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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 30, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6090 of January 19, 1990

National Sanctity of Human Life Day, 1990

By the President of the United States of America

A Proclamation

On National Sanctity of Human Life Day, we affirm the sanctity of human life in all its stages. We recall that at the very beginning of our Nation, Thomas Jefferson wrote in the Declaration of Independence that "Life, Liberty and the pursuit of Happiness" are among the "unalienable Rights" with which all people are endowed by God. Similarly, our Constitution recognizes the sanctity of life by providing that no person shall be deprived of life without the due process of law.

On this day, we thank God for the millions of Americans who work every day to affirm the sanctity of life: scientists who devote their lives to researching cures for disabling and deadly diseases; doctors and nurses who care for premature babies, the elderly, and the sick; those who inspire our youth to say "no" to drugs and "yes" to the full richness of life; and those who work to affirm the sanctity of life in our laws and public policy. We recall that when life is threatened, Americans respond energetically and quickly, as when disasters such as Hurricane Hugo or the Loma Prieta earthquake strike. In sorrow, we recall scenes that deny the sanctity of life: babies born addicted to drugs, lives shattered by drugs or alcohol, the elderly who are neglected, the disabled denied their full potential. We are also mindful that children, in particular, need special concern, care, and protection, both before and after birth.

One of the key issues connected with the sanctity of life, abortion, has been a divisive issue in our Nation for many years. The prevalence of abortion in America today is a tragedy not only in terms of human lives lost, but also in terms of the values we hold dear as a Nation. We pray for a recognition that the principle of life's sanctity should guide public policy on this question and others, just as moral principles should guide our individual lives. We pray also for wisdom and guidance as those with public responsibilities consider this question. We ask all levels of government and all sectors of society to promote policies to encourage alternatives such as adoption, and to extend policies that make adopting easier for families who want children and can provide a loving, supportive home for them, particularly for children with special needs. We hope for the day when devoted families who want to adopt will no longer be disappointed. On this day, we also thank God for the advances in medicine that have improved the care of unborn children in the womb and premature babies. These scientific advances reinforce the belief that unborn children are persons, entitled to medical care and legal protection.

All stages of human life are precious; all demand recognition of their sanctity. Protection of human life is a reflection of our Nation's most cherished principles. Let us then on this day speak for those who cannot speak and join with other Americans in reaffirming the sanctity of life.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Sunday, January 21, 1990, as National Sanctity of Human Life Day. I call upon all Americans to reflect on the sanctity of human life in all its stages and to gather in homes and places of

worship to give thanks for the gift of life and to reaffirm our commitment of respect for life and the dignity of every human being.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of January, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 90–1665
Filed 1–22–90; 10:13 am]
Billing code 3195–01–M

Presidential Documents

Executive Order 12700 of January 19, 1990

President's Council of Advisors on Science and Technology

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2), an advisory committee on science and technology, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the President's Council of Advisors on Science and Technology ("Council"). The Council shall be composed of not more than 15 members, one of whom shall be the Director of the Office of Science and Technology Policy, and 14 of whom shall be distinguished individuals from the private sector to be appointed by the President. The Director of the Office of Science and Technology Policy shall serve as Chairman of the Council. The Vice Chairman shall be appointed by the President from among the 14 private sector members. The Chairman shall report directly to the President.

Sec. 2. *Functions.* (a) The Council shall advise the President on matters involving all areas of science and technology.

(b) In the performance of its advisory duties the Council shall conduct a continuing review and assessment of developments in science and technology, and shall, through the Chairman, report thereon to the President whenever requested.

(c) The Chairman may, from time to time, invite experts to investigate and report to the Council on specific issues of national consequence.

Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Council and its panels such information with respect to scientific and technological matters as required for the purpose of carrying out its functions.

(b) Members of the Council shall serve without any compensation for their work on the Council. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(c) Any expenses of the Council shall be paid from the funds available for the expenses of the Office of Science and Technology Policy.

(d) The Office of Administration shall, on a reimbursable basis, provide such administrative services as may be required.

Sec. 4. *General.* (a) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Council, shall be performed by the Office of Administration in accord with the guidelines and procedures established by the Administrator of General Services.

(b) The Council shall terminate on June 30, 1991, unless sooner extended.

George Bush

THE WHITE HOUSE,
January 19, 1990.

[FR Doc. 90-1666
Filed 1-22-90; 10:14 am]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 89-205]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

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

EFFECTIVE DATE: January 23, 1990.

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

SUPPLEMENTARY INFORMATION:

Background

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

We are amending § 354.2 of the regulations by adding a commuted traveltime allowance for Ellsworth Air Force Base, South Dakota. The amendment is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Executive Order 12291 and Regulatory Flexibility Act

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

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

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

Effective Date

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

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

Executive Order 12372

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

List of Subjects in 7 CFR Part 354

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

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

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

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

2. Section 354.2 is amending by adding South Dakota in alphabetical order, as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

(In hours)

Location covered	Served from	Metropolitan area	
		Within	Outside
Add:			
South Dakota:			
Ellsworth AFB	Pierre		6

* * * * *

Done in Washington, DC, this 18th day of January 1990.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-1502 Filed 1-22-90; 8:45 am]

BILLING CODE 3410-10-M

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV-89-098FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Handling Requirement Conforming Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting without modification as a final rule an interim final rule which made conforming changes in the handling requirements issued under the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida. These changes were necessary to bring the handling requirements into conformity with a marketing order amendment which became effective September 8, 1989. The order amendment reclassified Canada and Mexico as export rather than domestic markets for the purposes of grade, size and other regulatory activity.

EFFECTIVE DATE: January 23, 1990.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601-674), hereinafter referred to as the Act. This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. In addition, there are about 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

Marketing Order No. 905 was amended on September 8, 1989 (54 FR 37290). Under that amendment, §§ 905.9 and 905.52 were changed to classify Canada and Mexico as export markets to better meet the needs of buyers in those markets. Section 905.9 of the order was amended by changing the term "continental United States" to "contiguous 48 States and the District of Columbia of the United States". Before the amendment, Canada and Mexico, along with the United States, were defined as the domestic market, and the handling regulations under the order were issued on that basis. The marketing order provides for different requirements for domestic and export shipments.

Minimum grade and size requirements are now in effect for several varieties of fresh Florida oranges, grapefruit, tangerines, and tangelos under § 905.306 (7 CFR 905.306) of the order. Paragraph (a) of that section specifies the requirements for shipments to domestic markets and paragraph (b) specifies the requirements for all other shipments (exports).

An interim final rule amending § 905.306 was issued November 1, 1989, and published in the **Federal Register** (54 FR 46596, November 6, 1989). That rule amended § 905.306, so that all Florida citrus fruit shipped to Canada and Mexico would be regulated under paragraph (b) as exports, rather than under paragraph (a) as domestic shipments, thereby incorporating the changes made by the marketing order amendment. That rule also made minor, non-substantive changes in § 905.306 for clarity. The interim final rule provided that interested persons could file written comments through December 6, 1989. No comments were received.

This action will enable Florida citrus handlers to continue to ship fruit to Canada and Mexico which meets the grade and size requirements for export shipments. Canada is an important market for Florida grapefruit, and this action will enable handlers to continue to ship smaller sized grapefruit to Canada, which is in demand in that country.

The interim final rule also made a conforming change in § 905.400. Section 905.400 of the other contains provisions which interpret the provisions of paragraph (d) in § 905.52. These provisions pertain to fruit incidentally packed as part of a lot for export when shipping holidays regulations are in effect for domestic shipments. The marketing order amendment changed paragraph (d) in § 905.52 by deleting the reference to Canada and Mexico.

Both §§ 905.306 and 905.400 are effective on a continuing basis subject to change, suspension, or termination by the Secretary.

The Department's view is that the impact of this action upon handlers and producers will be beneficial because it will enable handlers to continue to provide fruit consistent with demand conditions in domestic and export markets. Acceptable grades and sizes of Florida citrus fruit have been shipped to fresh markets over the past several years because handling requirements have been in effect under the marketing order.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that this final rule finalizing the interim final rule, as published in the **Federal Register** (54 FR 46596, November 6, 1989), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action adopts without change the provisions of the interim final rule which changed the handling requirements to conform with the recently amended marketing order; (2) Florida citrus growers approved the marketing order amendment which classified Canada and Mexico as export markets; (3) a majority of the Florida citrus handlers signed the amended marketing agreement; (4) the 1989–90 Florida citrus shipping season began in early September; (5) the interim final rule provided a 30-day comment period, and no comments were received; and (6) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Marketing agreements, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of §§ 905.306 and 905.400, which was published in the **Federal Register** (54 FR 46596, November 6, 1989), is adopted as a final rule without change.

Note: This action will be published in the Code of Federal Regulations.

Dated: January 17, 1990.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 90–1499 Filed 1–22–90; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 905

[Docket No. FV–89–106FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Dancy Tangerine Minimum Size Relaxation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting without modification as a final rule an interim final rule which temporarily reduced the minimum size requirements for domestic shipments of Florida Dancy tangerines from 2$^{6}/_{16}$ inches in diameter to 2$^{5}/_{16}$ inches in diameter. The size reduction was based on an analysis of the size composition, maturity level, and current and prospective market demand conditions for the 1989–90 Florida Dancy tangerine crop.

EFFECTIVE DATE: January 17, 1990.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–3918.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. In addition, there are about 13,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of Florida citrus handlers and a majority of the producers may be classified as small entities.

An interim final rule amending § 905.306 (7 CFR 905.306) was issued November 1, 1989, and published in the **Federal Register** (54 FR 46597, November 6, 1989). That rule reduced the minimum size requirements for domestic shipments of Florida Dancy tangerines to 2$^{5}/_{16}$ inches in diameter from 2$^{6}/_{16}$ inches for the period November 27, 1989 through August 19, 1990. That rule also provided that interested persons could file written comments through December 6, 1989. No comments were received.

The domestic market is defined as the 48 contiguous States and the District of Columbia by an amendment to the marketing order (54 FR 37290, September 8, 1989), which revised §§ 905.9 and 905.52. Section 905.306 was amended to reflect that definition by an interim final rule, published in the **Federal Register** (54 FR 46596, November 6, 1989). Section 905.306 specifies minimum grade and size requirements for Florida Dancy tangerines for both domestic and export markets. Domestic market requirements are specified in that section in Table I of paragraph (a).

Dancy tangerine shipments started in mid-November this season. Size requirements for Dancy tangerines are normally reduced each season when the smaller fruit reaches an acceptable level of flavor and maturity. Such action is designed to maximize shipments to fresh market channels and provide economic benefits to producers.

The Citrus Administrative Committee (committee), which administers the marketing order locally, met September 19, 1989, and unanimously recommended the size reduction for Dancy tangerines. The committee based its recommendation on expected market conditions and a projection of the expected maturity, flavor level, and size composition of that portion of the 1989–90 crop remaining for shipment on and after November 27, 1989, and on an analysis of current and prospective

marketing conditions. The committee projected that 2⁹⁄₁₆ inch Dancy tangerines would reach the level of maturity and flavor which consumers prefer by that date. Early in the shipping season smaller Dancy tangerines are typically too hard and sour to be acceptable to most consumers. Shipment of such fruit would likely result in consumer disappointment and could have reduced the demand for tangerines later in the season.

The reduced size requirements for Dancy tangerines are effective only for the 1989–90 shipping season, with the tighter minimum requirements resuming for 1990–91 season shipments on August 20, 1990. The resumption of tighter requirements recognizes that smaller Dancy tangerines are not sufficiently flavorful early in the season, and is based upon the anticipated maturity, size, quality, and flavor characteristics of the fruit early in the shipping season.

The committee meets prior to and during each season to review the handling requirements for Dancy tangerines. Committee meetings are open to the public, and interested persons may express their views at these meetings. The U.S. Department of Agriculture reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling requirements would tend to effectuate the declared policy of the Act.

Some Florida citrus fruit shipments are exempt from handling requirements effective under the marketing order. Handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day under a minimum quantity exemption provision. Also, handlers may ship up to two standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under the current exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base is not subject to the handling requirements.

The Department's view is that the impact of this action upon handlers and producers will be beneficial because it will enable handlers to continue to provide fruit consistent with the demand conditions in the domestic market. Acceptable grades and sizes of Florida citrus fruit have been shipped to fresh markets over the past several years because handling requirements have been in effect under the marketing order.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that this final rule finalizing the interim final rule, as published in the **Federal Register** (54 FR 46597, November 6, 1989), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action maintains reduced size requirements currently in effect for Florida Dancy tangerines; (2) Florida Dancy tangerine handlers need no additional time to continuing complying with the reduced requirements, which were unanimously recommended by the committee at a public meeting; (3) shipment of the 1989–90 season Florida Dancy tangerine crop is currently underway; (4) the interim final rule provided a 30-day comment period, and no comments were received; and (5) no useful purpose would be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR Part 905

Florida, Grapefruit, Marketing agreements, Oranges, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the **Federal Register** (54 FR 46597, November 6, 1989), is adopted as a final rule without change.

Note.—This action will not be published in the Code of Federal Regulations.

Dated: January 17, 1990.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 90–1501 Filed 1–22–90; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 989

[Docket No. FV–89–097FR]

Raisins Produced From Grapes Grown in California—Defining "Unstemmed" and "Stemmed" Raisins for the Purpose of Determining Whether Off-Grade Raisins May be Returned to Producers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the administrative rules and regulations established under the federal marketing order regulating raisins produced in California. This action defines the terms "unstemmed" and "stemmed" raisins for the purpose of determining whether or not individual lots of off-grade raisins received by raisin handlers may be returned to producers. This action was unanimously recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the marketing order.

EFFECTIVE DATE: January 23, 1990.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 382–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual receipts for the last three years of less than $500,000, and small agricultural service firms are defined as those whose average annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

Section 989.24(b) of the order defines off-grade raisins to mean raisins which do not meet the incoming minimum grade and condition standards for natural condition raisins. Pursuant to § 989.58(e)(1) of the order, when incoming natural condition raisins are certified as off-grade, they may be: (1) Received by the raisin handler for disposal in eligible non-normal outlets; (2) received by the handler for reconditioning; or (3) returned unstemmed to the raisin producer.

Off-grade raisins which are disposed of in eligible non-normal outlets may be used in livestock feed or distillation. Producers receive a lower price for such raisins since the raisins may not be sold in normal market channels.

Off-grade raisins which are reconditioned by raisin handlers to meet incoming standards have the added cost of the reconditioning process. Thus, producers receive a lower price for such raisins than if the raisins had initially passed the incoming standards.

Finally, off-grade raisins which are received by the handler may also be returned unstemmed to the raisin producer and the return of such raisins must comply with the requirements specified in § 989.158(c)(7) of the regulations. Unstemmed raisins may not be sold in normal market outlets since they have not had their stems removed. If off-grade raisins were returned to producers stemmed, the raisins would resemble processed raisins and such raisins might be sold in normal market channels. This would be very undesirable since these raisins would still fail to meet the minimum standards. Therefore, only unstemmed off-grade raisins may be returned to producers. Producers may then recondition the raisins on their own premises or take the raisins to a packer or dehydrator for reconditioning. If the raisins were successfully reconditioned to meet the minimum standards, producers would then be able to receive a more competitive price for such reconditioned raisins.

In past seasons, the term "unstemmed" has described raisins which have not had their large stems removed in the reconditioning process. Large stems are the branch or main stem of a grape bunch. Thus, only off-grade raisins with large stems intact may currently be returned to producers. Over the years, however, the process of stemming raisins has changed and now refers to running the raisins through equipment which removes not only the raisins' large stems but smaller capstems as well. Capstems are the small woody stems exceeding one-eighth inch in length which attach the raisins to the branches of the bunch. Therefore, the Committee recommended that "unstemmed" and "stemmed" be clearly defined in the rules and regulations of the order for the purpose of determining which lots of off-grade raisins received by raisin handlers may be returned to producers. Accordingly, the Committee recommended that "unstemmed" raisins should mean lots of raisins which contain 150 or more capstems per pound. "Stemmed" raisins should mean lots of raisins the contain less than 150 capstems per pound.

The Committee considers it necessary to establish this tolerance level for the number of capstems remaining on stemmed raisins to help distinguish stemmed raisins that may still be off-grade from raisins that have been fully processed. This action will help ensure that off-grade stemmed raisins do not enter normal market channels. Raisins that have been stemmed may still not meet the minimum standards for natural condition raisins. These off-grade stemmed raisins are almost indistinguishable from fully processed raisins, which have had even more capstems removed through processing. The tolerance level for the number of capstems per pound for U.S. Department of Agriculture (USDA) Grade C raisins, the lowest USDA grade of processed raisins, is 35 (7 CFR section 52.1846). The Committee determined that a tolerance level of 150 capsteams per pound for stemmed raisins will be sufficient to distinguish such stemmed raisins from fully processed raisins. Off-grade raisins with less than 150 capstems may not be returned to producers. Instead, these raisins must be reconditioned by the handler or disposed of in eligible non-normal outlets, pursuant to section 989.58(e)(1).

Notice of this action was published in the **Federal Register** on November 14, 1989 (54 FR 47367). Written comments were invited from interested persons until December 14, 1989. One comment was received from Mr. Vaughn Koligian, General Manager of the Raisin Bargaining Association of California. The comment supported the proposed action recommended by the Committee, noting that the rule could benefit producers to whom the unstemmed raisins could be returned.

In addition, for the purpose of clarity, this final rule makes a change to the amendatory language which was published in the proposed rule. The proposed amendatory language provided that unstemmed raisins were to be defined as lots of raisins that contain more than 150 capstems per pound while stemmed raisins would be lots of raisins that contain less than 150 capstems per pound. Accordingly, the proposed language was not clear as to whether lots of raisins with exactly 150 capstems per pound could be returned to producers. This language is clarified in this final rule to specify that lots of raisins with exactly 150 capstems per pound may be returned to producers.

After consideration of all relevant matter presented, including the Committee's recommendation and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements, Raisins.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as set forth below.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. Section 989.158 is amended by adding paragraph (c)(7)(i) to read as follows:

§ 989.158 Natural condition raisins.

* * * * *

(c)* * *

(7) *Return of off-grade raisins to tenderer.*

* * * * *

(i) *Unstemmed and stemmed raisins.* For the purpose of determining whether or not off-grade raisins may be returned to the person tendering such raisins, "unstemmed" raisins shall be defined as lots of raisins that contain 150 or more capstems per pound. "Stemmed" raisins means lots of raisins that contain less than 150 capstems per pound.

* * * * *

Dated: January 17, 1990.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 90-1500 Filed 1-22-90; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1032

[DA-90-007]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions of the Southern Illinois-Eastern Missouri Federal milk marketing order for the month of January 1990. The action reduces the shipping standard for pool supply plants. The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the market. As Mid-Am contends, the action is necessary to reflect a reduced need for shipments of milk from supply plants to distributing plants. Mid-Am indicates that less of its supply plant milk is needed because of the sale of a distributing plant whose fluid milk accounts have been shifted to distributing plants that are regulated under other Federal orders. In response to this situation, a previous suspension order was issued for the months of November 1989 through January 1990 that reduced the shipping standard for supply plants operated by cooperative associations to 25 percent of milk receipts. Mid-Am now indicates that, under current marketing conditions, it will not be able to perform at the 25 percent shipping level to pool its supply plant at Cabool, Missouri, without engaging in inefficient and uneconomic movements of milk. Thus, as Mid-Am contends, a further suspension is necessary to eliminate unnecessary shipments of milk to pool the milk of dairy farmers who have historically supplied the fluid milk needs of the market.

EFFECTIVE DATE: January 23, 1990.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued December 26, 1989; published December 29, 1989 (54 FR 53652).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on December 29, 1989 (54 FR 53652) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the action were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the month of January 1990 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1032.7(b), the words "during December at least 40 percent, and at least 50 percent in all other months, of the total", the words "(including producer milk diverted from such plant pursuant to § 1032.13 but excluding milk diverted to such plant) and handlers described in § 1032.9(c)", the words, "except that the minimum qualifying percentage shall be 25 percent for a plant(s) operated by a cooperative association that delivered producer milk", the words "each of", the words "months of", the words "through August", the word "to", and the words "plants described in paragraph (a) of this section".

For the benefit of the reader, the above suspension in conjunction with a previous suspension that was issued on November 15, 1989 (54 FR 48078) results in a provision that reads "A supply plant from which receipts of milk from dairy farmers is transferred to and physically received at plants described in paragraph (a) of this section during the immediately preceding September."

Statement of Consideration

This action suspends certain provisions of the order for the month of January 1990. The action reduces the shipping standard for pool supply plants that transferred milk to distributing plants during September 1989.

The order provides that a supply plant must ship at least 40 percent of its receipts of milk to distributing plants during December, and 50 percent in other months, to be a pool plant under the order. A supply plant that meets the pooling standard during each of the months of September through January is a pool plant during each of the months of February through August. Also, the order provides an alternative shipping standard of 25 percent for a supply plant operated by a cooperative association if at least 75 percent of the cooperative's total milk supply during the preceding months of September through August is received at distributing plants. A previous suspension action for the months of November 1989-January 1990 reduced the shipping standard to 25 percent of receipts for any cooperative association supply plant that delivered producer milk during each of the immediately preceding months of September through August. This action further reduces the amount of milk that must be shipped from any supply plant to a distributing plant during January 1990 if the supply plant shipped milk during September 1989.

Both the current and previous actions were requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants under the order and represents producers who supply the market. Mid-Am contends the action is necessary because of a reduced need for shipments of milk from supply plants to furnish the fluid milk requirements of distributing plants.

Mid-Am indicates that the reduction of the fluid milk requirements for the market is a result of the recent sale of a distributing plant to another handler that is regulated under the order. Mid-Am has maintained pool plant status under the order for its Cabool, Missouri, supply plant by making shipments to the distributing plant that was sold. The fluid milk accounts of the plant that sold were shifted to distributing plants that are regulated under other Federal orders and the plant ceased receiving milk on October 19, 1989. As a result, there was a reduction in the amount of supplemental supply plant milk required of Mid-Am to meet the fluid milk needs of the market.

In response to this situation, a suspension order was issued for the months of November 1989–January 1990 that reduced the shipping standard for supply plants operated by cooperative associations to 25 percent of milk receipts. Mid-Am now contends that, under current marketing conditions, it will not be able to perform at the 25 percent shipping level to pool its supply plant at Cabool, Missouri, without engaging in inefficient and uneconomic movements of milk. Thus, as Mid-Am contends, a further suspension for January 1990 is necessary to eliminate unnecessary shipments of milk to pool the milk of dairy farmers who have historically supplied the fluid milk needs of the market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that such action is necessary to permit the continued pooling of supply plants and the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1032

Dairy products, Milk, Milk marketing orders.

It is therefore ordered, That the following provisions in § 1032.7(b) of the Southern Illinois-Eastern Missouri order are hereby suspended for the month of January 1990.

PART 1032—MILK IN THE SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

1. The authority citation for 7 CFR Part 1032 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1032.7 [Suspended in part]

2. In § 1032.7(b), the words "during December at least 40 percent, and at least 50 percent in all other months, of the total", the words "(including producer milk diverted from such plant pursuant to § 1032.13 but excluding milk diverted to such plant) and handlers described in § 1032.9(c)", the words ", except that the minimum qualifying percentage shall be 25 percent for a plant(s) operated by a cooperative association that delivered producer milk", the words "each of", the words "months of", the words "through August", the word "to", and the words "plants described in paragraph (a) of this section" are hereby suspended for the month of January 1990.

Signed at Washington, DC, on January 16, 1990.

John E. Frydenlund,

Acting Assistant Secretary.

[FR Doc. 90–1503 Filed 1–22–90; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 97

[Docket No. 89–204

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services (VS) by adding a commuted traveltime allowance for Portal, North Dakota. Commuted traveltime allowances are the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by VS employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime for this location.

EFFECTIVE DATE: January 23, 1990.

FOR FURTHER INFORMATION CONTACT: Louise R. Lothery, Director, Resource Management Support, VS, APHIS, USDA, Room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR, chapter I, subchapter D, and 7 CFR, chapter III, require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of VS on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the service in accordance with 9 CFR Part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by adding a commuted traveltime allowance for Portal, North Dakota. The amendment is set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Executive Order 12291 and Regulatory Flexibility Act.

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

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

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

Effective Date

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

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

Executive Order 12372

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

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 9 CFR part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for part 97 continues to read as follows:

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

2. Section 97.2 is amended by adding, in alphabetical order, the information as shown below:

§ 97.2 Administrative instructions prescribing commuted traveltime.

* * * * *

Commuted Traveltime Allowances

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
Add:			
North Dakota:			
Portal	Bismarck		6

Done in Washington, D.C., this 18th day of January 1990.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-1504 Filed 1-22-90; 8:45 am]

BILLING CODE 3410-10-M

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 910, 912, 931 through 944, 950, and 955

[No. 90-06]

Nomenclature Changes; Miscellaneous Conforming and Technical Amendments

AGENCY: Federal Housing Finance Board.

ACTION: Final rule; miscellaneous technical and nomenclature amendments.

SUMMARY: The Federal Housing Finance Board ("FHFB" or "Board") is amending the regulations transferred to it by the former Federal Home Loan Bank Board by removing obsolete references and changes in nomenclature to reflect the new organizational structure.

EFFECTIVE DATE: January 23, 1990.

FOR FURTHER INFORMATION CONTACT: John F. Ghizzoni, Liaison Officer, (202) 785-5408, Federal Housing Finance Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. General

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183, signed into law on August 9, 1989, abolished the Federal Home Loan Bank Board and established the FHFB as an independent agency in the executive branch of the Government responsible for overseeing the Federal home loan banks. Regulations concerning the Federal Home Loan Bank System were contained in title 12 CFR parts 521-35, while regulations concerning the Financing Corporation were contained in part 592 of title 12. These regulations were issued under the authority of the former Federal Home Loan Bank Board. Section 402(h) of FIRREA preserves the authority of the Federal Home Loan Bank Board regulations unless terminated or superseded by the appropriate successor agency.

On September 5, 1989, the Board established 12 CFR chapter IX and redesignated its regulations into this chapter (54 FR 36757). At that time the Board merely redesignated the section numbers and noted that nomenclature and other conforming technical amendments would be made at a later date.

The Board is hereby today publishing these changes to its regulations. References to the obsolete Federal Home Loan Bank Board are being changed to refer to the FHFB.

B. Administrative Procedure Act

No new substantive regulations are being adopted that are not made necessary by changes in the statutory authority pursuant to which the FHFB will operate. Since this rule contains no substantive changes, the Board promulates this final rule as a matter of agency organization and management. Therefore, for good cause shown under 5 U.S.C. 553 (a)(2) and (b)(B), this rule is exempt from the notice and comment requirements of the Administrative Procedure Act and the 30-day delay in the effective date pursuant to 5 U.S.C. 553(d)(3).

C. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

Accordingly, the Federal Housing Finance Board hereby amends chapter IX, title 12, Code of Federal Regulations, set forth below.

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

§ 912.1, § 932.60 and § 939.1 [Amended]

1. Chapter IX is amended by removing the phrases "Federal Home Loan Bank Board" or "Board", whether used in the singular or plural, and by substituting in lieu thereof the phrase "Federal Housing Finance Board" in the following sections: Sections 912.1(b); 932.60(b); and 939.1.

SUBCHAPTER A—GENERAL

PART 910—CONSOLIDATED BONDS AND DEBENTURES

2. The authority citation for part 910 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431).

§ 910.1 [Amended]

3. Section 910.1 is amended by adding the phrase "Federal Housing Finance" between the words "The" and "Board" in the first sentence, and by adding the phrase "(hereinafter referred to in this Part as 'Board')" after the word "Board" in the first sentence.

§ 910.5 [Amended]

4. Section 910.5 is amended by removing the phrase "§§ 506.3 and 506.4," and by substituting in lieu thereof the phrase "§§ 910.3 and 910.4,".

§ 910.6 [Amended]

5. Section 910.6 is amended by removing the term "§ 506.1" and by substituting in lieu thereof the term "§ 910.1".

PART 912—BOOK-ENTRY PROCEDURE FOR FEDERAL HOME LOAN BANK SECURITIES

6. The authority citation for part 912 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431).

§ 912.4 [Amended]

7. Section 912.4(b) is amended by removing the phrase "§ 506a.3(a)(3) of the 'General Regulations' of the Federal Home Loan Bank Board," and by substituting in lieu thereof the phrase "§ 912.3(a)(3) of the Regulations of the Federal Housing Finance Board,".

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 931—DEFINITIONS

8. The authority citation for part 931 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b).

9. Section 931.3 is revised to read as follows:

§ 931.3 Board.

The Federal Housing Finance Board or any official duly authorized to act in its behalf.

PART 932—ORGANIZATION OF THE BANKS

10. The authority citation for part 932 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec 602, 92 Stat. 2115, as amended (42 U.S.C. 8101, *et seq.*).

11. Part 932 is amended by removing § 932.65.

PART 933—MEMBERS OF THE BANKS

12. The authority citation for part 933 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); secs. 2, 48 Stat. 128, as amended (12 U.S.C. 1426); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 503, 88 Stat. 1521, as amended (12 U.S.C. 1691, 1691a); sec. 202 (b), 87 Stat. 982, as amended (42 U.S.C. 4106(b)).

13. Section 933.5(b) is amended by removing the phrase "in § 561.7 of" and by substituting in lieu thereof the phrase "elsewhere in"; by amending paragraph (c)(1) by removing the phrase "Principal Supervisory Agent" and by substituting in lieu thereof the phrase "Bank President"; and by amending paragraph (d) heading and text by removing the phrase "Principal Supervisory Agent", whether used in the singular or plural, each place it appears, and by substituting in lieu thereof the phrase "Bank President", whether used in the singular or plural; by amending paragraph (f) by removing the phrases "§ 522.23" and "§ 523.30 and § 523.31" and by substituting in lieu thereof the phrases "§ 932.11" and "§ 933.32 and § 933.33", respectively; by removing the last sentence of paragraph (g).

14. Section 933.5 is further amended by revising paragraph (c) heading and introductory text as follows:

§ 933.5 Membership at principal place of business, designation, transfer of membership.

* * * * *

(c) *Designation by Bank President.* The rule contained in paragraph (b) of this section notwithstanding, the Bank President, at a Bank in which an association is a member, has discretion to designate a different principal place of business if—

* * * * *

§ 933.6 [Removed]

15. Part 933 is amended by removing § 933.6.

§ 933.14, 933.15, 933.16 and 933.17 [Removed]

16. Part 933 is amended by removing § § 933.14, 933.15, 933.16 and 933.17.

PART 934—OPERATIONS OF THE BANKS

17. The authority citation for part 934 continues to read as follows:

Authority: Sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 12, as added by sec. 310, 103 Stat. 343 (12 U.S.C. 1468a).

§ 934.3 [Amended]

18. Section 934.3 is amended by removing the phrase "Director, Office of District Banks," and by substituting in lieu thereof the term "Board".

§ 934.5 [Amended]

19. Section 934.5 introductory text is amended by removing the phrase "and Loan" used between the terms "Savings" and "Association".

§ 934.6 [Amended]

20. Section 934.6 is amended by removing the phrase "Director or Deputy Director, Office of District Banks," and by substituting in lieu thereof the phrase "Board's designee".

§ 934.11 and 934.12 [Amended]

21. Sections 934.11 and 934.12 are amended by removing the phrases "Director or Assistant Director, Office of District Banks" or "Director, Office of District Banks" and by substituting in lieu thereof the phrase "Board or its designee".

PART 935—ADVANCES

22. The authority citation for part 935 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by Sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430).

§ 935.1 [Amended]

23. Section 935.1 is amended by removing the phrase "§ 563.8(b) of" in paragraph (a); and by removing the phrase "§ 563.27 of" wherever it appears in paragraph (b).

§ 935.33 [Amended]

24. Section 935.33 is amended by removing the phrase "Director, Office of District Banks" and substituting in lieu thereof "Board or its designee".

PART 936—ADVERTISING OF ACCOUNTS

25. The authority citation for part 936 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

§ 936.1 [Amended]

26. Section 936.1 is amended by removing the phrase "§ 521.7 of" in paragraph (a); and by removing the phrase "as defined in § 563.6 of this subchapter" in paragraph (c).

PART 937—HOUSING OPPORTUNITY ALLOWANCE PROGRAM

27. The authority citation for part 937 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 101, 84 Stat. 450 (12 U.S.C. 1430 note).

§ 937.2 [Amended]

28. Section 937.2(c) is amended by removing the term "§ 521.7" and by substituting in lieu thereof the term "§ 931.9"; and by removing the phrase "Federal Savings and Loan Insurance Corporation or the".

§ 937.4 [Amended]

29. Section 937.4 is amended by removing the term "§ 527.8" and by substituting in lieu thereof the term "§ 937.8".

§ 937.6 [Amended]

30. Section 937.6 is amended by removing the term "§ 527.5" and by substituting in lieu thereof the term "§ 937.5".

§ 937.8 [Amended]

31. Section 937.8 is amended by removing the term "§ 527.4" wherever it appears and by substituting in lieu thereof the term "§ 937.4".

PART 938—NONDISCRIMINATION REQUIREMENTS

32. The authority citation for part 938 is revised to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 302, 88 Stat. 1125, as amended (12 U.S.C. 2801 *et seq.*); secs. 802–806, 91 Stat. 1147–1148 (12 U.S.C. 2901 *et seq.*); sec. 701, as added by sec. 503, 88 Stat. 1521 (15 U.S.C. 1691); sec. 16, 16 Stat. 144, as amended (42 U.S.C. 1981); sec. 1, 14 Stat. 27, as amended (42 U.S.C. 1982); secs. 801–819, 82 Stat. 81–89, as amended (42 U.S.C. 3601–3619); EO 11063, 27 FR 11527.

§ 938.1 [Amended]

33. Section 939.1 is amended by removing the number "528" in the introductory text and by substituting in lieu thereof the number "938"; and by amending paragraph (a) by removing the term "§ 531.8" and substituting in lieu thereof the term "§ 940.4".

§ 938.2 [Amended]

34. Section 938.2 is amended by removing the terms "§ 531.8" and "528" and by substituting in lieu thereof the terms "§ 940.4" and "938" respectively.

§§ 938.3 and 938.4 [Amended]

35. The cross-references following the headings of §§ 938.3 and 938.4 are amended by removing the term "§ 531.8" and by substituting in lieu thereof the term "§ 940.4".

§ 938.5 [Amended]

36. The cross-reference following the heading of § 938.5 is amended by removing the term "§ 531.8" and by substituting in lieu thereof the term "§ 940.4"; and the introductory text of paragraph (a) is amended by removing the term "§ 528.2" and by substituting in lieu thereof the term "§ 938.3".

§ 938.7 [Amended]

37. Section 938.7(b) is amended by removing the phrases "Office of Community Investment" and "Federal Home Loan Bank Board" wherever they appear in the text of the poster and substituting in lieu thereof "Office of Housing Finance Programs" and "Federal Housing Finance Board", respectively.

§ 938.8 [Amended]

38. Section 938.8(d)(1) is amended by removing the term "§ 528.1" and by substituting in lieu thereof the term "§ 938.1".

§ 938.9 [Amended]

39. Section 938.9 is amended by removing the term "part 528" in paragraph (f) introductory text and replacing it with the term "part 938".

§ 938.10 [Amended]

40. Section 938.10 is amended by removing the phrase "Office of Community Investment, Federal Home Loan Bank Board," everywhere it appears and replacing it with "Office of Housing Finance Programs, Federal Housing Finance Board,"; and by removing the phrase "Federal Home Loan Bank Board regulations" and replacing it with "Federal Housing Finance Board regulations".

PART 939—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

41. The authority citation in part 939 is revised to read as follows:

Authority: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d–1).

42. Section 939.2 is amended by revising paragraph (b) to read as follows:

§ 939.2 Definitions.

* * * * *

(b) "Board" means the Federal Housing Finance Board or, except in § 939.10(e), any person to whom it has delegated its authority in the matter concerned.

* * * * *

§ 939.3 [Amended]

43. Section 939.3 is amended by removing the number "529" in the introductory text and by substituting in lieu thereof the number "939"; and by removing the term "§ 529.4(c)" in paragraph (d) and by substituting in lieu thereof the term "§ 939.4(c)".

§ 939.8 [Amended]

44. Section 939.8 is amended by removing the term "§ 529.5" wherever it appears in paragraph (b) and by substituting in lieu thereof the term "§ 939.5"; by removing the term "§ 529.10(e)" in paragraph (c)(3) and substituting in lieu thereof the term "§ 939.10(e)"; and by removing paragraph (a)(2) and redesignating paragraph (a)(3) as (a)(2).

45. Section 939.9 is amended by removing the term "§ 529.8(c)" wherever it appears in paragraph (a) and by substituting in lieu thereof the term "§ 939.8(c)"; and by removing the term "§ 529.10" in paragraph (e) and by substituting in lieu thereof the term "§ 939.10".

46. Section 939.9(d)(1) is revised to read as follows:

§ 939.9 Hearings.

* * * * *

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of Title 5, United States Code, in accordance with the Regulations of the Federal Housing Finance Board that may be necessary or appropriate for the conduct of hearings pursuant to this part 939.

* * * * *

§ 939.10 [Amended]

47. Section 939.10(c) is amended by removing the term "§ 529.9" and by substituting in lieu thereof the term "§ 939.9".

§ 939.12 [Amended]

48. Section 939.12(c) is amended by removing the term "§ 529.10" and by substituting in lieu thereof the term "§ 939.10".

PART 940—STATEMENTS OF POLICY

49. The authority citation for part 940 is revised to read as follows:

Authority: Sec. 11, 47 Stat. 733, as amended (12 U.S.C. 1431); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 802–806, 91 Stat. 1147–1148 (12 U.S.C. 2901 *et seq.*); sec. 701, as added by sec. 503, 88 Stat. 1521 (15 U.S.C. 1691); sec. 16, 16 Stat. 144, as amended (42 U.S.C. 1981), secs. 801–819, 82 Stat. 81–89, as amended (42 U.S.C. 3601–3619); EO 11063, 27 FR 11527.

§ 940.2 [Amended]

50. Section 940.2 paragraphs (a) and (b)(3) are amended by removing the term "§ 531.1(b)" and by substituting in lieu thereof the term "§ 940.1(b)".

§ 940.4 [Amended]

51. Section 940.4 is amended by removing the phrase "parts 528 and 529" in paragraph (a) and by substituting in lieu thereof the phrase "parts 938 and 939"; by removing the phrase "528.2, 528.2a, and 528.3" in paragraph (c)(7) and by substituting in lieu thereof the phrase "938.3, 938.4, and 938.5"; and by removing the phrase "Bank Board regulations at 12 CFR 528.4 and 528.5" in paragraph (c)(8) and replacing it with "Board regulations at 12 CFR 938.6 and 938.7".

§ 940.5 [Amended]

52. Section 940.5(d) is amended by removing the phrase "Director or Deputy Director, Office of District Banks" and by substituting in lieu thereof the phrase "Board or its designee".

PART 941—RULINGS OF THE FORMER FEDERAL HOME LOAN BANK BOARD OR THE BOARD OF DIRECTORS, FEDERAL HOUSING FINANCE BOARD

53. The authority citation for part 941 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b).

§ 941.1 [Amended]

54. Section 941.1 is amended by removing the phrases "463(a) of 31 U.S.C." and "31 U.S.C. 463" and substituting in lieu thereof "5118 of 31 U.S.C." and "31 U.S.C. 5118", respectively; and by removing the quotation marks and the brackets around the letter "e" in the word "every" in the first sentence of the section.

PART 942—ELECTRONIC FUND TRANSFERS

55. The authority citation for part 942 is revised to read as follows:

Authority: Sec. 10, 47 Stat. 731, as amended (12 U.S.C. 1430); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464).

PART 943—COLLECTION, SETTLEMENT, AND PROCESSING OF PAYMENT INSTRUMENTS

56. The authority citation for part 943 is revised to read as follows:

Authority: Sec. 10, 47 Stat. 733, as amended (12 U.S.C. 1430); sec. 11, 47 Stat. 732, as amended (12 U.S.C. 1431).

§ 943.4 [Amended]

57. Section 943.4 introductory text is amended by removing the term "§ 534.2" and by substituting in lieu thereof the term "§ 943.2".

PART 944—PROHIBITED CONSUMER CREDIT PRACTICES

58. The authority citation for part 944 is revised to read as follows:

Authority: Sec. 18, as added by sec. 202, 88 Stat. 2193, as amended (15 U.S.C. 57a).

§ 944.1 [Amended]

59. Section 944.1(b) is amended by removing the quotation marks around the terms "consumer credit"; and by removing the phrase "as defined in § 561.38 of this chapter".

SUBCHAPTER C—FINANCING CORPORATION

PART 950—OPERATIONS

60. The authority citation for part 950 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b); sec. 21, as added by sec. 302, 101 Stat. 585, as amended (12 U.S.C. 1441).

SUBCHAPTER D—RESOLUTION FUNDING CORPORATION

PART 955—AUTHORITY FOR BANK ASSISTANCE

61. The authority citation for part 955 is revised to read as follows:

Authority: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b).

By the Federal Housing Finance Board.

Dated: January 16, 1990.

Jack Kemp,

Chairman.

[FR Doc. 90–1441 Filed 1–22–90; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–131–AD; Amdt. 39–6483]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which requires repetitive inspections to detect cracks and damage of various structural components associated with the wing center box, and repair, if necessary. This amendment is prompted by full-scale fatigue testing by the manufacturer, which identified certain significant structural components which are prone to cracking. This condition, if not corrected, could result in reduced structural integrity of the fuselage and subsequent decompression of the airplane.

DATE: Effective February 23, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Airbus Industrie Model A300 series airplanes, to require repetitive inspections to detect cracks and damage of various structural components associated with the wing center box, and repair, if necessary, was published in the **Federal Register** on September 15, 1989 (54 FR 38241).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due

consideration has been given to the comments received.

The commenters questioned the need for the rule since the referenced service bulletins will become a part of the Significant Structural Inspection Program (SSIP). The FAA acknowledges that the service bulletins may be part of the SSIP; however, the SSIP document is under preparation and its date of issuance is not known. Once the SSIP is finalized and issued, the FAA may consider further, separate rulemaking to address it. Since some operators may currently have airplanes which are approaching the specific number of cycles where the actions described in the service bulletins are necessary, the FAA has determined that it is appropriate to proceed with this rulemaking to require those actions.

One commenter recommended that repairs should be approved by the manufacturer's Designated Engineering Representative (DER) or by the Principal Maintenance Inspector (PMI) assigned to that operator. The FAA does not concur with the commenter's recommendation that repairs be performed in accordance with a method approved by a DER or PMI. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized to determine what the applicable requirement is. Further, where repair data does not exist, it is essential that the FAA have feedback as to the type of repairs being made. The FAA has determined that the Manager of the Standardization Branch should approve any such deviations to AD requirements. Given that possible new relevant issues might be revealed during this process, it is imperative that the FAA, at this level, have such feedback. Only by reviewing deviation approvals, can the FAA be assured of this feedback and of the adequacy of repair methods.

