthene.
206440	Benzo[j,k]fluorene.
	Fluoranthene.
207089	Benzo(k)fluoranthene.
208968	Acenaphthylene.
218019	Chrysene.
	1,2-Benzphenanthrene.
225514	Benz[c]acridine.
297972	O,O-Diethyl O-pyrazinyl phosphorothioate.
	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester.
298000	Methyl parathion.
	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester.
298022	Phorate.
	Phosphorodithioic acid, O,O-diethyl S-(ethylthio), methyl ester.
298044	Disulfoton.
	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl]ester.
300765	Naled.
301042	Acetic acid, lead(2+) salt.
	Lead acetate.
302012	Hydrazine.
303344	Lasiocarpine.
	2-Butenoic acid, 2-methyl-, 7[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-.
305033	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-.
	Chlorambucil.
309002	Aldrin.
	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)-.
311455	Diethyl-p-nitrophenyl phosphate.
	Phosphoric acid, diethyl 4-nitrophenyl ester.
315184	Mexacarbate.
319846	alpha—BHC.
319857	beta—BHC.
319868	delta—BHC.
329715	2,5-Dinitrophenol.
330541	Diuron.
333415	Diazinon.
353504	Carbon oxyfluoride.
	Carbonic difluoride.
357573	Brucine.
	Strychnidin-10-one, 2,3-dimethoxy-.
460195	Cyanogen.
	Ethanedinitrile.
465736	Isodrin.
	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-.
492808	Auramine.
	Benzenamine, 4,4'-carbonimidoylbis (N,N-dimethyl(N,N-D,methyl-)-.
494031	Chlornaphazine.
	Naphthalenamine, N,N'-bis(2-chloroethyl)-.
496720	Benzenediamine, ar-methyl-.
	Toluenediamine.
504245	4-Aminopyridine.
	4-Pyridinamine.
504609	1-Methylbutadiene.
	1,3-Pentadiene.
506616	Argentate(1-), bis(cyano-C)-,potassium.
	Potassium silver cyanide.
506649	Silver cyanide.
	Silver cyanide Ag(CN).
506683	Cyanogen bromide.
	Cyanogen bromide (CN)Br.
506774	Cyanogen chloride.
	Cyanogen chloride (CN)Cl.
506876	Ammonium carbonate.
506967	Acetyl bromide.
509148	Methane, tetranitro-.
	Tetranitromethane.
510156	Benzeneacetic acid,4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester.
	Chlorobenzilate.
513495	sec-Butylamine.
528290	o-Dinitrobenzene.
534521	Phenol, 2-methyl-4,6-dinitro-.
	4,6-Dinitro-o-cresol and salts
540738	Hydrazine, 1,2-dimethyl-.
	1,2-Dimethylhydrazine.
540885	tert-Butyl acetate.
541093	Uranyl acetate.
541537	Dithiobiuret.
	Thioimidodicarbonic diamide [(H2N)C(S)]2NH.
541731	Benzene, 1,3-dichloro-.
	m-Dichlorobenzene.
	1,3-Dichlorobenzene.
542621	Barium cyanide.
542756	1-Propene, 1,3-dichloro-.
	1,3-Dichloropropene.
542767	Propanenitrile, 3-chloro-.
	3-Chloropropionitrile.
542881	Dichloromethyl ether.
	Methane, oxybis(chloro)-.
543908	Cadmium acetate.
544183	Cobaltous formate.
544923	Copper cyanide CuCN.
	Copper cyanide.
554847	m-Nitrophenol.
557197	Nickel cyanide.
	Nickel cyanide Ni(CN)2.
557211	Zinc cyanide.
	Zinc cyanide Zn(CN)2.
557346	Zinc acetate.
557415	Zinc formate.
563122	Ethion.
563688	Acetic acid, thallium(1+) salt.
	Thallium(I) acetate.
573568	2,6-Dinitrophenol.
584849	Benzene, 1,3-diisocyanatomethyl-.
	Toluene diisocyanate.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
591082	Acetamide, N-(aminothioxomethyl)-.
	1-Acetyl-2-thiourea.
592018	Calcium cyanide.
	Calcium cyanide Ca(CN)2.
592041	Mercuric cyanide.
592858	Mercuric thiocyanate.
592870	Lead thiocyanate.
594423	Methanesulfenyl chloride, trichloro-.
	Trichloromethanesulfenyl chloride.
598312	Bromoacetone.
	2-Propanone, 1-bromo-.
606202	Benzene, 1-methyl-1,3-dinitro-.
	2,6-Dinitrotoluene.
608731	HEXACHLOROCYCLOHEXANE (all isomers).
608935	Benzene, pentachloro-.
	Pentachlorobenzene.
609198	3,4,5-Trichlorophenol.
610399	3,4-Dinitrotoluene.
615532	Carbamic acid, methylnitroso-, ethyl ester.
	N-Nitroso-N-methylurethane.
616239	n-,2,3 Dichloropropanol.
621647	Di-n-propylnitrosamine.
	1-Propanamine, N-nitroso-N-propyl-.
624839	Methane, isocyanato-.
	Methyl isocyanate.
625161	tert-Amyl acetate.
626380	sec-Amyl acetate.
628637	Amyl acetate.
628864	Fulminic acid, mercury(2+)salt.
	Mercury fulminate.
630104	Selenourea.
630206	Ethane, 1,1,1,2-tetrachloro-.
	1,1,1,2-Tetrachloroethane.
631618	Ammonium acetate.
636215	Benzenamine, 2-methyl-, hydrochloride.
	o-Toluidine hydrochloride.
640197	Acetamide, 2-fluoro-.
	Fluoroacetamide.
684935	N-Nitroso-N-methylurea.
	Urea, N-methyl-N-nitroso.
692422	Arsine, diethyl-.
	Diethylarsine.
696286	Arsonous dichloride, phenyl-.
	Dichlorophenylarsine.
757584	Hexaethyl tetraphosphate.
	Tetraphosphoric acid, hexaethyl ester.
759739	N-Nitroso-N-ethylurea.