One commenter noted that the phrase, "repeated at intervals not to exceed 1,500 landings," in paragraph D.1., should read, "repeated at intervals not to exceed 11,500 landings." The FAA concurs. This typographical error was published as a correction in the Federal Register on October 23, 1989 (54 FR 43217). The final rule is issued to reflect 11,500 landings as the correct number of landings.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 66 airplanes of U.S registry will be affected by this AD, that it will take approximately 54 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 $142,560.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

Airbus Industrie: Applies to all Model A300 series airplanes, as listed in Airbus Industrie Service Bulletins A300–53–245, A300–53–252, and A300–53–265, each dated March 13, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the fuselage, accomplish the following:

A. Prior to the accumulation of 20,700 landings or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform either an ultrasonic or rotating probe inspection of the wing center box lower panel stringer reinforcement strap and stiffeners, in accordance with Airbus Industrie Service Bulletin A300–53–245, dated March 13, 1989.

1. If the immediately preceding inspection was performed using ultrasound, the next inspection must be performed within 5,200 landings.

2. If the immediately preceding inspection was performed using a rotating probe, the next inspection must be performed within 11,600 landings.

B. If cracks are found using ultrasound, perform a rotating probe inspection in accordance with Airbus Industrie Service Bulletin A300–53–245, dated March 13, 1989, and proceed as specified in paragraph C., below.

C. If cracks are found using the rotating probe, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–53–245, dated March 13, 1989. Repeat inspections at intervals indicated in paragraph A., above.

D. Prior to the accumulation of the number of landings indicated below, or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform a rotating probe inspection of the rear spar and bottom panel at the junction with the fuselage, in accordance with Airbus Industrie Service Bulletin A300–53–265, dated March 13, 1989.

1. For airplanes identified as Configuration 2 in the service bulletin, the initial inspection must be performed prior to the accumulation of 19,700 landings, and repeated thereafter at intervals not to exceed 11,500 landings.

2. For airplanes identified as Configuration 3 in the service bulletin, the initial inspection must be performed prior to the accumulation of 22,400 landings, and repeated thereafter at intervals not to exceed 11,700 landings.

3. For airplanes identified as Configuration 5 in the service bulletin, the initial inspection must be performed prior to the accumulation of 24,500 landings, and repeated thereafter at intervals not to exceed 12,600 landings.

4. For airplanes identified as Configuration 7 in the service bulletin, the initial inspection must be performed prior to the accumulation of 18,500 landings, and repeated thereafter at intervals not to exceed 9,500 landings.

E. If cracks are found as a result of the inspections required by paragraph D., above, which are less than or equal to .2 mm (.007 inches) for bore with R1 oversize, or less than or equal to .4 mm (.015 inches) for bore with nominal diameter, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–53–265, dated March 13, 1989. Repeat inspections at frequency intervals approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

F. If cracks are found as a result of the inspections required by paragraph D., above, which are greater than .2 mm (.007 inches) for bore with R1 oversize, or greater than .4 mm (.015 inches) for bore with nominal diameter or if a crack is detected in bore with R2 oversize, repair prior to further flight in a manner approved by the Manager,

Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

G. Prior to the accumulation of the number of landings indicated below, or within 750 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals indicated below, perform an eddy current inspection between Frame 42 and Frame 45–1 of the wing center box lower panel at joint with pick-up angle (Area 1), and perform a rotating probe inspection between Frame 45–2 and Frame 47 of the lower surface bores left and right side (Area 2), in accordance with Airbus Industrie Service Bulletin A300–53–252, dated March 13, 1989.

1. For airplanes identified as Configuration 1 in Airbus Industrie Service Bulletin A300–53–252, the initial inspection must be performed prior to the accumulation of 33,000 landings.

a. Repeat the eddy current inspection between Frame 42 and Frame 45–1 of wing center box lower panel at joint with pick-up angle (Area 1) at intervals not to exceed 5,800 landings.

b. Repeat the rotating probe inspection between Frame 45–2 and Frame 47 of the lower surface bores (Area 2) at intervals not to exceed 15,800 landings.

2. For airplanes identified as Configuration 2 in Airbus Industrie Service Bulletin A300–53–252, the initial inspection must be performed prior to the accumulation of 29,500 landings.

a. Repeat the eddy current inspection between Frame 42 and Frame 45–1 of the wing center box lower panel at joint with pick-up angle (Area 1) at intervals not to exceed 5,600 landings.

b. Repeat the rotating probe inspection between Frame 45–2 and Frame 47 of the lower surface bores (Area 2) at intervals not to exceed 15,500 landings.

3. For airplanes identified as Configuration 3 in Airbus Industrie Service Bulletin A300–53–252, the initial inspection must be performed prior to the accumulation of 20,700 landings.

a. Repeat the eddy current inspection between Frame 42 and Frame 45–1 of wing center box lower panel at joint with pick-up angle (Area 1) at intervals not to exceed 4,200 landings.

b. Repeat the rotating probe inspection between Frame 45–2 and Frame 47 of the lower surface bores (Area 2) at intervals not to exceed 11,600 landings.

H. If cracks are found in Area 1 as result of the eddy current inspection required by paragraph G., above, prior to further flight, perform a rotating probe inspection, in accordance with Airbus Industrie Service Bulletin A300–53–252.

1. If cracks are equal to or less than .4 mm (.0157 inches) for all holes, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–53–252. Repeat inspections at intervals specified in paragraph G., above.

2. If cracks are between .4 mm (.0157 inches) and 1.2 mm (.047 inches) for all holes except 8, 9, 10, 11, 12, 20, 27, 38, 39, 40, 41, 42, 43, 44, 45, or 54, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–53–252. Repeat inspections at intervals specified in paragraph G., above.

3. If cracks are between .4 mm (.0157 inches) and 1.2 mm (.047 inches) for holes 8, 9, 10, 11, 12, 20, 27, 38, 39, 40, 41, 42, 43, 44, 45, or 54, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

4. If cracks are between 1.2 mm (.047 inches) and 2 mm (.0787 inches) for holes 1, 2, 3, 4, 28, 30, 31, or 32, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–53–252. Repeat inspections at intervals specified in paragraph G., above.

5. If cracks are between 1.2 mm (.047 inches) and 2 mm (.0787 inches) for holes other than 1, 2, 3, 4, 28, 30, 31, or 32, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

6. If cracks are between 2 mm (.0787 inches) and 2.8 mm (.11 inches) for holes 1, 2, 3, 4, 28, 30, 31, or 32, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–53–252. Repeat inspections at intervals specified in paragraph G., above.

7. If cracks are between 2 mm (.0787 inches) and 2.8 mm (.11 inches) for holes other than 1, 2, 3, 4, 28, 30, 31, or 32, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

8. If cracks are greater than 2.8 mm (.11 inches) for any hole, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

I. If cracks are found in Area 2 as a result of the rotating probe inspection required by paragraph G., above, accomplish the following:

1. If cracks are less than or equal to 4 mm (.0157 inches), repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–53–252. Repeat inspections at intervals specified in paragraph G., above.

2. If cracks are between .4 mm (.0157 inches) and 1.2 mm (.047 inches) at holes 13, 14, 17, 19, 22, 46, 47, 51, 52, 53, 55, 57, or 58, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300–53–252. Repeat inspections at intervals as shown in paragraph G., above.

3. If cracks are between .4 mm (.0157 inches) and 1.2 mm (.047 inches) at holes other than 13, 14, 17, 19, 22, 46, 47, 51, 52, 53, 55, 57, or 58, repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

4. If cracks are greater than 1.2 mm (.047 inches), repair prior to further flight, in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

J. 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, Standardization Branch, ANM–113, 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, Standardization Branch, ANM–113.

K. 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 Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 23, 1990.

Issued in Seattle, Washington, on January 8, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–1457 Filed 1–22–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs not Subject to Certification; Praziquantel Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Mobay Corp., Animal Health Division. The supplemental NADA provides for over-the-counter use of praziquantel tablets for removal of certain tapeworms from dogs and cats.

EFFECTIVE DATE: January 23, 1990.

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

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, filed a supplement to NADA 111–798 providing for over-the-counter rather than prescription use of praziquantel tablets for removal of certain canine and feline tapeworms. Use of praziquantel tablets for *Echinococcus granulosus* infections

in dogs remains a veterinary prescription use. The supplement is approved and 21 CFR 520.1870 is amended by revising paragraphs (c)(1)(i) and (iii) and (2)(iii) to reflect the approval and by removing "s" from "mgs" wherever it appears. The basis for approval is discussed in the freedom of information summary.

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

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

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

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

2. Section 520.1870 is amended by removing the "s" from "mgs" wherever it appears, and by revising paragraphs (c)(1)(i) and (iii) and (2)(iii) to read as follows:

§ 520.1870 Praziquantel tablets.

* * * * *

(c) * * *

(1) * * *

(i) *Indications for use.* For removal of canine cestodes *Dipylidium caninum* and *Taenia pisiformis*. If labeled for use by or on the order of a licensed veterinarian, for removal of the canine cestode *Echinococcus granulosus*.

* * * * *

(iii) *Limitations.* Administer directly by mouth or crumbled and in feed. Not intended for use in puppies less than 4 weeks of age. For over-the-counter (OTC) use: Consult your veterinarian before administering tablets to weak or debilitated animals, and for assistance in the diagnosis, treatment, and control of parasitism. For prescription use: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(iii) *Limitations.* Administer directly by mouth or crumbled and in feed. Not intended for use in kittens less than 6 weeks of age. For OTC use: Consult your veterinarian before administering tablets to weak or debilitated animals, and for assistance in the diagnosis, treatment, and control of parasitism.

Dated: January 10, 1990.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 90-1482 Filed 1-22-90; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL-020; FRL-3706-8]

Approval and Promulgation of Implementation Plans for Alabama; SO_2 Revision for Two Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a source-specific revision to the Alabama State Implementation Plan (SIP) for sulfur dioxide (SO_2) for Exxon Company's Big Escambia Creek Treating Facility and Tennessee Valley Authority's Colbert Steam Plant submitted on May 29, 1987. The SO_2 limits are based on Dispersion modeling conducted to comply with new EPA requirements on Good Engineering Practice (GEP) stack height. The National Ambient Air Quality Standards (NAAQS) for SO_2 will be protected, and no interstate impacts or attainment problems are expected as a result of approving this SIP revision.

EFFECTIVE DATE: This action will be effective on March 26, 1990 unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to Beverly T. Hudson of EPA Region IV's Air Programs Branch. (See EPA Region IV address below.) Copies of the submission and EPA's evaluation are available for public inspection during normal business hours at the following locations:

Air Programs Branch, Region IV, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Alabama Department of Environmental Management, 1751 Congressman William L. Dickinson Dr., Montgomery, Alabama 36130.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credit and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F.2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 s. CT. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Pursuant to section 406(d)(2) of Public Law 95-95, all states were required to (1) review and revise, as necessary, their SIPs to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credit above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be

submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, the regulations required the states to prepare inventories of stacks greater than 65 meters (m) in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. The sources were screened from further review on the basis of the grandfathering clause (in existence before December 31, 1970), and the actual stack height's being less than the calculated GEP stack height. The remaining sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

On May 29, 1987, the Alabama Department of Environmental Management submitted SO_2 SIP revisions. Since the State formally revised its SIP, a public hearing on these stack height reviews was held on April 23, 1987. The Environmental Management Commission adopted revisions to Chapter 5 (Control of Sulfur Compound Emissions) of its air regulation in response to the GEP requirements of the Clean Air Act and subsequent GEP regulations promulgated by EPA. The revisions ensure that no emission limit in Alabama reflects credit for the use of any stack higher than GEP or any other prohibited dispersion technique.

Modeling

Dispersion modeling was required for all sources that were identified as utilizing stack heights or dispersion techniques prohibited by the GEP regulations. The dispersion modeling results were used in determining what, if any, changes needed to be made to the facility's emission limits based on predicted ground level concentrations.

The modeling techniques used in the demonstration supporting these revisions are, for the most part, based on modeling guidance in place at the time that the analysis was performed, i.e., the EPA "Guideline on Air Quality Models" (1978). Since that time, revisions to modeling guidance have been promulgated by EPA [53 FR 392, January 6, 1988]. Because the modeling analysis was under way prior to publication of the revised guidance, EPA accepts the analysis. If for some reason this, or any other, analysis must be redone in the future, then it should be redone in accordance with current modeling guidance. Modeling results indicated violations of the NAAQS for only two facilities. EPA's Technical Support Document, available from the Region IV office whose address is given above, contains a detailed review of the modeling.

Alabama has determined that reductions in allowable SO_2 emissions will be required for the following source to ensure that no emission limits in Alabama reflect credit for the use of any stack height greater than GEP or any other prohibited dispersion techniques.

Company	Existing allowable emission limit for SO_2	Proposed allowable emission limit for SO_2
Exxon Company, U.S.A. Big Escambia Creek Treating Facility Sulfur recovery plants 1 and 2.	93% sulfur recovery rate	Variable sulfur recovery rate of 93% to 94.8% based on production.
TVA: Colbert Steam Plant Units 1 thru 4	4.0 lbs/mmBtu	2.2 lbs/mmBtu.

For the TVA facility, Alabama established a compliance schedule with acceptable increments of progress leading to final compliance date by January 1, 1991. Exxon came into compliance in April 1988.

EPA Review

EPA has reviewed this SO_2 SIP revision and for consistency with section 110(a) (2) (E) of the Clean Air Act. The SO_2 limits above are acceptable. Compliance with the new SO_2 standards will be demonstrated by EPA Method 6, according to a letter of commitment dated August 19, 1987, from the State. Alabama's Rules and Regulations specify EPA test methods, but allow alternative methods to be approved by the Director. EPA's policies and regulations require that any alternative method approved by the Director be submitted to EPA for approval as a SIP revision.

Final Action

EPA is approving Alabama's SO_2 SIP revision submitted to EPA on May 29, 1987, as it applies to Exxon Company's Big Escambia Creek Treating Facility and Tennessee Valley Authority's Colbert Steam Plant.

This action is taken without prior proposal because the issues are straightforward and no adverse comment is anticipated. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

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 March 26, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307 (b) (2).)

Under 5 U.S.C. section 605(b), I certify that this SIP action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air Pollution Control, Incorporation by Reference, Intergovernmental relations, Sulfur oxides, Particulate matter.

Note.—Incorporation by reference of the State Implementation Plan for State of Alabama was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 20, 1989.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of chaper I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart B—Alabama

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.50, paragraph (c) is amended by adding paragraph (c)(50) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(50) Changes in Alabama's Regulations which were submitted to EPA on May 29, 1987, by the Alabama Department of Health and Environmental Management.

(i) Incorporation by reference.

(A) Changes in Alabama's Regulation which were adopted on May 20, 1987:

(1) Chapter 5, Control of Sulfur Compound Emissions: Section 5.1.1(d) & (e) and Sections 5.3.4 (Applicability), 5.3.4 (a) & (b), 5.3.5 (a) & (b), 5.3.6, 5.3.7, 5.3.8, & 5.3.9.

(ii) Other Material.

A. Modeling analysis for Exxon Company's Big Escambia Creek Treating Facility and Tennessee Valley Authority's Colbert Steam Plant.

[FR Doc. 90–1420 Filed 1–22–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–494; DA 90–24]

Broadcast Services; Enforcement of Prohibitions Against Broadcast Indecency

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry; extension of comment period.

SUMMARY: In a Notice of Inquiry, 54 FR 53801 (December 22, 1989), the Commission, soliciting public comment regarding the validity of a total ban on the broadcast of indecent material, established a deadline of January 19, 1990 for filing comments, and a deadline of February 16, 1990 for filing reply comments. In response to a joint motion for extension of time, the Commission now extends the comment deadline to February 20, 1990, and the reply comment deadline to March 20, 1990. While it is the Commission's policy that extensions of time not be granted routinely, the Commission believes that, in this case, a grant of some additional time is warranted. In the Notice, the Commission urged parties to provide factual studies and data in response to numerous issues, including children's access to the broadcast media and children's listening and viewing habits, which are critical to the compilation of a complete evidentiary record. The Commission believes the aforementioned extended time periods will be sufficient to permit movants to complete their factual research and coordinate their comments among their multiple participants.

DATES: Comments are now due by February 20, 1990, and reply comments are now due by March 20, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Mohrman-Gillis, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Order Extending Time to File Comments

Adopted: January 12, 1990.

Released: January 12, 1990.

By the Chief, Mass Media Bureau:

1. On October 26, 1989, the Commission adopted a Notice of Inquiry, 4 FCC Rcd 8358 (1989), in response to a remand of the record in *Action for Children's Television* v. *FCC*, No. 88–1916 (D.C. Cir. Sept. 13, 1989) (*ACT II*) to solicit public comment regarding the validity of a total ban on the broadcast of indecent material. The Commission established a deadline of January 19, 1990 for filing comments, and a deadline of February 16, 1990 for filing reply comments.

2. Before the Commission is a motion for extension of time filed jointly by parties, the majority of whom are petitioners in ACT II.[1] The joint petitioners request additional time because of difficulties in coordinating the positions of multiple parties and the time required to undertake and complete joint factual research into the issues raised in the Notice. Petitioners request an extension of 40 days for filing comments and reply comments.

3. As set forth in § 1.46 of the Commission's Rules, 47 CFR 1.46, it is our policy that extensions of time shall not be routinely granted. However, we believe that, in this case, the grant of additional time will further the Commission's goal of developing a full and complete evidentiary record regarding the validity of a 24-hour ban on the broadcast of indecent material. In the Notice, the Commission urged parties to provide factual studies and data in response to numerous issues, including children's access to the broadcast media and children's listening and viewing habits, which are critical to the compilation of a complete evidentiary record. We will, therefore, extend the deadline by 30 days. We believe this extended time period will be sufficient to permit petitioners to complete their factual research and coordinate their comments among their multiple participants. Because of the need to expedite this proceeding, we do not anticipate granting further extensions of time in this proceeding, absent compelling justification.

4. Accordingly, *it is ordered* that the Motion for Extension of Time filed by joint petitioners *is granted* to the extent noted above, and in all other respects is denied.

5. *It is further ordered* that the times for filing comments and reply comments in this proceeding *are extended* to February 20, 1990 and to March 20, 1990 respectively.

6. This action is taken pursuant to authority found in sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, and Sections 0.204(b), 0.283, and 1.46 of the Commission's Rules.

7. For further information concerning this proceeding, contact Marilyn Mohrman-Gillis, Policy and Rules Division, Mass Media Bureau, (202) 632–7792.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 90–1484 Filed 1–22–90; 8:45 am]

BILLING CODE 6712–01–M

[1] The motion was filed by Capital Cities/ABC, Inc., CBS Inc., Action for Children's Television, American Civil Liberties Union, Association of Independent Television Stations, Inc., Radio-Television News Directors Association, Great American Television and Radio Company, Inc., Infinity Broadcasting Corp., Motion Picture Association of America, Inc., National Association of Broadcasters, National Broadcasting Company, Inc., National Public Radio, People for the American Way, Post-Newsweek Stations, Inc., Public Broadcasting Service, The Reporters Committee for Freedom of the Press, and Society of Professional Journalists.

Proposed Rules

Federal Register
Vol. 55, No. 15
Tuesday, January 23, 1990

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-89-1]

Petition for Rulemaking; Summary and Disposition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. 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.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: March 26, 1990.

ADDRESS: Send comments on 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. 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on January 17, 1990.

Deborah Swank,

Petitions for Rulemaking

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Docket No.: 26088.

Petitioner: Bell Helicopter Textron Inc.

Regulations Affected: 14 CFR 13.15 and 43.13.

Description of Petition: To clarify the regulation for use of approved parts on type certificated aircraft and to provide civil penalties for individuals or organizations who knowingly violate the intent of the regulation.

Petitioner's Reason for the Request: Section 43.13 requires that the person doing the maintenance determine that the aircraft is in an airworthy condition. This interpretation does not reflect the requirement that the parts must be approved as clearly stated in Part 21. The petitioner submits that the person performing the maintenance does not have sufficient information or technical expertise to determine the airworthiness (compliance) of a part and therefore must rely on the documentation accompanying the part. Only if this documentation reflects FAA approval can the installer assure the airworthiness of the part, as defined by the approval process clearly stated in Amendments 21-38 and 21-50.

[FR Doc. 90-1455 Filed 1-22-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-142-AD]

Airworthiness Directives; Airbus Industries Models A300 and A310; Boeing Models 707, 720, 727, 737, 747, 757, and 767; British Aerospace Models BAe 146 and BAC 1-11; Fokker Model F28; Lockheed Model L-1011; and McDonnell Douglas Models DC-8, DC-9 (Includes Model DC-9-80 Series and Model MD-88), and DC-10/KC-10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This action withdraws a Notice of Proposed Rulemaking (NPRM) which proposed a new airworthiness directive (AD), applicable to certain transport category airplanes, which would have required the installation of a visual annunciation of the loss of electrical power to the takeoff warning system which would not require action by the flight crew to display the annunciation. Since the issuance of the NPRM, the FAA has reviewed its position and the comments to the NPRM submitted by interested persons. This review concluded that the proposed visual annunciation of loss of electrical power as a warning that the system might have been deactivated because of nuisance warnings, could more appropriately be addressed by other means. Accordingly, the NPRM is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Saul, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806; telephone (213) 988-5342.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive, applicable to certain transport category airplanes, was published in the Federal Register on November 30, 1988 (53 FR 48498). The proposal would have required the installation of a visual warning which would signal the loss of primary electrical power to the takeoff warning system, visible to the flight crew without requiring flight crew action to display it. Comments on the proposed airworthiness directive were invited and, subsequent to the close of the comment period, the comments submitted were reviewed by the FAA.

All of the comments received objected to the issuance of the proposal. Commenters indicated that the proposed AD was an inadequate approach to accomplish the stated purpose, could have an adverse effect on safety, and was in conflict with FAA studies, human factor experience, and pilot experience. Commenters stated that the reliability of the components which currently supply

power to the system was already higher than many other components of the system. Commenters also argued that if the FAA, through this action, is trying to address nuisance warnings and opened circuit breakers, then there are other, more appropriate ways to deal with the concerns, such as more crew training, additional preflight checks, or other operational procedure changes.

In their arguments against adoption of the rule, thee commenters cited FAA studies which concluded that the general practice of adding warning/caution lights could be counterproductive and could increase the probability of flight crew errors. The commenters also cited the report of the special FAA team formed in September 1987 to review takeoff warning systems (referenced in the Notice) which rejected the idea of installation of a warning light because such action treated a symptom and not the problem.

After further consideration, the FAA concurs with the commenters. The FAA issued the NPRM because it had determined that nuisance takeoff warnings may cause flight crews to deactivate the system by removing power through the circuit breaker. Without any annunciation of the system's deactivated state, this situation presents the risk that, if electrical power to the takeoff warning system is lost, the flight crew may not be aware of it. If the crew further failed to set the proper takeoff configuration, the plane could takeoff in an unsafe takeoff configuration. After review of the comments received and reevaluation of this issue as it applies generally to all transport category airplanes, the FAA now concurs that the reliability of the components which supply power to the takeoff warning system is, in many cases, higher than other components of the system, and that an annunciation solely for the purpose of indicating failure of the power supply would not significantly enhance safety. The FAA also concurs that the addition of a visual warning to signal the loss of primary power to the takeoff warning system does not, in and of itself, completely address this problem of nuisance warnings. Accordingly, the FAA has determined that it is appropriate to withdraw this proposed rule.

The FAA now considers that eliminating the cause of the nuisance or distraction, so that the system will be left activated, is a more appropriate approach to increase the level of safety. Further, the FAA considers it more appropriate to direct rulemaking to mandate takeoff warning system modifications towards only those aircraft which display a propensity for nuisance warnings.

The FAA recently completed a review of the takeoff warning system designs installed on aircraft manufactured by McDonnell Douglas and Lockheed. The Air Transport Association (ATA) of America assisted the FAA in this review by providing information, garnered from a survey of its member operators, concerning operator procedures with regard to which engine(s) are shut down, movement of dead engine(s) throttle, and aircraft configuration during less-than-all-engine taxi operations. This review concluded that, of the system designs installed on McDonnell Douglas Models DC–8, DC–9, DC–9–80, and DC–10 series airplanes and the Lockheed Model L–1011 series airplanes, the system design of Model DC–9–80 series airplanes is most prone to nuisance warnings. The system is designed so that either throttle lever in the takeoff position will arm the takeoff warning system. The frequency of a nuisance warning while taxiing on only the No. 1 or No. 2 engine is probably high enough to annoy flight crews and possibly cause them to deactivate the system. For the other models, it was determined that, in general, the frequency of nuisance warnings was minimal, because of the thrust remaining on the operative engines, and was not enough to annoy the flight crew and cause them to deactivate the system.

As a result of this review, the FAA has issued a Notice of Proposed Rulemaking, Docket 89–NM–143–AD (54 FR 39405; September 26, 1989), proposing to require revision of the wiring for the takeoff warning system throttle lever switches on McDonnell Douglas Model DC–9–80 series airplanes, so that the switches are placed in series rather than in parallel. With this modification, the pilot could move only the throttle lever of the operating engine and avoid nuisance warnings of the takeoff warning system during single-engine taxi operations, since both throttle levers would have to be in the takeoff position to arm the takeoff warning system. The final rule for that action is expected to be issued shortly.

The FAA has also reviewed the Boeing model airplanes and has determined that certain actions are appropriate in addressing specific problems identified in the system designs of those individual models. As a result, the FAA issued a Notice of Proposed Rulemaking, Docket 88–NM–158–AD (53 FR 50544; December 16, 1989), proposing to require modification of Boeing Model 727 and 737 series airplanes to include the use of Engine Pressure Ratio (EPR) information in the logic which enables the takeoff warning system. That action was prompted by the existence, in unmodified airplanes of these models, of the potential for the occurrence of nuisance takeoff warnings during taxi operations conducted with all engines operating, and with the flaps intentionally retracted, particularly during hot days. If the flightcrew deactivates the takeoff warning system to avoid the nuisance warnings, they are deprived of a valuable backup that helps to assure that takeoff is initiated with the airplane in a proper takeoff configuration. The addition of EPR logic to the arm point is considered appropriate to reduce the likelihood of nuisance warnings during taxi during hot days, where higher throttle angles are required to achieve the same amount of thrust for taxi. The final rule for that action is expected to be issued imminently.

The FAA has also issued the following AD's, applicable to Boeing series airplanes, which have been prompted by specific problems in the systems of individual models:

(1) AD 88–22–09, Amendment 39–6054 (53 FR 41313; October 21, 1988), which requires a full maintenance check of the Boeing Model 727 and 737 takeoff warning system every 200 hours time-in-service.

(2) Ad 89–13–04, Amendment 39–6238 (54 FR 25710; June 19, 1989), which requires a modification to the Model 757 takeoff warning system to provide redundant flap/slat electronic unit inputs. The modification eliminates false warnings that have caused aborted takeoffs, in one case at a speed in excess of 100 knots.

(3) AD 89–15–02, Amendment 39–6260 (54 FR 29008; July 11, 1989), which requires changes to the Model 747 takeoff warning system stabilizer limit switch assembly mounting brackets to eliminate false warnings due to the selection of stabilizer midband trim at boundary trim conditions. False warnings have caused aborted takeoffs in excess of 130 knots.

The FAA considers these rulemaking actions to be responsive to the known unsafe conditions with regard to domestic transport category aircraft which display a propensity for nuisance warnings. The FAA will continue to work with foreign airworthiness authorities to review the foreign-manufactured airplanes for similar conditions and may consider additional rulemaking if problems are identified.

As is demonstrated by the actions described above, the FAA's position to "tailor" rulemaking to the correctio of

specific unsafe conditions identified in individually affected models with regard to the operation and use of their takeoff warning systems—rather than focusing on the broad range of possible conditions on all models—is a more logical, practical, and economical approach. Further, the FAA has determined that safety will not be abrogated by this approach, since any factor which is identified to pose substantial hazards to the continued airworthiness of specific aircraft, will be addressed by rulemaking aimed directly at preventing or correcting that specific problem.

Withdrawal of this Notice of Proposed Rulemaking constitutes only such action, and does not preclude the agency from issuing another Notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a Notice of Proposed Rulemaking (NPRM), it is neither a proposed nor final rule, and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

The Withdrawal

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration withdraws the notice of proposed rulemaking, Docket 88–NM–142–AD, published in the **Federal Register** on November 30, 1988 (53 FR 48498), FR Doc. 88–27671.

Issued in Seattle, Washington, on January 10, 1990.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–1458 Filed 1–22–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Arkansas permanent regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to the definition of ownership and control of surface coal mining and reclamation operations; requirements for the reporting of violations and ownership and control data, and the effect of that information on various permitting decisions; and criteria and procedures for the identification and rescission of improvidently issued permits. The amendment is intended to revise the State regulations to be consistent with the corresponding Federal regulations.

This notice sets forth the times and locations that the Arkansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.s.t. February 22, 1990. If requested, a public hearing on the proposed amendment will be held on February 16, 1990. Request to present oral testimony at the hearing must be received by 4 p.m., c.s.t. on February 7, 1990.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. James H. Moncrief at the address listed below.

Copies of the Arkansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 550, Tulsa, OK 74135, Telephone: (918) 581–6430

Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Drive, Little Rock, AR 72209, Telephone: (501) 562–7444.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program

On November 21, 1980, The Secretary of the Interior conditionally approved the Arkansas program. General background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Arkansas program can be found in the November 21, 1980, **Federal Register** (45 FR 77003). Subsequent actions concerning Arkansas program and program amendments can be found at 30 CFR 904.12, 904.15, and 904.16.

II. Proposed Amendment

By letter dated January 8, 1990 (administrative record No. AR–386), Arkansas submitted a proposed amendment to its programs pursuant to SMCRA. Arkansas submitted the proposed amendment in response to May 11, 1989, letter that OSMRE sent to Arkansas in accordance with 30 CFR 732.17(c).

The regulations that Arkansas proposes to amend concern the definition of ownership and control of surface coal mining and reclamation operations, requirements for the reporting of violations and ownership and control data and the effect of that information on various permitting decisions, and criteria and procedures for the identification and rescission of improvidently issued permits. Specifically, Arkansas proposes to amend Arkansas Surface Coal Mining and Reclamation Code sections: 778.13 and 778.14, respectively the identification of interests and compliance information for surface mining permit applications; 786.5, 786.17, and 786.19, respectively the definition of "owned or controlled and owns and controls," review of permit applications, and criteria of permit review or denial, all as they relate to the review, public participation, and approval or disapproval of permit application and permit terms and conditions; 786.27, general and right-of-entry conditions of permits; 786.30 and 786.31, respectively general procedures and rescission procedures for improvidently issued permits; and 843.11, cessation orders.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Arkansas program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include

explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or be included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., c.s.t. on February 7, 1990. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meeting will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 904

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 15, 1990.

Raymond L. Lorie,

Assistant Director, Western Field Operations.

[FR Doc. 90-1493 Filed 1-22-90; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 946

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of disapproval of proposed amendment.

SUMMARY: OSM is announcing the disapproval of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) The proposed amendment was intended to establish alternative standards for permitting, bonding, and reclamation for surface coal mining and reclamation operations which remine areas originally mined prior to the effective date of SMCRA.

DATE: This disapproval is effective January 23, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. W. Russell Campbell, Acting Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Room 220, Powell Valley Square Shopping Center, Route 23, Big Stone Gap, Virginia 24219; Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

The Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the Virginia program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval, can be found in the December 15, 1981, Federal Register (46 FR 61088-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Submission of Amendment

By letter dated December 22, 1987 (Administrative Record No. VA 664), Virginia submitted a proposed amendment to its Coal Surface Mining Reclamation Regulations, (VR) part 480. Contents of the originally proposed amendment are summarized in the February 19, 1988, Federal Register (53 FR 5002-5004) wherein OSM announced receipt of the proposal and opened the public comment period. This first comment period ended on March 21, 1988. Following review of this submission, OSM informed Virginia by letter dated June 13, 1988 (Administrative Record No. VA 689), of those parts of the amendment that could not be approved because they were less stringent than SMCRA and less effective than the Federal regulations.

By letter dated July 12, 1988 (Administrative Record No. VA 694), Virginia resubmitted parts of the proposed amendment with corrections and clarifications. In this letter, Virginia also expressed its intent to submit additional information at a later date.

OSM published receipt of the revisions submitted on July 12, 1988, with a summary of their contents and reopened the public comment period in the August 12, 1988, Federal Register (53 FR 30450-30452). The second public commend period ended on September 12, 1988. To allow Virginia more time to make revisions and gather additional information, OSM published notice to suspend final decision making and publication of final rules to amend the Virginia program in the January 30, 1989, Federal Register (54 FR 4297-4298).

By letters dated December 13, 1988 (Administrative Record No. VA 714), and February 17, 1989 (Administrative Record No. VA 718), Virginia resubmitted additional supporting information and revisions to the proposed program amendment. OSM published receipt of these documents with a summary of their contents and reopened the public comment period in the March 22, 1989, Federal Register (54 FR 11748-11750). The third public comment period ended on April 21, 1989. Since no one requested an opportunity to testify at any of the public hearings provided during the comment periods, the scheduled hearings were cancelled.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

1. VR 480-03-19.700.5 Definitions

Virginia originally proposed to revise Section 480-03-19.700.5 by adding the definitions for "abatement plan," "actual improvement," "baseline pollution load," "best professional judgment," "best technology," "pollution abatement area," "previously mined lands," "remining," and "reprocessing coal mine waste."

In its June 13, 1988, letter to Virginia, OSM pointed out that the definitions for "abatement plan," "actual improvement," "baseline pollution load," "best professional judgment," "best technology," and "pollution abatement area," were already under consideration as part of Virginia's proposed amendment to allow alternative effluent limits on mining operations affecting previously mined areas with existing pollutional discharges. This amendment was subsequently approved in the June 16, 1988, **Federal Register** (53 FR 22479–22484). In its July 12, 1988, resubmittal, Virginia deleted these definitions from this proposal.

(a) *Remining and previously mined lands.* The Director finds that Virginia's proposed definitions for "remining" and "previously mined lands" are no less effective than the Federal regulations because they are the same as the Federal definitions at 30 CFR 701.5

(b) *Reprocessing coal mine waste.* Virginia proposed to define "reprocessing coal mine waste" as extraction of coal from coal mine waste and refuse piles including any surface coal mining activities incidental to the removal and processing of the coal. This would allow undisturbed surfaces to be regulated under the relaxed standards of processing coal on previously mined lands if they are incidental to those operations. A commenter was concerned that this would expand the definition of coal mine waste. While there is not a specific Federal definition, the proposal does not appear limited to mining of coal mine wastes. Therefore, the Director finds that the definition for "reprocessing coal mine waste" is not consistent with the Federal rules as they relate to SMCRA and the Virginia program on certain types of surface mining and reclamation operations.

2. VR 480–03–19.830.10 Minimum Permit and Environmental Resources Information Requirements

This section would establish the minimum informational requirements pursuant to permit and environmental resource information for remining operations. The section specifies that all information contained in Subchapter VG regarding permit and environmental resource information must be contained in a permit application, except where exempted in proposed Subchapter VP. Subchapter VG established all permitting requirements for surface coal mining and reclamation operations in Virginia. Since subchapter VG was approved by OSM as being no less effective than the Federal rules, the Director finds this incorporation by reference renders this particular section no less effective than the Federal regulation at 30 CFR subchapter G. Specific exceptions to these requirements under proposed Subchapter VP are discussed separately.

3. VR 480–03–19.830.11 Remining Operation/Reclamation Plan

This section would require that each application contain a description of the mining operations proposed to be conducted during the life of the mine. These application requirements are identical to those of the Virginia program, and are no less effective than the corresponding Federal rule at 30 CFR 780.11.

However, the proposed State rule also would exempt areas to be reclaimed under either an abandoned mined land reclamation contract, which the Director is interpreting to mean contracts approved under the State reclamation plan pursuant to section 405 of SMCRA or a voluntary reclamation contract with the State. In the former case, such operations are not defined and since its meaning is unclear, it is inconsistent with SMCRA and the Federal regulations.

Since voluntary reclamation contracts are not defined as surface mining and reclamation operations, a reclamation exemption would be unnecessary unless Virginia intends to allow the disposal of excess spoil from active mining operations on these sites. In that case, in the preamble to the revised Federal rules specifying the activities for which a person must obtain a permit, OSM states that "sites used to dispose of excess spoil must be permitted" (54 FR 13819, April 5, 1989). This statement responds to a commenter's concern that the exemption from required information would depend upon the terms of individual voluntary contracts and there could be little information to guide the regulatory authority under a contract modification request. However, unless these projects are approved by OSM for reclamation under the State reclamation plan, these sites must be considered part of the mining operation and thus would no longer be exempt under section 701(28) of SMCRA. For these reasons, the Director finds this rule to be less stringent than SMCRA.

4. VR 480–03–19.830.17 Reprocessing Coal Mine Waste Permit Requirements

Virginia is proposing to delete a number of permitting requirements for operations remining coal mine waste deposits. They include: cultural, historic, climatological, vegetation, soils, fish and wildlife, land-use and geological information. To the extent that the Virginia proposal would not require surface data, soils and environmental information and related operational and reclamation plans for support areas surrounding the waste deposit, the Director finds it would be less effective than the corresponding Federal regulations at 30 CFR parts 779 and 780. Also, since coal mine waste areas may include wetlands and water bodies, deletion of the requirements for fish and wildlife resources information would render the proposal less effective than 30 CFR 780.16, which requires such information when these features are present.

OSM agrees with a commenter who pointed out that the impacted area may extend well beyond the coal waste piles since the proposal allows surface coal mining activities incidental to the removal and processing of coal on previously mined lands. Therefore, the Director finds the proposal less stringent than SMCRA.

5. VR 480–03–19.830.19 Reprocessing Coal Mine Waste Permit Requirements for Reclamation and Operations Plan

(a) *Existing structures.* Paragraph (b) of this rule would allow existing structures to be used if they meet the requirements of 480–03–19.831.17. However, the referenced rule (VR 480–03–19.831.17) concerns only drainage structures, not all existing structures. Furthermore, as discussed in Finding 13, it is incomplete. Therefore, the Director finds this provision to be less effective than the corresponding Federal rules concerning existing structures at 30 CFR 701.11(d) and 780.12.

(b) *Information maps and plans.* Paragraph (d) of this rule references only the informational map and plan requirements of VR 480–03–19.830.17; it does not include the operational map and plan requirements analogous to those of 30 CFR 780.14, nor does it include a requirement for a fish and wildlife protection and enhancement plan consistent with 30 CFR 780.16. OSM agrees with a commenter who stated that facilities could be built in wildlife habitat or on archeological sites well beyond coal waste piles. Deleted resource information on impacted areas then is essential. Since the provisions of these Federal rules are applicable to reprocessing operations, the Director finds that their omission renders the Virginia proposal less effective than the Federal regulations.

(c) *Geologic information.* Paragraph (h) of this rule contains a simplified version of the geologic information requirements of 30 CFR 780.22. It is not clear if the remining operation is limited

to the reprocessing of coal mine waste and includes the mining of adjacent lands or underlying coal seams. If the operation is limited to coal mine waste, the subsurface geology would be unaffected and this information would be unnecessary. However, Virginia's intent is unclear. Thus, the Director finds this rule less effective than 30 CFR 780.22.

(d) *Coal processing waste banks.* Paragraph (j)(7) would allow coal processing waste banks (refuse piles) to be designed to comply with either the performance standards for such banks at VR 480–03–19.816.81 through VR 480–03–19.816.84, or the excess spoil disposal performance standards for remining operations at 480–03–19.831.13. The Director finds that the proposed provision is less effective than 30 CFR 780.25(d) because it does not comply with the coal mine waste disposal rules.

(e) *Protection of public parks and historic places.* Paragraph (m), concerning the protection of public parks and historic places, does not clarify when adverse impacts must be prevented and when they must be minimized. The Director finds that this rule is less effective than the corresponding Federal rule at 30 CFR 780.31.

6. VR 480–03–19.830.13 Remining bond requirements

This rule would establish that remining operations must be bonded in accordance with Parts VR 480–03–19.800 or 480–03–19.801 of the Virginia program, except as provided under proposed language in section VR 480–03–19.830.15. Since this referenced section is being disapproved under Finding 8 below, the Director finds that the phrase, "except as provided in section VR 480–03–19.830.15," makes the rule less effective than the Federal rule at 30 CFR 800.11 insofar as it does not require the posting of bond for remining operations, and is not in accordance with the Virginia program.

7. VR 480–03–19.830.14 Bond Requirements for Spoil Disposal Areas

This rule would provide that bonds for permitted spoil disposal areas associated with remining operations shall be calculated by the applicant based upon "degree of difficulty."

OSM agrees with one commenter who stated that it is unclear what is meant by this phrase or how bond amounts will be calculated. Section 509(a) of SMCRA specifies that:

> The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit; shall reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential; and shall be determined by the regulatory authority.

Therefore, the Director finds that it is less stringent than section 509 of SMCRA and is less effective than the implementing Federal rules at 30 CFR Part 800.

8. VR 480.15 Remining Reclamation Bond Credits

This rule would allow a permittee to receive bond credits for reclamation of reclamation only areas. A commenter noted that inconsistent and confusing use of terminology. OSM agrees that the terms "bond credits" and "reclamation only areas" could be interpreted differently. It is unclear if the former would be a substitute for bond on an active mining operation, and if that the latter refers to adjacent or proximate previously mined lands which lie outside the permit area and on which the current operator would conduct no actual mining.

Section 509(a) of SMCRA requires that the amount of bond posted for the permit area "shall be sufficient to assure completion of the reclamation plan if the work had to be performed by the regulatory authority in the event of forfeiture." The Director finds that the proposed rule is less stringent than this requirement in that it would reduce the amount of bond posted to guarantee reclamation of the permit area below the minimum needed to complete the reclamation plan.

9. VR 480–03–19.831.20 Request for Bond Release

This rule applies the standard permanent regulatory program bond release provisions to remining operations, except as specifically modified by: (1) VR 480–03–19.834.14 for pollution abatement areas, (2) VR 480–03–19.834.11 for no-cost reclamation contracts, and (3) any contracts with the Division.

Since VR 480–03–19.834.14 establishes requirements in addition to, rather than in place of, the standard bond release provisions, the modification referenced in (1) above is no less effective than the corresponding Federal rules in 30 CFR 800.40. The reference to VR 480–03–19.834.11 in (2) above appears to be in error since the cited rule contains no provisions concerning bonding for no-cost reclamation contracts. The referenced rule is also less stringent than SMCRA as noted under Finding 3.

The third provision, which would allow bond release requirements to be modified by any contracts with the State, is too broad in scope and as a commenter pointed out it would allow the regulatory authority to make changes without public involvement. All remaining operations must comply with bond release requirements and procedures of section 519 of SMCRA and of 30 CFR 800.40. Therefore, the Director finds that this rule is less stringent than the Act and less effective than the Federal rule.

10. VR 480–03–19.831.12 Backfilling and Grading

(a) *Highwall elimination.* Paragraph (b)(1) of this section would allow the regulatory authority to approve backfill slopes of less than 2h:1v in situations where the permittee demonstrates that, using all reasonably available spoil, it is technically impractical to eliminate the highwall completely. The Director finds this proposal to be less effective than the corresponding Federal rule at 30 CFR 816.106(b). OSM disagrees with a commenter who stated that this rule would allow operators to establish less than maximum coverage of the highwall because VR 480–03–19.816.106(b)(1) requires use of all spoil in the backfill area.

(b) *Backfill stability.* Paragraph (b)(3) of this rule would allow the State to approve the retention of a terrace or diversion ditch at the top of the backfill provided it is compatible with the post-mining land use and would maintain the stability of the backfill.

OSM agrees with the commenter who was concerned that the height of the remaining highwall would not be limited to that necessary for terrace and diversion ditch construction, and that seep water from ditches could reduce stability of the backfill.

Under 30 CFR 816.106(b), highwall remnants cannot be authorized unless the person demonstrates that, using all reasonably available spoil, it is technically impractical to completely eliminate the highwall.

Furthermore, the Secretary conditioned his approval of the Virginia program, which originally included a somewhat similar provision, upon the State's amendment of that provision to require that, where roads or drainage structures are to be left at the top of the backfill area, the highwall must be eliminated by shaving and blending into the surrounding natural terrain (Finding 4(c)(vii), 46 FR 61093, December 15, 1981). Virginia subsequently did so. Also as stated in the preamble to the October 22, 1980, Federal Register (45 FR 69986) Finding 4(b)(vii) concerning the Virginia program, such structures may lead to saturation and stability problems

because of concentrated infiltration along the highwall. Toxic seeps may also be more likely to occur. Therefore, the Director finds that this rule is less effective than the Virginia program and corresponding Federal rules.

(c) *Access areas.* Paragraph (b)(5) of this rule would provide for access areas from the bench at the top of the highwall approximately every 2,500 feet. A commenter stated that this would allow development of roads without standards leading to erosion and instability of the highwall and bench. OSM disagrees with this assessment becasue the performance standards at VR 480–03–19.816.150 and VR 480–03–19.817.150 would apply to the proposed rule. The Director finds that paragraph (b)(5) of this rule is consistent with the Virginia program and corresponding Federal rules.

11. VR 480–03–831.13 Disposal of Excess Spoil

(a) *Inspection requirements.* Paragraph (b) of this rule would exempt excess spoil disposal sites resulting from remining operations from the inspection and certification requirements of VR 480–03–19.816 if the excess spoil is placed on existing benches on previously mined lands. Paragraph (c) states that frequent inspections are not necessary if: (1) The fill's design is similar to that required for backfilled areas, (2) no subsurface drainage structures or keyway cuts are needed and (3) no stability problems are evident from the design. However, the rule does not specify that the exception provided in paragraph (b) applies only if the conditions established in paragraph (c) are met. Therefore, paragraph (c) has no practical effect.

Since VR 480–03–19.816(b)(1) requires use of all spoil in the backfill area, OSM disagrees with the commenter who stated that omission of the word "maximum" in the phrase "maximum extent technically practical" would affect the inspection frequency pertaining to highwall elimination.

A commenter stated that by omitting the requirements for controlled 4-foot lifts of spoil and for inspection and certifications, this rule could lead to under-designed placement of excess spoil. Under the conditions established by Virginia in paragraph (c), spoil disposal on these sites would be analogous to normal backfilling and grading operations on a standard contour mine. Also, all such spoil disposal areas would be included within the permit area and would be subject to all other permanent regulatory program requirements. However, corresponding Federal regulation at 30 CFR 816.74(a) concerning the disposal of excess spoil on preexisting benches does not provide any exemptions from the inspection or certification requirements. Therefore, the Director finds that the Virginia proposal is less effective than the Federal rule.

(b) *Spoil on outslopes.* Paragraph (g) would allow the State to approve the spreading of excess spoil on the outslopes of previously mined lands if the applicant demonstrates that environmental benefits will occur. This is a stated concern of one commenter. There is no indication what these benefits would be or how the spreading of excess spoil would achieve them, especially since 30 CFR 816.22(a) does not allow topsoil to be considered excess spoil. In addition, on steep slope sites, this provision is less effective than the Federal rule at 30 CFR 816.107(a), which prohibits downslope placement of spoil. Therefore the Director finds the proposed rule to be less effective than the Federal rules. A commenter also mentioned that the word "excess" is omitted before the word, spoil, in paragraph (h). OSM agrees that "excess" should be used to be consistent with existing rule VR 480–03–19.916.74 which deals with excess spoil on pre-existing benches.

12. VR 480–03–19.831.14 Incidental Reclamation

Paragraph (b)(5) of this proposed rule would allow the Division to approve the placement of excess spoil on previously mined lands outside the permit area pursuant to a contract for voluntary reclamation between the operator and the Division. A commenter stated that this rule would allow indiscriminant placement of spoil. OSM disagrees with this statement because both paragraph (a) and (b) would require that placement occur in a manner consistent with Chapter 19, the permanent regulatory program performance standards. The proposed rule contains no other restrictions on such contracts; however, the submittal also contains a policy document entitled "Procedures for No-Cost Contracts." This document establishes application content and processing requirements, bond and bond release requirements and inspection responsibilities, and contains a sample contract form with the standard terms, specifications and sanctions to be included in all such contracts. According to these terms, failure to complete the project would result in bond forfeiture and disqualification of the operator from participation in any other no-cost contracts or abandoned mine land reclamation contracts under Title IV of SMCRA. The policy statement also requires that plans for these sites meet the standards for reclamation projects approved under Title IV of SMCRA and provides that bond would not be released until reclamation is completed and sufficient time has elapsed to reasonably ensure that the site is stable and permanent vegetation is established. If the operator fails to fulfill the terms of the contract, the State would forfeit the bond and complete the reclamation.

Section 515(b)(22) of SMCRA lists nine requirements pertinent to the disposal of excess spoil from mining operations. By requiring that spoil placement on no-cost contract sites be done in accordance with the permanent program standards of chapter 19, Virginia has satisfied several of these requirements. The remaining items (paragraphs (B) and (I)) require that the area of disposal must be within the bonded permit area and that all other provisions of SMCRA be met. However, the proposed rule does not require these sites to be permitted, a step which is necessary to subject these sites to all other provisions of the State program to be no less stringent than section 515(b)(22)(B) of SMCRA.

The approved Virginia program includes a provision (VR 480–03–19.816.76, formerly V816.76) authorizing the regulatory authority to approve the disposal of excess spoil on abandoned mine lands under a contract for reclamation according to the AML Guidelines, a reference which the Secretary has in the past, interpreted this to mean the OSM Guidelines published in the March 6, 1980, Federal Register (45 FR 14810). The Secretary further interpreted this provision to mean that any such project must be approved and funded in accordance with the State AML reclamation plan approved pursuant to section 405 of SMCRA and deemed that such contracts were the equivalent of a permit and bond (Finding 4(c)(xii), Federal Register (46 FR 61094) December 15, 1981). Failures subsequent to contract completion on such projects can be remedied through the use of maintenance funds provided in construction grants awarded to the State, thus mitigating the lack of the 5-year bond liability period for these projects.

As proposed, there would be no such maintenance fund for no-cost contracts, or policy statement reference to the AML Guidelines. Therefore, such contracts cannot be considered to provide environmental protection guarantees equivalent to those of a permit and bond. Nor would there be

any public notice or participation such as would occur on an AML contract or mining permit. For these reasons, the Director finds this proposed rule less stringent than SMCRA and less effective than the Virginia program and corresponding Federal rules.

13. VR 480–03–19.831.17 Sediment Control Measures

Paragraph (a) of this rule specifies that drainage control on previously mined lands shall be in accordance with VR 480–03–19.816.43 through 480–03–19.816.56 (the permanent regulatory program performance standards for hydrologic protection) except as specifically modified by this rule. Therefore, paragraph (a) is no less effective than the corresponding Federal rules at 30 CFR 816.56.

(a) *Existing drainage structures.* Paragraph (b) allows remining operations that were not constructed to current program standards. To do so, the applicant must demonstrate that the structures are stable and do not pose an imminent danger to public health or safety, that they are capable of meeting effluent limitations, and that they do not contribute to surface or ground water pollution.

A commenter stated that this language offered no protection to the environment and allows for danger to public health and safety so long as the danger is not imminent.

OSM agrees that the criteria for effluent limitation and ground water pollution are less comprehensive than the corresponding Federal criteria for the retention of existing structures at 30 CFR 701.11(d) and 780.12, and the Director finds that the proposed rule is less effective than the Federal rules.

(b) *Existing benches.* Paragraph (c) would allow the permittee to control runoff by using the dip or grade of existing benches in place of siltation structures if the drainage area is small, drainage is not discharged into an underground mine or over an unprotected bench crest, the retained runoff will not inundate the entire bench or disrupt the approved post-mining land use, and water pollution is prevented. It would not exempt the permittee from any program requirements, nor would it interfere with their attainment. Therefore, paragraph (c) is no less effective than the corresponding Federal rules at 30 CFR 816.45, which require use of the best technology currently available to minimize erosion and sedimentation, and the related hydrologic protection rules at 30 CFR 816.41, 816.46, 816.47. Under section 101(f) of SMCRA, states are encouraged to adopt regulations responsive to state-specific conditions, of which this is one example.

Under the corresponding Federal rules the provisions of subparagraphs (b)(4) through (b)(13) apply to all siltation structures, not just those described in paragraph (b) of the proposed State rule. These subparagraphs merely repeat selected provisions of rules already incorporated by reference in paragraph (a), and create the impression that only the listed provisions are applicable. This section is unclear because of its organization. Therefore, the Director finds this section to be less effective than the Virginia program and corresponding Federal rules.

14. VR 480–03–19.831.18 Revegetation

This rule requires the vegetative ground cover of reclaimed remined areas to be not less than either 75% or that existing prior to redisturbance, whichever is greater, and that it is adequate to control erosion. Virginia also submitted literature citation and other documentation to demonstrate that 75% ground cover is adequate to control erosion. However, the rule lacks an adequate vegetation description. The Director finds that section VR 480–03–19.831.18 is less effective than the corresponding Federal rule at 30 CFR 816.111(b)(5), which requires that the vegetative cover be in accordance with the approved permit and reclamation plan showing its diversification, compatibility and permanency.

15. VR 480–03–19.831.19 Existing Roads

This rule would exempt existing roads from the permanent regulatory program regulations if such roads meet all the performance standards of those regulations, or if it is demonstrated that reconstruction would result in greater environmental harm. Virginia has not made it clear that such exemptions will be granted only in accordance with the relevant procedures prescribed by VR 480–03–19.701.11(d), 480–03–19.773.16 and 480–03–19.780.12, and that the exemption from the permanent program rules will be limited to road design criteria, not performance standards. In addition, the proposed rule is less stringent than paragraphs (b)(17) and (b)(18) of section 515 of SMCRA, because Virginia doesn't prohibit the use of stream fords or existing roads located in streambeds or drainage channels. Therefore, the Director finds this proposal to be less effective than the corresponding Federal rules concerning existing structures at 30 CFR 701.11(d) and 780.12.

16. VR 480–03–19.832 Civil Penalty Credits

This proposed rule would allow a person to reclaim previously mined lands or bond forfeiture sites in lieu of paying past or present civil penalty assessments. It also would allow the person to obtain nonrefundable, nontransferable credits against future civil penalty assessments. The sites reclaimed could not be associated in any way with either a permitted mine or a no-cost contract operation. Site selection would have to be approved by the regulatory authority on the basis of "priority and eligibility," although the meaning of this phrase is not explained. The person would be required to submit and obtain approval of a reclamation plan; however, the cost of developing the plan would not be applicable to the credit. According to the narrative explanation accompanying the rule, no credits would be allowed for incompleted projects, despite language in Part IV of the standard contract that would appear to allow this to be done.

The narrative further states that the regulatory authority would allow the person to use spoil and topsoil from an active mining operation if removal of the spoil or topsoil would not adversely affect that operator's ability to follow the approved reclamation plan. The Director finds that these provisions are less effective than 30 CFR 816.22, which requires that all topsoil within the area to be disturbed must be saved and redistributed onsite, and less stringent than section 512(b)(22) of SMCRA, which requires that all excess spoil disposal areas be located within the bonded permit area.

One commenter stated that the rule does not adequately describe how credits will be calculated, and what recourse is left to the State if a site is abandoned. In a letter to all states, dated January 29, 1987, OSM established the following minimum requirements for any State proposal to allow reclamation in satisfaction of civil penalties: (1) Identification of the categories of sites that qualify for reclamation under the program; (2) criteria and procedures for determining the monetary value of the reclamation work performed; (3) a plan for evaluating the reclamation work performed; (4) timeframes for completion of the reclamation work; and (5) description of the recourse available to the State should the reclamation work not meet established standards or is not completed.

The Virginia proposal does not address the first four requirements and it satisfies the fifth only in part.

In addition, the proposal would provide a less effective deterrent against violations than the current civil penalty system in the following respects: (1) Allowing credits against future civil penalties would minimize the incentive for maintaining compliance that such penalties are intended to provide. (2) Since an operator could receive credit for reclaiming sites on which he or she forfeited bond, the deterrent effect of bond forfeiture would be reduced. (3) The proposal does not specify the dates by which the agreement must be entered and reclamation initiated and completed. It is thus less effective than 30 CFR 845.20 which specifies that the penalty shall become due and payable upon expiration of the time allowed to request a hearing. (4) As currently proposed, Virginia would impose no additional penalty on operators who default on their reclamation agreements. (5) Neither the proposed rules nor the standard contract form contain a provision stating that all penalties become immediately due and payable upon contract default.

The proposal is less effective than the Virginia program and corresponding Federal rules, and is less stringent than SMCRA.

17. VR 480–03–19.835 and 480–03–19.836 Remnant Remining

(a) *Definition of remnant.* In VR 480–03–19.835.5, Virginia defines a "remnant" as an area which is physically or economically isolated by past surface coal mining practices and which is uneconomical to mine and/or reclaim under normal regulatory program requirements. One commenter stated that the rule must include criteria concerning the size of the area and specific standards used to determine economic feasibility. OSM agrees with this comment and finds that the definition is less effective than the federal regulations.

(b) *Operations and performance standards.* VR 480–03–19.835.12 would establish application requirements for operations proposing to mine remnant areas, while VR 480–03–19.836 specifies the performance standards which would be applicable to such operations. OSM agrees with the commenter who stated that the performance standards of Part 836 are deficient in their requirements. Both section 835.12 and Part 836 resemble the State's coal exploration requirements. However, since these operations would be surface coal mines, not coal exploration operations, the Director finds the proposed State rules to be less stringent than SMCRA and less effective than the Federal regulations, which establish far more comprehensive requiremnts for mining operations. Also, neither SMCRA nor the Federal regulations authorize the relaxation of permitting requirements on environmental protection standards on the basis of economic factors.

OSM agrees with the commenter who pointed out the three sections, VR 480–03–19.835.12(a)(12), 480–03–19.836(e)(2) and 480–03–19.836(e)(5) each provide different pollution discharge requirements that could cause confusion.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided for a public hearing on the proposed amendments in the February 19, 1988, **Federal Register** (53 FR 5002–5004). Comments were received from the National Coal Association (NCA). Following Virginia's resubmittal of additional information on two separate occasions, the Director reopened the public comment period in the August 12, 1988, **Federal Register** (53 FR 30450–30452) and in the March 22, 1989, **Federal Register** (54 FR 11748–11750). Comments were received from the National Wildlife Federation (NWF). Since no one requested an opportunity to testify at the scheduled public hearings, the hearings were cancelled.

The NCA generally supported the Virginia proposal in its entirety.

The NWF provided several specific comments to various sections of the Virginia amendment. OSM responded to these comments in findings: 1.(b); 3.; 4.; 5.; 7.; 8.; 9.; 10.(a), (b), (c); 11.(a), (b); 12.; 13.(a); 16.; and 17.(a), (b).

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Virginia program. The Environmental Protection Agency (EPA) provided the only other comments received. OSM addressed EPA's comment in finding 17.(b).

V. Director's Decision

Based on the above findings, the Director is disapproving all of the proposed remining amendment as submitted by Virginia on December 22, 1987 and with subsequent revisions. The Director has determined this amendment not to be in accordance with SMCRA and inconsistent with Federal regulations. However, the proposed amendment may be revised, reorganized, and resubmitted if Virginia wishes to do so.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(g) prohibits unilateral changes to the approved State program. In his oversight of the Virginia program, the Director will recognize only the statutes, regulations, and other materials approved by him, together with any consistent implementing policies, directives, and other materials.

Dated: January 11, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–1429 Filed 1–22–90; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. AM015–WV–FRL–3716–3]

Approval and Promulgation of Implementation Plans; State of West Virginia; Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a declaration by West Virginia that the revision to EPA's stack height regulations does not necessitate a revision to the West Virginia State Implementation Plan (SIP) for any source except the Kammer power plant of Ohio Power. Following the promulgation of the revised stack height regulations, each state was required to review its SIP for consistency with the revised regulations. The intended effect of this action is to formally document that West Virginia has satisfied its obligation under section 406(d)(2) of the Clean Air Act Amendments of 1977 (the "Amendments").

DATE: Comments must be submitted by February 22, 1990.

ADDRESSES: Comments may be submitted to Joseph Kunz, Chief, Projects Management Section (3AM11), U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. A copy of the West Virginia submission and EPA's evaluation is available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region III, Projects Management Section, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, ATTN: Joseph W. Kunz; and
West Virginia Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311.

FOR FURTHER INFORMATION CONTACT: Denis Lohman at the EPA address cited above or telephone (215) 597–8375; (FTS) 597–8375.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982, EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by Section 123 of the Clean Air Act (the Act) (47 FR 5864). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. CT. 3571), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefined a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of the Amendments, all states must (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were required to prepare revised limitations consistent with their revised SIPs.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. This guidance is available for public inspection at the EPA Region III office listed above. Pursuant to this guidance, in reviewing emission limitations states were to prepare inventories of stacks greater than 65 meter (m) in height and sources with allowable emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limis correspond to the *de minimis* GEP stack height, and the *de minimis* SO_2 emission exemption from prohibited dispersion techniques. The inventoried sources were then subjected to detailed State review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

West Virginia Response

On April 30, 1986, the West Virginia Air Pollution Control Commission (WVAPCC) submitted an inventory of sources with stacks greater than 65 meters and/or facilities with allowable emissions of sulfur dioxide (SO_2) greater than 5,000 tons per year. Based upon their preliminary review of source operation dates and configurations, the WVAPCC declared that all sources in the inventory, with the possible exception of the Kammer plant, were exempt from the stack height regulations.

On September 16, 1988, the WVAPCC submitted a documentation package with detailed information on 32 stacks and 28 facilities. Supplemental information was submitted on three subsequent dates. Some of the information submitted by WVAPCC regarding these stacks and facilities is listed in Tables 1 and 2 below. Those stacks marked with an asterisk (*) in the tables are disucssed in depth in the Technical Support Document which is part of the docket and the EPA Region III office. With this submittal the State of West Virginia declared that the Kammer power plant of Ohio Power is the only source for which the currently applicable emission limitation must be revised because of EPA's revised stack height regulations and that no other sources or facilities have emission limitations affected by stack height credits above good engineering practice (GEP) or any prohibited dispersion technique.

EPA Review

EPA has reviewed the West Virginia submission and concurs with the conclusion that only one SIP revision is necessary as a result of EPA's revised stack height regulations. West Virginia has therefore met its obligation in that regard under Section 406 of the Amendments.

EPA's detailed review of the submittal is contained in a Technical Support Document which is available for public inspection at the EPA Region III office listed in the **ADDRESSES** section of this notice. Since West Virginia did not formally revise its SIP, no public hearing on the stack height review was held. In publishing this proposed approval and soliciting public comment, EPA seeks to ensure the opportunity for public participation in this process.

TABLE 1.—WEST VIRGINIA STACK HEIGHT REVIEW

Company/Facility	Source	Ht. (Ft.)	Grandfather [1]	Formula	Other
Ohio Power/Kammer*	Units 1-3	900			Revise.
Ohio Power/Mitchell*	Units 1-2	1,204	1971		
PPG/New Martinsville	Boiler 15	225	1952		
	Boiler 72	298	1966		
Weirton Steel*	Boiler 15	221	1941		
	Boiler FW1	225		H+1,5L	
	Boiler FW2	225		H+1.5L	
	#7 Batt	250	<1970		
	#8 Batt	250	<1970		
	#1 Batt	250	<1970		
Mon.Power/Pleasants*	Unit 1	1000			NSPS.
	Unit 2	1000			NSPS.
Mon.Power/Willow Isl.	Unit 2	216	1960		
App.Power/Mountaineer*	Unit 1	1,103			NSPS.
	Aux	300			NSPS.

TABLE 1.—WEST VIRGINIA STACK HEIGHT REVIEW—Continued

Company/Facility	Source	Ht. (Ft.)	Grandfather [1]	Formula	Other
Central/Philip Sporn	Units 1-4	600	<1952		
	Unit 5	602	1960		
App.Power/John Amos*	Units 1-2	903	1972		
	Unit 3	903	1973		
App.Power/Kanawha	Units 1-2	325	1953		
FMC/So. Charleston	Boiler 13-14	245	1930		
	Boiler 15-17	250	1935/6		
Mon/Power/Albright	Unit 3	225	1954		
Mon/Power/Ft. Martin	Unit 1	550	1967		
	Unit 2	550	1968		
Mon.Power/Harrison*	Units 1-2	1,000	1972/3		
	Units 2-3	1,000	1974		
WV Power/Mount Storm*	Units 1-2	743	1965/6		
	Unit 3	579	1973		
	Boiler 4	215		H+1.5L	+
Whlg.Pitt./Follansbee*	#8 Combust	250		H+1.5L	+
Kaiser/Ravenswood	Pot Room	613			Not used.

[1] Date(s) shown are date of startup of commercial operation. Sources with dates after 1970 commenced construction prior to 12/3170.

TABLE 2—WEST VIRGINIA DISPERSION TECHNIQUES (D.T.) REVIEW

Company/Facility	Source	Allow. T/YR	Grandfather [2]	No Merged Streams	No Other D.T.
Koppers/Follansbee	Boilers	5,430	1940/61		
Mobay/New Martinsville	Boilers	13,439		X	X
Ohio Power/Krammer*	Units 1-3	192,642			
Ohio Power/Mitchell*	Units 1-2	482,994	1971		X
PPG/New Martinsville	Boilers	21,955	1952		
Weirton Steel		79,029		X	X
American Cyanamid/WI	Boilers	5,429	1948		
Dupont/Washington Works		11,333	1947-68		
Mon.Power/Pleasants	Units 1-2	65,700		X	X
Mon.Power/Willow Island	Units 1-2	31,221	1949/60		
Union Carbide/Sistersville		5,337	1955-68		
App.Power/Mountaineer	Unit 1	69,064		X	X
Central/Philip Sporn	Units 1-4	128,387	1950-52		X
Goodyear/Apple Grove	Boiler 2-3	5,913	1966		
App.Power/John Amos*	Units 1-3	190,715	1971/72		
App.Power/Kanawha	Units 1-2	27,332	1953		
DuPont/Belle Plant	Boilers 1-8	10,724	1937-45		
Elkem Metals/Alloy	Boilers 1-4	13,607	1933-50		
FMC/So. Charleston		9,280	1930-37		
Union Carbide/Institute	Boilers	25,026	1942-64		
Union Carbide/So. Charleston	Boilers	9,848	1937-54		
Mon.Power/Albright	Units 1-3	44,850	1952-54		
Mon.Power/Ft. Martin	Units 1-2	139,310	1967/68		
Mon.Power/Harrison*	Units 1-3	425,526	1972-74		
Mon.Power/Rivesville	Units 7-8	24,107	1944/51	X	X
WV Power/Mount Storm*	Units 1-3	207,132	1965-73		X
Martin Marietta/Martinsburg		28,163		X	
Whlg.Pitt./Follansbee		19,022	1917-51		

[2] Date(s) shown are date of commercial operation startup. Sources with dates after 1970 commenced construction prior to 12/31/70.

Stack Height Remand

The EPA's stack height regulations were challenged in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the DC Circuit issued its decision affirming the regulations in large part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983 within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2));

2. Dispersion credit for source originally designed and constructed with merged or multiflue stacks (40 CFR 51.100(hh)(2)(ii)(A)); and

3. Grandfathering pre-1979 use of the refined H + 1.5L formula (40 CFR 51.100(ii)(2)).

The EPA has reviewed the documentation of the sources and facilities listed in Tables 1 and 2 and determined that none of those sources or facilities have received credit under any of the provisions remanded to the EPA in *NRDC* v. *Thomas*, 838 F.2d 1224 (DC Cir 1988).

Proposed Action

EPA proposes to approve the declaration by West Virginia that the 1985 revision to EPA's stack height regulations necessitate a SIP revision for no source other than the Kammer power plant.

Under 5 U.S.C. Section 605(b), I certify that this 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.

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: December 20, 1989.

Edwin B. Erickson,

Regional Administrator, Region III.

[FR Doc. 90–1508 Filed 1–22–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 86

[AMS–FRL–3716–1]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative Emission Regulations for Gasoline and Methanol-Fueled Light-Duty Vehicles, Light-Duty Trucks, and Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Hearing.

SUMMARY: This notice announces the time and place for a public hearing on EPA's proposed requirements for a program to control evaporative emissions from gasoline-fueled light-duty vehicles, light-duty trucks and heavy-duty vehicles. This proposal was published in the Federal Register on January 19, 1990 (55 FR 1914).

DATES: This hearing is scheduled to take place on March 6, 1990. The hearing will convene at 9:00 a.m. and will adjourn at 5:00 p.m. or such later time as may be necessary for completion of testimony. Written comments will be accepted for 30 days following the hearing, until April 2, 1990.

ADDRESSES: The public hearing will be held at the Ann Arbor Marriott, Plymouth Road, Ann Arbor, Michigan. Interested parties may submit written comments in response to this notice (in duplicate if possible) to Public Docket No. A–89–18, at: Air Docket Section (LE–131), U.S. Environmental Protection Agency, Attention: Docket No. A–89–18, Room M–1500, Waterside Mall, Washington, DC 20460, Telephone: (202) 382–7548.

Materials relevant to this notice have been placed in Docket Nos. A–85–21 and A–89–18 by EPA. Both dockets are located at the above address and may be inspected between 8:30 a.m. and noon and between 1:30 and 3:30 p.m. on weekdays. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mrs. Karen De Urquidi, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: (313) 668–4332.

SUPPLEMENTARY INFORMATION: Any person desiring to present testimony at the public hearing (see **"DATES"**) should notify the contact person listed above of such intent at least seven days prior to the day of the hearing. The contact person should also be provided an estimate of the time required for the presentation of the testimony and notification of any need for audio/visual equipment. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling the order of testimony.

It is suggested that sufficient copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA requests an advance copy of any statement or material to be presented at the hearing prior to the scheduled hearing date, in order for EPA staff to give such material full consideration. Such advance copies should be submitted to the contact person listed above.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submittals should be directed to the EPA central Docket Section, Docket No. A–85–21 (see **"ADDRESSES"**).

Mr. Richard D. Wilson, Director, Office of Mobile Sources, Office of Air and Radiation, has been designated as the presiding officer of the hearing. The hearing will be conducted informally, and technical rules of evidence will not apply. Written transcripts of the hearing will be made. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

Dated: January 16, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation

[FR Doc. 90–1511 Filed 1–22–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW–FRL–3716–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Hoechst Celanese Corporation (formerly Virginia Chemicals Company), Bucks, Alabama, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation to waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition.

DATES: Comments will be accepted until March 9, 1990. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by February 7, 1990. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–90–HBEP–FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS–340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (Room M2427), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Calls (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information concerning this notice, contact Linda Cessar, Office of Soid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475–9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes are also considered hazardous wastes. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standards for "delisting" a treatment residue or a mixture are the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). Based on this review, the Agency agreed with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

For this delisting determination, the Agency used this information to identify plausible exposure routes for hazardous constituents present in the waste and, is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents thaty may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Hoechst Celanese's petitioned waste on human health and the environment. Specifically, the model was used to predict compliance-point concentrations which were compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that it would be inappropriate to request ground-water monitoring data because Hoechst Celanese sends most of the petitioned waste off site for material recovery by users in the pulp and paper industry. Additionally, although a portion of the

petitioned waste is managed in an on-site surface impoundment, the petitioned waste is mixed with materials and non-hazardous wastes from other processes before reaching the impoundment. The waste contained in the surface impoundment is a mixture of solid waste and a hazardous waste listed solely because it exhibits a characteristic specified in 40 CFR part 261, subpart C (*i.e.*, the characteristics of ignitability). Therefore, the mixed waste within the impoundment is not a hazardous waste because it no longer exhibits the characteristic identified in subpart C (see 40 CFR 261.3(a)(2)(iii)). The Agency did not request ground-water monitoring data because the unit is not subject to the ground-water monitoring requirements of RCRA (*i.e.*, the impoundment is not a hazardous waste unit) and no such data were, therefore, available.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Hoechst Celanese Corporation, Bucks, Alabama

1. Petition for Exclusion

Hoechst Celanese Corporation (Hoechst Celanese), formerly Virginia Chemicals Company, manufactures sodium hydrosulfite at its facility in Bucks, Alabama. Hoechst Celanese has petitioned the Agency to exclude its distillation (still) bottom waste presently listed as EPA Hazardous Waste No. F003—"The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benezene, 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 more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures". This waste is listed as a hazardous waste solely because of the characteristic of ignitiability (see 40 CFR 261.31).

Hoechst Celanese petitioned to exclude its waste because it does not believe that its waste meets the criteria of the listing. Hoechst Celanese also believes that its still bottom waste is not hazardous because the methanol in the waste is present in low concentrations. Hoechst Celanese further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Hoechst Celanese's petition.

2. Background

Hoechst Celanese originally petitioned the Agency to exclude its still bottom waste on November 17, 1980. EPA granted a temporary exclusion for the still bottom waste on December 31, 1980 because the waste had a low methanol content and was not ignitable. In June 1986, the Agency requested new information based on the requirements of HSWA. On October 17, 1986, due to insufficient information in the petition, the Agency published a proposed denial of Hoechst Celanese's petition (see 51 FR 37140 for more details on why the Agency proposed to deny Hoechst Celanese's petition, formerly Virginia Chemical Company's petition). This was followed by a denial on November 17, 1986 (see 51 FR 41490). On March 29, 1988, Hoechst Celanese submitted a new petition for the still bottom waste. Today's notice is the result of the Agency's evaluation of Hoechst Celanese's new petition.

In support of its petition, Hoechst Celanese submitted (1) a detailed description of its sodium hydrosulfite production and methanol recovery processes, including a schematic diagram [1]; (2) a list of raw materials used in the manufacturing process; (3) results from total constituent analyses for total methanol; (4) results from total constitutent analyses for the EP toxic metals, nickel, sulfide, and cyanide from representative samples of the petitioned waste; (5) total oil and grease analysis data from representative samples of the petitioned waste; and (6) results from testing for the characteristics of ignitability, corrosivity, and reactivity.

[1] Hoechst Celanese has claimed their manufacturing and methanol recovery process descriptions as confidential business information (CBI). This information, therefore, is not available in the public docket.

Hoechst Celanese manufactures sodium hydrosulfite using the sodium formate process. The reaction is run using a methanol solution, with the methanol acting as a solvent and not as a reactant. Methanol is recovered from the water of the reaction by distillation and recycled to the process. Hoechst Celanese states that the design efficiency of the methanol recovery process is over 99.9 percent.

The aqueous solution and dissolved solids derived from recycling methanol in a distillation column is the petitioned (still bottom) waste discussed in today's notice. The still bottom waste is composed primarily of sodium and sulfur salts in an aqueous solution. The waste is stored in an above-grade tank. The overflow from the storage tank is mixed with other, non-hazardous process wastes, as was discussed previously in Section IB, prior to going to an on-site surface impoundment, also known as the holding pond. Hoechst Celanese sells the still bottom waste to users in the pulp and paper industry for its sodium and sulfur content.

To collect representative samples from distillation columns like Hoechst Celanese's, petitioners are normally requested to collect a minimum of four composite samples, each composed of four or five independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530–SW–85–003), April 1985.

Hoechst Celanese collected ten grab samples of the still bottom waste from the methanol recovery column during February and March of 1980. These samples were analyzed for percent sodium salts, pH, and percent solids, among other parameters. Hechst Celanese, however, did not analyze these ten samples for the EP toxic metals, nickel, or cyanide and did not sufficiently document sampling procedures to support a claim that the 1980 samples were representative of the waste.

Therefore, at the Agency's request, Hoechst Celanese collected an additional four grab samples of the still bottom waste at different times on four different days during September 1986 and seven more grab samples during October and November of 1987. Samples were collected from the column recycle

pump sample valve. Each grab sample was analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per volume of waste) of the EP toxic metals, nickel, cyanide, total sulfide, and methanol. These grab samples were also analyzed for total oil and grease content and the characteristics of ignitability, corrosivity, and reactivity. For these samples, the Agency determined that the inorganic constituent analyses did not take into account interferences that are know to be caused by waste matrices containing high concentrations of sodium salts.

After consultation with the Agency and clarification of alternate analytical methodologies to reduce the matrix interferences, Hoeschst Celanese collected an additional four composite samples during January and February of 1988. Each composite sample was composed of three grab samples collected during each of three different 8-hour shifts. Each composite represented four different days of waste generated. Each composite sample was analyzed for total constituent concentrations of the EP toxic metals, nickel, cyanide, and total sulfides. The Agency notes that Hoechst Celanese was not required to repeat characteristics testing or methanol and oil and grease analyses on the 1988 samples because the former data were considered consistent and reliable. The 1988 samples were necessary for repeating the constituent metals analyses because matrix interferences in the previous analyses did not allow an accurate determination of total metal concentrations.

Hoechst Celanese claims that the samples collected in 1986, 1987, and 1988 were non-biased and representative of the still bottom waste at any point in time because the production process, including the methanol recovery distillation column, operates continuously over a 24-hour day, 7-day work week and does not vary substantially with time.

3. Agency Analysis

Hoechst Celanese used SW–846 Method 6010 to quantify the total constituent concentrations of barium, chromium, silver, and nickel. Total concentrations of arsenic were analyzed using EPA Method 206.4. In analyzing for total concentrations of cadmium, lead, mercury, selenium, cyanide, and sulfides, Hoechst Celanese utilized SW–846 Methods 7130, 7420, 7470, 7741, 9010, and 9030, respectively. A prior extraction procedure using Method 303B of "Methods for Chemical Analysis of Water and Wastes" was needed for the analyses of cadmium and lead. Hoechst Celanese used SW–846 Method 8000 to quantify methanol concentrations.

The still bottom waste was analyzed only for total constituent concentrations because the waste contained less than 0.5 percent dissolved solids. Under this condition, the extraction procedure (EP) leachate concentration (*i.e.*, mass of a particular constituent per unit volume of extract) is considered equivalent to the total concentration. Total constituent analyses of the still bottom waste for the hazardous inorganic constituents revealed the maximum concentrations reported in Table 1. The EP toxic metals and nickel data are for samples collected in 1988, the only metals data determined to be analytically valid, as explained previously in section 2.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (ppm) STILL BOTTOM WASTE

Constituents	*Total constituent analyses*
Arsenic	<0.08
Barium	0.45
Cadmium	<0.04
Chromium	<0.08
Lead	<0.04
Mercury	<0.002
Selenium	<0.05
Silver	<0.04
Nickel	1.28
Cyanide	<0.1
Sulfide	<1.0

< Denotes that the constituent was not detected at the detection limit specified in the table.

The detection limits in Table 1 represent the lowest concentrations quantifiable by Hoechst Celanese, when using the appropriate analytical methods to analyze the petitioned waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Using SW–846 Method 9070, Hoechst Celanese determined that its still bottom waste had a maximum oil and grease content of 0.0064 percent. The sample analyses showed that the still bottom waste was not ignitable; the flashpoint of the material was, in all cases, greater than 140°F and the maximum reported concentration of methanol was 75 ppm, a value below the 24 percent by volume limit set forth in 40 CFR 261.21(a)(1). Hoechst Celanese also provided data showing that the pH of the still bottom waste was between 5.8 and 7.5. Based on analytical results provided by the petitioner, pursuant to 40 CFR 260.22, the still bottom waste was also determined not to be reactive. See 40 CFR 261.21, 261.22, and 261.23.

Hoechst Celanese submitted a signed certification stating that, based on current annual waste generation, their maximum annual generation rate of still bottom waste is 31,500 cubic yards. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Hoechst Celanese's certified estimate of 31,500 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Hoechst Celanese's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has initiated a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select facilities likely to be proposed for exclusion for spot-check sampling.

4. Agency Evaluation

Hoechst Celanese's aqueous still bottom waste is currently transported off site for sodium and sulfur recovery by the pulp and paper industry. As shown in Table 1, the only detected constituents in Hoechst Celanese's waste are barium and nickel. The Agency evaluated the two detected constituents in Hoechst Celanese's waste in a two-step process. First, the Agency compared the detected levels directly to the health-based levels used for delisting decision-making. Table 2 summarizes these detected values and the respective health-based levels of regulatory concern. The Agency then further evaluated the maximum reported concentration of nickel, which was detected in the waste above its respective health-based level.

The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, cadmium, chromium, lead, mercury, selenium, silver, cyanide, and sulfide) from Hoechst Celanese's waste because they were not detected in the waste using the appropriate analytical methods. The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the

constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 2.—MAXIMUM DETECTED HAZARDOUS CONSTITUENTS AND LEVELS OF REGULATORY CONCERN (PPM) STILL BOTTOM WASTE

Constituents	Concentrations	Levels of regulatory concern [1]
Barium	0.45	1.0
Nickel	1.28	0.7

[1] See "Docket Report on Health-Based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

Comparing the concentrations of the detected constituents directly to the health-based levels provides a worst-case evaluation of the waste in the event it were ingested directly. EPA believes that it is highly unlikely that this type of waste would ever be ingested directly.

The maximum reported barium level in below the health-based level used in delisting decision-making and therefore is not of regulatory concern. The maximum detected nickel concentration (1.28 ppm) is above its delisting health-based level (0.7 ppm). In order to evaluate whether this concentration could cause the waste to be hazardous under a reasonable worst-case management scenario, the Agency considered the various possible exposure scenarios for this type of waste. These scenarios included (1) spillage on the ground which could impact ground water, (2) discharge through sewers to a publicly owned treatment works (POTW), subsequent discharge to surface waters, and exposure through ingestion of surface water, and (3) discharge to surface water under the National Pollutant Discharge Elimination System (NPDES), and exposure through ingestion of surface water.

The Agency believes that each of these potential exposure scenarios would result in the reduction of the detected level of nickel in Hoechst Celanese's waste to well below its respective health-based level. For the first exposure scenario, the Agency considered the concentration reduction that might occur if the waste were spilled on the ground and introduced directly to the ground water (*i.e.*, no unsaturated zone), by using the Agency's vertical and horizontal spread (VHS) model. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well or compliance point (*i.e.*, the model estimates the dilution of a toxicant within the aquifer for a specific volume of waste).

Specifically, the Agency used the VHS model to evaluate the mobility of nickel detected in Hoechst Celanese's still bottom waste. The inputs to the model included the annual volume of still bottom waste (31,500 cubic yards) and the maximum reported concentration of nickel. As shown in Table 3, the model (*i.e.*, the calculated compliance-point concentration) predicts a ground-water dilution factor of 6, resulting in a maximum concentration at the compliance point below the health-based level for nickel used in delisting decisionmaking.

TABLE 3.—VHS MODEL: COMPLIANCE-POINT CONCENTRATION STILL BOTTOM WASTE

Constituents	*Compliance-point concentration*	*Level of regulatory concern*
Nickel	0.20	0.7

The agency conducted worst-case evaluations of potential exposure due to discharge to surface water via a POTW or NPDES permit. If the petitioned waste were discharged under these worst-case conditions, the in-stream mixing would rapidly reduce levels of nickel to below analytical detection limits. For these scenarios, the waste may also be subject to additional treatment due to the applicable regulations under the Clean Water Act, including pretreatment standards and NPDES permit standards.

For example, the typical dilution afforded by discharge to a POTW is illustrated by considering the average influent POTW flow of 2 million gallons per day (JRB Associates, "Assessment of the Impacts of Industrial Discharges on Publicly Owned Treatment Works," prepared for the Office of Water, January 1982). If an average POTW were to receive a daily discharge (assuming that the waste is discharged 365 days per year), the waste would be diluted by a factor of 114.7, resulting in a nickel concentration in the POTW effluent below the delisting health-based level. Furthermore, even if an average POTW were to receive a week's discharge of the petitioned waste in one day, the waste would be diluted by a factor of 16.3, which also results in a nickel concentration in the POTW effluent below the delisting health-based level. Similarly, the typical dilution afforded by discharge of the petitioned waste to surface waters is illustrated by considering typical instream dilution factors for industrial discharges. The Agency calculated dilution factors for low stream flow conditions for over 23,000 industrial dischargers. The mean worst-case dilution associated with low stream flow rates (*i.e.*), stream flow rate divided by discharge volume) is over 66,000. See the RCRA public docket to this proposal for details of these analyses.

The maximum reported concentration of total cyanide in Hoechst Celanese's waste was less than 0.1 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the Agency believes that the maximum level of reactive cyanide in the petitioned waste also will not exceed 0.1 ppm. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. For similar reasons, because the maximum reported concentration of total sulfide in the waste was less than 1 ppm, the Agency also concludes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency concluded, after reviewing Hoechst Celanese's processes and raw materials list, that no other hazardous constituents of concern are being used by Hoeschst Celanese and that no other constituents of concern are likely to be present or formed as reaction products or by-products of Hoechst Celanese's waste.

Based on test results provided by Hoechst Celanese, pursuant to 40 CFR 260.22, the Agency does not believe that Hoechst Celanese's waste exhibits the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively. In addition, as stated previously, the maximum reported concentration of methanol, the listed constituent of concern in Hoechst Celanese' petitioned waste, is 75 ppm, which is below the 24 percent volume limit set forth in 40 CFR 261.21(a)(1) for defining the characteristic of ignitability for liquids.

5. Conclusion

The Agency believes that Hoechst Celanese has successfully demonstrated that the still bottom waste generated from its methanol recovery process is non-hazardous. The Agency believes that the samples collected by Hoechst Celanese from the distillation column were non-biased and adequately represent the still bottom waste. The Agency, therefore, is proposing that Hoechst Celanese's waste be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant an exclusion to Hoechst Celanese Corporation, located in Bucks, Alabama, for its still bottom waste described in its petition as EPA Hazardous Waste No. F003. If the proposed rule becomes effective, the still bottom waste would no longer be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270.