	Urea, N-ethyl-N-nitroso-.
764410	1,4-Dichloro-2-butene.
	2-Butene, 1,4-dichloro-.
765344	Glycidylaldehyde.
	Oxiranecarboxyaldehyde.
815827	Cupric tartrate.
823405	Benzenediamine, ar-methyl-.
	Toluenediamine.
924163	N-Nitrosodi-n-butylamine.
	1-Butanamine, N-butyl-N-nitroso-.
930552	N-Nitrosopyrrolidine.
	Pyrrolidine, 1-nitroso-.
933755	2,3,6-Trichlorophenol.
933788	2,3,5-Trichlorophenol.
959988	alpha-Endosulfan.
1024573	Heptachlor epoxide.
1031078	Endosulfan sulfate.
1066304	Chromic acetate.
1066337	Ammonium bicarbonate.
1072351	Lead stearate.
1111780	Ammonium carbamate.
1116547	Ethanol, 2,2'-(nitrosoimino)bis-.
	N-Nitrosodiethanolamine.
1120714	1,2-Oxathiolane, 2,2-dioxide
	1,3-Propane sultone.
1185575	Ferric ammonium citrate.
1194656	Dichlobenil.
1300716	Xylenol.
1303282	Arsenic oxide As2O5.
	Arsenic pentoxide.
1303328	Arsenic disulfide.
1303339	Arsenic trisulfide.
1309644	Antimony trioxide.
1310583	Potassium hydroxide.
1310732	Sodium hydroxide.
1314325	Thallic oxide.
	Thallium oxide Tl2O3.
1314621	Vanadium oxide V2O5.
	Vanadium pentoxide.
1314803	Phosphorus pentasulfide.
	Phosphorus sulfide.
	Sulfur phosphide.
1314847	Zinc phosphide.
	Zinc phosphide Zn3P2, when present at concentrations greater than 10%.
1314870	Lead sulfide.
1319728	2,4,5-T amines.
1319773	Cresol(s).
	Cresylic acid.
	Phenol, methyl-.
1320189	2,4-D Ester.
1321126	Nitrotoluene.
1327522	Arsenic acid.
	Arsenic acid H3AsO4.
1327533	Arsenic oxide As2O3.
	Arsenic trioxide.
1330207	Benzene, dimethyl.
	Xylene (mixed).
1332076	Zinc borate.
1332214	Asbestos.
1333831	Sodium bifluoride.
1335326	Lead subacetate.
	Lead, bis(acetato-O)tetrahydroxytri.
1336216	Ammonium hydroxide.
1336363	Polychlorinated Biphenyls (PCBs).
1338234	Methyl ethyl ketone peroxide.
	2-Butanone peroxide.
1338245	Naphthenic acid.
1341497	Ammonium bifluoride.
1464535	1,2:3,4-Diepoxybutane.
	2,2'-Bioxirane.
1563662	Carbofuran.
1615801	Hydrazine, 1,2-diethyl-.
	N,N'-Diethylhydrazine.
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD).
1762954	Ammonium thiocyanate.
1863634	Ammonium benzoate.
1888717	Hexachloropropene.
	1-Propene, 1,1,2,3,3,3-hexachloro-.
1918009	Dicamba.
1928387	2,4-D Ester.
1928478	2,4,5-T esters.
1928616	2,4-D Ester.
1929733	2,4-D Ester.
2008460	2,4,5-T amines.
2032657	Mercaptodimethur.
2303164	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester.
	Diallate.
2312358	Propargite.
2545597	2,4,5-T esters.
2763964	Muscimol.
	3(2H)-Isoxazolone, 5-(aminomethyl)-.
	5-(Aminomethyl)-3-isoxazolol.
2764729	Diquat
2921882	Chlorpyrifos.
2944674	Ferric ammonium oxalate.
2971382	2,4-D Ester.
3012655	Ammonium citrate, dibasic.
3164292	Ammonium tartrate.
3165933	Benzenamine, 4-chloro-2-methyl-, hydrochloride.
	4-Chloro-o-toluidine, hydrochloride.
3251238	Cupric nitrate.
3288582	O,O-Diethyl S-methyl dithiophosphate.
	Phosphorodithioic acid, O,O-diethyl S-methyl ester.
3486359	Zinc carbonate.
3689245	Tetraethyldithiopyrophosphate.
	Thiodiphosphoric acid, tetraethyl ester.
3813147	2,4,5-T amines.
4170303	Crotonaldehyde.
	2-Butenal.
4549400	N-Nitrosomethylvinylamine.
	Vinylamine, N-methyl-N-nitroso-.
5344821	Thiourea, (2-chlorophenyl)-.
	1-(o-Chlorophenyl)thiourea.
5893663	Cupric oxalate.
5972736	Ammonium oxalate.
6009707	Ammonium oxalate.
6369966	2,4,5-T amines.
6369977	2,4,5-T amines.
6533739	Carbonic acid, dithallium(1+) salt.
	Thallium(I) carbonate.
7005723	4-Chlorophenyl phenyl ether.
7421934	Endrin aldehyde.
7428480	Lead stearate.
7439921	Lead.
7439976	Mercury.
7440020	Nickel.
7440224	Silver.
7440235	Sodium.
7440280	Thallium.
7440360	Antimony.
7440382	Arsenic.
7440417	Beryllium.
	Beryllium dust.
7440439	Cadmium.
7440473	Chromium.
7440508	Copper.
7440666	Zinc.
7446084	Selenium dioxide.
	Selenium oxide.
7446142	Lead sulfate.
7446186	Sulfuric acid, dithallium(1+) salt.
	Thallium(I) sulfate.
7446277	Lead phosphate.
	Phosphoric acid, lead(2+) salt (2:3).
7447394	Cupric chloride.
7488564	Selenium sulfide.
	Selenium sulfide SeS2.
7558794	Sodium phosphate, dibasic.
7601549	Sodium phosphate, tribasic.
7631892	Sodium arsenate.
7631905	Sodium bisulfite.
7632000	Sodium nitrite.
7645252	Lead arsenate.
7646857	Zinc chloride.
7647010	Hydrochloric acid.
	Hydrogen chloride.
7647189	Antimony pentachloride.
7664382	Phosphoric acid.
7664393	Hydrofluoric acid.
	Hydrogen fluoride.
7664417	Ammonia.
7664939	Sulfuric acid.
7681494	Sodium fluoride.
7681529	Sodium hypochlorite.
7697372	Nitric acid.
7699458	Zinc bromide.
7705080	Ferric chloride.