If made final, this exclusion will apply only to the processes and waste volume covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon final promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's proposed rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: January 7, 1990.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
•	•	• • • •
Hoechst Celanese Corporation	Bucks, Alabama	Distillation bottoms generated (at a maximum annual rate of 31,500 cubic yards) from the production of sodium hydrosulfite (EPA Hazardous Waste No. F003). This exclusion was published on [insert date of final rule's publication in the **Federal Register**]. This exclusion does not include the waste contained in Hoechst Celanese's on-site surface impoundment.
•	•	• • • •

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-612, RM-7103]

Radio Broadcasting Services; Key Colony Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a petition by Richard L. Silva, permittee for Station WKKB, Channel 288A, Key Colony Beach, Florida, seeking the substitution of Channel 288C2 for Channel 288A at Key Colony Beach, Florida, and modification of his construction permit (BPH-871110NI) to specify operation on the higher class channel. Channel 288C2 can be allotted to Key Colony Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.1 kilometers (10.0 miles) west. The coordinates for this allotment are North Latitude 24-24-28 and West Longitude 81-06-13. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest is use of Channel 288C2 at Key Colony Beach will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before March 5, 1990 and reply comments on or before March 20, 1990.

ADDRESSES: 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: William D. Silva, Blair, Joyce & Silva, 1825 K Street, NW., Suite 510, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-612, adopted December 18, 1989, and released January 11, 1990. 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* contracts 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. 90-1483 Filed 1-22-90; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 55, No. 15
Tuesday, January 23, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Modification of Sugar Import Quota Amount

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice increases the quota for imports of sugars, syrups, and molasses described in Additional U.S. Note 3 to Chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), during the quota period January 1, 1989 through September 30, 1990, from 2,229,612 metric tons, raw value, to 2,555,437 metric tons, raw value. This increase of the sugar import quota is appropriate to give due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade (GATT).

EFFECTIVE DATE: January 22, 1990.

FOR FURTHER INFORMATION CONTACT: John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION: Presidential Proclamation No. 4941, issued May 5, 1982, amended Headnote 3 of subpart A, part 10, Schedule 1 of the Tariff Schedules of the United States (TSUS) in part to authorize the Secretary of Agriculture to establish the total amount of sugar that may be imported during any quota period and to amend the quota period for sugar imported into the United States. Effective January 1, 1989, Headnote 3 was repealed, and Additional U.S. Note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) was enacted in its place. Paragraph (d) of Additional U.S. Note 3 authorizes the Secretary of Agriculture to "amend any quantitative limitations (including the time period for which such limitations are applicable) which have previously been established * * *" On September 12, 1989, the Secretary of Agriculture established the current quota period of January 1, 1989 through September 30, 1990 (54 FR 38258), and on November 24, 1989, the Secretary of Agriculture established a quota level for such period of 2,229,612 metric tons, raw value. (54 FR 49316)

On June 22, 1989, the GATT Council adopted the report of the panel which examined U.S. restrictions on imports of sugar and which concluded that the quotas maintained under Additional U.S. Note 3 to Chapter 17 are inconsistent with the General Agreement. The Council requested the United States to either terminate the restrictions or bring them into conformity with the General Agreement.

Following the Council's action, the U.S. Department of Agriculture established a Taskforce to develop options for implementing U.S. law with respect to imports of sugar in a manner consistent with our GATT obligations. The Taskforce and other appropriate Government agencies are now formulating and evaluating these options.

In the interim and since no clear alternative has yet been decided upon, modification of the quota amount gives due consideration to the interests in the U.S. sugar market of domestic producers and materially affected contracting parties to the GATT.

Notice

Notice is hereby given that I have determined, in accordance with Additional U.S. Note 3 to Chapter 17 of the HTS (Note 3), that the total amount of sugars, syrups, and molasses described in subheadings 1701.11, 1701.12, 1701.91.20, 1701.99, 1702.90.30, 1702.90.40, 1806.10.40, and 2106.90.10 of the HTS the products of all foreign countries which may be entered or withdrawn from warehouse for consumption during the current sugar import quota period January 1, 1989 through September 30, 1990 is increased to 2,555,437 metric tons, raw value. Of the 2,555,437 metric tons, raw value, 1,815 metric tons, raw value, are reserved for specialty sugars from countries listed in paragraph (c)(ii) of Note 3; 2,390,000 metric tons, raw value are reserved as the total base quota amount for purposes of paragraph (c)(i) of Note 3; and 163,622 metric tons, raw value are reserved as a quota adjustment amount to be allocated by the United States Trade Representative.

I have also determined that this modification of the quota amount gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

Signed at Washington, DC on January 17, 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90–1442 Filed 1–17–90; 4:39 pm]

BILLING CODE 3410–10–M

CIVIL RIGHTS COMMISSION

New York State Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will be convened at 3:30 p.m. on Tuesday, February 27, 1990, in Room 3305 of the Jacob K. Javits Federal Building, 26 Federal Plaza, New York City. The purpose of the meeting is to discuss the status of the agency, release the summary report of a forum held by the Committee, entitled *Census Undercounts and Preparations for the 1990 Census,* and plan a project for 1990.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairman Walter Y. Oi (716/275–4991) or John I. Binkley, Director of the Eastern Regional Division, at (202/523–5264; TDD 202/376–8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, DC, January 16, 1990.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 90–1465 Filed 1–22–90; 8:45 am]

BILLING CODE 6335–01–M

North Carolina Advisory Committee; Amendment of Public Meeting Location

Notice is hereby given, pursuant to the Rules and Regulations of the U.S. Commission on Civil Rights, that the location of a meeting of the North Carolina Advisory Committee to the Commission published at 54 FR 53667 (December 29, 1989) has been changed from the North Raleigh Hilton Hotel, 3415 Old Wake Forest Road, Raleigh, NC 27609. The new location for the meeting will be Meredith College, Harris Building, 3800 Hillsboro Street, Room 214, Raleigh, NC 27609.

Persons desiring additional information, should contact Chairperson David Broyles or Director John I. Binkley, Director of the Eastern Regional Division of the Commission at (202) 523–5264, TDD (202) 376–8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division 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, January 16, 1990.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 90–1466 Filed 1–22–90; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Workshop for NIST/OSI Implementors' Workshop; 1991 Meeting Dates

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The NIST announces four (4) workshop sessions to reach implementor agreements on Open Systems Interconnection (OSI) computer network protocols.

DATES: The following constitutes the schedule for the workshops for the year of 1991. The dates are firm:

March 11–15, 1991
June 10–14, 1991
September 9–13, 1991
December 9–13, 1991

The meetings will be hostd by NIST and will be held at Gaithersburg, Maryland.

ADDRESSES: To register for the workshops, companies may contact: OSI Workshop Series, Attn: Brenda Gray, National Institute of Standards and Technology, Building 225, Room B–217, Gaithersburg, MD 20899, Telephone: (301) 975–3664.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant. A NIST representative will confirm workshop registration reservations by telephone.

FOR FURTHER INFORMATION CONTACT: Tim Boland (301) 975–3608.

SUPPLEMENTARY INFORMATION: The workshops will cover protocols in seven layers of the ISO Reference Model. Attendance at the workshops is limited due to space requirements and the size of the conference facility; therefore, registration is on a first come, first served basis with recommended limitation of two participants per company. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangements and accommodations. NIST reserves the right to cancel any part of the workshops.

Dated: January 17, 1990.

Raymond G. Kammer,

Acting Director.

[FR Doc. 90–1510 Filed 1–22–90; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Jeffery Shapiro From an Objection by the Connecticut Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of Dismissal.

On February 14, 1989, Jeffrey Shapiro (Appellant) filed with the U.S. Department of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and its implementing regulations, 15 C.F.R. part 930, subpart H. The appeal was taken from an objection by the Connecticut Department of Environmental Protection (State) to Appellant's certification that his proposal to expand Cedar Island Marina in Clinton, Connecticut, for which he would need a U.S. Army Corps of Engineers permit, was consistent with the State coastal zone management program.

The threshold issue in consistency appeals is the timeliness of the State's objection, as "[c]oncurrence by the State agency [with Appellant's consistency certification] shall be conclusively presumed in the absence of a State agency objection within six months following commencement of State agency review." 15 CFR 930.63(a).

Appellant filed his consistency certification on February 2, 1989. The State's objection was dated January 23, 1989. The Under Secretary for Oceans and Atmosphere therefore found that the State's objection was untimely and that the State's concurrence with Appellant's certification was conclusively presumed.

On November 22, 1989, the Under Secretary accordingly dismissed the appeal for good cause pursuant to 15 CFR 930.128. The dismissal bars Appellant from filing another appeal from the State's objection to his consistency certification. As of the date of dismissal, the Corps of Engineers may approve Appellant's permit application if it so chooses.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: January 11, 1990.

Thomas A. Campbell,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 90–1467 Filed 1–22–90; 8:45 am]

BILLING CODE 3510–08–M

COMMISSION ON RAILROAD RETIREMENT REFORM

Meeting

ACTION: Public meeting.

SUMMARY: The Commission on Railroad Retirement Reform ("the Commission") will hold a public meeting on Wednesday, February 7, 1990. The Commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, enacted December 22, 1987.

Date, Time, and Place: February 7, 9:30 a.m.–3:30 p.m., Association of American Railroads, 50 F Street, NW., Washington, DC (4th Floor Conference Center).

AGENDA: The open meeting will include public testimony, discussion of alternative revenue sources, and alternative system structures.

FOR ADDITIONAL INFORMATION: Contact Maureen Kiser, 202–254–3223, Commission on Railroad Retirement Reform, 1111 18th Street, NW., Washington, DC, 20036.

SUPPLEMENTARY INFORMATION: See Federal Register, volume 54 FR, No. 40, Thursday, March 2, 1989, Page 8856.

Kenneth J. Zoll,

Executive Director.

[FR Doc. 90–1480 Filed 1–22–90; 8:45 am]

BILLING CODE 6820–63–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting; Defense Manufacturing Board

AGENCY: Under Secretary of Defense (Acquisition).

ACTION: Notice of Open Meeting

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Office of the Under Secretary of Defense for Acquisition announces a planning meeting on the Defense Manufacturing Board project on Critical Defense Industries.

DATE AND TIME: 1 Feb 90, 1000–1600.

ADDRESSES: Dewey Ballentine, 1775 Pennsylvania Avenue, NW, Wash., DC. The agenda for the meeting will focus on reviewing the Board's final report concerning critical defense industries.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Fitzpatrick of the DMB Secretariat at (202) 697–0957.

Dated: January 17, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–1449 Filed 1–22–90; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Supplemental Environmental Impact Statement (SEIS) for the Palm Beach County, FL, Beach Erosion Control Project

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

ACTION: Notice of Intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Supplemental Environmental Impact Statement for the Palm Beach County Beach Erosion Control Project. The SEIS concerns the Coral Cove Segment of the project. The authorized project includes the advanced nourishment to a 1.0 mile segment of beach from a point approximately 1400 feet south of the north county line to a point just north of the southern limit of the town of Tequesta, Florida. The nourishment of the Coral Cove segment will be used to provide protection to beach front properties from wave damage and beach erosion.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and SEIS can be answered by: Mr. Michael Dupes, (904) 791–1689, Environmental Resources Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

SUPPLEMENTARY INFORMATION: 1. A Beach Erosion Control Study for Palm Beach County, Florida, was authorized on 23 October 1962, by Pub. L. 87–878. A Final Environmental Impact Statement (FEIS) was published in April 1987. The FEIS addressed the alternative methods of accomplishing the project goals and the impacts associated with those alternatives. The local sponsor for the project is the County of Palm Beach. A Supplemental Design Memorandum and SEIS is currently being prepared for the Coral Cove segment to discuss the specific location of borrow areas and because several alternative design modifications to the authorized project are being considered. Impacts to rock outcrops and mitigation for losses of this resource from these alternatives will also be addressed in the SEIS.

2. Scoping: The scoping process will involve Federal, State, and local agencies, and other interested persons and organizations. A scoping letter (December 15, 1989) has been sent to interested Federal, State, and local agencies requesting their comments and concerns. Any persons and organizations wishing to participate in the scoping process should contact the Corps of Engineers at the above address. Significant issues that are anticipated include concern for offshore hard bottom communities, fisheries, water quality, and endangered and threatened species. Consultation with the State Historic Preservation Officer (SHPO) during the development of the FEIS indicated that historical and archaeological resources may be present in the project area. Magnetometer surveys performed showed magnetic anomalies in some of the offshore borrow areas. Further coordination with the SHPO will occur during the scoping process for the SEIS.

3. Coordination with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service will be accomplished in compliance with section 7 of the Endangered Species Act. Coordination required by applicable Federal and State laws and policies will be conducted. Since the project will require the discharge of material into waters of the United States, the discharge will comply with the provisions of section 404 of the Clean Water Act as amended.

4. SEIS Preparation: It is estimated that the draft SEIS will be available to the public in July 1990.

Dated: January 8, 1990.

A.J. Salem,

Chief, Planning Division.

[FR Doc. 90–1968 Filed 1–22–90; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before February 22, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to George P. Sotos, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: George P. Sotos, (202) 732–2174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from George Sotos at the address specified above.

Dated: January 17, 1990.

Carlos Rice,

Director for Office of Information Resources, Management.

Office of Elementary and Secondary Education

Type of Review: Reinstatement
Title: Performance and Financial Report for Indian Education Programs (Formula and Discretionary Grants)
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 1200
Burden Hours: 3600
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: State and Local Governments that have participated in the Indian Education Programs are to submit these reports to the Department. The Department uses the information to asess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Report of Vending Facility Program
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 51
Burden Hours: 688
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: State Vocational rehabilitation agencies must submit this form to report sales, cost and earnings by blind persons operating vending stands to the Department. The Department uses this information to ensure financial accountability and to manage the Vending Facility Program.

[FR Doc. 90-1434 Filed 1-22-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Advisory Board; Accelerator Production of Tritium Panel

Notice is hereby given of the following meeting:

Name: Accelerator Production of Tritium Panel of the Energy Research Advisory Board.

Date & Time: February 2, 1990, 8:30 a.m.–5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, DC 20585, (202) 586-5444.

Contact: Charles Cathey, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5444.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: To evaluate the feasibility, cost, schedule, and environmental issues associated with the potential production of tritium using an accelerator based system.

Tentiative Agenda: The agenda items are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the date of the meeting.

Agenda

- Prepare final draft report of the Panel for submission to the Energy Research Advisory Board.
- Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statments may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on January 17, 1990.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 90-1515 Filed 1-22-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-82-NG]

Goetz Energy Corporation; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas From Canada.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Goetz Energy Corporation (Goetz) blanket authorization in FE Docket No. 89-82-NG to import up to 140 Bcf of Canada natural 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, U.S. Department of Energy, 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, January 16, 1990.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-1514 Filed 1-22-90; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

January 10, 1990.

The following information collection requirements have been approved by the the Office of Management and

Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0022.

Title: Application of Alien Amateur Radio Licensee for Permit to Operate in the United States.

Form No.: FCC 610–A. A revised application form FCC 610–A has been approved through 11/30/92. The August 1986 edition, which has been approved through 6/30/92, will remain in use until revised forms are available.

OMB No.: 3060–0433.

Title: Basic Signal Leakage Performance Report.

Form No.: FCC 320. A new report form FCC 320 has been approved through 11/30/92. The first report is due prior to July 1, 1990, and subsequent reports once each following calendar year.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–1485 Filed 1–22–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritme Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984. Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010027–024.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S/A
A/S Ivarans Rederi
A. Bottacchi S.A. De Navegacion C.F.I.I.
Van Nievelt, Goudriaan and Co., B.V.

Synopsis: The proposed amendment would (1) delete A/S Ivarans Rederi as a party, effective December 31, 1989; (2) add Columbus Lines as a party as of January 1, 1990; (3) revise pool shares, sailings, and port calls in accordance with the change in membership and (4) make other nonsubstantive changes.

Agreement No.: 212–010027–025

Title: Brazil/U.S. Atlantic Coast Agreement

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia de Navegacao Maritima Netumar
American Transport Lines, Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.S. de Navegacion C.F.I.I.
Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck (Columbus Line)

Synopsis: The proposed amendment extends the special pool deduction for certain bulk-type commodities and the special deduction for Wheels for Automobiles. It also clarifies the application of the Agreement to cargo moving under intermodal tariffs.

By Order of the Federal Maritime Commission.

Dated: January 17, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–1427 Filed 1–22–90; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 90–2]

Distribution Services Limited et al. v. Asia North America Eastbound Rate Agreement et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Distribution Services Limited, Fritz Transportation International, and Worldlink Logistics, Inc. ("Complainants") against Asia North America Eastbound Rate Agreement ("ANERA"), American President Lines, Ltd., Sea-Land Service, Inc., Neptune Orient Lines, Ltd., A.P. Moller (Maersk Lines), Kawasaki Kisen Kaisha, Ltd., Nippon Yusen Kaisha Line, Mitsui O.S.K. Lines, Ltd., and Nippon Liner System, Ltd. (hereinafter collectively referred to as "Respondents") was served January 16, 1990. Complainants allege that Respondents have violated, and are continuing to violate, sections 8(c), 10(b)(5), 10(b)(10), 10(b)(11), 10(b)(12), 10(c)(1) and 10(c)(3) of the Shipping Act of 1984, 46 U.S.C. app. 1707(c), 1709(b)(5), (b)(10), (b)(11), (b)(12), (c)(1) and (c)(3), through ANERA's entering into service contracts which impose an additional $300.00 charge and/or provide a lower discount on shipments for which the shipper is neither the legal or equitable owner of nor otherwise has the legal right to buy or sell the cargo at time of shipment.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by January 16, 1991, and the fnal decision of the Commission shall be issued by May 16, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 90–1428 Filed 1–22–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and section 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 6, 1990.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Joe Boyd Burnette,* and his wife, Peggy Joyce Smith Burnette, Moscow, Tennessee; to acquire up to an additional 8.19 percent, of the voting shares of Moscow Bancshares, Inc., Moscow, Tennessee, thereby, increasing their total ownership in the company to 24.95 percent, and thereby indirectly acquire Moscow Savings Bank, Moscow, Tennessee.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Herman Meinders,* Oklahoma City, Oklahoma; to acquire an additional 8.9 percent of the voting shares of Jefferson Bank and Trust, Lakewood, Colorado, for a total of 25.9 percent.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Archie E. Huckabee,* Lubbock, Texas; to acquire 11.54 percent of the voting shares of Crown Park Bancshares, Inc., Lubbock, Texas, and thereby indirectly acquire Western National Bank, Lubbock, Texas.

D. **Federal Reserve Bank of San Fransciso** (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *Santa Barbara Bank and Trust Employee Stock Ownership Plan and Trust,* Santa Barabara, California; to acquire an additional 7.9 percent of the voting shares of Santa Barbara Bancorp, Santa Barbara, California, for a total of 13.5 percent, and thereby indirectly acquire Santa Barabara Bank and Trust, Santa Barbara, California.

Board of Governors of the Federal Reserve System, January 17, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-1444 Filed 1-22-90; 8:45 am]

BILLING CODE 6210-01-M

First Financial Bancorp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 9, 1990.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Financial Bancorp,* Monroe, Ohio; to engage *de novo* in making, acquiring, and servicing loans and other extensions of credit (including issuing letters of credit and accepting draft) for the company's account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *PAB Bankshares, Inc.,* Valdosta, Georgia; to engage *de novo* through its subsidiary, American Bank Consultants, Inc., Valdosta, Georgia, in management consulting services activities to depository financial institutions and financial institutions in organization pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted within a 1,000 mile radius of Valdosta, Georgia.

C. **Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Independent Southern Bancshares, Inc.,* Brownsville, Tennessee; to engage *de novo* through its subsidiary, INSOUTH Leasing Corporation, Brownsville, Tennessee, in leasing personal and real property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Janesville Holding Company,* Janesville, Minnesota; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Minnesota.

Board of Governors of the Federal Reserve System, January 17, 1990.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 90-1445 Filed 1-22-90; 8:45 am]

BILLING CODE 6210-01-M

Fulton Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and sumarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 8, 1990.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Fulton Financial Corporation,* Lancaster, Pennsylvania; to merge with Danville Bank Corporation, Danville, Pennsylvania, and thereby indirectly

acquire First National Bank of Danville, Danville, Pennsylvania.

2. *Fulton Financial Corporation,* Lancaster, Pennsylvania; to merge with First Community Bancorp, Inc., Nazareth, Pennsylvania, and thereby indirectly acquire The Second National Bank of Narzareth, Nazareth, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *FSB Holding Co.,* Kalona, Iowa; to acquire 90 percent of the voting shares of Cedar Valley Bank & Trust, Mount Vernon, Iowa, a *de novo* bank.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Place Financial Corp.,* Farmington, New Mexico; to acquire 100 percent of the voting shares of The Burns National Bank of Durango, Durango, Colorado.

Board of Governors of the Federal Reserve System, January 17, 1990.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 90-1446 Filed 1-22-90; 8:45 am]

BILLING CODE 6210-01-M

Fuji Bank, Ltd.; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register Notice (FR Doc. 90-150) published at page 361 of the issue for Thursday, January 4, 1990.

Under the Federal Reserve Bank of New York, the entry for Sanwa Bank, Ltd. is amended to read as follows:

1. The Fuji Bank, Limited, Tokyo, Japan; to acquire Market Vision Corp., New York, New York, and thereby engage in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, if—(i) the data to be processed or furnished are financial, banking or economic, and the services are provided pursuant to a written agreement so describing and limiting the services; (ii) the facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and (iii) the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Comments on this application must be received by January 29, 1990.

Board of Governors of the Federal Reserve System, January 17, 1990.

Jennifer J. Johnnson,

Associate Secretary of the Board.

[FR Doc. 90-1447 Filed 1-22-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration; Statement of Organization, Functions and Delegation of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration (SSA). Chapter S2 covers the Deputy Commissioner, Operations. Subchapter S2G covers the Office of Systems Support. Notice is hereby given that Subchapter S2G is being amended to reflect a change in title and to clarify functions for the Office of Strategic Planning and Integration and to formally establish division and staff level components. The new title is the Office of Systems Planning and Integration.

Section S2G.10 The Office of Systems Support—(Organization)

Subsection F. The Office of Strategic Planning and Integration (S2GC).

Change Title to: The Office of Systems Planning and Integration (S2GC).

Section S2G.20 The Office of Systems Support—(Function)

Subsection F. Revise to read as follows: The Office of Systems Planning and Integration (S2GC) directs and conducts Operations' comprehensive systems integration and systems planning processes. It provides management leadership and direction to systems activities in the areas of data administration, software engineering technology and systems engineering management, inlcuding configuration management and quality assurance. It carries out a variety of technology assessment functions, including the development of pilot projects to evaluate specific technology applications in SSA. The Office develops the Information Technology Systems budget for Operations, prepares the detailed budget submission and develops monitoring and tracking systems. It also develops and monitors systems security policy for the Operations systems community, and coordinates technical activities for Systems components.

Section S2GC.00 Office of Strategic Planning and Integration—(Mission)

Change title to: Office of Systems Planning and Integration. Revise mission statement to read as follows: The Office of Systems Planning and Integration directs and conducts comprehensive systems integration and systems planning processes for Operations. It provides management leadership and direction to systems activities in the areas of data administration, software engineering technology and systems engineering management, including configuration management and quality assurance. It carries out a variety of technology assessment functions, including the development of pilot projects to evaluate specific technology applications in SSA. The Office develops the Information Technology Systems budget for Operations, prepares the detailed budget submission and develops monitoring and tracking systems. It also develops and monitors systems security policy for the Operations systems community, and coordinates technical training activities for SSA Systems components.

Section S2GC.10 Office of Strategic Planning and Integration—(Organization)

Change title to: Office of Systems Planning and Integration. Revise remaining material as follows:

The Office of Systems Planning and Integration under the leadership of the Director includes:

A. The Director, Office of Systems Planning and Integration (S2GC).

B. The Immediate Office of the Director, Office of Systems Planning and Integration (S2GC) which includes:

1. The Data Administration Staff (S2GC-1).

C. The Division of Systems Engineering (S2GCA).

D. The Division of Systems Planning (S2GCB).

E. The Division of Financial, Procurement and Information Management (S2GCC).

Section S2GC.20 The Office of Strategic Planning and Integration—(Function)

Change Title to: Office of Systems Planning and Integration (S2GC).

Revise remaining material as follows:

A. The Director of the Office of Systems Planning and Integration (S2GC) is directly responsible to the Associate Deputy Commissioner, Systems Support, for carrying out the Office of Systems Planning and Integration's mission and managing its respective components.

B. The Immediate Office of the Director, Office of Systems Planning and Integration (S2GC) provides internal operations and management analysis staff support and assistance to the Director and all of the Office of Systems Planning and Integration components. It includes:

1. The Data Administration Staff (S2GC–1) which is responsible for the overall operation of the SSA Data Resource Management (DRM) Program. This responsibility includes developing a strategy for the standardization of SSA data definitions and usages, and establishing the SSA data dictionary and authorizing subsequent changes to it. The Staff establishes the DRM policy framework, including policies, definition of responsibility, procedures, standards, and control/audit mechanisms for the definition, collection, validation and usage of DRM data. The Staff builds data models and develops a plan to evolve from existing systems to implementation of the models. The staff also reviews and approves requests for systems services to assure compliance with published DRM standards.

C. The Division of Systems Engineering (S2GCA) is responsible for the development of Systems-wide policies, procedures and standards for all phases of the systems life cycle development process; development of methods to assure the quality of system products; and development and maintenance of the Software Engineering Technology, which includes the policies, standards, guidelines, procedures, tools and training elements pertaining to the following software life cycle stages: requirements definition and analysis, design, programming, validation, operation and review. The Division develops proposals and recommendations for new software engineering methods for use at SSA, based on extensive research into various methodologies utilized by other data processing installations. Develops a configuration management and change control system which ensures the orderly flow, recording, status accounting and enforcement of configuration procedures. Develops and maintains quality assurance procedures and mechanisms to assure that software products satisfy user requirements and conform to the defined standards, guidelines and procedures of SSA systems. It identifies major integration issues and develops alternative solutions and recommendations. The Division also manages the Integration and Management contract, including contractor performance and the review and evaluation of deliverables.

D. The Division of Systems Planning (S2GCB) is responsible for long-range systems planning, technology assessment and planning for and acquiring technical training for Systems personnel. It conducts systems planning within the framework of SSA's overall strategic planning initiative. It develops and recommends major systems goals and objectives and produces a systems plan to achieve these goals. The Division analyzes the current SSA data processing environment, future systems requirements and technology forecasts to determine their implications for Operations' mid- and long-range systems planning. It develops pilot projects to evaluate technologies, particularly in the area of artificial intelligence and expert systems, for selected applications. Evaluates technical and nontechnical training needs for all Systems offices and coordinates and evaluates vendor provided and in-house training as applicable.

E. The Division of Financial, Procurement and Information Management (S2GCC) has primary responsibility for directing the development of the Operations' 5-year Information Technology Systems (ITS) plan and budget; and the planning, analysis, allocation and monitoring of technical resources. It directs the fiscal management and tracking of ITS procurements and keeps management advised of the status of all ITS acquisitions. The Division functions as an advisor and consultant to the Associate Deputy Commissioner for Systems Support, on all matters related to the development and execution of the 5-year plan and budget for the allocation of resources. The Division is also responsible for the development, implementation and maintenance of automated systems to support management control, tracking and reporting activities of the Office of Systems Planning and Integration, including procurement tracking and management, systems budget tracking, full-time equivalency management and systems life cycle cost tracking. The Division operates the Systems Management Center, a fully automated center for the integration, analysis and display of information produced by these management control systems.

Dated: January 9, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 90–1518 Filed 1–22–90; 8:45 am]

BILLING CODE 4190–11–M

Office of Human Development Services

Availability of Competitive Financial Assistance for Native American Pacific Islanders, Including American Samoan Natives

AGENCY: Administration for Native Americans (ANA), Office of Human Development Services (OHDS), HHS.

ACTION: Notice of competitive financial assistance available for Native American Pacific Islanders, including American Samoan Natives.

SUMMARY: The Administration for Native Americans (ANA) published a program announcement in the **Federal Register** on May 9, 1989, (54 FR 20056–20060) announcing the anticipated availability of fiscal year 1990 funds for social and economic development projects. Section D of that announcement stated that "Up to $500,000 is available under this announcement for Native American Pacific Islanders projects, subject to the availability of FY 1990 specific appropriations, as provided for in section 816(c) of the Act, as amended." Recent Congressional action appropriated $500,000 for such projects; this amount will be reduced approximately two percent based on final sequestration action by Congress.

DATES: The closing dates for receipt of applications are February 2, 1990 and May 18, 1990.

FOR FURTHER INFORMATION CONTACT: Pecita Lonewolf, (202) 245–7714 or Darryl Summers, (202) 245–7730, Department of Health and Human Services, Office of Human Development Services, Administration for Native Americans, 200 Independence Avenue SW., 344–F HHH Washington, DC 20201–0001.

SUPPLEMENTARY INFORMATION: This notice is to advise public and nonprofit private agencies serving native people from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands that funds have been appropriated and eligible applicants may now apply for competitive grant awards. The populations served may be located in these islands or in the United States. The May 9th announcement specifies the purpose of these grants,

criteria for review of applications, and other pertinent information.

The application kits containing the necessary forms may be obtained by writing Jan Phalen, Administration for Native American, Office of Human Development Services, Room 344F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201–0001, Attention: No. 13612–901, or by telephone to Ms. Phalen at (202) 245–7730.

Dated: January 4, 1990.

S. Timothy Wapato,

Commissioner, Administration for Native Americans.

Approved: January 17, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

[FR Doc. 90–1517 Filed 1–22–90; 8:45 am]

BILLING CODE 4130–01–M

Public Health Service

Statement of Organization, Functions and Delegations of Authority; Office of the Assistant Secretary for Health

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 54 FR 27213, June 28, 1989) is amended to reflect changes within the Office of Personnel Management, Office of Management, Office of the Assistant Secretary for Health.

Office of the Assistant Secretary for Health

Under Chapter HA, Office of the Assistant Secretary for Health, Section HA–20, Functions, Office of Management, delete in its entirety all statements for the Office of Personnel Management, (HAU3) and add the following:

Office of Personnel Management (HAU3). The Director, Office of Personnel Management, serves as the PHS principal advisor to the Assistant Secretary for Health and the Deputy Assistant Secretary for Health Operations and Director, Office of Management, in meeting nationwide personnel management responsibilities; represents the Office of the Assistant Secretary for Health and the PHS agencies in contacts with DHHS, U.S. Office of Personnel Management, and other Federal agencies; provides leadership and direction in the planning and implementation of comprehensive personnel management systems for PHS.

Division of Personnel Policy, Planning and Evaluation (HAU34). Develops, implements, administers systems for and advises on: (1) Evaluation of personnel management practices and programs throughout PHS; (2) the formulation of PHS personnel policies and delegations of authority; (3) plans for the development and implementation of PHS-wide personnel policies, regulations and procedures. Provides leadership, advice and assistance to PHS officials in the above areas in such ways as the use of management practices survey and self-assessment programs to evaluate the management of human resources throughout PHS and the evaluation of PHS reorganization proposals to assure sound classification and position management practices.

Division of Position Management and Compensation (HAU35). Plans, develops and coordinates policies and programs in the areas of position management, pay and compensation, wage administration, position classification, and Schedule C appointments, and directs their implementation. Provides technical advice and guidance to PHS agencies for these functions, which include the implementation of alternative personnel and pay systems; bonus and awards systems, such as performance based awards for both managers and employees, the Physicians Comparability Allowance bonuses for recruitment and retention of medical officers, and the special salary rates program, including initial requests and continuing program administration; review of the U.S. OPM revisions to the classification standards; and other pertinent matters. Monitors these programs to ensure conformance to U.S. OPM, Department and PHS policies and procedures.

Division of Human Resources Planning and Development (HAU36). Develops PHS-wide policies, procedures, guidelines and programs in the functional areas of training, career planning, human resources development, staffing, recruitment, the Senior Executive Service, performance management systems, and special emphasis recruitment programs such as the Federal Equal Opportunity Recruitment Program, and programs for the handicapped, veterans, students, interns and culturally disadvantaged youths. Plans, develops and/or coordinates policies and programs for training, development and career planning for persons occupying positions common to PHS, with particular emphasis on health professions, underrepresented groups, and managerial and executive levels. Provides leadership, advice, and assistance to PHS officials on recruitment, placement, retention, performance management, reduction in force, staffing authorities, career development and training programs. Provides and encourages participation in common needs training for all PHS employees in the Parklawn complex.

Division of Personnel Operations (HAU37). Administers the Parklawn Servicing Personnel Office (SPO) providing technical review and oversight to the consolidated personnel activities of the constituent agencies of the Parklawn complex; assures close working relationships exist between personnel and program with a uniformity of operations within the scope of the SPO. Plans and conducts an operating personnel program for the Office of the Assistant Secretary for Health (OASH), including position classification, pay administration, employment, merit promotion, personnel security, employee relations, labor-management relations, awards and special recruitment activities. Provides personnel management advice and assistance on all aspects of personnel administration to managers, supervisors, and employees of OASH.

Division of Human Resources Information Management (HAU38). Serves as the central focal point for providing ADP systems support to the PHS agency personnel offices and the OPM divisions and staff offices. Provides monthly workforce highlights, FTE and staffing reports, and other official human resources management information to the PHS agency management community. Maintains Wang system hardware, software, telecommunications and operating systems for use by OPM and PHS agency community. Designs, develops and maintains application systems such as the Work Force On-line Data System, the PHS Vacancy Systems and the Training Management Information System which provide access to personnel/payroll information. Serves as the focal point for all IMPACT systems activity in PHS. Provides guidance and technical expertise to PHS in the areas of workforce analyses, microcomputer technology, and other human resources management activity.

Dated: January 11, 1990.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 90–1431 Filed 1–22–90; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-00-4111-15; WYW106457]

Proposed Reinstatement of Terminated Oil and Gas Lease

January 10, 1990.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW106457 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW106457 effective October 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 90-1471 Filed 1-27-90; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-00-4111-15; WYW113119]

Proposed Reinstatement of Terminated Oil and Gas Lease

January 10, 1990.

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW113119 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessees have met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW113119 effective October 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 90-1472 Filed 1-22-90; 8:45 am]

BILLING CODE 4310-22-M

[CO-942-90-4730-12]

Colorado; Filing of Plats of Survey

January 10, 1990.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., January 10, 1990.

The plat representing the dependent resurvey of portions of the Ute Meridian (east boundary), the Ute Base Line (south boundary), T. 1 N., R. 1 W., the west boundary, and the subdivisional lines, the subdivision of certain sections, and the informative traverse of a portion of the adjusted meanders of the right bank of the Colorado River, T. 1 S., R. 1 W., Ute Meridian, Colorado, Group No. 874, was accepted October 13, 1989.

The plat representing the dependent resurvey of portions of the Ute Base Line through Range 2 East (north boundary), the west boundary, and the subdivisional lines, the subdivision of certain sections, and the informative traverse of the adjusted meanders of the right bank of the Colorado River, T. 1 S., R. 2 E., Ute Meridian, Colorado, Group No. 874, was accepted October 13, 1989.

The plat representing the dependent resurvey of portions of the Ute Base Line (south boundary, T. 1 N., R. 1 E.), and the subdivisional lines, the subdivision of certain sections, and the informative traverse of the adjusted meanders of the right bank of the Colorado River, T. 1 S., R. 1 E., Ute Meridian, Colorado, Group No. 874, was accepted October 13, 1989.

The plat (in two sheets) representing the dependent resurvey of portions of the Second Standard Parallel South (south boundary, T. 10 S., R. 98 W.) and the subdivisional lines, the subdivision of certain sections, and the informative traverse of a portion of the adjusted meanders of the right and left banks of the Colorado River, Frac. T. 11 S., R. 96 W., Sixth Principal Meridian, Colorado, Group No. 874, was accepted October 13, 1989.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 89215.

Darryl A. Wilson,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 90-1430 Filed 1-22-90; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Information Collection Submitted for Review

The collection of information listed below has been submitted to the Office of Management and Budget for reapproval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project (1010-0061), Washington, DC 20503, telephone 202-395-7340.

Title: Oil Transportation Allowances

Abstract

The Government collects royalties resulting from the sale of Federal and Indian oil. In some cases an allowance is granted to compensate lessees for the reasonable costs of transporting the royalty portion of the oil to a delivery point remote from the lease. Transportation allowances are taken as a deduction from royalty. The allowance determination procedure is essential to ensure that the public and the Indians receive the full royalty payment to which they are entitled, and that lessees are correctly compensated for allowable transportation costs. Failure to collect the data described in this information collection could make it impossible to ensure that royalty rates computed and paid are appropriate.

Bureau Form Numbers: MMS-4110

Frequency: On occasion, annually, or when circumstances cause changes

Description of Respondents: Oil companies

Estimated Completion Time: Average, 2 hours

Annual Responses: 2,006

Annual Burden Hours: 4,130

Bureau Clearance Officer: Dorothy Christopher, 703–787–1239.

Dated: December 22, 1989.

Donald T. Sant,

Acting Associate Director for Royalty Management.

[FR Doc. 90–1473 Filed 1–22–90; 8:45 am]

BILLING CODE 4310–MR–M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related explanatory material may be obtained by contacting Jeane Kalas at 303–231–3046. Comment and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget, Paperwork Reduction Project (1010–0074), Washington, DC 20503, telephone 202–395–7340.

Title: Coal Washing and Transportation Allowances

OMB approval number: 1010–0074

Abstract

The Government collects royalties resulting from the sale of Federal and Indian coal. Coal sales contracts are required to be submitted upon request by MMS to ensure that the Federal or Indian lessor receives royalties that are based on product values representing fair market value. In some cases an allowance may be granted from royalities to compensate the lessee for the reasonable actual costs of washing the royalty portion of the coal. An allowance may also be granted for transporting the royalty portion of coal to a sales point not on the lease or in the mine area. Failure to collect the data described in this information collection could result in the undervaluation of coal and render it impossible to ensure that the public and/or the Indians receive payment on the full value of the minerals being removed.

Bureau Form Numbers: MMS–4292 and MMS–4293

Frequency: Annually, or whenever a contract terminates, or circumstances otherwise cause changes

Description of Respondents: Solid minerals mining companies

Annual Responses: 42

Annual Burden Hours: 572

Bureau Clearance Officer: Dorothy Christopher, 703–787–1239.

Dated: November 29, 1989.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 90–1474 Filed 1–22–90; 8:45 am]

BILLING CODE 4310–MR–M

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change in discount rate for water resources planning.

SUMMARY: This notice sets forth that the discount rate to be used in Federal Water resources planning for fiscal year 1990 is 8⅞ percent.

DATES: This discount rate is to be used for the period October 1, 1989, through and including September 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Kennedy, Chief, Economic Analysis Branch, U.S. Bureau of Reclamation, D–5440, Building 67, Denver Federal Center, Denver, CO 80225–0007. Telephone 303/236–8388.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal Agencies in the formulation and evaluation of plans for water and related land resources is 8⅞ percent for fiscal year 1990.

This rate has been computed in accordance with section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which (1) specify that the rate shall be based upon the average yield during the preceding fiscal year on interest bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average yield to be 8.91 percent.

The rate of 8⅞ percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis.

Dated: January 9, 1990.

Darrell W. Webber,

Assistant Commissioner—Engineering and Research

[FR Doc. 90–1507 Filed 1–22–90; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31570]

Ogeechee Railway Company—Purchase and Trackage Rights—Missouri Pacific Railroad Company Lines in Louisiana

[Finance Docket No. 31571]

Ogeechee Railway Company—Purchase—Southern Pacific Transportation Company Line Near Opelousas, LA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting applications for consideration.

SUMMARY: The Commission accepts for consideration applications filed by Ogeechee Railway Company (OGEE) to: (1) Purchase from the Missouri Pacific Railroad Company (MP) 57.7 miles of rail lines in Louisiana and to acquire trackage rights over 20.9 miles of MP track (Finance Docket No. 31570); and (2) to purchase from the Southern Pacific Transportation Company (SPT) approximately 5 miles of rail line near Opelousas, LA (Finance Docket No. 31571). The Commission finds these are minor transactions under 49 CFR part 1180.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than February 22, 1990. Comments from the Secretary of Transportation and the Attorney General of the United States must be filed by March 9, 1990. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the issuance of the service list. Applicants' reply is due by March 29, 1990.

ADDRESSES: Send an original and 10 copies of all documents to:

Office of the Secretary, Case Control Branch, ATTN: Finance Docket Nos. 31570 and 31571, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the

Attorney General of the United States, and each of applicant's representatives:
Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 5101, 400 Seventh Street SW., Washington, DC 20590
Attorney General of the United States, Washington, DC 20530
John M. Robinson (OGEE), 9616 Old Spring Road, Kensington, MD 20895
James V. Dolan (MP), Vice President—Law, Missouri Pacific Railroad Company, 1416 Dodge Street, Omaha, NE 68179
Gary Laakso (SPT), Southern Pacific Transportation Company, One Market Street, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: In Finance Docket No. 31570, OGEE and MP seek Commission approval under 49 U.S.C. 11343, *et. seq.*, for OGEE to purchase and operate: (1) approximately 36.1 miles of MP's Church Point Branch between Bunkie and Opelousas, LA (milepost .097 to milepost 35.574 and milepost 35.588 to milepost 36.2); and (2) approximately 21.6 miles of MP's Crowley Line between Eunice (milepost 570.34) and Crowley, LA (milepost 591.95). OPEE also proposes to acquire from MP approximately 20.9 miles of overhead trackage rights between Eunice (milepost 569.8) and Opelousas (milepost 590.7) to connect its lines. The purchase price is $834,180.

In Finance Docket No. 31571, OGEE and SPT seek Commission approval under 49 U.S.C. 11343, *et seq.*, for OGEE to purchase and operate approximately 5 miles of SPT's Alexandria Branch between milepost 20 and milepost 25 near Opelousas. The purchase price is $171,000.

Applicants contend that these are minor transactions under 49 CFR 1180.2(c), and they submitted applications with appropriate information under the Railroad Consolidation Procedures in 49 CFR part 1180 for minor transactions. We will grant OGEE's motion to consolidation these proceedings.

OGEE, a Class III rail carrier, leases and operates 50 miles of rail lines in Georgia. *See* Finance Docket No. 31490, *Ogeechee Ry. Co.—Lease and Oper Exemp.—Southern Ry. Co. (not printed), served July 31, 1989. One-third of OGEE's stock is owned by ISTRA Corporation (ISTRA), a Texas corporation. ISTRA, in turn, is owned in equal shares by James E. Isbell, Jr., and Trac-Work, Inc. (T-W), of Ennis, TX. The remaining two-thirds of OGEE's stock is owned in equal shares by James E. Isbell, Jr., T-W, and Joseph A. Cleland.*

MP, a Class I rail carrier, is a subsidiary of Union Pacific Corporation and is operated under common control with Union Pacific Railway Corporation. SPT, a Class I rail carrier, is a wholly owned subsidiary of Rio Grande Industries, Inc.

OGEE states it is acquiring MP's and SPT's lines to create an efficient short line railroad to serve shippers in and around Opelousas, Eunice, Bunkie and Crowley. It will operate these lines as a separate division known as the "Acadiana Railway Company." The lines to be acquired would be known as the Acadiana Lines. OGEE will use the trackage rights over MP to connect the two parts of the proposed system.

The MP lines are expected to be the core of the Acadiana Lines. Nearly 60 percent of the traffic OGEE expects to handle would be generated by the Church Point Branch. Another 30 percent of the traffic would be generated by the 5 miles of track acquired from SPT.

Traffic data indicate that the Acadiana Lines generated between 6,800 and 7,800 carloads annually between 1985 and 1988. Traffic levels for 1989 and 1990 are projected at 6,700 cars annually. Traffic is projected to increase to 7,100 carloads in 1993 and 1994. OGEE states that it is acquiring the line to preserve and improve local rail service. Noting that current traffic levels are only marginally profitable to MP and SPT, OGEE asserts that they would not support long range investment by those carriers. If not transferred, OGEE believes they would ultimately be abandoned. As a low cost carrier, OGEE asserts it can operate these lines more profitabley even at current traffic levels, and that the proposed transaction will lead to improved service and new investment.

Applicants state that the transactions will not adversely affect inter-or intramodal competition and are of limited scope because they involve only 62.7 miles of purely local rail line and related facilities and 20.9 miles of overhead trackage rights. OGEE states that it will continue and improve existing service, and would increase service if necessary to respond to the needs of the lines' shippers.

The applications are supported by the following shippers: Cabot Corporation; FMC Corporation; Helena Chemical Company; Lou Anna Foods, Inc., Cal Chlor corporation; James Corporation of Opelousas, Inc.; Schilling Distributing, Co. Inc.; G&H Seed Company, Inc.; The Supreme Rice Mill, Inc.; Acadia Scrap & Salvage, Inc.; and MFC Services. These shippers represent 95 percent of the traffic currently shipped or received on the lines. (OGEE also proposes to serve the Union Tank Car Company rail car repair facility at Ville Platte, LA.)

OGEE asserts that the transaction will not change the existing competitive balance in the regional transportation market. Shippers now located on MP or SPT lines will continue to have access to them through OGEE's switching service. In addition most commodities handled are truck competitive. OGEE attributes the lines' slightly decreased traffic levels in 1988 and 1989 to truck diversion. It expects that its operations will be competitive with trucks and that it will ultimately regain the diverted traffic, consistent with its traffic projections.

Under 49 U.S.C. 11347, we are obligated to impose labor protection conditions for transactions under section 11343. For the transfer of MP's and SPT's lines to OGEE, we will impose the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) (*New York Dock*). For the trackage rights, we will impose the conditions in *Norfolk and Western Ry.—Trackage Rights—Burlington Northern R.R.*, 354 I.C.C. 605 (1987), as modified by *Mendocino Coast Ry.—Lease and Operate*, 360 I.C.C. 653 (1980) (*N&W*).

OGEE states it will operate the Acadiana lines with its own employees working under rates and benefits it will develop for them. It has no employees in Louisiana. Under the sales contracts, OGEE has no obligation to hire or be responsible for MP or SPT employees, but to the extent practical, it plans to give them hiring preference. OGEE does not anticipate that the transactions will affect its rail employees in Georgia.

Additional labor issues are raised in the OGEE-MP sale and trackage rights agreement. MP accepted responsibility under section 11347 to protect its employees affected by the proposed transaction and has not negotiated alternate employee protective arrangements. OGEE and MP request a finding that the protections in *New York Dock* and *N&W* are the sole remedies available to affected rail employees. Because it will have no obligation to MP employees, OGEE requests that any implementing agreement provisions be limited to MP and its employees.

MP expects to abolish seven positions. This would occur in the first year after the transaction is consummated. Those employees would be entitled to exercise seniority in their home districts under Commission imposed employee protective conditions.

OGEE and MP further request that in approving the application and imposing labor protection, we specify that the transaction embraces all the purposes, economies, and labor impacts shown within the application and contemplated by OGEE's plan of operations. They further request that we make specific findings approving all the operating purposes, economies, and labor impacts they have shown and on which we rely in making our public interest determination. Moreover, they suggest that we may wish to recognize this as the reason labor protection is imposed, and that the transactions are immunized from any other law that might impede their consummation.

The transfer of SPT's line is not expected to adversely affect SPT employees. No other labor protection issues are raised in that transaction.

Under § 1180.4(b)(2) of our consolidation regulations, we must initially determine whether a proposed transaction is major, significant, minor, or exempt. Each of the proposed transactions involves a Class I and Class III railroad. They have no regional or national significance and will not result in any major market extensions. Accordingly, we find the proposals minor transactions under 49 CFR 1180.2(c), and because the applications comply with applicable regulations, we accept them for consideration.

The applications and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by filing written comments. Any person who files written comments will be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) the docket number and title of the proceeding;
(b) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made;
(c) the commenting party's position, *i.e.*, whether it supports or opposes the proposed transactions;
(d) a statement of whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;
(e) if desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and
(f) a list of all information sought to be discovered from applicant carriers.

Because we have determined that these proposals are minor transactions, no responsive applications will be permitted. Time limits for processing minor applications are set forth at 49 U.S.C. 11345(d). Applicants have requested that we expedite consideration of the applications. We will accommodate that request as practicable.

Discovery may begin immediately. We admonish the parties to resolve all discovery matters amicably. OGEE seeks protective orders to limit access to traffic forecasts (Exhibit 2) and financial forecasts (Exhibit 6) filed with each application to parties, their counsel, and employees immediately involved in the proceeding. We will grant this request and require parties seeking access to sign a mutually acceptable stipulation agreeing to respect the confidentiality of Exhibits 2 and 6 of each application.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The applications in Finance Docket Nos. 31570 and 31571 are accepted as minor transactions under 49 CFR 1180.2(c) and are consolidated for consideration.

2. The parties shall comply with all provisions as stated above.

3. This decision is effective on January 19, 1990.

Decided: January 16, 1990.

By the Commission, Chairman Gradison, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-1491 Filed 1-22-90; 8:45 am]

BILLING CODE 7035-01

DEPARTMENT OF JUSTICE

Lodging of Proposed Consent Decree Under the Safe Drinking Water Act

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on October 30, 1989 a proposed Consent Decree in *United States* v. *Boca Chica Water Supply, Inc.*, Civil Action No. B-89-162 was lodged with the Southern District of Texas, Brownsville Division. The complaint filed by the United States alleged several violations of the Safe Drinking Water Act by Boca Chica Water Supply, Inc. The complaint sought to impose injunctive relief and civil penalties. The proposed Consent Decree imposes injunctive relief and civil penalties for past violations.

The Department of Justice will review for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *Boca Chica Water Supply, Inc.*, Civil Action No. B-89-162 (S.D. Tx.), D.J. # 90-5-1-1-3229.

The proposed Consent Decree may be examined at the Clerk's Office of the United States District Court for the Southern District of Texas, Brownsville Division, 500 East Tenth Street, Room 234, Brownsville, Texas 78520 and at the Region VI office of the Environmental Protection Agency, Allied Bank Tower, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 2630, Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice at a cost of $.10 per page, for a total of $1.40.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-1476 Filed 1-22-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decrees; United States v. Browning-Ferris Industries, Chemical Services, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 26, 1989, a proposed Consent Decree in *United States* v. *Browning-Ferris Industries, Chemical Services, Inc., et al.* (D.N.J.), was lodged with the United States District Court for the District of New Jersey. The proposed Consent Decrees arise from a civil action filed simultaneously under the Comprehensive Environmental Response, Compensation, & Liability Act, 42 U.S.C. 9601 *et seq.*, seeking clean-up, civil penalties and recovery of costs incurred by the United States in responding to the contamination of the Quanta Resources Corp. Site in Edgewater, New Jersey caused by numerous recycling and disposal

operations on the property. The complaint seeks reimbursement of past costs of approximately $1,200,000 plus injunctive relief and penalties. The Consent Decrees requires Defendant Browning-Ferris Industries, Chemical Services, Inc. ("BFI") to pay $125,000 and Defendant Peabody International Corporation ("PIC") to pay $360,000 to the United States as their share of the relief sought in the complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Browning-Ferris Industries, Chemical Services, Inc., et al.*, DJ Ref. 90–11–2–197.

The proposed Consent Decrees may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102 and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278. Copies of the Consent Decrees may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decrees may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.50 (10 cents per page reproduction csot) payable to the Treasurer of the United States.

George Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–1475 Filed 1–22–90; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on January 9, 1990, a proposed consent decree in *United States* v. *Envirite Corporation*, Civ. No. H–89–279 (EBB), was lodged with the United States District Court for the District of Connecticut. This consent decree settles a lawsuit filed against Envirite Corporation on May 3, 1989. The lawsuit, alleging violations under section 3008 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928, sought injunctive relief and civil penalties of up to $25,000 per violation. The complaint alleged that Envirite had failed to dispose and otherwise manage hazardous waste as required under RCRA and its implementing regulations, and had also operated its on-site laboratory in a manner that failed to conform with the requirements of RCRA and its implementing regulations.

The consent decree requires Envirite to pay a civil penalty of $60,000 for the laboratory violations alleged, and to manage all of its wastes as hazardous wastes unless an independent laboratory certifies that the wastes are non-hazardous. Envirite will later be allowed to use its own laboratory in lieu of the independent laboratory to determine whether its wastes are non-hazardous, provided (1) that Envirite submit to EPA a revised laboratory Standard Operating Procedures Manual and that such Manual is approved by EPA; (2) that an EPA audit of Envirite's laboratory shows that the laboratory is adhering to the requirements of the revised Manual; and (3) that forty "split" samples analyzed by Envirite's laboratory and an independent laboratory are statistically shown to be sufficiently similar that Envirite's laboratory can be deemed reliable. The consent decree contains provisions for stipulated penalties in the event that certain requirements of the consent decree are not met.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Envirite Corporation*, DOJ Ref. No. 90–7–1–523.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

United States Attorney's Office

Ruthann McQuade, Esq., Assistant U.S. Attorney, P.O. Box 1824, New Haven, CT 06508, (203/773–2108).

EPA Region I

Carol R. Wasserman, Esq., Office of Regional Counsel, RCR 2203, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203, (617/565–1475).

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW, Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the consent decree, please enclose a check for copying costs in the amount of $1.20 payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–1477 Filed 1–22–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M–89–188–C]

Rhonda Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Rhonda Coal Company, Inc., P.O. Box 580, Raven, Virginia 24639 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Rhonda Mine No. 6 (I.D. No. 44–06180) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined on a weekly basis.

2. Petitioner will be conducting pillaring operations, using a three-cut partial recovery method, adjacent to a previously abandoned panel which has been sealed.

3. As an alternate method, petitioner proposes to include examination of the seals within its weekly examination at a bleeder performance evaluation station.

4. In support of this request, petitioner states that—

(a) Access to the seals would be eliminated through the normal progression of retreat mining;

(b) Blocks adjacent to the seals would not be pillared to help ensure the integrity of the seals; and

(c) Air would be coursed across the face of the seals through the gob areas into the return aircourse.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1990. Copies of the petition are available for inspection at that address.

Dated: January 16, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-1460 Filed 1-22-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-187-C]

Rhonda Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Rhonda Coal Company, Inc., P.O. Box 580, Raven, Virginia 24639 has filed a petition to modify the application of 30 CFR 75.303 (preshift examination) to its Rhonda Mine No. 6 (I.D. No. 44-06180) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that seals be examined during the preshift examination to determine if they are functioning properly.

2. Petitioner will be conducting pillaring operations, using a three-cut partial recovery method, adjacent to a previously abandoned panel which has been sealed.

3. As an alternate method, petitioner proposes to include preshift examination of the seals within its weekly examination at a bleeder performance evaluation station.

4. In support of this request, petitioner states that—

(a) Access to the seals would be eliminated through the normal progression of retreat mining;

(b) Blocks adjacent to the seals would not be pillared to help ensure the integrity of the seals; and

(c) Air would be coursed across the face of the seals through the gob areas into the return aircourse.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1990. Copies of the petition are available for inspection at that address.

Dated: January 16, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-1461 Filed 1-22-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-191-C]

Topper Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Topper Coal Company, Inc., 266 Rocky Road, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 3 Mine (I.D. No. 15-16676) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the No. 2 Elkhorn seam and ranges from 40 to 48 inches in height. The coal seam has consistent ascending and descending grades creating dips in the coal bed.

3. As a result of these dips, the use of canopies on the mine's electric face equipment would result in a diminution of safety, because the canopies could:

(a) Dislodge roof support;

(b) Limit the equipment operator's visibility and seating position; and

(c) Create a hazard for the equipment operator as well as the other employees in the mine.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1990. Copies of the petition are available for inspection at that address.

Dated: January 16, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-1462 Filed 1-22-90; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Oregon State Standards; Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 28, 1972, notice was published in the **Federal Register** (37 FR 28628) of the approval of the Oregon plan and the adoption of subpart D to part 1952 containing the decision.

The Oregon plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective as status of the State program, a program change supplement to a State plan shall be required.

On its own initiative, the State has submitted by letter dated December 4, 1985 from William J. Brown, Director, Workers' Compensation Department, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to 29 CFR 1910.268(o) (1) and (2), Telecommunications, as published in the **Federal Register** (40 FR 13441) on March 26, 1975. The State's original standard received Federal Register approval (43 FR 9888) on March 10, 1978. The State's amendment was adopted on January 18, 1983 with an effective date of January 19, 1983 after a public hearing was held on October 19, 1982. Regional review of the State standard amendment, which

was originally submitted to the Regional Administrator on March 28, 1983, revealed discrepancies in several of the State's responses. The submission was returned to the State for corrections on May 5, 1983. On December 4, 1985, the State resubmitted a corrective amendment to its Telecommunications Standard. The State's corrective amendment was adopted on November 22, 1985 with an effective date of January 29, 1986 after a public hearing was held on August 27, 1985. The State's amendment contains the following minor substantive differences: it includes requirements for communication between employer and employees concerning hazards at the worksite, and emphasizes that the examples of worksite hazards apply to all telecommunications worksites, not just manholes. Other differences include the incorporation of the State rules numbering system and editorial changes.

In response to Federal standards changes, the State has submitted by letter dated January 11, 1989 from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to: 29 CFR 1910.217(c)(3)(iii) (b) and (h), Presence Sensing Device Initiation of Mechanical Power Presses. The comparable Federal standard amendments were published in the Federal Register (53 FR 8353) on March 14, 1988. The State's rules pertaining to Presence Sensing Device Initiation (PSDI) of Mechanical Power Presses, contained in OAR 437-02-240 (7), were adopted by reference on December 30, 1988, effective January 1, 1989, pursuant to ORS 654.025(2), ORS 656.726(3), and ORS 183.335, as ordered and transmitted under Oregon APD Administrative Order 22-1988. On December 14, 1988, the State mailed the Notice of Proposed Amendment of Rules to those on the Department of Insurance and Finance mailing list, established pursuant to OAR 436-01-000 and to those on the Department's distribution list as their interest appeared. No public hearing was requested or held for the adoption of the State's rules. By letter dated November 1, 1989, from John A. Pompei, Administrator, to James W. Lake, Regional Administrator, the State has clarified its policy that it will accept only Federally recognized third parties and will not establish its own third-party certification program for the PSDI standard.

On its own initiative, the State has submitted by letter dated September 16, 1988 from John A. Pompei, Administrator, Accident Prevention Division, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment to its OAR 437-56-090(4), Vehicles. The State's original standard received **Federal Register** approval (43 FR 35125) on August 6, 1978. The State's original rule, OAR 437-56.090(4), permitted diesel vehicles to run while being fueled. The State's amendment will prohibit the practice. The amended standard will be consistent with 29 CFR 1910.106(g)(8) and National Fire Prevention Association Code No. 30. There are only editorial differences now between the State and Federal standards. The State's amendment was adopted and effective on September 17, 1985 after a Notice of Proposed Amendment of Rules was mailed to those on the Worker's Compensation Department mailing list established pursuant to OAR 436-90-505 and to those on the Department's distribution mailing list as their interest appeared. Both actions failed to elicit a request for hearing.

2. *Decision.* Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standard amendment for Presence Sensing Device Initiation of Mechanical Power Presses is identical to the Federal standard amendment and that the State-initiated amendment for Telecommunications is at least as effective as the comparable Federal standard as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State-initiated amendment for Vehicles and the equivalent Federal standard are minimal and that the standard amendment is thus substantially identical. OSHA, therefore approves these standards; however, the right to reconsider this approval for the Telecommunications standard and the Vehicles standard is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approval plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Insurance and Finance, Labor and Industries Building, Salem, Oregon 97310; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. *Public participation.* Under 29, CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consisent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Oregon State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The State's rules are at least as effective as the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law which included opportunity for public hearing and comment and further public participation would be repetitious.

This decision is effective January 23, 1990.

(Sec. 18, Pub. L. 91-596, 84 Stat. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington this 12th day of November 1989.

James W. Lake,

Regional Administrator.

[FR Doc. 89-1463 Filed 1-22-90; 8:45 am]

BILLING CODE 4510-26-M

LIBRARY OF CONGRESS

American Folklife Center Board of Trustees Meeting

AGENCY: Library of Congress.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Board of Trustees of the American Folklife Center. This notice also describes the functions of the Center. Notice of this meeting is required in accordance with Public Law 94-463.

DATE: January 26, 1990, 9:00 a.m. to 1:00 p.m.

ADDRESS: Whittall Pavilion, Jefferson Building, Library of Congress, 10 First Street SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Raymond L. Dockstader, Deputy Director, American Folklife Center, Washington, DC 20540.

SUPPLEMENTAL INFORMATION: The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Raymond Dockstader at (202) 707-6590.

The American Folklife Center was created by the U.S. Congress with passage of Public Law 94-201, the American Folklife Preservation Act, in

1976. The Center is directed to "preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Dated: January 9, 1990.

Rhoda W. Canter,

Associate Librarian for Management.

[FR Doc. 90–1464 Filed 1–22–90; 8:45 am]

BILLING CODE 1410–01–M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Meeting

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) notice is hereby given of a public meeting to be held in the Maricopa II, third floor, of the Scottsdale Conference Center, Scottsdale, Arizona. Meeting room may be subject to change, please verify at front desk.

DATE: Tuesday, February 20, 1990, 8:00–5:00.

Status: The meeting is to be open to the public.

Matters To Be Discussed: The purpose of this public meeting is to enable the Commission members to discuss progress on the research agenda, findings received from prior hearings, and budget and administrative matters.

FOR FURTHER INFORMATION, CONTACT: Barbara C. McQuown, Director National Commission for Employment Policy, 1522 K Street NW., Suite 300, Washington, DC 20005, (202) 724–1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV–F of the Job Training Partnership Act (Pub. L. 97–300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the meeting will be available for public inspection at the Commission's headquarters, 1522 K Street NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 16th day of January 1990.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 90–1459 Filed 1–22–90; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Containment Systems; Meeting

The Subcommittee on Containment Systems will hold a meeting on February 6, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Tuesday, February 6, 1990—1:00 p.m. until 5:00 p.m.

The Subcommittee will discuss the NRC staff's document on Containment Performance Improvements (CPI) Program (all containment types other than the BWR Mark I).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 27, 1990.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 90–1486 Filed 1–22–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Systematic Assessment of Experience; Meeting

The Subcommittee on Systematic Assessment of Experience will hold a meeting on February 6, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Tuesday, February 6, 1990—8:30 a.m. until 12:00 Noon.

The Subcommittee will review the proposed power level increase for Indian Point Unit 2.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 301/492-7750) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 15, 1990.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 90-1487 Filed 1-22-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of an Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, (Title 44, U.S.C. Chapter 35), this notice announces a request submitted to OMB to extend a clearance for collecting data from selected Federal agencies for general purpose statistics. On an annual basis, occupational data not otherwise available to the Office of Personnel Management are collected using OPM Form 1079-A or automated means. This report is completed by ten agencies, and takes approximately 12 hours to complete, for a total burden of 120 hours. The data are used by the Office of Personnel Management to manage personnel programs and evaluate policy alternatives, and also by the National Science Foundation and the Bureau of Labor Statistics. For copies of this clearance package, call Larry Dambrose on (202) 632-0199.

DATE: Comments on this data collection should be received on or before February 6, 1990.

ADDRESS: Send or deliver comments to: Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 3002, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Randall T. Matke, (202) 653-5465, U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-1461 Filed 1-22-90; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of the Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549

Reinstatement

Form X-17A-5; File No. 270-155

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.), the Securities and Exchange Commission has submitted for reinstatement OMB clearance of Form X-17A-5 ("FOCUS Report") under the Securities Exchange Act of 1934 which is the form used for reporting the financial and operational conditions of brokers and dealers. Seven thousand respondents incur an estimated average burden of ninety-one hours to comply with the rule.

The estimated average burden hours are made solely for the purpose of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of costs of SEC rules. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 16, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1505 Filed 1-22-90; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review of the Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549

Extension

File No. 270-311, Rule 15Ca1-1

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.), the Securities and Exchange Commission has submitted for extension OMB clearance of Rule 14Ca1-1 under the Securities Exchange Act of 1934 which provides that a registered broker-dealer that is a government securities broker or dealer must notify the Commission of their government securities activities on Form BD. Two hundred and fifty respondents incur an estimated average burden of fifteen minutes to comply with the rule.

The estimated average burden hours are made solely for the purpose of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of costs of SEC rules. Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 16, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-1506 Filed 1-27-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-27616; File No. SR-Amex-89-30]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc., Relating to Exchange Act Rule 19c-4

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 5, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend section 122 of the Amex Company Guide on order to permit the Exchange to exempt certain transactions from the restrictions set forth in Rule 19c–4 under the Act.[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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 19c–4(a) under the Act provides that an exchange should not list or continue to list a common stock or other equity securities of a domestic entity which issues a class of security or takes other corporate action which has the effect of "nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock." Part (f) of the Rule invites the individual marketplaces to develop and file with the Commission proposed interpretations specifying transactions covered by or excluded from the Rule's prohibitions.

Over the past year, the Exchange has identified three areas where rigid application of the Rule would produce a result which can be inimical to the best interests of the issuer and its shareholders.[2] These involve: (1) the grant of options to key executives to purchase a limited number of super voting shares; (2) mergers designed to qualify for "pooling of interests" accounting; and (3) the use of super voting stock by a company experiencing significant financial difficulty as part of a plan to save the company from bankruptcy.

(1) Stock Options:

Stock options have long been recognized as a valuable tool for attracking and keeping key corporate executives. Notwithstanding this, the Rule prohibits issuances of additional super voting shares pursuant to employee stock option plans even though the Company's practice has been to issue such options pursuant to existing plans. Representatives of dual class companies which have such plans have urged that this restriction be relaxed because it will adversely affect their relations with key management personnel to the detriment of shareholders.

The Exchange believes that an appropriate balance can be struck between the concern with public shareholder disenfranchisement, and the legitimate business needs of listed companies by creating a "safe harbor" in which certain limits on grants of options on super voting sharing would be presumed not to violate Rule 19c–4. Accordingly, the proposed rule change provides that a dual class company may apply for a favorable Exchange staff interpretation provided that:

(i) Such options will not exceed 5% of the total outstanding voting power on the date of grant;

(ii) The proposed issuance(s) would not significantly alter the existing degree of management control; and

(iii) The proposed grant was either consistent with the issuer's prior practice, or spelled out in reasonable detail in the issuer's initial public offering.

In reviewing requests to grant such options the Exchange will also consider such other factors as may be relevant, including the number of proposed recipients, their relationship to the issuer, and the degree of voting control represented by the super voting class prior to the proposed grant of options.

(2) Pooling of Interests Transactions:

If a company has outstanding more than one class of common stock, generally accepted accounting principles ("GAAP") require that the class possessing voting control be issued in a business combination for the transaction to be eligible for pooling of interests accounting.[3] Since Rule 19c–4 generally prohibits the issuance of shares of super voting stock, dual class issuers are effectively precluded from using pooling of interests accounting.[4]

The Exchange, however, believes that dual class companies should not be prohibited from seeking pooling treatment for bona fide merger transactions which are driven by economic considerations and not for the purpose of altering the balance of voting control. To permit a pooling of interest for bona fide merger transactions would allow Exchange-traded companies to realize the economic benefits associated with pooling accounting without undercutting the purpose of Rule 19c–4. Indeed, the Exchange believes that since the Release adopting Rule 19c–4 is silent on this question, the conflict between it and GAAP appears to be unintended.

In considering whether to grant exemptive relief to a proposed pooling of interests transaction, the Exchange will, among other things, consider whether there would be a significant shift of voting power among the affected parties, and whether the economic benefits are substantial in relation to such shift.

(3) Companies in Financial Distress

The release adopting rule 19c–4 envisions an exception for companies which may need to issue super voting shares as part of a plan to rescue the company from adverse financial consequences. The Exchange therefore proposes a presumptive "safe harbor" exception containing the following elements:

(i) The issuer must provide satisfactory evidence supporting the claim of significant financial difficulty and the likelihood of bankruptcy without the infusion of added capital;

(ii) The degree of voting control to be transferred must be reasonable in relation to the size of the capital infusion;

(iii) The proposed transaction must be approved by the company's independent directors, audit committee or comparable body; and

(iv) The company must publicly disclose both the extent of its financial difficulties and the terms of the proposed transaction.

Pursuant to Rule 19c–4(f), the Amex has identified three "types of securities issuances and other corporate actions"

[1] *See* Securities Exchange Act Release No. 25891 (July 7, 1988), 53 FR 26376 ("Adopting Release").

[2] As the Exchange acquires further experience in administering Rule 19c–4 it may determine to seek relief in other areas as well.

[3] In a dual class company, the super voting class usually has voting control.

[4] The two acceptable accounting methods for uniting companies in a business combination are the pooling of interests method and the purchase method. If pooling of interests is not available, the purchase method must be used. The purchase method often results in a nontax deductible expense to the newly combined company that would not otherwise exist if the pooling of interest accounting method was used.

which should be presumptively excluded from the prohibitions set forth in sections (a) and (b) of Rule 19c–4. In each of these areas the Amex believes that the interests of investors and the public interest would be better served by allowing the issuance of super voting stock since the adverse consequences from prohibiting the specified transactions (*i.e.*, the failure to (i) retain or attract key executives; (ii) achieve the economic advantage provided by a pooling of interests; or (iii) survive as a viable entity) far outweigh the potential for shareholder disenfranchisement. While the proposed rule establishes categories of transactions which would be presumed to be allowed, the exchange would, in each case, retain the authority to disallow any transaction which it believed was structured for the purpose of violating Rule 19c–4. For these reasons, the Amex believes that the proposed rule change is also consistent with section 6(b) of the Act, and furthers the objectives of section 6(b)(5) in particular, in that it is intended to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six 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, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–89–30 and should be submitted by February 13, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 12, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–1436 Filed 1–22–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 35–25024]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 12, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 5, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70–7474)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, 20 Montchanin Road, Wilmington, Delaware 19807, has filed a post-effective amendment to its application-declaration filed under sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By order dated January 27, 1988 (HCAR No. 24565) ("January 1988 Order"), Columbia was authorized to acquire on the open market from time-to-time through December 31, 1989, up to 2% of its outstanding shares of common stock ("Common Stock"), $10 par value per share, and to reissue such Common Stock to fulfill stock options exercised under its Long-Term Incentive Plan, to fulfill stock purchase requirements under its Dividend Reinvestment Plan, and for such other purposes as may be approved by the Commission upon request by Columbia. As of December 31, 1989, no shares were purchased under the authorization granted by the January 1988 order.

Columbia now proposes to acquire on the open market from time-to-time through December 31, 1991, up to 900,000 shares of its outstanding Common Stock, $10 par value per share, and to reissue such Common Stock to fulfill stock options exercised under its Long-Term Incentive Plan, to fulfill stock purchase requirements under its Dividend Reinvestment Plan, and for such other purposes as may be approved by the Commission upon request by Columbia. As of December 31, 1989, Columbia had 45.6 million shares of common stock outstanding.

American Electric Power Company, Inc. (70–7696)

American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed an application-declaration pursuant to sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

AEP proposes to repurchase from time to time through December 31, 1991 up to 9 million shares of its currently issued and outstanding common stock, par value $6.50 per share, on the open market. The timing of such repurchases will depend upon then existing market conditions and the anticipated capital needs of AEP and its subsidiaries. AEP presently has outstanding 193,534,992 shares of common stock, par value $6.50 per share.

The East Ohio Gas Company (70–7724)

The East Ohio Gas Company ("EOG"), 1717 East Ninth Street, Cleveland, Ohio 44144, a wholly owned subsidiary of Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222–3199, a registered holding company, has filed an application pursuant to section 9(c)(3) of the Act and Rule 51 thereunder.

EOG requests authorization to acquire a one unit interest, out of a maximum of 150 units ("Units"), at a purchase price of $500,000 in Cleveland Development Partnership I ("Partnership"), a limited partnership engaged in financing for the development of real estate projects in downtown Cleveland.

The application states that the projects in which the Parntership might invest would be expected to impact favorably upon urban blight, create jobs and promote the general community interest in a strong, vital, aesthetically exciting and economically viable city. The board of trustees of the general partner, consisting of senior management of major Cleveland area corporations, will be responsible for the major decisions affecting the Partnership. The Partnership also intends to generate returns for its partners and will have a stated term of 25 years, extendable for one or more five-year periods. A significant portion of net cash flow is presently intended to be reinvested in other projects. As of November 17, 1989 the Partnership has sold 75 units for an aggregate of $37,500,000.

It is not anticipated that the Partnership will at any time be an affiliate of EOG as that term is defined in section 2(a)(11) of the Act because it is anticipated that upon completion of the current offering of Units and the proposed purchase of one Unit by EOG, EOG will own less than 5% of the outstanding Units of the Partnership. Should EOG in the future become the owner of 5% or more of such outstanding Units, it will file a post-effective amendment with the Commission which will reflect this change in ownership. The only significant voting rights of the Limited Partners are to convert, by an 80% vote, the General Partner to a Limited Partner under certain circumstances, and to agree, by a 50% vote, to changes in the Partnership Agreement.

Energy Initiatives, Inc., et al. (70–7728)

Energy Initiatives, Incorporated ("EII"), Armstrong Energy Corporation ("Armstrong"), and AEC/REF–Fuel Limited Partnership ("Partnership"), One Gatehall Drive, Parsippany, New Jersey 07054, each of which is an indirect subsidiary of General Public Utilities Corportion, a registered holding company, have filed a declaration under section 12(b) of the Act and Rule 45 thereunder.

Pursuant to prior Commission authorization dated April 16, 1987 (HCAR No. 24373), EII has organized and acquired all of the authorized capital stock of Armstrong and Armstrong has entered into a limited partnership agreement with REF–Fuel Corporation ("REF–Fuel"), a previously unaffiliated entity, to establish the Partnership to develop a proposed waste coal-fired generating facility ("Project") which will be a qualified facility under the Public Utility Regulatory Policies Act of 1978.

EII now proposes to make additional capital contributions to Armstrong of up to $2 million from time-to-time through December 31, 1991. Armstrong proposes to make such capital contributions, in turn, to the Partnership. The Partnership proposes to use such funds to pay Project development expenses and make additional investments in the Project. The Partnership states that such investments would include, among other things, the acquisition of real property, options to purchase real property, and other assets necessary for development of the Project, payments in respect of good faith security deposits required under a power purchase agreement for the Project, and payments to REF–Fuel, the sole limited partner of the Partnership, as required under the limited partnership agreement.

Consolidated Natural Gas Company (70–7731)

Consolidated Natural Gas Company ("Consolidated"), a registered holding company, CNG Tower, Pittsburgh, Pennsylvania 15222–3199, has filed a declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Consolidated proposes to issue and sell, through December 31, 1990, up to four million shares of its authorized but unissued common stock, $2.75 par value ("Additional Stock"). It is anticipated by Consolidated that the proposed transaction will be structured to include the issuance and sale of a to be determined number of shares of Additional Stock (i) to an underwriter(s) in the United States ("U.S. Underwriters"), (ii) to an international manager(s) ("Managers") outside the United States, and (iii) to such U.S. Underwriters or Managers to cover over-allotments (typically from 10% to 15% of the Additional Stock).

Consolidated states that the proceeds from the sale of the Additional Stock will be added to the treasury funds of Consolidated and subsequently used to finance, in part, capital expenditures of Consolidated and Consolidated's subsidiaries.

Consolidated requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) for its issuance of the Additional Stock. Consolidated states that it believes that the flexibility to match readily terms and conditions of the Additional Stock offer and sale with the changing demands of the market will contribute to it achieving lowest cost funding. Consolidated further states the involvement of both U.S. Underwriters and Managers necessitates coordination between the two underwriting groups.

Consolidated further requests authorization to begin negotiations with U.S. Underwriters and Managers for the public offering of the Additional Shares. It is authorized to do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–1435 Filed 1–22–90; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Secretary of State's Advisory Committee on Private International Law

[Public Notice 1190]

Study Group on International Contract Practices; Meeting

The Advisory Committee Study Group will hold its second meeting at 9:30 a.m. on Monday, January 29, 1990 in Washington, DC at the International Law Institute, 1615 New Hampshire Avenue NW.

The primary focus of the Study Group meeting will be on international procurement and the formulation of United States positions for a February 1990 meeting of the United Nations Commission on International Trade Law (UNCITRAL) Working Group which, at the direction of the Commission, has undertaken the preparation of a model national procurement law. The Commission Secretariat has recently distributed its first draft of the model procurement law (U.N. Doc. A/CN.9/WG.V/WP.24, November 4, 1989) together with a Commentary on the draft law (U.N. Doc. A/CN.9/WG.V/WP.25, November 24, 1989).

The meeting agenda will include a review of the proposed scope of the UNCITRAL project, including the limitation of its provisions to bidding and award phases of procurement, open access to markets, competitive or restricted bidding, subcontracting, multinational parties, party autonomy and jurisdiction.

Copies of the U.N. Documents referred to above and other relevant information, including a previous Report on International Procurement by the Secretariat preparatory to the October 1988 UNCITRAL Working Group meeting (U.N. Doc. A/CN.9/WG.V/WP.22, November 14, 1988) may be obtained by contacting Harold S. Burman at (202) 653–9852 or writing the Office of the Assistant Legal Adviser for Private International Law, L/PIL, Suite 402, 2100 "K" Street NW., Washington, DC 20037–7180.

Members of the general public may attend the meeting up to the capacity of the meeting room. Access to the meeting room is controlled, and the office indicated above should be notified not later than Thursday, January 25 of the name, affiliation, address and phone number of persons expecting to attend. In order to facilitate planning for the meeting, members of the public are requested to indicate whether they expect to comment on particular issues. Persons interested but unable to attend the meeting are welcome to submit comments or proposals to the address indicated above.

Peter H. Pfund,

Assistant Legal Adviser for Private International Law and Vice-Chairman, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 90–1478 Filed 1–22–90; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under subpart Q during the Week ended January 12, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46704.

Date filed: January 10, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 10, 1990.

Description: Application of United Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity to authorize foreign air transportation of persons, property and mail between Chicago, Illinois, and Tokyo, Japan.

Docket Number: 46705.

Date filed: January 11, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 8, 1990.

Description: Application of Trans World Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests an amendment of its certificate of public convenience and necessity for Route 147 so as to authorize TWA to provide air transportation of persons, property and mail between a point or points in the United States and Istanbul and Ankara, Turkey, as well as local traffic rights between the latter two points in Turkey, on the one hand, and other intermediate points within Europe TWA is authorized to serve, provided that such local traffic rights are available under the pertinent bilaterals.

Docket Number: 46707.

Date filed: January 12, 1990.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 9, 1990.

Description: Application of Balair Ltd., pursuant to section 402 of the Act and subpart Q of the Regulations applies for amendment and reissuance of its foreign air carrier permit to conduct charters in foreign air transporation between the United States and Switzerland.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90–1437 Filed 1–22–90; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 164—Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I), notice is hereby given for the fifth meeting of RTCA Special Committee 164 on Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment to be held February 7–9, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the fourth meeting's minutes, RTCA Paper No. 422–89/SC164–21; (3) technical presentations; (4) review of task assignments from last meeting; (5) continued review of the first draft of the MOPS, RTCA Paper No. 370–89/SC164–16; (6) working group sessions; (7) in plenary for working group progress and task assignments; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 10, 1990.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90–1453 Filed 1–22–90; 8:45 am]

BILLING CODE 4910–13–M

Aviation Security Advisory Subcommittee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Aviation Security Advisory Subcommittee Meeting.

SUMMARY: Notice is hereby given of the first meeting of the Policy and Procedures Subcommittee of the Aviation Security Advisory Committee.

DATE: The meeting will be held February 14, 1990, from 9 a.m. to 2 p.m.

ADDRESS: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of Civil Aviation Security, ACS, 800 Independence Avenue SW., Washington, DC 20591, telephone 202–267–9863.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Aviation Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Policy and Procedures Subcommittee of the Aviation Security Advisory Committee to be held February 14, 1990, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The Policy and Procedures Subcommittee is co-chaired by the Airport Operators Council International (AOCI), the American Association of Airport Executives (AAAE), and the Air Transport Association (ATA). The agenda for the meeting is to identify and prioritize issues of importance surrounding the policy and procedures of aviation security and to establish task force working groups as might be appropriate to address those issues. This shall include a discussion of any proposed revisions of FAR 107 on airport security and FAR 108 on air carrier security.

Attendance at the February 14 meeting is open to the public but limited to space available. Oral statements are not anticipated, but written statements may be submitted anytime. Persons wishing to submit statements should contact the security office of one of the co-chair organizations.

AOCI, 1220 19th Street NW., # 200, Washington, DC 20036, telephone 202–293–8500.

AAAE, 4224 King Street, Alexandria Va 22302, telephone 703–824–0500.

ATA, 1709 New York Avenue NW., Washington, DC 20006, telephone 202–626–4000.

Issued in Washington, DC, on January 17, 1990.

Raymond A. Salazar,

Director of Civil Aviation Security.

[FR Doc. 90–1454 Filed 1–22–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

January 17, 1990.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer Listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

INTERNAL REVENUE SERVICE

OMB Number: 1545–0245.

Form Number: 6627.

Type of Review: Resubmission.

Title: Environmental Taxes.

Description: Attached to Form 720 to compute and collect tax on petroleum, chemicals, imported chemical substances, and ozone-depleting chemicals.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 13,600.

Estimated Burden Hours Per Response:

Recordkeeping: 8 hours, 28 minutes.

Learning about the law or the form: 22 minutes.

Preparing the form: 1 hour, 47 minutes.

Copying, assembling, and sending the form to IRS: 16 minutes.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 419,968 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–1489 Filed 1–22–90; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

January 17, 1990.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0197.

Form Number: IRS Form 5300.

Type of Review: Resubmission.

Title: Application for Determination for Employee Benefit Plan.

Description: IRS needs certain information on the financing and operating of employee benefit and employee contribution plans set up by employers. IRS uses Form 5300 to obtain the information needed to determine whether the plans qualify under Code sections 401(a) and 501(a).

Respondents: Individuals, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 300,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping: 22 hrs., 14 mins.

Learning about the law or the form: 6 hrs., 36 mins.

Preparing the form: 9 hrs., 7 mins.

Copying, assembling, and sending the form to IRS: 32 mins.

Frequency of Responses: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 11,544,000 hours.

OMB Number: 1545–0200.

Form Number: IRS Form 5307.

Type of Review: Resubmission.

Title: Application for Determination for Adopters of Master or Prototype, Regional Prototype or Volume Submitter Plans.

Description: This form is filed by employers or plan administrators who have adopted a master or prototype plan approved by the IRS National Office or a regional prototype plan approved by an IRS District Director to obtain a ruling that the plan adopted is qualified under IRC sections 401(a) and 501(a). It may not be used to request a letter for a multiple employer plan.

Respondents: Businesses or other for-profit, Small Business or organizations.

Estimated Number of Respondents/ Recordkeepers: 39,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping: 13 hrs., 52 mins.

Learning about the law or the form: 5 hrs., 53 mins.

Preparing the form: 9 hrs., 9 mins.

Copying, assembling, and sending the form to IRS: 48 mins.

Frequency of Responses: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 1,158,300 hours.

OMB Number: 1545–0229.

Form Number: IRS Form 6406.

Type of Review: Resubmission.

Title: Short Form Application for Determination for Amendment of Employee Benefit Plan.

Description: This form is used by certain employee plans who want a determination letter or an amendment to the plan. the information gathered will be used to decide whether the plan is qualified under section 401(a).

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 16,000.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping: 12 hrs., 26 mins.

Learning about the law or the form: 3 hrs., 23 mins.

Preparing the form: 6 hrs., 32 mins.

Copying, assembling, and sending the form to IRS: 48 mins.

Frequency of Responses: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 370,560 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–1490 Filed 1–22–90; 8:45 am]

BILLING CODE 4830–01–M

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954). The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yeman, Arab Republic
Yemen, Peoples Democratic Republic of

Dated: January 17, 1990.

Kenneth W. Gideon,

Assistant Secretary for Tax Policy.

[FR Doc. 90–1433 Filed 1–22–90; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

Drawback Study Briefing

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

ACTION: Notice of briefing.

SUMMARY: The U.S. Customs Service announces that it will be providing a briefing for interested parties on the Drawback Revitalization Study—an internal study conducted by Customs to identify areas relating to drawback that require more uniform treatment nationally.

DATES: The briefing will be held on February 5, 1990 at 1 p.m. Notice of intention to attend the briefing should be received by Customs by January 29, 1990.

ADDRESSES: The briefing will be held at the Department of Commerce Auditorium, Room 1115, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230. Written notice of intention to attend the briefing should be sent to: U.S. Customs Service, Office of Trade Operations, Room 1313, ATTN: Connie Lewis, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Ms. Connie Lewis, Office of Trade Operations, (202) 566–5200.

SUPPLEMENTARY INFORMATION: Customs has recently conducted an internal study relating to drawback. The purpose of the study, known as the Drawback Revitalization Study, was to examine the way drawback, both manufacturing and same condition, is currently handled by Customs and recommend changes required to streamline processing and provide uniformity of procedures. All disciplines within Customs responsible for drawback were reviewed and all aspects of filing claims were examined from contract proposal through liquidation of the claim.

A briefing will be held by Customs to inform interested members of the importing community of the current status of the study and subjects which have been determined to require additional review. The briefing is scheduled for Monday, February 5, 1990, at 1 p.m. and will be held in the U.S. Department of Commerce Auditorium, Room 1115, Herbert C. Hoover Building, 14th and Constitution Avenue NW., Washington, DC 20230. Questions will be accepted.