7718549	Nickel chloride.
7719122	Phosphorus trichloride.
7720787	Ferrous sulfate.
7722647	Potassium permanganate.
7723140	Phosphorus.
7733020	Zinc sulfate.
7738945	Chromic acid.
7758294	Sodium phosphate, tribasic.
7758943	Ferrous chloride.
7758954	Lead chloride.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
7758987	Cupric sulfate.
7761888	Silver nitrate.
7773060	Ammonium sulfamate.
7775113	Sodium chromate.
7778394	Arsenic acid.
	Arsenic acid H3As04.
7778441	Calcium arsenate.
7778509	Potassium bichromate.
7778543	Calcium hypochlorite.
7779864	Zinc hydrosulfite.
7779886	Zinc nitrate.
7782414	Fluorine.
7782492	Selenium.
7782505	Chlorine.
7782630	Ferrous sulfate.
7782823	Sodium selenite.
7782867	Mercurous nitrate.
7783008	Selenious acid.
7783064	Hydrogen sulfide.
	Hydrogen sulfide H2S.
7783359	Mercuric sulfate.
7783462	Lead fluoride.
7783495	Zinc fluoride.
7783508	Ferric fluoride.
7783564	Antimony trifluoride.
7784341	Arsenic trichloride.
7784409	Lead arsenate.
7784410	Potassium arsenate.
7784465	Sodium arsenite.
7785844	Sodium phosphate, tribasic.
7786347	Mevinphos.
7786814	Nickel sulfate.
7787475	Beryllium chloride.
7787497	Beryllium fluoride.
7787555	Beryllium nitrate.
7788989	Ammonium chromate.
7789006	Potassium chromate.
7789062	Strontium chromate.
7789095	Ammonium bichromate.
7789426	Cadmium bromide.
7789437	Cobaltous bromide.
7789619	Antimony tribromide.
7790945	Chlorosulfonic acid.
7791120	Thallium chloride TlCl.
	Thallium(I) chloride.
7803512	Phosphine.
7803556	Ammonium vanadate.
	Vanadic acid, ammonium salt.
8001352	Camphene, octachloro-
	Toxaphene.
8001589	Creosote.
8003198	Dichloropropane—Dichloropropene (mixture).
8003347	Pyrethrins.
8014957	Sulfuric acid.
10022705	Sodium hypochlorite.
10025873	Phosphorus oxychloride.
10025919	Antimony trichloride.
10026116	Zirconium tetrachloride.
10028225	Ferric sulfate.
10031591	Sulfuric acid, dithallium(1+) salt.
	Thallium(I) sulfate.
10039324	Sodium phosphate, dibasic.
10043013	Aluminum sulfate.
10045893	Ferrous ammonium sulfate.
10045940	Mercuric nitrate.
10049055	Chromous chloride.
10099748	Lead nitrate.
10101538	Chromic sulfate.
10101630	Lead iodide.
10101890	Sodium phosphate, tribasic.
10102064	Uranyl nitrate.
10102188	Sodium selenite.
10102439	Nitric oxide.
	Nitrogen oxide NO.
10102440	Nitrogen dioxide.
	Nitrogen oxide NO2.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
10102451	Nitric acid, thallium(1+) salt.
	Thallium(I) nitrate.
10102484	Lead arsenate.
10108642	Cadmium chloride.
10124502	Potassium arsenite.
10124568	Sodium phosphate, tribasic.
10140655	Sodium phosphate, dibasic.
10192300	Ammonium bisulfite.
10196040	Ammonium sulfite.
10361894	Sodium phosphate, tribasic.
10380297	Cupric sulfate, ammoniated.
10415755	Mercurous nitrate.
10421484	Ferric nitrate.
10544726	Nitrogen dioxide.
	Nitrogen oxide NO2.
10588019	Sodium bichromate.
11096825	Aroclor 1260.
	Polychlorinated Biphenyls (PCBs).
11097691	Aroclor 1254.
	Polychlorinated Biphenyls (PCBs).
11104282	Aroclor 1221.
	Polychlorinated Biphenyls (PCBs).
11115745	Chromic acid.
11141165	Aroclor 1232.
	Polychlorinated Biphenyls (PCBs).
12002038	Cupric acetoarsenite.
12039520	Selenious acid, dithallium(1+) salt.
	Thallium selenite.
12054487	Nickel hydroxide.
12125018	Ammonium fluoride.
12125029	Ammonium chloride.
12135761	Ammonium sulfide.
12672296	Aroclor 1248.
	Polychlorinated Biphenyls (PCBs).
12674112	Aroclor 1016.
	Polychlorinated Biphenyls (PCBs).
12771083	Sulfur monochloride.
13463393	Nickel carbonyl.
	Nickel carbonyl Ni(CO)4, (T-4)-.
13560991	2,4,5-T salts.
13597994	Beryllium nitrate.
13746899	Zirconium nitrate.
13765190	Calcium chromate.
	Chromic acid H2CrO4, calcium salt.
13814965	Lead fluoborate.
13826830	Ammonium fluoborate.
13952846	sec-Butylamine.
14017415	Cobaltous sulfamate.
14216752	Nickel nitrate.
14258492	Ammonium oxalate.
14307358	Lithium chromate.
14307438	Ammonium tartrate.
14639975	Zinc ammonium chloride.
14639986	Zinc ammonium chloride.
14644612	Zirconium sulfate.
15699180	Nickel ammonium sulfate.
15739807	Lead sulfate.
15950660	2,3,4-Trichlorophenol.
16721805	Sodium hydrosulfide.
16752775	Ethanimidothioic acid, N-[[(methylamino)carbonyl] oxy]-, methyl ester.
	Methomyl.
16871719	Zinc silicofluoride.
16919190	Ammonium silicofluoride.
16923958	Zirconium potassium fluoride.
18883664	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-.
	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-.
	Streptozotocin.

APPENDIX A—SEQUENTIAL CAS REGISTRY NUMBER LIST OF CERCLA HAZARDOUS SUBSTANCES—Continued

CASRN	Hazardous substance
20816120	Osmium oxide OsO4 (T-4)-.
	Osmium tetroxide.
20830813	Daunomycin.
	5,12-Naphthacenedione, 8-acetyl-10-[3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-,(8S-cis)-.
20859738	Aluminum phosphide.
23950585	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-.
	Pronamide.
25154545	Dinitrobenzene (mixed).
25154556	Nitrophenol (mixed).
25155300	Sodium dodecylbenzenesulfonate.
25167822	Trichlorophenol.
25168154	2,4,5-T esters.
25168267	2,4-D Ester.
25321146	Dinitrotoluene.
25321226	Dichlorobenzene.
25376458	Benzenediamine, ar-methyl-.
	Toluenediamine.
25550587	Dinitrophenol.
26264062	Calcium dodecylbenzenesulfonate.
26471625	Benzene, 1,3-diisocyanatomethyl-.
	Toluene diisocyanate
26628228	Sodium azide.
26638197	Dichloropropane.
26952238	Dichloropropene.
27176870	Dodecylbenzenesulfonic acid.
27323417	Triethanolamine dodecylbenzene sulfonate.
27774136	Vanadyl sulfate.
28300745	Antimony potassium tartrate.
30525894	Paraformaldehyde.
32534955	2,4,5-TP esters.
33213659	beta - Endosulfan.
36478769	Uranyl nitrate.
37211055	Nickel chloride.
39196184	Thiofanox
	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O[(methylamino)carbonyl] oxime.
42504461	Isopropanolamine dodecylbenzenesulfonate.
52628258	Zinc ammonium chloride.
52652592	Lead stearate.
52740166	Calcium arsenite.
53467111	2,4-D Ester.
53469219	Aroclor 1242.
	Polychlorinated Biphenyls (PCBs)
55488874	Ferric ammonium oxalate.
56189094	Lead stearate.
61792072	2,4,5-T esters.

3. Section 302.6 is amended by revising paragraph (b)(1) and the parenthetical phrase at the end of the section to read as follows:

§ 302.6 Notification requirements.

* * * * *

(b) Releases of mixtures or solutions (including hazardous waste streams) of

(1) Hazardous substances, except for radionuclides, are subject to the following notification requirements:

(i) if the quantity of all of the hazardous constituent(s) of the mixture or solution is known, notification is

required where an RQ or more of any hazardous constituent is released; or

(ii) if the quantity of one or more of the hazardous constituent(s) of the mixture or solution is unknown, notification is required where the total amount of the mixture or solution released equals or exceeds the RQ for the hazardous constituent with the lowest RQ.

* * * * *

(Approved by the Office of Management and Budget under control numbers 2050–0046 and 2115–0137)

PART 116—LIST OF HAZARDOUS SUBSTANCES

1. The authority citation for Part 116 continues to read as follows:

Authority: 33 U.S.C. 1321 and 1361.

§ 116.4 [Amended]

2. Section 116.4 is amended by removing the entire entry for "Ammonium thiosulfate, CASRN 7783188," and by removing the term "Kelthane," CASRN 115322, and inserting in its place the term "Dicofol" in the list of hazardous substances in both Table 116.4A and Table 116.4B.

PART 117—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

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

Authority: 33 U.S.C. 1321 and 1361, and Executive Order 11735.

§ 117.3 [Amended]

2. Section 117.3 is amended by revising Table 117.3 to read as set forth below. Included in these amendments to Table 117.3 is the removal of the entry for "ammonium thiosulfate," CASRN 7783188, as well as the removal of the term "Kelthane," CASRN 115322, and the insertion in its place of the term "Dicofol." The note preceding Table 117.3 is republished without change.

* * * * *

Note—The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letter "X," "A," "B," "C,"and "D" associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively.

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT

[**Note:** The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X," "A," "B," "C," and "D" associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively]

Material	Category	RQ in pounds (kilograms)
Acetaldehyde	C	1,000 (454)
Acetic acid	D	5,000 (2,270)
Acetic anhydride	D	5,000 (2,270)
Acetone cyanohydrin	A	10 (4.54)
Acetyl bromide	D	5,000 (2,270)
Acetyl chloride	D	5,000 (2,270)
Acrolein	X	1 (0.454)
Acrylonitrile	B	100 (45.4)
Adipic acid	D	5,000 (2,270)
Aldrin	X	1 (0.454)
Allyl alcohol	B	100 (45.4)
Allyl chloride	C	1,000 (454)
Aluminum sulfate	D	5,000 (2,270)
Ammonia	B	100 (45.4)
Ammonium acetate	D	5,000 (2,270)
Ammonium benzoate	D	5,000 (2,270)
Ammonium bicarbonate.	D	5,000 (2,270)
Ammonium bichromate.	A	10 (4.54)
Ammonium bifluoride	B	100 (45.4)
Ammonium bisulfite	D	5,000 (2,270)
Ammonium carbamate.	D	5,000 (2,270)
Ammonium carbonate	D	5,000 (2,270)
Ammonium chloride	D	5,000 (2,270)
Ammonium chromate	A	10 (4.54)
Ammonium citrate dibasic.	D	5,000 (2,270)
Ammonium fluoborate	D	5,000 (2,270)
Ammonium fluoride	B	100 (45.4)
Ammonium hydroxide	C	1,000 (454)
Ammonium oxalate	D	5,000 (2,270)
Ammonium silicofluoride.	C	1,000 (454)
Ammonium sulfamate	D	5,000 (2,270)
Ammonium sulfide	B	100 (45.4)
Ammonium sulfite	D	5,000 (2,270)
Ammonium tartrate	D	5,000 (2,270)
Ammonium thiocyanate.	D	5,000 (2,270)
Amyl acetate	D	5,000 (2,270)
Aniline	D	5,000 (2,270)
Antimony pentachloride.	C	1,000 (454)
Antimony potassium tartrate.	B	100 (45.4)
Antimony tribromide	C	1,000 (454)
Antimony trichloride	C	1,000 (454)
Antimony trifluoride	C	1,000 (454)
Antimony trioxide	C	1,000 (454)
Arsenic disulfide	X	1 (0.454)
Arsenic pentoxide	X	1 (0.454)
Arsenic trichloride	X	1 (0.454)
Arsenic trioxide	X	1 (0.454)
Arsenic trisulfide	X	1 (0.454)
Barium cyanide	A	10 (4.54)
Benzene	A	10 (4.54)
Benzoic acid	D	5,000 (2,270)
Benzonitrile	D	5,000 (2,270)
Benzoyl chloride	C	1,000 (454)
Benzyl chloride	B	100 (45.4)
Beryllium chloride	X	1 (0.454)
Beryllium fluoride	X	1 (0.454)
Beryllium nitrate	X	1 (0.454)
Butyl acetate	D	5,000 (2,270)
Butylamine	C	1,000 (454)