Parties interested in attending are requested to inform Customs of their intention to attend the briefing to assure adequate accommodations are provided. Notices of intention to attend should be received by January 29, 1990. Such notice may be given in writing or telephonically. Written notices should be sent to U.S. Customs Service, Office of Trade Operations, Room 1313, 1301 Constitution Avenue NW., Washington, DC 20229. Telephone replies may be made to Ms. Lewis at (202) 566–5200.

Dated: January 17, 1990.

D. Lynn Gordon,

Assistant Commissioner, Commercial Operations.

[FR Doc. 90–1550 Filed 1–22–90; 8:45 am]

BILLING CODE 4820–02–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Greek Gold from the Benaki Museum" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Dallas Museum in Dallas, Texas, beginning on or about Appril 8, 1990, to on or about June 10, 1990, is in the national interest.

Public notice of the determination is ordered to be published in the **Federal Register.**

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485–7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street SW., Washington, DC 20547

Dated: January 16, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-1452 Filed 1-22-90; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Matisse in Morocco, The Paintings and Drawings, 1912-1913—A USA/USSR Joint Project" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art beginning on or about March 18, 1990 to on or about June 3, 1990, and at the Museum of Modern Art, New York, NY, beginning around June 20, 1990 to September 4, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 16, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-1451 Filed 1-22-90; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Sculpture of Indonesia" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, DC, beginning on or about July 1, 1990 to on or about November 4, 1990; at the Museum of Fine Arts, Houston, Texas, beginning on or about December 9, 1990 to on or about March 17, 1991; at the Metropolitan Museum of Art, New York, NY, beginning on or about April 21, 1991 to on or about August 18, 1991; and at the Asian Art Museum, San Francisco, California, beginning on or about September 28, 1991 to on or about January 5, 1992, is in the national interest.

Public notice of this determination is ordered to be publised in the **Federal Register.**

Dated: January 17, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90-1450 Filed 1-22-90; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485-7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485-7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 55, No. 15
Tuesday, January 23, 1990

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

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 18, 1989.

TIME AND DATE: 10:00 a.m., Thursday, January 25, 1990.

Place: Room 600, 1730 K Street NW., Washington, DC.

Status: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Possible revisions to Commission Procedural Rules.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/ (202) 708–9300 for TDD Relay; 1–800–877–8339 Toll Free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90–1560 Filed 1–19–90; 11:11 am]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.

TIME AND DATE: 11:00 a.m., Monday, January 29, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 19, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–1639 Filed 1–19–90; 3:42 pm]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, January 31, 1990 at 3:30 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Inv. No. 731–TA–429 (F) (Mechanical Transfer Presses from Japan)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Dated: January 17, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–1557 Filed 1–19–90; 11:11 am]

BILLING CODE 7020–02–M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 P.M., Wednesday, February 7, 1990.

Place: Board Hearing Room, 8th Floor, 1425 K Street, NW., Washington, DC.

Status: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of January, 1990.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523–5920.

Date of notice: January 16, 1990.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 90–1561 Filed 1–19–90; 11:11 am]

BILLING CODE 7550–01–M

Corrections

Federal Register
Vol. 55, No. 15
Tuesday, January 23, 1990

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

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90123-9023]

Revisions to the Commodity Control List Based on COCOM Review: Metal-Working Machinery, etc.

Correction

In rule document 89-4153 beginning on page 8290 in the issue of Tuesday, February 28, 1989, make the following correction:

On page 8297, in the second column, the first word "revising" should read "adding".

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 102, 110, 114 and 9034

[Notice 1989-13]

Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions

Correction

In rule document 89-19337 beginning on page 34098 in the issue of Thursday, August 17, 1989, make the following corrections:

1. On page 34105, in the 1st column, in the 2nd complete paragraph, in the 23rd line, insert "true contributor. However, the new language would not reach an" following "the".

2. On page 34106, in the 3rd column, in the 13th line, "section 110.65" should read "section 110.6".

3. On page 34108, in the third column, in the fourth line, "Section 100.1" should read "Section 110.1".

§ 110.1 [Corrected]

4. On page 34110, in the first column, in § 110.1(f)(3), in the last line, "11 CFR 110.2(c)(4)" should read "11 CFR 110.3(c)(4)".

§ 114.8 [Corrected]

5. On page 34114, in § 114.8(g)(1), in the third column, in the second line, "§ 110.5(g)(4)" should read "§ 100.5(g)(4)".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

RIN 3150-AC12

Safety Requirements for Industrial Radiographic Equipment

Correction

In rule document 90-464 beginning on page 843 in the issue of Wednesday, January 10, 1990, make the following corrections:

§ 34.20 [Corrected]

1.On page 852, in the third column, in § 34.20(d), in the fourth line, "January 10, 1991" should read "January 10, 1992".

2. On the same page, in the same column, in § 34.20(e), in the third line, "January 10, 1995" should read "January 10, 1996".

§ 34.21 [Corrected]

3. On page 853, in the first column, in § 34.21(b), in the third and fourth lines, "January 10, 1991" and "January 10, 1995" should read "January 10, 1992" and "January 10, 1996", respectively.

BILLING CODE 1505-01-D

federal register

Tuesday
January 23, 1990

Part II

Federal Emergency Management Agency

44 CFR Part 206

Robert T. Stafford Disaster Relief and Emergency Assistance Act; Implementation, etc.; Final Rules

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AB37

Disaster Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: President Reagan signed the Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100-707) on November 23, 1988. This law amended the Disaster Relief Act of 1974, Pub. L. 93-228, and retitled it the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). As a result, FEMA added a new part 206 to 44 CFR to implement the Stafford Act. Subparts A, B, and C of the final regulations, which are being published today, govern major disasters or emergencies declared by the President on or after November 23, 1988. Additional subparts D, E, F, G, H, I, J, K, L, M, and N are being published separately. Existing regulations at 44 CFR part 205 will remain in effect to govern those major disasters and emergencies declared prior to enactment of Public Law 100-707.

EFFECTIVE DATE: This final rule will be effective on February 23, 1990.

FOR FURTHER INFORMATION CONTACT: Robert G. Chappell, Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support, 500 C Street, SW., Washington, DC, 20472, or contact the program officer for the particular subpart in question (202) 646-3615.

SUPPLEMENTARY INFORMATION: The Stafford Act made substantive changes to the Disaster Relief Act of 1974 and provided additional authorities. Regulations to implement the Act were developed using existing disaster regulations at 44 CFR part 205 as a guide. Sections which did not change as a result of the Stafford Act were repeated verbatim; changes were made to the appropriate sections which were amended by the Stafford Act; and additional sections were added to implement the new authorities of the Act. On May 22, 1989, FEMA published in the **Federal Register** at 54 FR 22162 an Interim Rule, and invited comments for 60 days ending on July 21, 1989. Comments were received from 4 sources representing local governments.

The following information is given to identify sections where major changes were made because of the legislative amendments, and also to indicate comments and suggestions received concerning the interim regulations, and actions taken:

General Information (Subpart A)

Sections of the Stafford Act which apply to overall disaster assistance are codified in this subpart.

1. Definitions of Major Disaster and Emergency—Section 206.2

The definition of a major disaster has been amended to limit the qualifying events to natural catastrophes, except for fire, flood, or explosion, which may be declared for any cause. In order to warrant a Presidential declaration of a major disaster, the determination must be made that damages are of sufficient severity and magnitude to warrant Federal assistance to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused by the disaster event.

The definition of an emergency was amended to include any occasion or instance for which Federal assistance is needed to supplement State and local efforts and capabilities to save lives, protect property, public health and safety, or to lessen or avert the threat of a catastrophe.

The idea of restricting the recovery provisions and programs to cover primarily natural catastrophes under a major disaster is not new. Legislation was first introduced in 1982 to change the definitions of "major disasters" and "emergency" to establish separate statutory authorities for dealing with two distinct types of situations: (1) Programs of response and recovery following "major disasters", primarily of "natural" origin, and (2) "emergency" programs of short-term, immediate response to provide needed life-saving, public health, safety and property-protecting measures in a broad range of incidents.

In S. Rpt. No. 97-459 dated May 28, 1982, accompanying S. 2250, 97th Cong. 2d Sess., the Committee on Environment and Public Works stated:

> The authorities of title V permit the Government to provide needed life-saving, public health, safety and property-protecting measures in a broad range of incidents. The Administration could then, in a more deliberate manner, determine whether to provide continuing assistance and, if so, identify the proper authorities under which to provide it. For unusual types of civil emergencies for which adequate response authorities do not exist, the Administration, and the Congress, as a result of enactment of the new title V, would have more time to design and enact legislation specifically tailored to the problem instead of relying upon the Disaster Relief Act of 1974 which was written to respond to a specific class of natural catastrophes for which the Act was tailored.

Although virtually identical legislation was proposed in several bills during the 1980's, the provisions did not become law until passage of the Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. 100-707. Nevertheless, the legislative history leading to the enactment of Public Law 100-707 indicates a clear Congressional intent to authorize a much more limited range of Federal assistance in response to "emergencies" than in response to "major disasters".

2. Local Government Review of State Emergency Plans—Section 206.4

A comment was made that, prior to final adoption, States should be required to circulate their emergency plans for comment by all local governments, because local governments will be significantly affected by and must be cognizant of the terms of those plans. The purpose of this section is to insure that all requirements of the Stafford Act are included in the State plan. While FEMA supports the concept of coordination between the State and local governments, we cannot dictate specific levels of participation. We have, however, amended the section to strongly encourage a State to solicit participation at the local level.

3. Assistance by other Federal Agencies—Section 206.5

In regard to subparagraph (e) containing instructions to Federal agencies performing disaster work directed by FEMA, one group of commenters took exception to the phrase "other instructions as the Associate Director or Regional Director may issue", stating that the ability to randomly issue "other instructions" apart from the adopted Rules and Regulations will undermine the consistent and fair implementation of Public Law 100-707. Any time FEMA directs a Federal agency to perform work under Public Law 93-288, as amended by Public Law 100-707, certain administrative instructions and parameters for accomplishing the work must be included. Because those items are included in § 206.7, Implementation of assistance from other Federal agencies, this comment has been accepted and the phrase deleted.

Another comment indicated that a provision should be included for local governments to make requests directly to FEMA to direct other Federal agencies to provide assistance. Section

206.5 sets forth the kinds of assistance that may be provided under a major disaster or emergency, not the channel for identifying or requesting such assistance. In keeping with the intent of the law that assistance must be supplemental to both State and local efforts, all requests for assistance under the Stafford Act must be channeled through the State.

4. Nondiscrimination in Disaster Assistance—Section 206.11

It was suggested that the paragraph be amended to prohibit discrimination on the basis of political affiliation. The contributor fears that subrecipients may be denied assistance by higher organizational levels, of a different political persuasion, through which the assistance must pass. The language of the Stafford Act does not allow the inclusion of additional causes. In practice, however, FEMA would expect all assistance to be rendered in a fair, impartial, and non-partisan manner.

5. Recovery of Assistance—Section 206.15

Section 317 of the Stafford Act provides a new authority, not included in previous disaster legislation, for recovery of monies expended in providing Federal assistance when it is determined that any person intentionally caused the condition which resulted in a major disaster or emergency declaration.

6. Audits and Investigations—Section 206.16

Section 318 of the Act is a new authority which permits FEMA to (a) conduct audits and investigations necessary to assure compliance with the Act, (b) examine the books and records of any person related to activity funded under the Act, and (c) require audits by State and local governments in connection with assistance under the Act when necessary to assure compliance with the Act or related activities. Although the provisions of section 318(c) would allow FEMA to supplant the requirements of the Single Audit Act, and require audits by State and local governments, FEMA has decided to comply with the requirements of the Single Audit Act and not to implement those portions of this subsection of the Stafford Act which are inconsistent with the mandates of the Single Audit Act.

7. Emergency Mass Care—Section 206.17

Commenters felt this section should be deleted in its entirety because they feel it restricts the rights of States and local governments to provide the full range of essential assistance authorized in other sections of the Act. Since the subject is covered in the appropriate FEMA handbooks, it is being deleted from subpart A of these regulations.

8. Payments to States—Section 206.18

Commenters objected to the use of the term "final claims" stating that it was inconsistent with regulations published by FEMA in § 206.203 and § 206.205 of the Public Assistance regulations in subpart G. Payments to States can be made for both Individual Assistance and Public Assistance programs, with differences attributable to each program process. Section 206.18 has been deleted in its entirety and payments to States will be included in the appropriate sections of the program regulations.

The Declaration Process (Subpart B)

This subpart outlines the process by which a major disaster or emergency may be declared, including additional actions which may result after a declaration.

1. Preliminary Damage Assessment—Section 206.33

As part of a continuing effort to streamline the disaster declaration process, FEMA is encouraging one combined damage assessment by State and Federal officials, prior to a Governor's request. It is believed that this provides a more efficient means of determining whether or not a situation warrants supplemental assistance, by providing both the Governor and FEMA with the same information on which to base a decision.

All commenters wanted to mandate local government participation on PDA terms. FEMA has always been an advocate of local participation on damage assessment teams; however, experience has shown that this is not always possible. If a local representative is required by regulation, and none is available, it could prevent a given area from being surveyed, thus impeding the declaration process. Revision has been made in the language of § 206.33(b) to strongly encourage such participation.

2. Request for Utilization of DOD Resources—Section 206.34

A new authority under the Stafford Act permits emergency assistance to be provided by Department of Defense for 10 days during the immediate aftermath of an incident which may ultimately qualify for a major disaster or emergency declaration. The assistance must be requested by the Governor to the FEMA Associate Director. If justified, FEMA will direct the DOD through mission assignment to provide personnel and equipment to accomplish the task. The 75 percent Federal share of the cost of such assistance will be paid from funds appropriated for disaster relief under the Stafford Act. The remaining 25 percent will be paid by the State and local governments. This assistance will not supplant assistance provided by DOD or other Federal agencies under separate authorities.

Before discussing the comments, it should be reiterated that this section of the Act authorizes pre-declaration activities by Department of Defense personnel of a limited emergency nature and does not in any way affect assistance available by any arm of DOD after a disaster declaration. Prior to the enactment of Public Law 100–707, no assistance, except Fire Suppression, could be made available under Public Law 93–288 until a declaration was made by the President. The Stafford Act now makes an exception by allowing emergency work essential to the preservation of life and property, caused by an incident that may ultimately qualify for a major disaster or emergency.

Four comments were submitted in reference to this section. One objected to the use of the term "imminent" threats in subparagraph (a), stating that the law allows any emergency work which is essential for the preservation of life and property. Congressman Stangeland, one of the sponsors of H.R. 2707, 100th Cong., 2d Session, and a member of the House Committee for Public Works and Transportation, speaking before the House on October 21, 1988, stated the intent of this section of the law, as follows:

> Another significant improvement in the bill is the establishment of a new authority for the President to involve the services of the Department of Defense in responding to crisis situations. This new authority, proposed by Congressman Trent Lott of Mississippi, would be available during the immediate aftermath of a natural catastrophe.

FEMA believes that the intent of Congress was to provide immediate action by DOD when the impact was so severe that it could not be dealt with effectively by the State or local governments and the threat was so great that response could not be delayed until the declaration process could be completed. In response to the comment, however, FEMA has deleted the word.

A second comment concerned the 48-hour time limit for submitting requests prescribed in subparagraph (b). It was cited as too restrictive because the need might not be apparent within that time

period. As noted by Mr. Stangeland, the section applies to crisis situations, and in most cases the need is readily apparent. FEMA has amended subparagraph (b) to include a waiver provision to allow for unusual circumstances where the provisions of this section of the Act would be required.

One individual felt that local governments should be permitted to make a request to FEMA for DOD assistance, and that either a State or local government should be permitted to request assistance by a Federal agency other than DOD. The Stafford Act authorizes pre-declaration assistance by DOD only; and it clearly states that a request for such assistance must come from the Governor of the affected State. Local government officials who have an identified need for such assistance should make this known to State officials through the proper channels.

The last comment concerned the prohibition, in subparagraph (e), on work that falls within the statutory authorities of DOD or another Federal agency. Federal disaster assistance under Public Law 93–288, as amended, is not considered necessary when the need for assistance can be addressed by other Federal agencies under their statutory authorities. Consequently, the limits addressed in subparagraph (e) appropriately reflect the intent of Congress. Additional material has been added, however, to indicate the conditions under which DOD assistance might be approved in conjunction with the involvement of other Federal agencies.

3. Requests for Emergency Declarations—Section 206.35

One group feels that time constraints given in subparagraph (a) for submitting emergency requests should be eliminated. They point out that assistance may not be needed at the outset of a situation, but as a result of a deteriorating condition.

FEMA beleives it is consistent with the definition of emergency and the intent of the Act to prescribe the time limits contained in the interim regulations. The regulations have been amended, however, to provide some leeway for unexpected circumstances.

One person suggested that a provision should be included in subparagraph (a) to allow local governments to request an emergency declaration, if a State refuses to do so within 48 hours after being notified by the local government of its need The Act allows only for a request from the Governor of an affected State. Since Federal response is supplemental to the combined efforts of a State and its local governments, an incident might be beyond a local government's capability but not beyond the State's response. In such a case, an emergency declaration would not be warranted.

Section 501(b) of the Act does provide for an emergency declaration without a request from the Governor, but only for those situations for which the Federal government exercises exclusive or preeminent responsibility and authority for response. In the event of such an incident, a local government may make the situation known to the appropriate FEMA Regional Director, who, after investigating the circumstances, may initiate a recommendation, if warranted. The regulation has been changed to make this clear.

The commenters want the certification by the Governor of the non-Federal share of costs eliminated from the requirements for an emergency request listed in subparagraph (c). FEMA agrees that the certification is not mandated by Title V of the Act, and has eliminated the requirement at (c)(5) of the interim regulations. Title V does, however, include a provision for cost sharing by State and local governments. FEMA will review each emergency situation and, where appropriate, cost sharing percentages will be included in the declaration letter and in the FEMA-State Agreement for the emergency declaration. It should be noted that in most situations, FEMA expects to provide 75 percent of eligible costs. FEMA feels this is in accordance with Congressional intent since an earlier provision for a 100 percent Federal contribution in emergency declarations was changed in the final version of the bill. In a modified emergency declaration where the situation is a unique Federal responsibility, the Federal share may be more than 75 percent. It is anticipated that such a declaration would be extremely rare. Such a declaration would be a deviation from normal experience and would have to be evaluated on a case-by-case basis.

4. Requests for Major Disaster Declarations—Section 206.36

The Stafford Act establishes statutory provisions for cost sharing by State and local governments. The procedures for the Governor's request have been amended to include a commitment that the State and local governments will assume the non-Federal share of costs required under the Act.

Commenters want to eliminate the requirement in subparagraph (c)(3) that the Governor must state specifically those activities for which no Federal funding will be requested. This was contained in prior regulations before there was a statutory provision for cost sharing. FEMA agrees with the suggestion, and the language has been eliminated.

Commenters objected to the requirement in subparagraph (c)(5) that additional commitments will be required from the Governor for those disasters which do not involve programs with cost sharing provisions. FEMA has agreed to eliminate the requirement since the specific language of the law only addresses a commitment to cost share. The Governor's certification of compliance with cost-sharing requirements will satisfy the need for a State and local commitment, including the requirement that the State's commitment must be a significant proportion of the combined State and local contribution.

5. Processing Requests for Declaration of a Major Disaster or Emergency—Section 206.37

Section 320 of the Act stipulates that an arithmetic formula or sliding scale may not be used as the sole basis for denying assistance. FEMA has included a list of factors in § 206.37 which will be used to evaluate all requests for a declaration of major disaster or emergency.

One commenter took exception to the last sentence of subparagraph (c)(1) which stated that mathematic formulas may be considered as indicators only and not the sole basis for determining if assistance will be provided. The commenter suggests that this be eliminated. FEMA listed many factors that will be used to evaluate a request. The sentence on mathematic formulas was included to acknowledge the Congressional prohibition on using mathematic formulas as a single factor for a determination. In response to the comment, FEMA has eliminated the sentence from the regulation.

One group feels that FEMA has not expressed the intent of Congress in subparagraph (d), relating to modified Federal emergencies, by stating that an emergency will not be recommended where the authority to respond or coordinate is within the jurisdiction of one or more Federal agencies without a Presidential declaration. Again quoting Congressman Stangeland (Congressional Record—House, October 21, 1988):

> However, we do not intend for emergency declarations to be available in responding to public health problems such as disease epidemics or environmental or nuclear catastrophes for which Federal assistance is already available. Nor do we intend to interfere with existing Federal emergency

authorities or the Comprehensive Crime Control Act's law enforcement emergency assistance provisions.

FEMA feels that the Congressional intent is clear. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under the Stafford Act, the involvement of other Federal agencies would not preclude a declaration of an emergency under the Act. This language has been incorporated into the regulation.

6. Presidential Determinations—Section 206.38

It is FEMA's responsibility to gather information pertaining to assistance requested by a Governor, and provide a recommendation to the President. The ultimate decision whether to activate the Act's authorities is the President's. In response to a Governor's request for a major disaster declaration, the President may declare either a major disaster or an emergency, or deny the Governor's request. The Governor's request for an emergency, however, may result only in a declaration of an emergency or denial of the request.

7. Designation of Affected Areas and Eligible Assistance—Section 206.40

Assistance provided under a major disaster declaration may include a complete range of emergency and permanent assistance or may be limited to certain types of assistance. Assistance provided under an emergency declaration is limited only to emergency assistance necessary to save lives and protect property, public health and safety, or to lessen or avert the threat of a catastrophe.

One group of commenters thought that only the President can determine the types of assistance to be provided under a declaration and designate which areas will be included, and had the impression from the interim rule that the Associate Director could deny areas or types of assistance after they had been announced in the declaration letter. This is not FEMA's intent. These authorities have been delegated to the Director of FEMA by Executive Order 12673, dated March 23, 1989, and further redelegated to the Associate Director, State and Local Programs and Support, who is responsible for disaster assistance programs under the Act. For clarity, the announcement of types of assistance initially authorized by FEMA is included in the declaration letter. The initial designation of areas is published with the declaration announcement in the **Federal Register**. Other areas or assistance which may be added later by the Associate Director are published in subsequent **Federal Register** Notices. The wording of § 206.40(a) and (b) has been amended to clarify the process. Relative to this, § 206.42(b), pertaining to the responsibilities of the State Coordinating Officer, has been amended to note that it is the responsibility of the State to make timely notifications to local governments of the initial, and any subsequent areas designated for assistance, as well as the types of assistance authorized.

Another comment suggested that the 30-day time limit for the State to request additional assistance is not sufficient. FEMA has always started the 30-day clock on the date that the incident period closes, not on the date that it begins. In most instances, this has sufficiently extended the time to allow all affected localities to be included. If the Governor fails to submit a timely request after an incident, or there are other factors that delay the declaration, insufficient time could result. FEMA has changed the language in subparagraph (d) to allow 30 days from the termination date of the incident period, or 30 days from the date of declaration, whichever is later, along with a provision for extension where necessary.

8. Advance of Non-Federal Share—Section 206.45

Under certain limited conditions, FEMA may lend or advance a grantee the non-Federal share of assistance. FEMA interprets the "lending" and "advancing" authorities at section 319 of the Stafford Act to be identical. Therefore, FEMA considers all advances of the non-Federal share of disaster assistance to be tantamount to loans. The terms and conditions for loans and loan repayment are given in § 206.45. There is no forgiveness feature authorized under the Act; therefore, all such loans must be repaid. In compliance with the Common Rule as referenced in 44 CFR part 13, FEMA considers the "grantee" to be the State. Therefore, all loans will be to the State as the grantee. It will be the responsibility of the State to distribute and administer loans to subgrantees.

FEMA will evaluate each loan request on its own merits, considering, as an example, disaster-related expenditures incurred by the grantee over the preceding 12 months, or the impact of a catastrophic event on the budgets of State and local governments and how it affects their ability to provide continuing services to their constituents.

9. Appeals—Section 206.46

One individual feels that local governments should be allowed to appeal (1) the denial of an emergency or disaster declaration, (2) the denial of types of assistance or areas, and (3) the denial of an advance of a non-Federal share. The law recognizes the Governor as the only person who can request disaster assistance for an affected State. In the event of a declaration, the contract for disaster assistance is established between the State and FEMA. Local governments, as political jurisdictions of the State, must present their petitions to the State.

Emergency Assistance (Subpart C)

Subpart C contains a description of the assistance available after an emergency declaration and when that assistance may be authorized. The declaration process for emergencies is included in subpart B.

1. Available Assistance—Section 206.62

Title V of the Stafford Act redefines the circumstances for which an emergency may be declared and the assistance which may be provided under an emergency declaration. Assistance under an emergency declaration is limited to essential work to save and protect lives, property, health, and safety, or to lessen or avert the threat of a catastrophe.

Title V of the Act specifically identifies the kind of assistance that may be provided under an emergency declaration. The only specific Stafford Act major disaster authorities (i.e., authorized by title IV of the Act) that Congress also made available in title V are debris removal under section 407 of the Act, and temporary housing assistance under section 408 of the Act.

Commenters indicated that "coordination" should have been included in the list of available assistance. It is covered by § 206.64, Coordination of assistance; however, § 206.62 has been amended to reflect the exact language of the law.

2. Provision of Assistance—Section 206.63

It was suggested that the prohibition on assistance that has the effect of long-term recovery or permanent restoration is not indicated in title V of the Act. Congressman Tom Ridge, one of the principal architects of the legislation, speaking before the House on October 21, 1988, indicated:

A major provision in the bill encourages the use of an emergency declaration when such assistance is warranted. The assistance will be immediate and short term. Federal

expenditures in the emergency declaration title will be capped.

If longer-term solutions were needed, the initial assistance under an emergency declaration would give the Administration more time to design and enact legislation specifically tailored to the problem instead of relying upon the Act. The language of § 206.63(a) has been revised to incorporate Congressman Ridge's phrase.

Also in question was the propriety of prioritizing the order in which assistance authorized under Title V would be provided, as stipulated in the interim regulations. A prior version of the bill specified the progression of assistance; however, since it was eliminated in the final bill, FEMA has eliminated subparagraph (b) which contained the restrictions.

3. Limitation on Expenditures—Section 206.66

There is a funding cap of $5,000,000 per declaration. If it becomes necessary to exceed this limitation for any one incident, a report must be made to Congress and, if necessary, additional legislation would be proposed.

One contributor stated that the Act itself does not contain restrictive guidelines for measuring the time, or geographical, limit of a single emergency in applying the $5 million trigger, and suggested amending the rules to allow emergency declarations by locality in order to prevent inequitable distribution of the $5 million among local governments. The law looks at an "incident" within "State" as a whole; therefore, FEMA feels it is not appropriate to declare an emergency for each local entity in order to get around the $5 million limit. In events of such magnitude that more than $5 million is needed, the law provides an explicit mechanism. Where the conditions are met, FEMA will continue to provide assistance beyond the $5 million limit while simultaneously reporting to Congress as specified in the Act.

Environmental Considerations

An environmental assessment has been prepared, leading to the determination that this rule will not have a significant impact on the environment and that an Environmental Impact Statement is not required. The assessment is available for review at the Office of the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Regulatory Flexibility

FEMA has determined that this rule is not a major rule under Executive Order 12291, and will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Hence, no regulatory impact analyses have been prepared.

Federalism Assessment

In promulgating these rules, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1978 (E.O. 12612, 52 FR 41685). The purpose of the order is to assure the appropriate division of governmental responsibilities between the national government and the States. Among other provisions, this rule implements the requirement that agency rules be in accordance with the so-called common rule, adopted by FEMA at 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. These regulations conform FEMA assistance to the executive order; to describe this, a Federalism assessment has been prepared. It may be obtained or reviewed at the Office of the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Reporting Requirements

The Office of Management and Budget has approved the information collection requirements contained in subparts B and C of this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et. seq.*, and has assigned OMB Control Number 3067–0113.

List of Subjects in 44 CFR Part 206

Disaster assistance: general, the declaration process, emergency assistance, individual assistance, public assistance, the Coastal Barrier Resources Act, community disaster loans, fire suppression, and hazard mitigation.

Accordingly, FEMA is amending part 206, chapter I, subchapter D, of title 44 of the Code of Federal Regulations by adding subparts A, B, and C and revising the authority citation for the part to read as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

Subpart A—General

Subpart B—The Declaration Process

Subpart C—Emergency Assistance

* * * * *

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978 (3 CFR, 1979 p. 329); Executive Orders 12148 (3 CFR, 1980 p. 412) and 12673 [(54 FR 12571, March 28, 1989)

Subpart A—General

§ 206.1 Purpose.

The purpose of this subpart is to prescribe the policies and procedures to be followed in implementing those sections of Public Law 93–288, as amended, delegated to the Director, Federal Emergency Management Agency (FEMA).

§ 206.2 Definitions.

(a) *General.* The following definitions have general applicability throughout this part:

(1) *The Stafford Act:* The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended.

(2) *Applicant:* Individuals, families, States and local governments, or private nonprofit organizations who apply for assistance as a result of a declaration of a major disaster or emergency.

(3) *Associate Director:* The Associate Director for State and Local Programs and Support, FEMA, or his/her designated representative.

(4) *Concurrent, multiple major disasters:* In considering a request for an advance, the term concurrent multiple major disasters means major disasters which occur within a 12-month period immediately preceding the major disaster for which an advance of the non-Federal share is requested pursuant to section 319 of the Stafford Act.

(5) *Contractor:* Any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the Federal Government or a State or local agency.

(6) *Designated area:* Any emergency or major disaster-affected portion of a State which has been determined eligible for Federal assistance.

(7) *Director.* The Director, FEMA.

(8) *Disaster Recovery Manager (DRM):* The person appointed to exercise the authority of a Regional Director for a particular emergency or major disaster.

(9) *Emergency:* Any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

(10) *Federal agency:* Any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(11) *Federal Coordinating Officer (FCO):* The person appointed by the Director, or in his absence, the Deputy Director, or alternatively the Associate Director, to coordinate Federal assistance in an emergency or a major disaster.

(12) *Governor:* The chief executive of any State or the Acting Governor.

(13) *Governor's Authorized Representative (GAR):* The person empowered by the Governor to execute, on behalf of the State, all necessary documents for disaster assistance.

(14) *Hazard mitigation:* Any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

(15) *Individual assistance:* Supplementary Federal assistance provided under the Stafford Act to individuals and families adversely affected by a major disaster or an emergency. Such assistance may be provided directly by the Federal Government or through State or local governments or disaster relief organizations. For further information, see subparts D, E, and F of these regulations.

(16) *Local government:* Any county, city, village, town, district, or other political subdivision of any State; any Indian tribe or authorized tribal organization; any Alaska Native village or organization; and includes any rural community, unincorporated town or village, or other public entity for which an application for assistance is made by a State or political subdivision thereof.

(17) *Major disaster:* Any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(18) *Mission assignment:* Work order issued to a Federal agency by the Regional Director, Associate Director, or Director, directing completion by that agency of a specified task and citing funding, other managerial controls, and guidance.

(19) *Private nonprofit organization:* Any nongovernmental agency or entity that currently has:

(i) An effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under section 501 (c), (d), or (e) of the Internal Revenue Code of 1954; or

(ii) Satisfactory evidence from the State that the organization or entity is a nonprofit one organized or doing business under State law.

(20) *Public assistance:* Supplementary Federal assistance provided under the Stafford Act to State and local governments or certain private, nonprofit organizations other than assistance for the direct benefit of individuals and families. For further information, see subparts G and H of these regulations. Community Disaster Loans under section 417 of the Stafford Act and Fire Suppression Grants under section 420 of the Stafford Act are also included in Public Assistance. See subparts K and L of these regulations.

(21) *Regional Director:* A director of a regional office of FEMA, or his/her designated representative. As used in these regulations, Regional Director also means the Disaster Recovery Manager who has been appointed to exercise the authority of the Regional Director for a particular emergency or major disaster.

(22) *State:* Any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, or the Republic of the Marshall Islands.

(23) *State Coordinating Officer (SCO):* The person appointed by the Governor to act in cooperation with the Federal Coordinating Officer to administer disaster recovery efforts.

(24) *State emergency plan:* As used in section 401 or section 501 of the Stafford Act means that State plan which is designated specifically for State-level response to emergencies or major disasters and which sets forth actions to be taken by the State and local governments, including those for implementing Federal disaster assistance.

(25) *Temporary housing:* Temporary accommodations provided by the Federal Government to individuals or families whose homes are made unlivable by an emergency or a major disaster.

(26) *United States:* The 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(27) *Voluntary organization:* Any chartered or otherwise duly recognized tax-exempt local, State, or national organization or group which has provided or may provide needed services to the States, local governments, or individuals in coping with an emergency or a major disaster.

(b) *Additional definitions.* Definitions which apply to individual subparts are found in those subparts.

§ 206.3 Policy.

It is the policy of FEMA to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies by:

(a) Providing Federal assistance programs for public and private losses and needs sustained in disasters;

(b) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and local governments;

(c) Achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(d) Encouraging individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance; and

(e) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of wetlands, and environmental planning, to reduce losses from disasters.

§ 206.4 State emergency plans.

The State shall set forth in its emergency plan all responsibilities and actions specified in the Stafford Act and those regulations that are required of the State and its political subdivisions to prepare for and respond to major disasters and emergencies and to facilitate the delivery of Federal disaster assistance. Although not mandatory, prior to the adoption of the final plan, the State is encouraged to circulate the plan to local governments for review and comment.

§ 206.5 Assistance by other Federal agencies.

(a) In any declared major disaster, the Associate Director or the Regional Director may direct any Federal agency to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support State and local assistance efforts.

(b) In any declared emergency, the Associate Director or the Regional Director may direct any Federal agency to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support emergency efforts by State and local governments to save lives; protect property, public health and safety; and lessen or avert the threat of a catastrophe.

(c) In any declared major disaster or emergency, the Associate Director or the Regional Director may direct any Federal agency to provide emergency assistance necessary to save lives and to protect property, public health, and safety by:

(1) Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act;

(2) Distributing medicine, food, and other consumable supplies; or

(3) Performing work or services to provide emergency assistance authorized in the Stafford Act.

(d) Disaster assistance by other Federal agencies is subject to the coordination of the FCO. Federal agencies shall provide any reports or information about disaster assistance rendered under the provisions of these regulations or authorities independent of the Stafford Act, that the FCO or Regional Director considers necessary and requests from the agencies.

(e) Assistance furnished by any Federal agency under paragraphs (a), (b), or (c) of this section is subject to the criteria provided by the Associate Director under these regulations.

(f) Assistance under paragraphs (a), (b), or (c) of this section, when directed by the Associate Director or Regional Director, does not apply to nor shall it affect the authority of any Federal agency to provide disaster assistance independent of the Stafford Act.

(g) In carrying out the purposes of the Stafford Act, any Federal agency may accept and utilize, with the consent of the State or local government, the services, personnel, materials, and facilities of any State or local government, agency, office, or employee. Such utilization shall not make such services, materials, or facilities Federal in nature nor make the State or local government or agency an arm or agent of the Federal Government.

(h) Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

§ 206.6 Donation or loan of Federal equipment and supplies.

(a) In any major disaster or emergency, the Associate Director or the Regional Director may direct Federal agencies to donate or loan their equipment and supplies to State and local governments for use and distribution by them for the purposes of the Stafford Act.

(b) A donation or loan may include equipment and supplies determined under applicable laws and regulations to be surplus to the needs and responsibilities of the Federal Government. The State shall certify that the surplus property is usable and necessary for current disaster purposes in order to receive a donation or loan. Such a donation or loan is made in accordance with procedures prescribed by the General Services Administration.

§ 206.7 Implementation of assistance from other Federal agencies.

All directives, known as mission assignments, to other Federal agencies shall be in writing, or shall be confirmed in writing if made orally, and shall identify the specific task to be performed and the requirements or criteria to be followed. If the Federal agency is to be reimbursed, the letter will also contain a dollar amount which is not to be exceeded in accomplishing the task without prior approval of the issuing official.

§ 206.8 Reimbursement of other Federal agencies.

(a) Assistance furnished under § 206.5(a) or (b) of this subpart may be provided with or without compensation as considered appropriate by the Associate Director or Regional Director.

(b) The Associate Director or the Regional Director may not approve reimbursement of costs incurred while performing work pursuant to disaster assistance authorities independent of the Stafford Act.

(c) *Expenditures eligible for reimbursement.* The Associate Director or the Regional Director may approve reimbursement of the following costs which are incurred in providing requested assistance.

(1) Overtime, travel, and per diem of permanent Federal agency personnel.

(2) Wages, travel, and per diem of temporary Federal agency personnel assigned solely to performance of services directed by the Associate Director or the Regional Director in the major disaster or emergency area designated by the Regional Director.

(3) Travel and per diem of Federal military personnel assigned solely to the

performance of services directed by the Associate Director or the Regional Director in the major disaster or emergency area designated by the Regional Director.

(4) Cost of work, services, and materials procured under contract for the purposes of providing assistance directed by the Associate Director or the Regional Director.

(5) Cost of materials, equipment, and supplies (including transportation, repair, and maintenance) from regular stocks used in providing directed assistance.

(6) All costs incurred which are paid from trust, revolving, or other funds, and whose reimbursement is required by law.

(7) Other costs submitted by an agency with written justification or otherwise agreed to in writing by the Associate Director or the Regional Director and the agency.

(d) *Procedures for reimbursement.* Federal agencies performing work under a mission assignment will submit requests for reimbursement, as follows:

(1) Federal agencies may submit requests for reimbursement of amounts greater than $1,000 at any time. Requests for lesser amounts may be submitted only quarterly. An agency shall submit a final accounting of expenditures after completion of the agency's work under each directive for assistance. The time limit and method for submission of reimbursement requests will be stipulated in the mission assignment letter.

(2) An agency shall document its request for reimbursement with specific details on personnel services, travel, and all other expenses by object class as specified in OMB Circular A–12 and by any other subobject class used in the agency's accounting system. Where contracts constitute a significant portion of the billings, the agency shall provide a listing of individual contracts and their associated costs.

(3) Reimbursement requests shall cite the specific mission assignment under which the work was performed, and the major disaster or emergency identification number. Requests for reimbursement of costs incurred under more than one mission assignment may not be combined for billing purposes.

(4) Unless otherwise agreed, an agency shall direct all requests for reimbursement to the Regional Director of the region in which the costs were incurred.

(5) A Federal agency requesting reimbursement shall retain all financial records, supporting documents, statistical records, and other records pertinent to the provision of services or use of resources by that agency. These materials shall be accessible to duly authorized representatives of FEMA and the U.S. Comptroller General, for the purpose of making audits, excerpts, and transcripts, for a period of 3 years starting from the date of submission of the final billing.

§ 206.9 Nonliability.

The Federal Government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Stafford Act.

§ 206.10 Use of local firms and individuals.

In the expenditure of Federal funds for debris removal, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency. This shall not be considered to restrict the use of Department of Defense resources in the provision of major disaster assistance under the Stafford Act.

§ 206.11 Nondiscrimination in disaster assistance.

(a) Federal financial assistance to the States or their political subdivisions is conditioned on full compliance with 44 CFR part 7, Nondiscrimination in Federally-Assisted Programs.

(b) All personnel carrying out Federal major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(c) As a condition of participation in the distribution of assistance or supplies under the Stafford Act, or of receiving assistance under the Stafford Act, government bodies and other organizations shall provide a written assurance of their intent to comply with regulations relating to nondiscrimination.

(d) The agency shall make available to employees, applicants, participants, beneficiaries, and other interested parties such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

§ 206.12 Use and coordination of relief organizations.

(a) In providing relief and assistance under the Stafford Act, the FCO or Regional Director may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services and essential facilities, whenever the FCO or Regional Director finds that such utilization is necessary.

(b) The Associate Director is authorized to enter into agreements with the American Red Cross, The Salvation Army, the Mennonite Disaster Service, and other voluntary organizations engaged in providing relief during and after a major disaster or emergency. Any agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with § 206.11, Nondiscrimination in Disaster Assistance, and § 206.191, Duplication of Benefits, of these regulations and such other regulations as the Associate Director may issue. The FCO may coordinate the disaster relief activities of the voluntary organizations which agree to operate under his/her direction.

(c) Nothing contained in this section shall be construed to limit or in any way affect the responsibilities of the American National Red Cross as stated in Public Law 58–4.

§ 206.13 Standards and reviews.

(a) The associate Director shall establish program standards and assess the efficiency and effectiveness of programs administered under the Stafford Act by conducting annual reviews of the activities of Federal agencies and State and local governments involved in major disaster or emergency response efforts.

(b) In carrying out this provision, the Associate Director or Regional Director may direct Federal agencies to submit reports relating to their disaster assistance activities. The Associate Director or the Regional Director may request similar reports from the States relating to these activities on the part of

State and local governments. Additionally, the Associate Director or Regional Director may conduct independent investigations, studies, and evaluations as necessary to complete the reviews.

§ 206.14 Criminal and civil penalties.

(a) *Misuse of funds.* Any person who knowingly misapplies the proceeds of a loan or other cash benefit obtained under this Act shall be fined an amount equal to one and one-half times the misapplied amount of the proceeds or cash benefit.

(b) *Civil enforcement.* Whenever it appears that any person has violated or is about to violate any provision of this Act, including any civil penalty imposed under this Act, the Attorney General may bring a civil action for such relief as may be appropriate. Such action may be brought in an appropriate United States district court.

(c) *Referral to Attorney General.* The Associate Director shall expeditously refer to the Attorney General for appropriate action any evidence developed in the performance of functions under this Act that may warrant consideration for criminal prosecution.

(d) *Civil penalty.* Any individual who knowingly violates any order or regulation issued under this Act shall be subject to a civil penalty of not more than $5,000 for each violation.

§ 206.15 Recovery of assistance.

(a) *Party liable.* Any person who intentionally causes a condition for which Federal assistance is provided under this Act or under any other Federal law as a result of a declaration of a major disaster or emergency under this Act shall be liable to the United States for the reasonable costs incurred by the United States in responding to such disaster or emergency to the extent that such costs are attributable to the intentional act or omission of such person which caused such condition. Such action shall be brought in an appropriate United States District Court.

(b) *Rendering of care.* A person shall not be liable under this section for costs incurred by the United States as a result of actions taken or omitted by such person in the course of rendering care or assistance in response to a major disaster or emergency.

§ 206.16 Audit and investigations.

(a) Subject to the provisions of chapter 75 of title 31, United States Code, and 44 CFR part 14, relating to requirements for single audits, the Associate Director or Regional Director shall conduct audits and investigations as necessary to assure compliance with the Stafford Act, and in connection therewith may question such persons as may be necessary to carry out such audits and investigations.

(b) For purposes of audits and investigations under this section, FEMA or State auditors, the Governor's Authorized Representative, the Regional Director, the Associate Director, and the Comptroller General of the United States, or their duly authorized representatives, may inspect any books, documents, papers, and records of any person relating to any activity undertaken or funded under the Stafford Act.