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT—Continued

[**Note:** The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X," "A," "B," "C," and "D" associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively]

Material	Category	RQ in pounds (kilograms)
n-Butyl phthalate	A	10 (4.54)
Butyric acid	D	5,000 (2,270)
Cadmium acetate	A	10 (4.54)
Cadmium bromide	A	10 (4.54)
Cadmium chloride	A	10 (4.54)
Calcium arsenate	X	1 (0.454)
Calcium arsenite	X	1 (0.454)
Calcium carbide	A	10 (4.54)
Calcium chromate	A	10 (4.54)
Calcium cyanide	A	10 (4.54)
Calcium dodecylbenzene-sulfonate.	C	1,000 (454)
Calcium hypochlorite	A	10 (4.54)
Captan	A	10 (4.54)
Carbaryl	B	100 (45.4)
Carbofuran	A	10 (4.54)
Carbon disulfide	B	100 (45.4)
Carbon tetrachloride	A	10 (4.54)
Chlordane	X	1 (0.454)
Chlorine	A	10 (4.54)
Chlorobenzene	B	100 (45.4)
Chloroform	A	10 (4.54)
Chlorosulfonic acid	C	1,000 (454)
Chlorpyrifos	X	1 (0.454)
Chromic acetate	C	1,000 (454)
Chromic acid	A	10 (4.54)
Chromic sulfate	C	1,000 (454)
Chromous chloride	C	1,000 (454)
Cobaltous bromide	C	1,000 (454)
Cobaltous formate	C	1,000 (454)
Cobaltous sulfamate	C	1,000 (454)
Coumaphos	A	10 (4.54)
Cresol	C	1,000 (454)
Crotonaldehyde	B	100 (45.4)
Cupric acetate	B	100 (45.4)
Cupric acetoarsenite	X	1 (0.454)
Cupric chloride	A	10 (4.54)
Cupric nitrate	B	100 (45.4)
Cupric oxalate	B	100 (45.4)
Cupric sulfate	A	10 (4.54)
Cupric sulfate, ammoniated.	B	100 (45.4)
Cupric tartrate	B	100 (45.4)
Cyanogen chloride	A	10 (4.54)
Cyclohexane	C	1,000 (454)
2,4-D Acid	B	100 (45.4)
2,4-D Esters	B	100 (45.4)
DDT	X	1 (0.454)
Diazinon	X	1 (0.454)
Dicamba	C	1,000 (454)
Dichlobenil	B	100 (45.4)
Dichlone	X	1 (0.454)
Dichlorobenzene	B	100 (45.4)
Dichloropropane	C	1,000 (454)
Dichloropropene	B	100 (45.4)
Dichloropropene-Dichloropropane (mixture).	B	100 (45.4)
2,2-Dichloropropionic acid.	D	5,000 (2,270)
Dichlorvos	A	10 (4.54)
Dicofol	A	10 (4.54)
Dieldrin	X	1 (0.454)
Diethylamine	B	100 (45.4)
Dimethylamine	C	1,000 (454)

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT—Continued

[**Note:** The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X," "A," "B," "C," and "D" associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively]