§ 206.17 Effective date.

These regulations are effective for all major disasters or emergencies declared on or after November 23, 1988.

§§ 206.18–206.30 [Reserved]

Subpart B—The Declaration Process

§ 206.31 Purpose.

The purpose of this subpart is to describe the process leading to a Presidential declaration of a major disaster or an emergency and the actions triggered by such a declaration.

§ 206.32 Definitions.

All definitions in the Stafford Act and in § 206.2 apply. In addition, the following definitions apply:

(a) *Appeal:* A request for reconsideration of a determination on any action related to Federal assistance under the Stafford Act and these regulations. Specific procedures for appeals are contained in the relevant subparts of these regulations.

(b) *Commitment:* A certification by the Governor that the State and local governments will expend a reasonable amount of funds to alleviate the effects of the major disaster or emergency, for which no Federal reimbursement will be requested.

(c) *Disaster Application Center:* A center established in a centralized location within the disaster area for individuals, families, or businesses to apply for disaster aid.

(d) *FEMA-State Agreement:* A formal legal document stating the understandings, commitments, and binding conditions for assistance applicable as the result of the major disaster or emergency declared by the President.

(e) *Incident:* Any condition which meets the definition of major disaster or emergency as set forth in § 206.2 which causes damage or hardship that may result in a Presidential declaration of a major disaster or an emergency.

(f) *Incident period:* The time interval during which the disaster-causing incident occurs. No Federal assistance under the Act shall be approved unless the damage or hardship to be alleviated resulted from the disaster-causing incident which took place during the incident period or was in anticipation of that incident. The incident period will be established by FEMA in the FEMA-State Agreement and published in the Federal Register.

§ 206.33 Preliminary damage assessment.

The preliminary damage assessment (PDA) process is a mechanism used to determine the impact and magnitude of damage and the resulting unmet needs of individuals, businesses, the public sector, and the community as a whole. Informtion collected is used by the State as a basis for the Governor's request, and by FEMA to document the recommendation made to the President in response to the Governor's request. It is in the best interest of all parties to combine State and Federal personnel resources by performing a joint PDA prior to the initiation of a Governor's request, as follows.

(a) *Preassessment by the State.* When an incident occurs, or is imminent, which the State official responsible for disaster operations determines may be beyond the State and local government capabilities to respond, the State will request the Regional Director to perform a joint FEMA-State preliminary damage assessment. It is not anticipated that all occurrences will result in the requirement for assistance; therefore, the State will be expected to verify their initial information, in some manner, before requesting this support.

(b) *Damage assessment teams.* Damage assessment teams will be composed of at least one representative of the Federal Government and one representative of the State. A local government representative, familiar with the extent and location of damage in his/her community, should also be included, if possible. Other State and Federal agencies, and voluntary relief organizations may also be asked to participate, as needed. It is the State's responsibility to coordinate State and local participation in the PDA and to ensure that the participants receive timely notification concerning the schedule. A FEMA official will brief team members on damage criteria, the kind of information to be collected for the particular incident, and reporting requirements.

(c) *Review of findings.* At the close of the PDA, FEMA will consult with State

officials to discuss findings and reconcile any differences.

(d) *Exceptions.* The requirement for a joint PDA may be waived for those incidents of unusual severity and magnitude that do not require field damage assessments to determine the need for supplemental Federal assistance under the Act, or in such other instances determined by the Regional Director upon consultation with the State. It may be necessary, however, to conduct an assessment to determine unmet needs for managerial response purposes.

§ 206.34 Request for utilization of Department of Defense (DOD) resources.

(a) *General.* During the immediate aftermath of an incident which may ultimately qualify for a Presidential declaration of a major disaster or emergency, when threats to life and property are present which cannot be effectively dealt with by the State or local governments, the Associate Director may direct DOD to utilize DOD personnel and equipment for removal of debris and wreckage and temporary restoration of essential public facilities and services.

(b) *Request process.* The Governor of a State, or the Acting Governor in his/her absence, may request such DOD assistance. The Governor should submit the request to the Associate Director through the appropriate Regional Director to ensure prompt acknowledgment and processing. The request must be submitted within 48 hours of the occurrence of the incident. Requests made after that time may still be considered if information is submitted indicating why the request for assistance could not be made during the initial 48 hours. The request shall include:

(1) Information describing the types and amount of DOD emergency assistance being requested;

(2) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(3) A finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments and that Federal assistance is necessary for the preservation of life and property;

(4) A certification by the Governor that the State and local government will reimburse FEMA for the non-Federal share of the cost of such work; and

(5) An agreement:

(i) To provide all lands, easements and rights-of-way necessary to accomplish the approved work without cost to the United States;

(ii) To hold and save the United States free from damages due to the requested work, and to indemnify the Federal government against any claims arising from such work; and

(iii) To assist DOD in all support and local jurisdictional matters.

(c) *Processing the request.* Upon receipt of the request, the Regional Director shall gather adequate information to support a recommendation and forward it to the Associate Director. If the Associate Director determines that such work is essential to save lives and protect property, he/she will issue a mission assignment to DOD authorizing direct Federal assistance to the extent deemed appropriate.

(d) *Implementation of assistance.* The performance of emergency work may not exceed a period of 10 days from the date of the mission assignment.

(e) *Limits.* Generally, no work shall be approved under this section which falls within the statutory authority of DOD or another Federal agency. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under this section of the Stafford Act, the involvement of other Federal agencies would not preclude the authorization of DOD assistance by the Associate Director.

(f) *Federal share.* The Federal share of assistance under this section shall be not less than 75 percent of the cost of eligible work.

(g) *Project management.* DOD shall ensure that the work is completed in accordance with the approved scope of work, costs, and time limitations in the mission assignment. DOD shall also keep the Regional Director and the State advised of work progress and other project developments. It is the responsibility of DOD to ensure compliance with applicable Federal, State and local legal requirements. A final report will be submitted to the Regional Director upon termination of all direct Federal assistance work. Final reports shall be signed by a representative of DOD and the State. Once the final eligible cost is determined, DOD will request reimbursement from FEMA and FEMA will submit a bill to the State for the non-Federal share of the mission assignment.

(h) *Reimbursement of DOD.* Reimbursement will be made in accordance with § 206.8 of these regulations.

§ 206.35 Requests for emergency declarations.

(a) When an incident occurs or threatens to occur in a State, which would not qualify under the definition of a major disaster, the Governor of a State, or the Acting Governor in his/her absence, may request that the President declare an emergency. The Governor should submit the request to the President through the appropriate Regional Director to ensure prompt acknowledgment and processing. The request must be submitted within 5 days after the need for assistance under title V becomes apparent, but no longer than 30 days after the occurrence of the incident, in order to be considered. The period may be extended by the Associate Director provided that a written request for such extension is made by the Governor, or Acting Governor, during the 30-day period immediately following the incident. The extension request must stipulate the reason for the delay.

(b) The basis for the Governor's request must be the finding that the situation:

(1) Is of such severity and magnitude that effective response is beyond the capability of the State and the affected local government(s); and

(2) Requires supplementary Federal emergency assistance to save lives and to protect property, public health and safety, or to lessen or avert the threat of a disaster.

(c) In addition to the above findings, the complete request shall include:

(1) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(2) Information describing the State and local efforts and resources which have been or will be used to alleviate the emergency;

(3) Information describing other Federal agency efforts and resources which have been or will be used in responding to this incident; and

(4) Identification of the type and extent of additional Federal aid required.

(d) *Modified declaration for Federal emergencies.* The requirement for a Governor's request under paragraph (a) of this section can be waived when an emergency exists for which the primary responsibility rests in the Federal government because the emergency involves a subject area for which, under the Constitution or laws of the United States, the Federal government exercises exclusive or preeminent responsibility and authority. Any party may bring the existence of such a

situation to the attention of the FEMA Regional Director. Any recommendation for a Presidential declaration of emergency in the absence of a Governor's request must be initiated by the Regional Director or transmitted through the Regional Director by another Federal agency. In determining that such an emergency exists, the Associate Director or Regional Director shall consult the Governor of the affected State, if practicable.

(e) *Other authorities.* It is not intended for an emergency declaration to preempt other Federal agency authorities and/or established plans and response mechanisms in place prior to the enactment of the Stafford Act.

§ 206.36 Requests for major disaster declarations.

(a) When a catastrophe occurs in a State, the Governor of a State, or the Acting Governor in his/her absence, may request a major disaster declaration. The Governor should submit the request to the President through the appropriate Regional Director to ensure prompt acknowledgment and processing. The request must be submitted within 30 days of the occurrence of the incident in order to be considered. The 30-day period may be extended by the Associate Director, provided that a written request for an extension is submitted by the Governor, or Acting Governor, during this 30-day period. The extension request will stipulate reasons for the delay.

(b) The basis for the request shall be a finding that:

(1) The situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments; and

(2) Federal assistance under the Act is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses.

(c) In addition to the above findings, the complete request shall include:

(1) Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan;

(2) An estimate of the amount and severity of damages and losses stating the impact of the disaster on the public and private sector;

(3) Information describing the nature and amount of State and local resources which have been or will be committed to alleviate the results of the disaster;

(4) Preliminary estimates of the types and amount of supplementary Federal disaster assistance needed under the Stafford Act; and

(5) Certification by the Governor that State and local government obligations and expenditures for the current disaster will comply with all applicable cost sharing requirements of the Stafford Act.

(d) For those catastrophes of unusual severity and magnitude when field damage assessments are not necessary to determine the requirement for supplemental Federal assistance, the Governor or Acting Governor may send an abbreviated written request through the Regional Director for a declaration of a major disaster. This may be transmitted in the most expeditious manner available. In the event the FEMA Regional Office is severely impacted by the catastrophe, the request may be addressed to the Director of FEMA. The request must indicate a finding in accordance with § 206.36(b), and must include as a minimum the information requested by § 206.36 (c)(1), (c)(3), and (c)(5). Upon receipt of the request, FEMA shall expedite the processing of reports and recommendations to the President. Notification to the Governor of the Presidential declaration shall be in accordance with 44 CFR 206.39. The Associate Director shall assure that documentation of the declaration is later assembled to comply fully with these regulations.

§ 206.37 Processing requests for declarations of a major disaster or emergency.

(a) *Acknowledgment.* The Regional Director shall provide written acknowledgment of the Governor's request.

(b) *Regional summary.* Based on information obtained by FEMA/State preliminary damage assessments of the affected area(s) and consultations with appropriate State and Federal officials and other interested parties, the Regional Director shall promptly prepare a summary of the PDA findings. The data will be analyzed and submitted with a recommendation to the Associate Director. The Regional Analysis shall include a discussion of State and local resources and capabilities, and other assistance available to meet the major disaster or emergency-related needs.

(c) *FEMA recommendation.* Based on all available information, the Director shall formulate a recommendation which shall be forwarded to the President with the Governor's request.

(1) *Major disaster recommendation.* The recommendation will be based on a finding that the situation is or is not of such severity and magnitude as to be beyond the capabilities of the State and its local governments. It will also contain a determination of whether or not supplemental Federal assistance under the Stafford Act is necessary and appropriate. In developing a recommendation, FEMA will consider such factors as the amount and type of damages; the impact of damages on affected individuals, the State, and local governments; the available resources of the State and local governments, and other disaster relief organizations; the extent and type of insurance in effect to cover losses; assistance available from other Federal programs and other sources; imminent threats to public health and safety; recent disaster history in the State; hazard mitigation measures taken by the State or local governments, especially implementation of measures required as a result of previous major disaster declarations; and other factors pertinent to a given incident.

(2) *Emergency recommendation.* The recommendation will be based on a report which will indicate whether or not Federal emergency assistance under section 502 of the Stafford Act is necessary to supplement State and local efforts to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe. Only after it has been determined that all other resources and authorities available to meet the crisis are inadequate, and that assistance provided in section 502 of the Stafford Act would be appropriate, will FEMA recommend an emergency declaration to the President.

(d) *Modified Federal emergency recommendation.* The recommendation will be based on a report which will indicate that an emergency does or does not exist for which assistance under section 502 of the Stafford Act would be appropriate. An emergency declaration will not be recommended in situations where the authority to respond or coordinate is within the jurisdiction of one or more Federal agencies without a Presidential declaration. However, where there are significant unmet needs of sufficient severity and magnitude, not addressed by other assistance, which could appropriately be addressed under the Stafford Act, the involvement of other Federal agencies would not preclude a declaration of an emergency under the Act.

§ 206.38 Presidential determination.

(a) The Governor's request for a major disaster declaration may result in either a Presidential declaration of a major

disaster or an emergency, or denial of the Governor's request.

(b) Thew Governor's request for an emergency declaration may result only in a Presidential declaration of an emergency, or denial of the Governor's request.

§ 206.39 Notification.

(a) The Governor will be promptly notified by the Director or his/her designee of a declaration by the President that an emergency or a major disaster exists. FEMA also will notify other Federal agencies and other interested parties.

(b) The Governor will be promptly notified by the Director or his/her designee of a determination that the Governor's request does not justify the use of the authorities of the Stafford Act.

(c) Following a major disaster or emergency declaration, the Regional Director or Associate Director will promptly notify the Governor of the designations of assistance and areas eligible for such assistance.

§ 206.40 Designation of affected areas and eligible assistance.

(a) *Eligible assistance.* The Associate Director has been delegated authority to determine and designate the types of assistance to be made available. The initial designations will usually be announced in the declaration. Determinations by the Associate Director of the types and extent of FEMA disaster assistance to be provided are based upon findings whether the damage involved and its effects are of such severity and magnitude as to be beyond the response capabilities of the State, the affected local governments, and other potential recipients of supplementary Federal assistance. The Associate Director may authorize all, or only particular types of, supplementary Federal assistance requested by the Governor.

(b) *Areas eligible to receive assistance.* The Associate Director also has been delegated authority to designate the disaster-affected areas eligible for supplementary Federal assistance under the Stafford Act. These designations shall be published in the **Federal Register**. A disaster-affected area designated by the Associate Director includes all local government jurisdictions within its boundaries. The Associate Director may, based upon damage assessments in any given area, designate all or only some of the areas requested by the Governor for supplementary Federal assistance.

(c) *Requests for additional designations after a declaration.* After a declaration by the President, the Governor, or the GAR, may request that additional areas or types of supplementary Federal assistance be authorized by the Associate Director. Such requests shall be accompanied by appropriate verified assessments and commitments by State and local governments to demonstrate that the requested designations are justified and that the unmet needs are beyond State and local capabilities without supplementary Federal assistance. Additional assistance or areas added to the declaration will be published in the **Federal Register**.

(d) *Time limits to request.* In order to be considered, all supplemental requests under paragraph (c) of this section must be submitted within 30 days from the termination date of the incident, or 30 days after the declaration, whichever is later. The 30-day period may be extended by the Associate Director provided that a written request is made by the appropriate State official during this 30-day period. The request must include justification of the State's inability to meet the deadline.

§ 206.41 Appointment of disaster officials.

(a) *Federal Coordinating Officer.* Upon a declaration of a major disaster or of an emergency by the President, the Director, or in his absence, the Deputy Director, or alternately, the Associate Director shall appoint an FCO who shall initiate action immediately to assure that Federal assistance is provided in accordance with the declaration, applicable laws, regulations, and the FEMA-State Agreement.

(b) *Disaster Recovery Manager.* The Regional Director shall designate a DRM to exercise all the authority of the Regional Director in a major disaster or an emergency.

(c) *State Coordinating Officer.* Upon a declaration of a major disaster or of an emergency, the Governor of the affected State shall designate an SCO who shall coordinate State and local disaster assistance efforts with those of the Federal Government.

(d) *Governor's Authorized Representative.* In the FEMA-State Agreement, the Governor shall designate the GAR, who shall administer Federal disaster assistance programs on behalf of the State and local governments and other grant or loan recipients. The GAR is responsible for the State compliance with the FEMA-State Agreement.

§ 206.42 Responsibilities of coordinating officers.

(a) Following a declaration of a major disaster or an emergency, the FCO shall:

(1) Make an initial appraisal of the types of assistance most urgently needed;

(2) In coordination with the SCO, establish field offices and Disaster Application Centers as necessary to coordinate and monitor assistance programs, disseminate information, accept applications, and counsel individuals, families and businesses concerning available assistance;

(3) Coordinate the administration of relief, including activities of State and local governments, activities of Federal agencies, and those of the American Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary relief organizations which agree to operate under the FCO's advice and direction;

(4) Undertake appropriate action to make certain that all of the Federal agencies are carrying out their appropriate disaster assistance roles under their own legislative authorities and operational policies; and

(5) Take other action, consistent with the provisions of the Stafford Act, as necessary to assist citizens and public officials in promptly obtaining assistance to which they are entitled.

(b) The SCO coordinates State and local disaster assistance efforts with those of the Federal Government working closely with the FCO. The SCO is the principal point of contact regarding coordination of State and local disaster relief activities, and implementation of the State emergency plan. The functions, responsibilities, and authorities of the SCO are set forth in the State emergency plan. It is the responsibility of the SCO to ensure that all affected local jurisdictions are informed of the declaration, the types of assistance authorized, and the areas eligible to receive such assistance.

§ 206.43 Emergency support teams.

The Federal Coordinating Officer may activate emergency support teams, composed of Federal program and support personnel, to be deployed into an area affected by a major disaster or emergency. These emergency support teams assist the FCO in carrying out his/her responsibilities under the Stafford Act and these regulations. Any Federal agency can be directed to detail personnel within the agency's administrative jurisdiction to temporary duty with the FCO. Each detail shall be without loss of seniority, pay, or other employee status.

§ 206.44 FEMA-State Agreements.

(a) *General.* Upon the declaration of a major disaster or an emergency, the

Governor, acting for the State, and the FEMA Regional Director or his/her designee, acting for the Federal Government, shall execute a FEMA-State Agreement. The FEMA-State Agreement states the understandings, commitments, and conditions for assistance under which FEMA disaster assistance shall be provided. This Agreement imposes binding obligations on FEMA, States, their local governments, and private nonprofit organizations within the States in the form of conditions for assistance which are legally enforceable. No FEMA funding will be authorized or provided to any grantees or other recipients, nor will direct Federal assistance be authorized by mission assignment, until such time as this Agreement for the Presidential declaration has been signed, except where it is deemed necessary by the Regional Director to begin the process of providing essential emergency services or temporary housing.

(b) *Terms and conditions.* This Agreement describes the incident and the incident period for which assistance will be made available, the type and extent of the Federal assistance to be made available, and contains the commitment of the State and local government(s) with respect to the amount of funds to be expended in alleviating damage and suffering caused by the major disaster or emergency. The Agreement also contains such other terms and conditions consistent with the declaration and the provisions of applicable laws, Executive Order and regulations.

(c) *Provisions for modification.* In the event that the conditions stipulated in the original Agreement are changed or modified, such changes will be reflected in properly executed amendments to the Agreement, which may be signed by the GAR and the Regional Director or his/her designee for the specified major disaster or emergency. Amendments most often occur to close or amend the incident period, to add forms of assistance not originally authorized, or to designate additional areas eligible for assistance.

(d) In a modified declaration for a Federal emergency, a FEMA-State Agreement may or may not be required based on the type of assistance being provided.

§ 206.45 Loans of non-Federal share.

(a) *Conditions for making loans.* At the request of the Governor, the Associate Director may lend or advance to a State, either for its own use or for the use of public or private nonprofit applicants for disaster assistance under the Stafford Act, the portion of assistance for which the State or other eligible disaster assistance applicant is responsible under the cost-sharing provisions of the Stafford Act in any case in which:

(1) The State or other eligible disaster assistance applicant is unable to assume their financial responsibility under such cost sharing provisions:

(i) As a result of concurrent, multiple major disasters in a jurisdiction, or

(ii) After incurring extraordinary costs as a result of a particular disaster;

(2) The damages caused by such disasters or disaster are so overwhelming and severe that it is not possible for the State or other eligible disaster assistance applicant to immediately assume their financial responsibility under the Act; and

(3) The State and the other eligible disaster applicants are not delinquent in payment of any debts to FEMA incurred as a result of Presidentially declared major disasters or emergencies.

(b) *Repayment of loans.* Any loan made to a State under paragraph (a) of this section must be repaid to the United States. The Governor must include a repayment schedule as part of the request for advance.

(1) The State shall repay the loan (the principal disbursed plus interest) in accordance with the repayment schedule approved by the Associate Director.

(2) If the State fails to make payments in accordance with the approved repayment schedule, FEMA will offset delinquent amounts against the current, prior, or any subsequent disasters, or monies due the State under other FEMA programs, in accordance with the established Claims Collection procedures.

(c) *Interest.* Loans or advances under paragraph (a) of this section shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current market yields on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the reimbursement period of the loan or advance. Simple interest will be computed from the date of the disbursement of each drawdown of the loan/advance by the State based on 365 days/year.

§ 206.46 Appeals.

(a) *Denial of declaration request.* When a request for a major disaster declaration or for any emergency declaration is denied, the Governor may appeal the decision. An appeal must be made within 30 days after the date of the letter denying the request. This one-time request for reconsideration, along with appropriate additional information, is submitted to the President through the appropriate Regional Director. The processing of this request is similar to the initial request.

(b) *Denial of types of assistance or areas.* In those instances when the type of assistance or certain areas requested by the Governor are not designated or authorized, the Governor, or the GAR, may appeal the decision. An appeal must be submitted in writing within 30 days of the date of the letter denying the request. This one-time request for reconsideration, along with justification and/or additional information, is sent to the Associate Director through the appropriate Regional Director.

(c) *Denial of advance of non-Federal share.* In those instances where the Governor's request for an advance is denied, the Governor may appeal the decision. An appeal must be submitted in writing within 30 days of the date of the letter denying the request. This one-time request for reconsideration, along with justification and/or additional information, is sent to the Associate Director through the appropriate Regional Director.

(d) *Extension of time to appeal.* The 30-day period referred to in paragraphs (a), (b), or (c) of this section may be extended by the Associate Director provided that a written request for such an extension, citing reasons for the delay, is made during this 30-day period, and if the Associate Director agrees that there is a legitimate basis for extension of the 30-day period. Only the Governor may request a time extension for appeals covered in paragraphs (a) and (c) of this section. The Governor, or the GAR if one has been named, may submit the time extension request for appeals covered in paragraph (b) of this section.

§§ 206.47–206.60 [Reserved]

Subpart C—Emergency Assistance

§ 206.61 Purpose.

The purpose of this subpart is to identify the forms of assistance which may be made available under an emergency declaration.

§ 206.62 Available assistance.

In any emergency declaration, the Associate Director or Regional Director may provide assistance, as follows:

(a) Direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and

advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;

(b) Coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(c) Provide technical and advisory assistance to affected State and local governments for:

(1) The performance of essential community services;

(2) Issuance of warnings of risks or hazards;

(3) Public health and safety information, including dissemination of such information;

(4) Provision of health and safety measures; and

(5) Management, control, and reduction of immediate threats to public health and safety;

(d) Provide emergency assistance under the Stafford Act through Federal agencies;

(e) Remove debris in accordance with the terms and conditions of section 407 of the Stafford Act;

(f) Provide temporary housing assistance in accordance with the terms and conditions of section 408 of the Stafford Act; and

(g) Assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

§ 206.63 Provision of assistance.

Assistance authorized by an emergency declaration is limited to immediate and short-term assistance, essential to save lives, to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

§ 206.64 Coordination of assistance.

After an emergency declaration by the President, all Federal agencies, voluntary organizations, and State and local governments providing assistance shall operate under the coordination of the Federal Coordinating Officer.

§ 206.65 Cost sharing.

The Federal share for assistance provided under this title shall not be less than 75 percent of the eligible costs.

§ 206.66 Limitation on expenditures.

Total assistance provided in any given emergency declaration may not exceed $5,000,000, except when it is determined by the Associate Director that:

(a) Continued emergency assistance is immediately required;

(b) There is a continuing and immediate risk to lives, property, public health and safety; and

(c) Necessary assistance will not otherwise be provided on a timely basis.

§ 206.67 Requirement when limitation is exceeded.

Whenever the limitation described in § 206.66 is exceeded, the Director must report to the Congress on the nature and extent of continuing emergency assistance requirements and shall propose additional legislation if necessary.

§§ 206.68–206.100 [Reserved]

Dated: January 6, 1990.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AB37

Disaster Assistance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is today publishing final rules at 44 CFR Part 206 (Subpart G, H, J, K, and L) to implement the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended. The Disaster Relief Act of 1974 was amended by the Disaster Relief and Emergency Assistance Amendments of 1988, Pub. L. 100–707. These subparts pertain primarily to disaster assistance to State and local governments and certain private nonprofit organizations. As appropriate, comments on the Interim Rule, published March 21, 1989, have been incorporated in this final rule.

DATES: These final rules will be effective on February 22, 1990.

FOR FURTHER INFORMATION CONTACT: Charles B. Stuart, Program Officer, Disaster Assistance Programs, State and Local Programs and Support at 202–646–3691, for subparts G, H, and J; or Eugene Morath, Program Officer, Disaster Assistance Programs, State and Local Programs and Support at 202–646–3683, for subparts K and L.

SUPPLEMENTARY INFORMATION:

General Information

The President signed the Disaster Relief and Emergency Assistance Amendments of 1988 (Pub. L. 100–707) on November 23, 1988. This law amended the Disaster Relief Act of 1974, Pub. L. 93–288, and retitled it the Stafford Act. As a result, on March 21, 1989, FEMA published in the **Federal Register** at 54 FR 11610 an Interim Rule at 44 CFR part 206 with a request for comments. The interim rule was published for two purposes: to implement the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act, or the Act), and to implement the Office of Management and Budget's (OMB) "common rule", Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. The "common rule" had been recently adopted by FEMA at 44 CFR part 13 (effective on October 1, 1988). The final regulations which are being published today have taken into account comments received on the interim rule. They will govern disasters or emergencies declared by the President on or after November 23, 1988. Existing regulations at 44 CFR part 205 remain in effect to govern those major disasters and emergencies declared prior to enactment of the amendments.

The March 21, 1989, publication contained subparts D through M.

Today's document contains final rules for subparts G, H, J, K, and L. Final rules for subparts D, E, and F dealing with Individual Assistance will be published as a separate document. Subpart I pertaining to insurance requirements for public assistance will be reissued as a revised Interim Rule at a later date. Subpart M, Hazard Mitigation Planning, will be published as a proposed rule to replace the interim rule at a later date.

Fourteen comment letters were received from State and local governments and other interested groups. The following discussion of comments is arranged in the order in which the subjects appear in the regulation.

Public Assistance Project Administration (Subpart G)

1. Definition of "Predisaster Design—Section 206.201(h)

One commenter asked that the definition of "predisaster design" should be changed to remove the restriction concerning the actual use of a facility prior to the disaster. The intent of the restriction is that if a destroyed facility had been over-utilized at the time of the disaster, the replacement facility would

not be enlarged to cover the space required by the extra users. The commenter was concerned that a replacement facility would not include designed increases in capacity made after the original design. The sentence in question makes reference to "designed capacity". By this is meant the capacity for which the facility was designed, either originally, or by later modification. Clarifying language has been added to this section.

2. Time limits for Project Approval—Section 206.202(e)

It was suggested that the Regional Director (RD) be required to approve Damage Survey Reports (DSR) within 30 days of their completion and to obligate funds within 15 days of receipt of the project application on Standard Form (SF) 424 (Application for Federal Assistance). Looking first at the second part of this recommendation, the process now being used for taking the application makes it impossible to have such a time limit for the obligation of funds. There is but a single SF 424 which is submitted by the grantee for each disaster, and it may be submitted before there are any DSR's against which to obligate funds. Then, as DSR's are approved, funds are obligated against them to the grantee on behalf of the particular subgrantee. The actual process consists of the RD signing an approval of a DSR or group of DSR's for one or more subgrantees. This approval is a legal obligation of FEMA funds to the grantee. Those funds are then available to the grantee to make withdrawals through the Letter of Credit process.

The actual mechanics of the process are that the approval is transmitted to the Office of the Comptroller in Washington, DC, and the obligation is entered into the Financial Accounting and Reporting System (FARS) computer, normally within five days of the RD's approval. Each approval by the RD is also forwarded to the grantee and the grantee is thereby notified that the funds are available. The grantee is expected to notify the subgrantee of approvals of their DSR's and inform them when actual funds will be forthcoming. After funds are obligated to the grantee, it is the responsibility of the grantee (State) to then disburse the funds to the subgrantee in accordance with its own laws. It is assumed that grantees will use an application process between themselves and the subgrantees similar to FEMA's process. Thus, as a practical matter, by the time the grantee makes an approval to a subgrantee, the funds will be available from the Letter of Credit for disbursement to the subgrantee.

One other aspect of the "approval—obligation—payment" process should be discussed here. That is the requirement in section 601(a)(2) of the Act that regulations issued by FEMA ". . . shall provide that payment of any assistance under this Act to the State shall be completed within 60 days after the date of approval of such assistance." This time limit is not specifically provided in the regulation because the process described in the previous paragraphs does not allow it.

For small projects, in which the Federal share is authorized to be paid immediately upon approval of the DSR, such a time limit has no effect because the funds are immediately available to the State, subject to U.S. Treasury regulations. For large projects, in which payments are made incrementally as work progresses and final payment is made after the project is complete, the time limit also cannot be applied within the strict meaning of the language in the law. This is because the work is almost never completed within 60 days of the approval of the DSR and thus payment cannot "be completed within 60 days after the date of approval of such assistance." However, since the RD's approval of the DSR makes the funds available to the grantee to be paid out as work progresses, payment is actually made to the State well within the required 60 days of when it is needed.

In the interest of improving the process even further, FEMA is currently testing a procedure of entering obligations into the FARS computer directly from the Disaster Field Office (DFO). When this is fully implemented, funds will be immediately available to the grantee upon approval by the RD. For these reasons, it is not appropriate to place a time limit between the approval of a DSR and the obligation of funds.

Concerning a time limit for approving a DSR after its completion by an inspector, there are a number of items which must be considered before a DSR is ready for final approval. There may be a floodplain management review, a review for mitigation opportunities, or an environmental assessment which could delay the approval. In order to allow time for these special considerations, a time limit of forty-five days is being instituted for FEMA's processing of a DSR. Within that time the RD shall either approve or disapprove the DSR or provide a written explanation of any delay and transmit that determination to the grantee.

3. Cost Overruns—Section 206.204(e)

For restoration projects which are classified as "large projects" ($35,000 or more), reasonable costs actually expended on a project are generally eligible. Thus, the final amount reimbursed for a project may be different from the amount initially approved. In the regulations at § 206.204(e), there is a short list of typical reasons for cost overruns which will be considered for increasing the amount approved. It was suggested that two reasons be added to the list: "Presence of previously unanticipated field conditions encountered during construction"; and "Increases in DSR approved quantities caused by construction activity". As recognized in the comment itself, both of these items are already included in the item (e)(2) of that paragraph: "Changes in the scope of eligible work;". The intent in the current wording of this paragraph was to keep the reasons broad in their definition to maintain simplicity and flexibility. No change is being made.

4. Progress Reports—Section 206.204(f)

Two comments were made concerning the requirement for a grantee to submit quarterly progress reports to FEMA on all projects on which final payment had not yet been made. Both suggested the requirement be changed to every six months. The point was made that such a requirement was a burden on the grantee, especially during the first few months of a disaster. It should be noted that the date for submission of the first report may be negotiated by the grantee and FEMA (§ 206.204(f)). Another point was that for some large projects, there may be no progress to report during some three month periods. While this may be true for some projects, others will have significant progress which should be reported. Having a reporting requirement may also keep attention on a project and thus speed things along. The interval selected is in keeping with guidance provided in the common rule, 44 CFR part 13. The requirement is only placed on large projects, which in the past have made up only seven percent of the total number of projects. In addition, FEMA is planning on giving the grantee access to the computer system by which it tracks project progress and financial data. Changes are being planned for this system to add features which will be particularly useful to the grantee for tracking project completions. Thus, much of the reporting may be automated. The reporting requirement will remain at three months.

5. Payments to subgrantees for small projects—Section 206.205

Seven commenters addressed the issue of payments, to subgrantees, of the Federal share of eligible costs for "small projects".

The suggestion was made by some States that payment for these small projects should be made on the basis of actual costs, instead of on the basis of the Federal estimate. The commenters were concerned that a State might be held responsible for recovering unspent funds from a subgrantee when actual costs are less than the estimate which was paid to them.

FEMA believes that a delay of final payment until actual costs could be determined would defeat the purpose of the simplified procedure section of the law. In the Stafford Act, the Congress established a "Simplified Procedure" for those projects for which the Federal estimate was less than $35,000. Section 422 of the Act specifies that the Federal contribution may be made on the basis of such Federal estimate. This frees FEMA from the burden of having to determine the actual costs for approximately 93% of of all projects which FEMA assists. The intent of this section is to simplify procedures for these projects and thus expedite payments to the subgrantees. Because the Federal share is being paid on the basis of the estimate, the expenditure of less than the estimated amount will not reduce the amount of the Federal contribution. In order to answer some of this concern, an addition has been made to the payment section of the regulation. (Section 206.205(a)), to the effect that the amount of the Federal contribution will not be reduced as a result of approved funds for a small project not being completely spent by a subgrantee.

However, there is still a requirement that an approved project be completed, either restoration of the original damaged facility or an alternate project as provided in § 206.203(d)(2). Normally, FEMA will not be performing final inspections on these projects. However, FEMA audit regulations at 44 CFR part 14, still allow FEMA to conduct audits or inspections of any project. This provision, coupled with the requirement that the grantee certify that all projects were completed in accordance with FEMA approvals, has made a few States reluctant to pay out the full Federal share until they can verify that the work was actually completed. Because disaster assistance is basically a categorical grant program, notwithstanding the exceptions for alternate projects and simplified procedures for payment of small projects, the requirement that a project be completed must be maintained.

A comment was also made on the other side of the issue. One State requested that the ability to pay on the basis of the estimate *not* be removed so that they could maintain flexibility in the process. The changes noted above will continue payment of the Federal share on the basis of the estimate while assuring the grantee as much as possible that their liability concerning the Federal share will be limited.

Three organizations representing local units of government requested that payments to subgrantees be required to be made upon approval of the funds by FEMA. The role of the State as grantee places certain requirements on this process which will probably not allow the immediate payment of funds to a subgrantee. Under the "Common Rule", 44 CFR part 13, FEMA makes one grant to the State as the grantee which is based on approved DSR's written for subgrantees. The grantee then makes subgrants to the local governments or private nonprofit organizations (PNP's) based on each subgrantee's DSR's. Actual payment to the grantee is made by Letter of Credit (LOC) method, and the grantee is authorized to make drawdowns on the LOC as soon as the obligation is made by FEMA. However, subsequent payment to a subgrantee must be in accordance with State laws. Although these comments concern the timing of payments more than the basis for payment, the use of the estimate rather than actual costs would speed final payments to the subgrantees.

This comment also requested that a definition of "Project Approval" to mean "approval of the DSR" be added. A definition of Project Approval has been added, but for a different reason. Previous discussion of time limits on payments noted that when the RD approves a DSR, that action also, in effect, obligates funds for that project. The definition takes account of that dual function of the RD's approval.

All of the above discussion concerns approval and payment of the Federal share for projects. As stated in the policy paragraph at § 206.200(b), FEMA expects grantees to expedite payments to subgrantees of the Federal share and the State's share of disaster assistance as much as possible. However, FEMA cannot place requirements on what the basis of the grantee's share will be (estimated costs vs. actual costs) or on the timing of distribution of that share.

6. Appeals—Section 206.206

Five letters addressed the issue of the right of the subgrantee to appeal assistance decisions to FEMA, and one letter representing three groups commented on the requirement for FEMA to issue rules for fair and impartial consideration of appeals. Two of these letters also commented on the length of time allowed for submission of and response to appeals.

One item of major concern was whether a subgrantee had the right to appeal to FEMA. The question arose because the regulations at § 206.200(a) stated: "The grantee may appeal any determination previously made related to Federal assistance for a subgrantee." This was interpreted to mean that *only* the grantee could make such an appeal. Section 423 of the Stafford Act relates to appeals from applicants. Under the new administrative procedures of the "Common Rule," there is only one application from the grantee for each disaster, and this is why the regulation section was written the way it was. [An exception to the one application rule may occur if a State cannot process the assistance for an Indian tribe, and a separate application is taken directly from the tribe.]

Upon review, it is clear from the usage of the word "applicant" in the Act that the reference is not only to a State agency for the State project, but also to a local government or PNP. Accordingly, the appeals section has been changed to specifically provide that a subgrantee may appeal through the grantee to FEMA. The subgrantee has 60 days after receiving notice of the action which it is appealing to submit the appeal. The grantee is then required to make an evaluation and forward the appeal to FEMA with a written recommendation within 60 days of its receipt of the appeal. For those areas within the jurisdiction of the grantee, such as certain time extensions, the grantee will make the determination and is required to do so within 90 days of its receipt of the appeal.

The 60 day limit for submission of the appeal is contained in the Act and thus cannot be extended, as one letter requested. However, the 60 day limit applies separately to the actions of the subgrantee and the grantee, and not to the combined actions of those two parties. This should satisfy the concern of this commenter.

After the RD receives the appeal, a response must be made within 90 days. That response may take the form of a determination or a request for additional information from the applicant. After receipt of any additional information which is requested, the RD has 90 days to make a determination.

If the RD denies the appeal, the appellant may made a second appeal to

the Associate Director for State and Local Programs and Support (AD). The same time limits for submission and response apply to the second appeal. One letter stated that the AD should have only 90 days for the entire process. FEMA believes that the RD and the AD should have the opportunity to request additional information when necessary and should have sufficient time for that purpose. Without the extra information, appeals might have to be resolved based on inadequate information. This could be detrimental to the applicant's cause.

The remaining contentious area concerning appeals involves whether the regulation provides for fair and impartial consideration of appeals as required by section 423(c) of the Act. The commenter believed that the procedure proposed for submitting highly technical appeals to an independent scientific body did not satisfy the requirement of the Act and made several suggestions for change. The first was that appeals at the National Office level should be decided by the Agency Director, rather than the Associate Director. The Director of FEMA has delegated to the Associate Director all of the authorities of the Stafford Act, with the exception of the authority to make major disaster or emergency declaration recommendations to the President. Therefore, the Associate Director is an appropriate authority to make program decisions at the National Office level. A second suggestion was that, at the unilateral request of the grantee or subgrantee, an appeal would be submitted to an independent technical or scientific body for decision. The commenter stated that it was the intent of Congress for such a process to be used because the House Public Works Committee Report relating to H.R. 2707 stated that the President should consider alternative dispute resolution mechanisms to the extent they may be appropriate. The process proposed in the interim rule was an attempt to respond to the Committee's concern. However, in response to the comment, FEMA has made a further examination of the procedure described in the interim rule and determined that an additional level of review is appropriate. Currently the Associate Director has the final appeal authority. For approximately the past year, FEMA has been tracking appeals to the AD in its computer system. A review of this information shows that approximately seventy percent of the funds requested in these appeals have been approved. Thus, the process has been working generally in favor of the applicant.

Nevertheless, FEMA has decided to provide an additional level of appeal beyond the Associate Director. If an appellant is dissatisfied with the decision of the Associate Director, it may submit an appeal to the Director of FEMA. In appeals involving highly technical issues, the Director may solicit input from persons or organizations with expertise in the subject matter of the appeal. The Director would also have the option of delegating to FEMA personnel who are not associated with FEMA's Disaster Assistance Programs office, or to persons who are not employed by FEMA, either from the public or private sector, authority to recommend a proposed appeal decision. FEMA believes that this broad range of options for soliciting input to assist in the resolution of appeals will ensure fair and impartial consideration of appeals.

One final comment asked that some independent organization be tasked to review all of FEMA's appeal determinations for fairness and impartiality and to report its findings on an annual basis to the President and to Congress. FEMA does not believe that such a procedure is necessary, especially in light of the additional level of review which will be provided to appellants in the future. Therefore, no such change to the interim regulation is being made.

7. Administrative Plans.—Section 206.207

One letter commented on requirements for the Public Assistance Administrative Plan. The commenter requested that such plan not be a mandatory part of the Emergency Plan described in Subpart A (Published at 54 FR 22162 on May 22, 1989). The plans for the public assistance program and Individual and Family Grant program are administrative plans, not operations plans, and thus would not normally be put in the body of the Emergency Operations Plan. They may be made as annexes to the basic plan and distributed only to those persons who need them. States may incorporate disaster assistance capabilities into new or existing State emergency plans in the format most appropriate to the State.

8. Single Audit—Section 206.207

One State asked how the cost of a State's single audit is treated. The costs of audits made in compliance with the Single Audit Act of 1984 are eligible in accordance with 44 CFR part 14, Appendix A. These audits are system audits rather than specific program audits. As such, they examine an entity's entire operation and the costs are shared between the Federal government and the State. Paragraph 16. b. of this Appendix A states;

> Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

The audit costs of local government subgrantees, however, are treated differently. Section 406(f)(1) of the Stafford Act states that necessary costs of requesting, obtaining, and administering Federal assistance are covered by that subsection's percentage allowance for an applicant. Thus, audit costs are assumed to be included in the allowance.

9. Direct Federal Assistance—Section 206.208(a)

Three commenters asked that this section be changed to state that FEMA may direct any Federal agency to do eligible debris removal and/or emergency work, with or without reimbursement. The commenters contend that the phrase "with or without reimbursement" in section 502(a)(1) of the Act means that assistance may be provided at 100 percent Federal share. In response, we should first point out that this section in the regulations is referring to the performance of work eligible under section 402(4), 403, and 407 of the Act, and therefore the comment should have referred to section 402(1) which contains the same phrase. Nevertheless, FEMA interprets both sections 402(1) and 502(a)(1) of the Act to relate to whether FEMA reimburses the other Federal agency when that agency is performing work under its own authorities. The cost sharing provisions of the Title IV sections of the Act are not changed by the fact that a Federal agency may be performing the work directly. Therefore, the nonfederal portion of the costs must be paid in the form of a reimbursement to FEMA. This is the reimbursement referred to in § 206.208(b)(1)(iii) of the regulations and not reimbursement between Federal agencies. No change is being made to the regulation other than the addition of listing the applicable sections of the Act in § 206.208(a).

Public Assistance Eligibility (Subpart H)

1. Maintenance—Preamble Page 11613, Paragraph 13

A commenter stated that Federal disaster assistance was never intended to fund routine maintenance. This comment was directed at the discussion

in the preamble about work which was of the same type as maintenance. The reader felt that routine maintenance which exceeded the minimum DSR amount ($250) would be eligible under the new interpretation. This is not the case; maintenance work is still not eligible. If damages existed before the disaster event, and they can be distinguished from the disaster related damage, they are not eligible. Maintenance work falls in this category.