Material	Category	RQ in pounds (kilograms)
Dinitrobenzene (mixed).	B	100 (45.4)
Dinitrophenol	A	10 (45.4)
Dinitrotoluene	A	10 (4.54)
Diquat	C	1,000 (454)
Disulfoton	X	1 (0.454)
Diuron	B	100 (45.4)
Dodecylbenzenesulfonic acid.	C	1,000 (454)
Endosulfan	X	1 (0.454)
Endrin	X	1 (0.454)
Epichlorohydrin	B	100 (45.4)
Ethion	A	10 (4.54)
Ethylbenzene	C	1,000 (454)
Ethylenediamine	D	5,000 (2,270)
Ethylenediaminetetraacetic acid (EDTA).	D	5,000 (2,270)
Ethylene dibromide	X	1 (0.454)
Ethylene dichloride	B	100 (45.4)
Ferric ammonium citrate.	C	1,000 (454)
Ferric ammonium oxalate.	C	1,000 (454)
Ferric chloride	C	1,000 (454)
Ferric fluoride	B	100 (45.4)
Ferric nitrate	C	1,000 (454)
Ferric sulfate	C	1,000 (454)
Ferrous ammonium sulfate.	C	1,000 (454)
Ferrous chloride	B	100 (45.4)
Ferrous sulfate	C	1,000 (454)
Formaldehyde	B	100 (45.4)
Formic acid	D	5,000 (2,270)
Fumaric acid	D	5,000 (2,270)
Furfural	D	5,000 (2,270)
Guthion	X	1 (0.454)
Heptachlor	X	1 (0.454)
Hexachlorocyclopentadiene.	A	10 (4.54)
Hydrochloric acid	D	5,000 (2,270)
Hydrofluoric acid	B	100 (45.4)
Hydrogen cyanide	A	10 (4.54)
Hydrogen sulfide	B	100 (45.4)
Isoprene	B	100 (45.4)
Isopropanolamine dodecylbenzenesulfonate.	C	1,000 (454)
Kepone	X	1 (0.454)
Lead acetate	D	5,000 (2,270)
Lead arsenate	X	1 (0.454)
Lead chloride	B	100 (45.4)
Lead fluoborate	B	100 (45.4)
Lead fluoride	B	100 (45.4)
Lead iodide	B	100 (45.4)
Lead nitrate	B	100 (45.4)
Lead stearate	D	5,000 (2,270)
Lead sulfate	B	100 (45.4)
Lead sulfide	D	5,000 (2,270)
Lead thiocyanate	B	100 (45.4)
Lindane	X	1 (0.454)
Lithium chromate	A	10 (4.54)
Malathion	B	100 (45.4)
Maleic acid	D	5,000 (2,270)
Maleic anhydride	D	5,000 (2,270)
Mercaptodimethur	A	10 (4.54)
Mercuric cyanide	X	1 (0.454)
Mercuric nitrate	A	10 (4.54)
Mercuric sulfate	A	10 (4.54)
Mercuric thiocyanate	A	10 (4.54)
Mercurous nitrate	A	10 (4.54)
Methoxychlor	X	1 (0.454)
Methyl mercaptan	B	100 (45.4)
Methyl methacrylate	C	1,000 (454)
Methyl parathion	B	100 (45.4)
Mevinphos	A	10 (4.54)
Mexacarbate	C	1,000 (454)
Monoethylamine	B	100 (45.4)
Monomethylamine	B	100 (45.4)
Naled	A	10 (4.54)
Naphthalene	B	100 (45.4)
Naphthenic acid	B	100 (45.4)
Nickel ammonium sulfate.	B	100 (45.4)
Nickel chloride	B	100 (45.4)
Nickel hydroxide	A	10 (4.54)
Nickel nitrate	B	100 (45.4)
Nickel sulfate	B	100 (45.4)
Nitric acid	C	1,000 (454)
Nitrobenzene	C	1,000 (454)
Nitrogen dioxide	A	10 (4.54)
Nitrophenol (mixed)	B	100 (45.4)
Nitrotoluene	C	1,000 (454)
Paraformaldehyde	C	1,000 (454)
Parathion	A	10 (4.54)
Pentachlorophenol	A	10 (4.54)
Phenol	C	1,000 (454)
Phosgene	A	10 (4.54)
Phosphoric acid	D	5,000 (2,270)
Phosphorus	X	1 (0.454)
Phosphorus oxychloride.	C	1,000 (454)
Phosphorus pentasulfide.	B	100 (45.4)
Phosphorus trichloride.	C	1,000 (454)
Polychlorinated biphenyls.	X	1 (0.454)
Potassium arsenate	X	1 (0.454)
Potassium arsenite	X	1 (0.454)
Potassium bichromate.	A	10 (4.54)
Potassium chromate	A	10 (4.54)
Potassium cyanide	A	10 (4.54)
Potassium hydroxide	C	1,000 (454)
Potassium permanganate.	B	100 (45.4)
Propargite	A	10 (4.54)
Propionic acid	D	5,000 (2,270)
Propionic anhydride	D	5,000 (2,270)
Propylene oxide	B	100 (45.4)
Pyrethrins	X	1 (0.454)
Quinoline	D	5,000 (2,270)
Resorcinol	D	5,000 (2,270)
Selenium oxide	A	10 (4.54)
Silver nitrate	X	1 (0.454)
Sodium	A	10 (4.54)
Sodium arsenate	X	1 (0.454)
Sodium arsenite	X	1 (0.454)
Sodium bichromate	A	10 (4.54)
Sodium bifluoride	B	100 (45.4)
Sodium bisulfite	D	5,000 (2,270)
Sodium chromate	A	10 (4.54)
Sodium cyanide	A	10 (4.54)
Sodium dodecylbenzenesulfonate.	C	1,000 (454)
Sodium fluoride	C	1,000 (454)
Sodium hydrosulfide	D	5,000 (2,270)
Sodium hydroxide	C	1,000 (454)
Sodium hypochlorite	B	100 (45.4)
Sodium methylate	C	1,000 (454)
Sodium nitrite	B	100 (45.4)
Sodium phosphate, dibasic.	D	5,000 (2,270)
Sodium phosphate, tribasic.	D	5,000 (2,270)
Sodium selenite	B	100 (45.4)
Strontium chromate	A	10 (4.54)
Strychnine	A	10 (4.54)
Styrene	C	1,000 (454)
Sulfuric acid	C	1,000 (454)
Sulfur monochloride	C	1,000 (454)
2,4,5-T acid	C	1,000 (454)
2,4,5-T amines	D	5,000 (2,270)
2,4,5-T esters	C	1,000 (454)
2,4,5-T salts	C	1,000 (454)
TDE	X	1 (0.454)
2,4,5-TP acid	B	100 (45.4)
2,4,5-TP acid esters	B	100 (45.4)
Tetraethyl lead	A	10 (4.54)
Tetraethyl pyrophosphate.	A	10 (4.54)
Thallium sulfate	B	100 (45.4)
Toluene	C	1,000 (454)
Toxaphene	X	1 (0.454)
Trichlorfon	B	100 (45.4)
Trichloroethylene	B	100 (45.4)
Trichlorophenol	A	10 (4.54)
Triethanolamine dodecylbenzenesulfonate.	C	1,000 (454)
Triethylamine	D	5,000 (2,270)
Trimethylamine	B	100 (45.4)
Uranyl acetate	B	100 (45.4)
Uranyl nitrate	B	100 (45.4)
Vanadium pentoxide	C	1,000 (454)
Vanadyl sulfate	C	1,000 (454)
Vinyl acetate	D	5,000 (2,270)
Vinylidene chloride	B	100 (45.4)
Xylene (mixed)	C	1,000 (454)
Xylenol	C	1,000 (454)
Zinc acetate	C	1,000 (454)
Zinc ammonium chloride.	C	1,000 (454)
Zinc borate	C	1,000 (454)
Zinc bromide	C	1,000 (454)
Zinc carbonate	C	1,000 (454)
Zinc chloride	C	1,000 (454)
Zinc cyanide	A	10 (4.54)
Zinc fluoride	C	1,000 (454)
Zinc formate	C	1,000 (454)
Zinc hydrosulfite	C	1,000 (454)
Zinc nitrate	C	1,000 (454)
Zinc phenolsulfonate	D	5,000 (2,270)
Zinc phosphide	B	100 (45.4)
Zinc silicofluoride	D	5,000 (2,270)
Zinc sulfate	C	1,000 (454)
Zirconium nitrate	D	5,000 (2,270)
Zirconium potassium fluoride.	C	1,000 (454)

TABLE 117.3.—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT—Continued

[**Note:** The first number under the column headed "RQ" is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed "Category" which lists the code letters "X," "A," "B," "C," and "D" associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively]

Material	Category	RQ in pounds (kilograms)
Zirconium sulfate	D	5,000 (2,270)
Zirconium tetrachloride	D	5,000 (2,270)

[FR Doc. 89-15746 Filed 8-11-89; 8:45 am]

BILLING CODE 6560-50-M

federal register

Monday
August 14, 1989

Part VI

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1989.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of August 1, 1989 of six rescission proposals and 14 deferrals contained in the first four special messages of FY 1989. These messages were transmitted to the Congress on September 30 and November 29, 1988, and January 9 and April 18, 1989.

Rescissions (Table A and Attachment A)

As of August 1, 1989, there are no funds being withheld related to rescission proposals.

Deferrals (Table B and Attachment B)

As of August 1, 1989 $2,753.8 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1989.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the **Federal Registers** listed below:

Vol. 53, FR p. 39879, Wednesday, October 12, 1988
Vol. 53, FR p. 49530, Wednesday, December 7, 1988
Vol. 54, FR p. 1650, Friday, January 13, 19898
Vol. 54, FR p. 18234, Thursday, April 27, 1989

Richard G. Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1989 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by President Reagan.....	143.1
Accepted by the Congress as of August 1, 1989....	2.1
Funding made available.....	121.0
Funding never withheld.....	20.0

****

TABLE B

STATUS OF 1989 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	9,156.2
Routine Executive releases through August 1, 1989.. (OMB/Agency releases of $6,408.9 million and cumulative adjustments of $6.5 million)	-6,402.4
Overturned by the Congress.....	0
Currently before the Congress.....	2,753.8

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1989

As of August 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs:								
Subsidized housing programs.....	R89-1	20,000		1-9-89		(See note below.)		
Community Planning and Development:								
Urban development action grants.....	R89-2	51,651		1-9-89		51,651	2-28-89	
DEPARTMENT OF THE INTERIOR								
Fish and Wildlife Service:								
Land acquisition.....	R89-3	30,000		1-9-89		30,000	2-28-89	
National Park Service:								
Land acquisition and State assistance.....	R89-4	35,000		1-9-89		35,000	2-28-89	
DEPARTMENT OF JUSTICE								
Office of Justice Programs:								
Justice assistance.....	R89-5	5,000		1-9-89	2,053	2,947	3-16-89	P.L. 101-45
DEPARTMENT OF LABOR								
Employment Standards Administration:								
Black lung disability trust fund.....	R89-6	1,445		1-9-89		1,445	3-16-89	
TOTAL, RESCISSIONS.....		143,096	0		2,053	121,043		

NOTES. - The $20 million proposed for rescission in Rescission Proposal No. 89-1 was never withheld from obligation. Therefore, there was no need to release the funds.

- On March 16, the entire $5 million included in Rescission proposal No. R89-5 was made available for obligation. However, P.L. 101-45 subsequently rescinded $2,053,000, leaving $2,947,000 available of the funds proposed for rescission.

Attachment B - Status of Deferrals - Fiscal Year 1989

As of August 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 8-1-89
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit	D89-11	4,122,750		11-29-88	3,467,750				655,000
Economic support fund	D89-01	592,760		09-30-88					
	D89-01A		2,054,000	11-29-88	1,999,313			471	647,918
Military assistance	D89-12	457,000		11-29-88	326,950				130,050
International military education and training	D89-13	37,400		11-29-88	37,400				0
Agency for International Development									
International disaster assistance	D89-14	18,125		11-29-88	15,164				2,961
Special Assistance for Central America									
Promotion of stability and security in Central America	D89-2	1,000		09-30-88	1,000				0
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal	D89-3	144,649		09-30-88	751				143,898
Cooperative work	D89-4	335,263		09-30-88					
	D89-4A		172,737	04-18-89	508,000				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D89-5	1,212		09-30-88					
	D89-5A		227	04-18-89	56				1,383
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Southwestern Power Administration, Operation and maintenance	D89-6	2,800		09-30-88					
	D89-6A		5,600	04-18-89					8,400

Attachment B - Status of Deferrals - Fiscal Year 1989

As of August 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congressionally Required Releases (-)	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 8-1-89
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses (construction)	D89-7	6,745		09-30-88					
	D89-7A		80	04-18-89					6,824
DEPARTMENT OF JUSTICE									
Office of Justice Programs									
Crime victims fund	D89-8	90,000		09-30-88					
	D89-8A		35,000	04-18-89					125,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D89-9	26,135		09-30-88					
	D89-9A		27,000	11-29-88	52,492			6,001	6,644
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D89-10	823,608		09-30-88					
	D89-10A		202,084	11-29-88					1,025,692
TOTAL, DEFERRALS		6,659,446	2,496,728		6,408,876	0		6,472	2,753,770

[FR Doc. 89-18963 Filed 8-11-89; 8:45 am]
BILLING CODE 3110-01-C

federal register

Monday
August 14, 1989

Part VII

Department of Education

Patricia Roberts Harris Fellowships Program; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.094B and 84.094C]

Patricia Roberts Harris Fellowships Program

AGENCY: Department of Education.

ACTION: Combined notice inviting applications under the Patricia Roberts Harris Fellowships Program. New Grant Awards for Graduate and Professional Study Fellowships and Public Service Education Fellowships for Fiscal Year 1990.

PURPOSE OF PROGRAM: Applications are invited for new grant awards under the Patricia Roberts Harris Fellowships Program for Fiscal Year 1990. This program has two components, the Graduate and Professional Study Fellowships and the Public Service Education Fellowships.

The Graduate and Professional Study Fellowship grants are awarded to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and are from minority groups which are traditionally underrepresented in graduate and professional study areas.

The Public Service Education Fellowships grants are awarded to institutions of higher education to support fellowships for graduate and professional study to students who demonstrate financial need and who plan to pursue a career in public service. Public Service Education Fellowships are intended to provide opportunities for qualified students, particularly individuals from minority groups which are traditionally underrepresented in the graduate area of study or profession for which a fellowship is awarded.

OFFICE OF POSTSECONDARY EDUCATION

CFDA No.	Program title	Applications available	Deadline date	Deadline for intergovernmental review	Estimated range of awards	Estimated avg. size of awards	Estitmated number of awards	Project period (months)
84.094B	Patricia Roberts Harris Fellowships Program—Graduate & Professional Study Fellowship.	09/08/89	10/13/89	12/15/89	$6,667–$261,333	$87,809	185	9–12
84.094C	Patricia Roberts Harris Fellowships Program—Public Service Education Fellowships.	10/20/89	12/15/89	02/16/90	$16,000–$112,000	$47,420	70	9–12

Note: The Department is not bound by any estimates in this notice.

DATES: The deadline dates for transmitting applications under this notice are listed in the chart above.

ELIGIBLE APPLICANTS: For these two programs, eligible applicants are institutions of higher education as defined in section 1201(a) of the Higher Education Act of 1965, as amended.

APPLICABLE REGULATIONS: (a) The Patricia Roberts Harris' Program Regulations at 34 CFR Part 649, and (b) The Education Department General Administrative Regulations (EDGAR) 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 85 (Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

FOR APPLICATIONS OR INFORMATION CONTACT: Dr. Charles H. Miller, Program Manager, or Mrs. Barbara J. Harvey, Education Program Specialist, U.S. Department of Education, Division of Higher Education Incentive Programs, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202–5251, telephone (202) 732–4395 or (202) 732–4863, respectively.

Program Authority: 20 U.S.C. 1134d–1134f.

Dated: August 8, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89–18925 Filed 8–11–89; 8:45 am]

BILLING CODE 4000–01–M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 281 / Pub. L. 101-74

To approve the designation of the Cordell Bank National Marine Sanctuary, to disapprove a term of that designation, to prohibit the exploration for, or the development or production of, oil, gas, or minerals in any area of that sanctuary, and for other purposes. (Aug. 9, 1989; 103 Stat. 554; 1 page) Price: $1.00

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, DC 20402. Charge orders (VISA, MasterCard, or GPO Deposit Account) may be telephoned to the GPO order desk at (202) 783-3238 from 8:00 a.m. to 4:00 p.m. eastern time, Monday—Friday (except holidays).

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*1, 2 (2 Reserved)	$10.00	Apr. 1, 1989
3 (1988 Compilation and Parts 100 and 101)	21.00	[1] Jan. 1, 1989
4	15.00	Jan. 1, 1989
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*1-699	15.00	Jan. 1, 1989
*700-1199	17.00	Jan. 1, 1989
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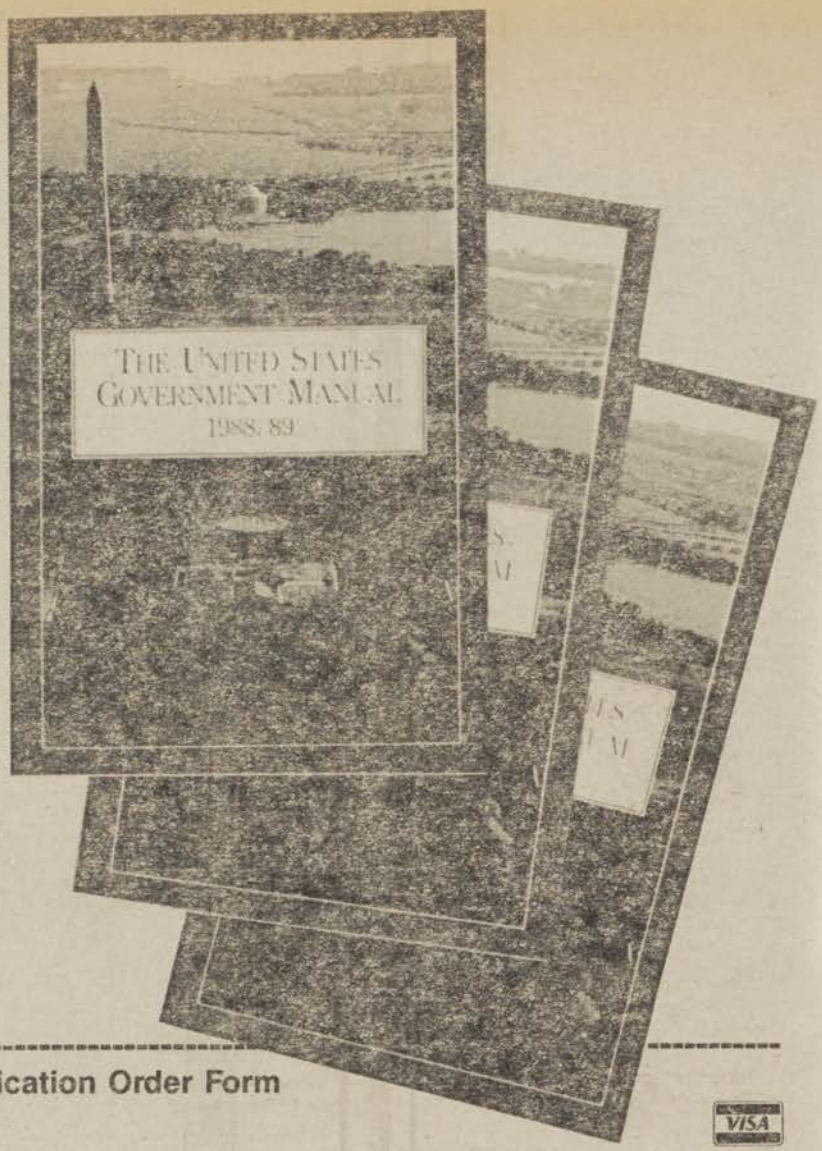
[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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