2. Definition of "Immediate threat"—Section 206.221(c)

Two comments were made concerning the definition of "immediate threat". The term is used in the criteria which must be met for emergency debris removal and emergency protective measures to be eligible for assistance, §§ 206.224 and 206.225. The interim rule defined immediate threat as that threat from an event which could reasonably be expected to occur within one year which is a change from the five year event previously used. Both comments requested that a five year event be used instead of a one year event on the basis that much of the reconstruction work being protected required more than one year to be completed. The comments also stated that, in actual practice, the difference between a level of protection from a one year event and a five year event is not very great. FEMA agrees with the comments and the definition is changed accordingly.

3. Definition of "Standards"—Section 206.221(i)

One letter requested a change to the definition of "Standards" to make it conform to the wording from the legislation by removing the references to legal requirements and differences between repair or new construction standards. The definition is being changed as requested, and the discussion of State or Federal legal requirements is being added to the section on the criteria for the eligibility of a standard, § 206.226(a). The reference to the difference between new construction and repair standards is also moved to this section.

4. Work Within Authority of Another Federal Agency—Section 206.223(b)

Four comments objected to FEMA's policy of not providing disaster assistance to restore disaster damaged facilities when another Federal agency has specific authority for the same work. This policy was stated at § 206.223(b) of the interim regulations. The commenters contend that FEMA should grant assistance under the Stafford Act when another Federal agency has the authority but not the funds to pay for certain work. The lack of funds may exist either because Congress appropriated no funds for the other Federal agency's response authority or because funds which Congress appropriated to the other Federal agency have already been expended. The commenters feel that sections 402 and 502 of the Act, which give the President the authority to "* * * direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law * * *", contemplate the provision of disaster assistance under either the Stafford Act or another Federal agency's authorities.

Another comment contends that Congress consciously decides to appropriate disaster assistance funds to the President's Disaster Fund which is administered by FEMA, rather than to the appropriations of other Federal agencies with disaster assistance authorities, and that under these circumstances FEMA should have a policy of routinely funding such disaster activities from the President's Disaster Fund. There may be situations where it is clear that Congress intended for other Federal agencies' authorities to be used as the sole or primary response mechanism to a particular catastrophe, while there will undoubtedly be other cases where Congress' intent is not so well defined.

The regulatory mandate that "Disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster" applies only to permanent restorative work under section 406 of the Stafford Act. Emergency work which is eligible under the authority of sections 403, 407, 418, 419 or 502 of the Act can be approved under the Stafford Act in those cases where another Federal agency has authority to provide assistance but is unable to respond on a timely basis because of a lack of funds.

In an effort to clarify this rule the wording of paragraph 206.223(b) under the heading "General work eligibility" has been transferred to paragraph 206.226(a) under the heading "Restoration of damaged facilities." This clarifies that this policy applies only to permanent restoration of facilities and not to emergency work.

5. Eligibility of standards—Section 206.226(a)

Another comment asks that § 206.226(a)(1) be changed from "Apply to the type of repair or restoration required"; to "Be in conformity with current applicable codes, specifications, and standards related to the type of repair or restoration required." The regulation as currently worded already says this. It is just that the words "* * * in conformity with the following * * *" are in the beginning paragraph of this section. The reason for this organization of the section is that "Standards" is just one of eight criteria with which eligible work must be in conformity.

6. Historic Properties—Section 206.226(c)(2)

One comment addresses the issue of eligible work when an historic property is involved. The applicable section in the regulations, § 206.226(c), Repair vs Replacement, states that a facility is eligible for full replacement when repair costs equal or exceed 50 percent of the cost of replacing the facility. However, an applicant may elect to perform repairs to the facility instead of replacement. The eligible costs, however, will be limited to the less expensive of the two options. The commenter asks for an exception for historic facilities when repair costs to restore to historic significance exceed replacement with a functionally equivalent but not identical facility.

It has been FEMA's long standing practice, based on legislative history, to replace the functional capacity of a facility but not necessarily to restore the historical features of such facility. The legislative history of Pub. L. 93–288, provides guidance on this issue. In the Congressional Record for the House of Representatives for May 15, 1974, there is a discussion of what is meant by "* * * restoration based on the design of the facility as it existed immediately before the disaster * * *". Congressman Treen was concerned that an estimate for the restoration of some beautiful Greek revival structures based on the existing design could run substantially higher than the cost of a substitute structure of comparable functional capacity and thus provide excessive payments. Congressman Jones explained that "design" did not mean an exact physical reproduction, but a new structure which would have the same capacity as the old structure (See 120 Cong. Rec. 14710). This principle has not been changed by the Stafford Act, and thus FEMA believes that an exception for historic facilities would be contrary to the legislative intent.

7. Relocation costs.—Section 206.226(d)

One commenter suggested that additional items be listed as eligible costs when a facility is required by the RD to be relocated (§ 206.226(d)(2)). The

items which were listed in that paragraph are: land acquisition, roads, utilities, and demolition. It was not clear that the listed items were in addition to those items normally eligible. The requested list: environmental documentation, architectural fees and administrative costs, when associated with eligible work, are already eligible and do not need to be listed separately. An addition is being made to the regulation to indicate that the listed items are in addition to normally eligible work on a facility.

Another comment on relocation asks that when a facility can neither be built at its original location nor relocated, that eligible costs equal to replacement costs at the original location be provided. This situation may arise when a facility in a particularly vulnerable location is destroyed, but it is not feasible to relocate because of costs or of the type of facility it is. In such cases the applicant has the option of selecting an alternate project and receiving a grant equal to 90% of the grant which it would have normally received. Prior regulations did not allow this option in this situation.

The same comment goes on to ask that when a facility provides an essential public service, replacement in the original location be allowed, notwithstanding provisions of other parts of 44 CFR which might prohibit such replacement. It should be noted that reviews conducted in compliance with the Floodplain Management or Hazard Mitigation regulations consider, in particular, the need for the facility when determining whether the original location is a practicable alternative. Therefore, the decision to deny funding is not arrived at lightly, but the provisions of the cited regulation cannot be ignored. The regulations are not being changed in response to this comment.

8. Inactive Facilities.—Section 206.226(h)(2)

One commenter requested that an addition be made to the exceptions for the normal ineligibility of a facility not in active use at the time of the disaster. The requested exception is when a facility is temporarily vacant due to a change in occupancy. Discussion with the commenter revealed that his concern was for a situation in which an applicant intended to use a temporarily vacant facility, but did not have a firm schedule at the time of the disaster. This situation might arise when an applicant was reviewing a number of alternatives for the use of the facility. The regulation is being changed to allow an exception when the applicant can demonstrate, to FEMA's satisfaction, its intention for future use of the facility.

9. Applicant Owned Equipment Rates—Section 206.228(a)(1)

Five commenters asked that FEMA accept an applicant's equipment rates for force account work. The interim rule required that an applicant submit a request to FEMA for any rate which was higher than the rate on FEMA's Schedule of Equipment Rates. The commenters contend that this is a burdensome procedure. The rule has been changed to allow reasonable applicant rates which have been developed or approved under State guidelines to be used as the basis for reimbursement. There is an upper limit of $75 per hour on these automatically accepted rates. Requested rates above that shall be evaluated by FEMA on a case by case basis. Locally developed rates which exceed the FEMA rate and which do not follow State guidelines may still be submitted to FEMA for approval. FEMA will be evaluating the applicant owned equipment rate procedures during the next year and the suggestions provided will be considered.

10. Administrative Costs—Sections 206.228(a)(2) & 206.228(b)

One letter questioned the use of the terms "direct costs" and "indirect costs" and their relationship to what is eligible under OMB Circular A–87. This circular is part of FEMA's regulation 44 CFR part 13 by reference. There are four separate issues in the comment.

First, the commenter believes that a grantee's administrative costs can be calculated under the Stafford Act, (Sec. 406(f)), and that the grantee's total cost of administering the program can be calculated. The commenter contends that the difference between the two should be eligible as "State management costs." This is essentially correct and § 206.228 is being changed accordingly. There are now two categories of direct administrative costs for the grantee: "Statutory" and "State Management." Statutory administrative costs are calculated in accordance with section 406(f) of the Stafford Act. The State Management administrative costs follow the guidance of 44 CFR Part 13. However, with respect to subgrantees of the States, the only administrative costs which are eligible are those covered by the Stafford Act. This is because section 406(f) of the Act defines as eligible those costs relating to "requesting, obtaining and administering Federal assistance * * *" FEMA interprets this provision to mean that all of a subgrantee's administrative expenses are to be covered by this percentage allowance.

Second, the commenter questions whether the grantee's direct administrative costs should be cost shared. The requirement for the grantee to cost share direct administrative expenses is entirely consistent with the Stafford Act and with the "common rule." In OMB CIRCULAR A–87, Attachment A, paragraph A states in part: "This principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant." Therefore, the cost sharing requirements of the sections of the Act under which the assistance grants are being made, (Sections 402, 403, 406, 407, 502 and 503) are applied to the administrative costs associated with these grants.

Thirdly, the comment questions whether certain items such as overtime should be ineligible. There is a misunderstanding here. It is not that overtime is ineligible, but that it is specifically covered by a provision of the legislation which limits the amount which may be paid for overtime and other items. In section 406(f)(2) of the Act a percentage allowance is provided for "Extraordinary costs incurred by a State for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses of such employees, but not including pay for regular time of such employees, * * *". This section of the law covering these three items of cost supercedes the provisions of 44 CFR part 13 and Circular A–87. FEMA recognizes that States have assumed a significant role in the management of the disaster assistance program, but the provisions of the law must be followed. Except for these three items, normal administrative costs will be considered in accordance with 44 CFR part 13.

The fourth item concerning costs of administration is the item of "Indirect costs". That term, as it was used in the interim rule is incorrect. The percentage allowances discussed in Section 206.228(b), Eligibile Indirect Costs, were really direct costs of project administration. As noted above, the regulations now have direct costs covered in two paragraphs: "Statutory Administrative Costs" which are the percentage allowances, and "Other Administrative Costs" which are all other administrative costs allowed by the "common rule". A new category of cost has also been added to the regulation: "Eligible Indirect Costs". These costs for the grantee are eligible

in accordance with Circular A–87. However, the subgrantee will not receive indirect costs because all administrative expenses are covered by the statutory percentage allowance at section 406(f) of the Stafford Act.

For further information contact Charles Stuart at 202–646–3691.

Coastal Barrier Resources Act (Subpart J)

No comments were received concerning this subpart. Therefore, no changes have been made.

Community Disaster Loans (Subpart K)

The preamble to the interim rule (54 FR 11615) noted that the Community Disaster Loan program had recently been revised extensively in a proposed rule published in April, 1987 (52 FR 15348) and a final rule published in April, 1988 (53 FR 12681), and that the interim subpart was revised only to incorporate new section and paragraph numbers.

1. Use of Loan Funds—Section 206.361(f)

One comment suggested that § 206.361(f) be changed to eliminate the prohibition against the use of loan funds for capital improvements related to the repair or restoration of damaged facilities, and the payment of the nonfederal share of disaster related recovery costs. A related comment suggested that § 206.366(b)(4), which defines disaster related expenses of a municipal operation character, be changed to include capital improvements.

The legislative history relating to the Community Disaster Loan authority indicates this program was to provide a source of funds to enable a local government to continue to provide non-capital essential municipal services (such as police and fire protection, trash collection, school operation, etc.) at a time when it had suffered a substantial loss of tax and other revenue as a result of a major disaster.

Based on the foregoing legislative intent, FEMA determined that community disaster loan funds should not be disbursed from the Treasury to meet municipal capital requirements, and that a shortfall in revenue to support capital expenditures should not be a consideration for loan cancellation. While it is recognized that municipal funds normally are co-mingled, FEMA excludes capital expenditures from the operating budget-type figures as published in annual financial reports for determining loan cancellation.

For the above reasons, it is concluded that no change should be made in the language of the rule.

2. Operating Budget—Section 206.364(b)(2)

Another comment suggested clarification of the term "operating budget" as defined in § 206.364(b)(2). For loan application purposes, the amount of the loan is limited to 25 percent of the annual operating budget. For this determination, the Agency adopted the definition contained in publications by the Municipal Finance Officers Association which defined the term as a budget which applies to all outlays other than capital outlays.

For loan cancellation purposes, the cancellation determination is based on actual financial results of the local government over a three fiscal year period. Early program experience indicated that budget figures were too vague and imprecise to use in the cancellation determination. Consequently, for the purpose of the loan cancellation determination, the Agency interpreted the term to mean actual published revenues and expenditures.

This explanation is contained in § 206.364(b)(2), and consequently, no change is being made in the final rule.

3. Promissory Note—Section 206.364(d)(2)

One comment objected to the requirement in § 206.364(d)(2)(i) for the State to co-sign the promissory note.

In response to similar comments received in response to the earlier proposed rule, this requirement was modified in the earlier final rule to provide in § 205.94(d)(2)(ii) that the local government could pledge collateral security in the event that the State cannot legally cosign the promissory note.

The language in § 206.364(d)(2)(ii) of the current interim rule is considered adequate, and consequently, no change is made in the final rule.

Fire Suppression Assistance (Subpart L)

No comments were received concerning this subpart. Therefore, no changes have been made.

Environmental Considerations

The majority of the provisions of the interim rule have either been assessed by prior environmental assessments or represent actions which are categorical exclusions pursuant to FEMA's regulation at 44 CFR part 10, Environmental Considerations. An environmental assessment covering the remaining items led to the determination that there will be no significant impact caused by implementation of this interim rule and that the preparation of an Environmental Impact Statement is not required. Environmental assessments are on file and may be inspected or obtained at the Office of Disaster Assistance Programs for each program area, or at the Office of the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

Regulatory Flexibility

FEMA has determined that this rule is not a major rule under Executive Order 12291, and will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Hence, no regulatory impact analyses have been prepared.

Federalism Assessment

In promulgating this rule, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1987 (E.O. 12612, 52 FR 41685). The purpose of the Executive Order is to assure the appropriate division of governmental responsibilities between national government and the States. Among other provisions, this rule implements the requirement in 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, that agency administrative provisions in regulations be consistent with part 13. There are significant changes in grant administration procedures which have Federalism impacts and therefore, a Federalism Assessment has been prepared. Interested parties may inspect or obtain copies of this assessment at the Office of the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

List of Subjects in 44 CFR Part 206

Disaster Assistance: Public Assistance, Coastal Barrier Resources Act, Community Disaster Loans, and Fire Suppression Assistance.

Accordingly, FEMA is amending chapter I, subchapter D, of title 44 by revising part 206, subparts G, H, J, K, and L to read as follows (and the authority citation continues to read as set forth below):

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

* * * * *

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended, 42 U.S.C. 5121 et seq.; Reorganization Plan No. 3 of 1978 (3 CFR, 1979 p. 329); Executive Order 12148 (3 CFR, 1980 p. 412); and 12673 (54 FR 12571, March 28, 1989).

Subpart G—Public Assistance Project Administration

§ 206.200 General.

(a) *Purpose.* This subpart establishes procedures for the administration of Public Assistance grants approved under the provisions of the Stafford Act.

(b) *Policy.* It is a requirement of the Stafford Act that, in the administration of the Public Assistance Program, eligible assistance be delivered as expeditiously as possible consistent with Federal laws and regulations. The regulation entitled "Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments", published at 44 CFR part 13, places certain requirements on the State in its role as grantee for the public assistance program. The intent of this "common rule" is to allow States more discretion in administering Federal programs in accordance with their own procedures and thereby simplify the program and reduce delays. FEMA also expects States to make subgrants with the requirements of the Stafford Act in mind. They are expected to keep subgrantees informed as to the status of their application including notification of FEMA's approvals of DSR's and an estimate of when payments will be made. Subgrantees should receive the full payment approved by FEMA, and the State contribution, as provided in the FEMA-State Agreement, as soon as practicable after payment is approved. Payment of the State contribution must be consistent with State laws.

§ 206.201 Definitions.

(a) *Applicant* means a State agency, local government, or eligible private nonprofit organization, as identified in Subpart H of this regulation, submitting an application to the Grantee for assistance under the State's grant.

(b) *Emergency work* means that work which must be done immediately to save lives and to protect improved property and public health and safety, or to avert or lessen the threat of a major disaster.

(c) *Facility* means any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

(d) *Grant* means an award of financial assistance. The grant award shall be based on the total eligible Federal share of all approved projects.

(e) *Grantee* means the government to which a grant is awarded which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. For purposes of this regulation, except as noted in § 206.202, the State is the grantee.

(f) *Hazard mitigation* means any cost effective measure which will reduce the potential for damage to a facility from a disaster event.

(g) *Permanent work* means that restorative work that must be performed through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and current applicable standards.

(h) *Predisaster design* means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

(i) *Project* (also referred to as "individual project") means all work performed at a single site whether or not described on a single Damage Survey Report (DSR).

(j) *Project approval* means the process where the RD signs an approval of work and costs on a DSR or group of DSR's. Such approval is also an obligation of funds to the grantee.

(k) *Subgrant* means an award of financial assistance under a grant by a grantee to an eligible subgrantee.

(l) *Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

§ 206.202 Application procedures.

(a) *General.* This section describes the policies and procedures for processing grants for Federal disaster assistance to States. For purposes of this regulation the State is the grantee. The State is responsible for processing subgrants to applicants in accordance with 44 CFR parts 13, 14, and 206, and its own policies and procedures.

(b) *Grantee.* The Grantee serves as the grant administrator for all funds provided under the Public Assistance grant program. The Grantee's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subgrantees, providing State support for damage survey activities, ensuring that all potential applicants are aware of assistance available, and submission of those documents necessary for grants award.

(c) *Notice of interest (NOI).* The Grantee must submit to the RD a completed NOI (FEMA Form 90–49) for each applicant requesting assistance. NOI's must be submitted to the RD within 30 days following designation of the area is which the damage is located.

(d) *Damage Survey Reports (DSR'S).* Damage surveys are conducted by an inspection team. An authorized local representative accompanies the inspection team and is responsible for representing the applicant and ensuring that all eligible work and costs are identified. The inspectors prepare a Damage Survey Report-Data Sheet (FEMA Form 90–91), for each site. On the Damage Survey Report-Data Sheet the inspectors will identify the eligible scope of work and prepare a quantitative estimate for the eligible work. Any damage that is not shown to the inspection team during its initial visit shall be reported in writing to the RD by the Grantee within 60 days following completion of the initial visit.

(e) *Grant approval.* Upon completion of the field surveys the Damage Survey Report-Data Sheets are reviewed and action is taken by the Regional Director (RD). This will be done within 45 days of the date of inspection or a written explanation of any delay will be provided to the grantee. Prior to the obligation of any funds the Grantee shall submit a Standard Form (SF) 424, Application for Federal Assistance, and SF 424D, Assurances for Construction Programs, to the RD. Following receipt of the SF 424 and 424D, the RD will then obligate funds to the State based upon the approved DSR's. The grantee shall then approve subgrants to the applying entities based upon DSR's approved for each applicant.

(f) *Exceptions.* The following are exceptions to the above outlined procedures and time limitations.

(1) *Grant applications.* An Indian tribe or authorized tribal organization may submit a SF 424 directly to the RD when assistance is authorized under the Act and a State is legally unable to assume the responsibilities prescribed in these regulations.

(2) *Time limitations.* The time limitations shown in paragraphs (c) and (d) of this section may be extended by the RD when justified and requested in writing by the Grantee. Such justification shall be based on extenuating circumstances beyond the grantee's or subgrantee's control.

(Approved by the Office of Management and Budget under Control Numbers 3067–0033 and 0348–0043.)

§ 206.203 Federal grant assistance.

(a) *General.* This section describes the types and extent of Federal funding available under State disaster assistance grants, as well as limitations and special procedures applicable to each.

(b) *Cost sharing.* All projects approved under State disaster assistance grants will be subject to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act.

(c) *Project funding*—(1) *Large projects.* When the approved estimate of eligible costs for an individual project is $35,000 or greater, Federal funding shall equal the Federal share of the actual eligible costs documented by a grantee. Such $35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) *Small projects.* When the approved estimate of costs for an individual project is less than $35,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such $35,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section.

(d) *Funding options*—(1) *Improved projects.* If a subgrantee desires to make improvements, but still restore the predisaster function of a damaged facility, the Grantee's approval must be obtained. Federal funding for such improved projects shall be limited to the Federal share of the approved estimate of eligible costs.

(2) *Alternate projects.* In any case where a subgrantee determines that the public welfare would not be best served by restoring a damaged public facility or the function of that facility, the Grantee may request that the RD approve an alternate project.

(i) The alternate project option may be taken only on permanent restorative work.

(ii) Federal funding for such alternate projects shall equal 90 percent of the Federal share of the approved estimate of eligible costs.

(iii) Funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. These funds may not be used to pay the nonfederal share of any project, nor for any operating expense.

(iv) Prior to the start of construction of any alternate project the Grantee shall submit for approval by the RD the following: a description of the proposed alternate project(s); a schedule of work; and the projected cost of the project(s). The Grantee shall also provide the necessary assurances to document compliance with special requirements, including, but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

§ 206.204 Project performance.

(a) *General.* This section describes the policies and procedures applicable during the performance of eligible work.

(b) *Advances of funds.* Advances of funds will be made in accordance with 44 CFR 13.21, Payment.

(c) *Time limitations for completion of work*—(1) *Deadlines.* The project completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under State disaster assistance grants.

Completion Deadlines

Type of work	Months
Debris clearance	
Emergency work;	6
Permanent work;	18

(2) *Exceptions.* (i) The Grantee may impose lesser deadlines for the completion of work under paragraph (c)(1) of this section if considered appropriate.

(ii) Based on extenuating circumstances or unusual project requirements beyond the control of the subgrantee, the Grantee may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris clearance and emergency work and an additional 30 months, on a project by project basis for permanent work.

(d) *Requests for time extensions.* Requests for time extensions beyond the Grantee's authority shall be submitted by the Grantee to the RD and shall include the following:

(1) The dates and provisions of all previous time extensions on the project; and

(2) A detailed justification for the delay and a projected completion date. The RD shall review the request and make a determination. The Grantee shall be notified of the RD's determination in writing. If the RD approves the request, the letter shall reflect the approved completion date and any other requirements the RD may determine necessary to ensure that the new completion date is met. If the RD denies the time extension request, the grantee may, upon completion of the project, be reimbursed for eligible project costs incurred only up to the latest approved completion date. If the project is not completed, no Federal funding will be provided for that project.

(e) *Cost overruns.* During the execution of approved work a subgrantee may find that actual project costs are exceeding the approved DSR estimates. Such cost overruns normally fall into the following three categories:

(1) Variations in unit prices;
(2) Change in the scope of eligible work; or
(3) Delays in timely starts or completion of eligible work.

The subgrantee shall evaluate each cost overrun and, when justified, submit a request for additional funding through the grantee to the RD for a final determination. All requests for the RD's approval shall contain sufficient documentation to support the eligibility of all claimed work and costs. The grantee shall include a written recommendation when forwarding the request. The RD shall notify the Grantee in writing of the final determination. FEMA will not normally review an overrun for an individual small project. The normal procedure for small projects will be that when a subgrantee discovers a significant overrun related to the total final cost for all small projects, the subgrantee may submit an appeal for additional funding in accordance with § 206.206 below, within 60 days following the completion of all of its small projects.

(f) *Progress reports.* Progress reports will be submitted by the Grantee to the RD quarterly. The RD and Grantee shall negotiate the date for submission of the first report. Such reports will describe the status of those projects on which a final payment of the Federal share has not been made to the grantee and outline any problems or circumstances expected to result in noncompliance with the approved grant conditions.

§ 206.205 Payment of claims.

(a) *Small projects.* Final payment of the Federal share of these projects shall be made to the Grantee upon approval of the project. The grantee shall make payment of the Federal share to the subgrantee as soon as practicable after Federal approval of funding. Prior to the closeout of the disaster contract, the Grantee shall certify that all such projects were completed in accordance with FEMA approvals and that the State contribution to the non-Federal share, as specified in the FEMA-State Agreement, has been paid to each subgrantee. Such certification is not required to specify the amount spent by a subgrantee on small projects. The Federal payment for small projects shall not be reduced if all of the approved funds are not spent to complete a project. However, failure to complete a project may require that the Federal payment be refunded.

(b) *Large projects.* (1) The Grantee shall make an accounting to the RD of eligible costs for each approved large project. In submitting the accounting the Grantee shall certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement, and that payments for that project have been made in accordance with 44 CFR 13.21, Payments. Each large project shall be submitted as soon as practicable after the subgrantee has completed the approved work and requested payment.

(2) The RD shall review the accounting to determine the eligible amount of reimbursement for each large project and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the RD may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a Federal audit may be conducted. If the RD determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary.

§ 206.206 Appeals.

(a) *Subgrantee.* The subgrantee may appeal any determination previously made related to Federal assistance for a subgrantee, including a time extension determination made by the grantee. The subgrantee's appeal shall be made in writing and submitted to the grantee within 60 days after receipt of notice of the action which is being appealed. The appeal shall contain documented justification supporting the subgrantee's position.

(b) *Grantee.* Upon receipt of an appeal from a subgrantee, the grantee shall review the material submitted, make such additional investigations as necessary, and shall forward the appeal with a written recommendation to the RD within 60 days.

(c) *Regional Director.* Upon receipt of an appeal, the RD shall review the material submitted and make such additional investigations as deemed appropriate. Within 90 days following receipt of an appeal, the RD shall notify the Grantee, in writing, as to the disposition of the appeal or of the need for additional information. Within 90 days following the receipt of such additional information, the RD shall notify the grantee, in writing, of the disposition of the appeal. If the decision is to grant the appeal, the RD will take appropriate implementing action.

(d) *Associate Director.* (1) If the RD denies the appeal, the subgrantee may submit a second appeal to the Associate Director. Such appeals shall be made in writing, through the grantee and the RD, and shall be submitted not later than 60 days after receipt of notice of the RD's denial of the first appeal. The Associate Director shall render a determination on the subgrantee's appeal within 90 days following receipt of the appeal or shall make a request for additional information. Within 90 days following the receipt of such additional information, the AD shall notify the grantee, in writing, of the disposition of the appeal. If the decision is to grant the appeal, the RD will be instructed to take appropriate implementing action.

(2) In appeals involving highly technical issues, the AD, at his/her discretion, may ask an independent scientific or technical group or person with expertise in the subject matter of the appeal to review the appeal in order to obtain the best possible evaluation. In such cases, the 90 day time limit will run from the submission of the technical report.

(e) *Director.* (1) If the AD denies the appeal, the subgrantee may submit an appeal to the Director of FEMA. Such appeals shall be made in writing, through the grantee and the RD, and shall be submitted not later than 60 days after receipt of notice of the AD's denial of the second appeal.

(2) The Director shall render a determination on the subgrantee's appeal within 90 days following receipt of the appeal or shall make a request for additional information if such is necessary. Within 90 days following the receipt of such additional information, the Director shall render a determination and notify the grantee, in writing, of the disposition of the appeal. If the decision is to grant the appeal, the RD will be instructed to take appropriate implementing action.

(3) In appeals involving highly technical issues, the Director may, at his/her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice and recommendation. Before making the selection of this person or group, the Director may consult with the grantee and/or the subgrantee.

(4) The Director may also submit appeals which he/she receives to persons who are not associated with FEMA's Disaster Assistance Programs office for recommendations on the resolution of appeals.

(5) Within 60 days after the submission of a recommendation made pursuant to paragraphs (d) (3) and (4) of this section, the Director shall render a determination and notify the grantee of the disposition of the appeal.

§ 206.207 Administrative and audit requirements.

(a) *General.* Uniform administrative requirements which are set forth in 44

CFR part 13 apply to all disaster assistance grants and subgrants.

(b) *State administrative plan.* (1) The State shall develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:

(i) The designation of the State agency or agencies which will have the responsibility for program administration.

(ii) The identification of staffing functions in the Public Assistance program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.

(iii) Procedures for:

(A) Notifying potential applicants of the availability of the program;

(B) Conducting briefings for potential applicants and application procedures, program eligibility guidance and program deadlines;

(C) Assisting FEMA in determining applicant eligibility;

(D) Participating with FEMA in conducting damage surveys to serve as a basis for obligations of funds to subgrantees;

(E) Participating with FEMA in the establishment of hazard mitigation and insurance requirements;

(F) Processing appeal requests, requests for time extensions and requests for approval of overruns, and for processing appeals of grantee decisions;

(G) Compliance with the administrative requirements of 44 CFR parts 13 and 206;

(H) Compliance with the audit requirements of 44 CFR part 14;

(I) Processing requests for advances of funds and reimbursement; and

(J) Determining staffing and budgeting requirements necessary for proper program management.

(2) The Grantee may request the RED to provide technical assistance in the preparation of such administrative plan.

(3) In accordance with the Interim Rule published March 21, 1989, the Grantee was to have submitted an administrative plan to the RD for approval by September 18, 1989. An approved plan must be on file with FEMA before grants will be approved in a future major disaster. Thereafter, the Grantee shall submit a revised plan to the RD annually. In each disaster for which Public Assistance is included, the RD shall request the Grantee to prepare any amendments required to meet current policy guidance.

(4) The Grantee shall ensure that the approved administrative plan is incorporated into the State emergency plan.

(c) *Audit*—(1) *Nonfederal audit.* For grantees or subgrantees, requirements for nonfederal audit are contained in FEMA regulations at 44 CFR Part 14 or OMB Circular A–110 as appropriate.

(2) *Federal audit.* In accordance with 44 CFR part 14, Appendix A, Para. 10, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

§ 206.208 Direct Federal assistance

(a) *General.* When the State and local government lack the capability to perform or to contract for eligible emergency work and/or debris removal, under sections 402(4), 403 or 407 of the Act, the Grantee may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in § 206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.

(b) *Requests for assistance.* All requests for direct Federal assistance shall be submitted by the Grantee to the RD and shall include:

(1) A written agreement that the State will:

(i) Provide without cost to the United States all lands, easements and rights-of-ways necessary to accomplish the approved work;

(ii) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;

(iii) Provide reimbursement to FEMA for the nonfederal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and

(iv) Assist the performing Federal agency in all support and local jurisdictional matters.

(2) A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in subparagraph (b)(1)(i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.

(c) *Implementation.* (1) If the RD approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency shall define the scope of eligible work. Prior to execution of work on any project, the RD shall prepare a DSR establishing the scope and estimated cost of eligible work. The Federal agency shall not exceed the approved funding limit without the authorization of the RD.

(2) If all or any part of the requested work falls within the statutory authority of another Federal agency, the RD shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

(d) *Time limitation.* The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the RD may extend this time limitation.

(e) *Project management.* (1) The performing Federal agency shall ensure that the work is completed in accordance with the RD's approved scope of work, costs and time limitations. The performing Federal agency shall also keep the RD and Grantee advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the nonfederal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.

(2) Pursuant to the agreements provided in the request for assistance the Grantee shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

§§ 206.209–206.219 [Reserved]

Subpart H—Public Assistance Eligibility

§ 206.220 General.

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502 and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part

206, Subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Hazard Mitigation Planning. Regulations under 44 CFR part 9—Floodplain Management and 44 CFR part 10—Environmental Considerations, also apply to this assistance.

§ 206.221 Definitions.

(a) *Educational institution* means:

(1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or

(2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or

(3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) *Force account* means an applicant's own labor forces and equipment.

(c) *Immediate threat* means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.

(d) *Improved property* means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

(e) *Private nonprofit facility* means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facility providing essential governmental type services to the general public, and such facilities on Indian reservations. Further definition is as follows:

(1) *Educational facilities* means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.

(2) *Utility* means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.

(3) *Emergency facility* means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.

(4) *Medical facility* means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, includng the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(5) *Custodial care facility* means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

(6) *Other essential governmental services facilities* means facilities such as museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, shelter workshops and similar facilities which are open to the general public.

(f) *Private nonprofit organization* means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

(g) *Public entity* means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

(h) *Public facility* means the following facilities owned by a State or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

(i) *Standards* means codes, specifications or standards required for the construction of facilities.

§ 206.222 Applicant eligibility.

The following entities are eligible to apply for assistance under the State public assistance grant:

(a) State and local governments.

(b) Private non-profit organizations or institutions which own or operate a private nonprofit facility as defined in § 205.221(e).

(c) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

§ 206.223 General work eligibility.

(a) *General.* To be eligible for financial assistance, an item of work must:

(1) Be required as the result of the major disaster event,

(2) Be located within a designated disaster area, and

(3) Be the legal responsibility of an eligible applicant.

(b) *Private nonprofit facilities.* To be eligible, all private nonprofit facilities must be owned and operated by an organization meeting the definition of a private nonprofit organization [see § 206.221(f)].

(c) *Public entities.* Facilities belonging to a public entity may be eligible for assistance when the application is submitted through the State or a political subdivision of the State.

(d) *Facilities serving a rural community or unincorporated town or village.* To be eligible for assistance, a facility not owned by an eligible applicant, as defined in § 206.222, must be owned by a private nonprofit organization; and provide an essential governmental service to the general public. Applications for these facilities must be submitted through a State or political subdivision of the State.

(e) *Negligence.* No assistance will be provided to an applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant to cooperate with FEMA in all efforts necessary to recover the cost of such assistance from the negligent party.

§ 206.224 Debris removal.

(a) *Public interest.* Upon determination that debris removal is in the public interest, the Regional Director may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:

(1) Eliminate immediate threats to life, public health, and safety; or

(2) Eliminate immediate threats of significant damage to improved public or private property; or

(3) Ensure economic recovery of the affected community to the benefit of the community-at-large.

(b) *Debris removal from private property.* When it is in the public interest for an eligible applicant to remove debris from private property in urban, suburban and rural areas, including large lots, clearance of the living, recreational and working area is eligible except those areas used for crops and livestock or unused areas.

(c) *Assistance to individuals and private organizations.* No assistance will be provided directly to an individual or private organization, or to an eligible applicant for reimbursement of an individual or private organization, for the cost of removing debris from their own property. Exceptions to this are those private nonprofit organizations operating eligible facilities.

§ 206.225 Emergency work.

(a) *General.* (1) Emergency protective measures to save lives, to protect public health and safety, and to protect improved property are eligible.

(2) In determining whether emergency work is required, the Regional Director may require certification by local State, and/or Federal officials that a threat exists, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat.

(3) In order to be eligible, emergency protective measures must:

(i) Eliminate or lessen immediate threats to live, public health or safety; or

(ii) Eliminate or lessen immediate threats of significant additional damage to improved public or private property through measures which are cost effective.

(b) *Emergency access.* An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant for repair or maintenance may be eligible for emergency repairs or replacement provided that emergency repair or replacement of the facility economically eliminates the need for temporary housing. The work will be limited to that necessary for the access to remain passable through events which can be considered an immediate threat. The work must be performed by an eligible applicant and will be subject to cost sharing requirements.

(c) *Emergency communications.* Emergency communications necessary for the purpose of carrying out disaster relief functions may be established and may be made available to State and local government officials as deemed appropriate. Such communications are intended to supplement but not replace normal communications that remain operable after a major disaster. FEMA funding for such communications will be discontinued as soon as the needs have been met.

(d) *Emergency public transportation.* Emergency public transportation to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible is eligible. Such transportation is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding for such transportation will be discontinued as soon as the needs have been met.

§ 206.226 Restoration of damaged facilities.

Work to restore eligible facilities on the basis of the design of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

(a) *Assistance under other Federal agency (OFA) programs.* Generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

(b) *Standards.* For the costs of Federal, State, and local repair or replacement standards which change the predisaster construction of facility to be eligible, the standards must:

(1) Apply to the type of repair or restoration required;

(Standards may be different for new construction and repair work)

(2) Be appropriate to the predisaster use of the facility;

(3) Be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration;

(4) Apply uniformly to all similar types of facilities within the jurisdiction of owner of the facility; and

(5) For any standard in effect at the time of a disaster, it must have been enforced during the time it was in effect.

(c) *Hazard mitigation.* In approving grant assistance for restoration of facilities, the Regional Director may require cost effective hazard mitigation measures not required by applicable standards. The cost of any requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

(d) *Repair vs. replacement.* (1) A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.

(2) If a damaged facility is not repairable in accordance with paragraph (d)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs shall be limited to the less expensive of repairs or replacement.

(3) An exception to the limitation in paragraph (d)(2) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

(e) *Relocation.* (1) The Regional Director may approve funding for and require restoration of a destroyed facility at a new location when:

(i) The facility is and will be subject to repetitive heavy damage;

(ii) The approval is not barred by other provisions of Title 44 CFR; and

(iii) The overall project, including all costs, is cost effective.

(2) When relocation is required by the Regional Director, eligible work includes land acquisition and ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.

(3) When relocation is required by the Regional Director, no future funding for repair or replacement of a facility at the original site will be approved, except those facilities which facilitate an open space use in accordance with 44 CFR part 9.

(4) When relocation is required by the Regional Director, and, instead of relocation, the applicant requests approval of an alternate project [see § 206.203(d)(2)], eligible costs will be limited to 90 percent of the estimate of restoration at the original location excluding hazard mitigation measures.

(5) If relocation of a facility is not feasible or cost effective, the Regional Director shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR part 9, 44 CFR part 10, or 44 CFR part 206, Subpart M, that restoration in the original location is not allowed. In such cases, an alternate project may be applied for.

(f) *Equipment and furnishings.* If equipment and furnishings are damaged

beyond repair, comparable items are eligible as replacement items.

(g) *Library books and publications.* Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.

(h) *Beaches.* (1) Replacement of sand on an unimproved natural beach is not eligible.

(2) Improved beaches. Work on an improved beach may be eligible under the following conditions:

(i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and

(ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.

(i) *Restrictions*—(1) *Alternative use facilities.* If a facility was being used for purposes other than those for which it was designed, restoration will only be eligible to the extent necessary to restore the immediate predisaster alternate purpose.

(2) *Inactive facilities.* Facilities that were not in active use at the time of the disaster are not eligible except in those instances where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget or the owner can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time.

§ 206.227 Snow removal assistance.

Snow removal is eligible for the following types of facilities only:

(a) Thru traffic lanes of collector roads and streets; minor arterial roads and streets; and principal arterials.

(b) Tracks and rights of way of urban mass transit systems as necessary for the continuation or resumption of services.

(c) Roads and Streets are defined for purposes of snow removal assistance as:

(1) *Collector roads and streets* means local roads and streets which serve thru traffic and provide access to higher type roads and facilitate community activities but are primarily of local interest.

(2) *Minor arterial roads and streets* means roads and streets which serve thru traffic and provide access of higher type roads, connecting communities in nearby areas in addition to serving adjacent property.

(3) *Principal arterials* means roads and streets which serve thru traffic and are of statewide interest. They carry high volumes of traffic between population centers and are designed to facilitate traffic movement with limited land access. It also means roads and streets which serve thru traffic only and provide no access to abutting property. (For further clarification, refer to the functional classifications for highways, as determined pursuant to 23 CFR 470.107(b)(3)).

§ 206.228 Allowable costs.

General policies for determining allowable costs are established in 44 CFR 13.22. Exceptions to those policies as allowed in 44 CFR 13.4 and 13.6 are explained below.

(a) *Eligible direct costs—(1) Applicant-owned equipment.* Reimbursement for ownership and operation costs of applicant-owned equipment used to perform eligible work shall be provided in accordance with the following guidelines:

(i) *Rates established under State guidelines.* In those cases where an applicant uses reasonable rates which have been established or approved under State guidelines, in its normal daily operations, reimbursement for applicant-owned equipment which has an hourly rate of $75 or less shall be based on such rates. Reimbursement for equipment which has an hourly rate in excess of $75 shall be determined on a case by case basis by FEMA.

(ii) *Rates established under local guidelines.* Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. If an applicant certifies that its locally established rates do not reflect actual costs, reimbursement may be based on the FEMA Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

(iii) *No established rates.* The FEMA Schedule of Equipment Rates will be the basis for reimbursement in all cases where an applicant does not have established equipment rates.

(2) Statutory Administrative Costs—(i) *Grantee.* Pursuant to section 406(f)(2) of the Stafford Act, an allowance will be provided to the State to cover the extraordinary costs incurred by the State for preparation of damage survey reports, final inspection reports, project applications, final audits, and related field inspections by State employees, including overtime pay and per diem and travel expenses, but not including regular time for such employees. The allowance will be based on the following percentages of the total amount of assistance provided (Federal share) for all subgrantees in the State under sections 403, 406, 407, 502, and 503 of the Act:

(A) For the first $100,000 of total assistance provided (Federal share), three percent of such assistance.

(B) For the next $900,000, two percent of such assistance.

(C) For the next $4,000,000, one percent of such assistance.

(D) For assistance over $5,000,000, one-half percent of such assistance.

(ii) *Subgrantee.* Pursuant to section 406(f)(1) of the Stafford Act, necessary costs of requesting, obtaining, and administering Federal disaster assistance subgrants will be covered by an allowance which is based on the following percentages of net eligible costs under sections 403, 406, 407, 502, and 503 of the Act, for an individual applicant (applicants in this context include State agencies):

(A) For the first $100,000 of net eligible costs, three percent of such costs;

(B) For the next $900,000, two percent of such costs;

(C) For the next $4,000,000, one percent of such costs;

(D) For those costs over $5,000,000, one-half percent of such costs.

(3) State Management Administrative Costs.

(i) *Grantee.* Except for the items listed in paragraph (a)(2)(i) of this section, other administrative costs shall be paid in accordance with 44 CFR 13.22.

(ii) *Subgrantee.* No other administrative costs of a subgrantee are eligible because the percentage allowance in paragraph (a)(2)(ii) of this section covers necessary costs of requesting, obtaining and administering Federal assistance.

(b) *Eligible indirect costs*—(1) *Grantee.* Indirect costs of administering the disaster program are eligible in accordance with the provisions of 44 CFR part 13 and OMB Circular A–87.

(2) *Subgrantee.* No indirect costs of a subgrantee are separately eligible because the percentage allowance in paragraph (a)(2)(ii) of this section covers necessary costs of requesting, obtaining and administering Federal assistance.

§§ 206.229–206.249 [Reserved]

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Subpart J—Coastal Barrier Resources Act

§ 206.340 Purpose of subpart.

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97–348) as that statute applies to disaster relief granted to individuals and State and local governments under the Stafford Act. CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

§ 206.341 Policy.

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Atlantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under the Stafford Act.

§ 206.342 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in part 206 of subchapter D are applicable to this subject.

(a) *Consultation* means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.

(b) *Essential link* means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alternative route is reasonably available.

(c) *Existing facility* on a unit of CBRS established by Pub. L. 97–348 means a publicly owned or operated facility on which the start of a construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. For any other unit added to the CBRS by amendment to Pub. L. 97–348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.

(d) *Expansion* means changing a facility to increase its capacity or size.

(e) *Facility* means "public facility" as defined in § 206.201. This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; and nonfederal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes, or any park.

(f) *Financial assistance* means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.

(g) *New financial assistance* on a unit of the CBRS established by Pub. L. 97–348 means an approval by FEMA of a project application or other disaster assistance after October 18, 1982. For any other unit added to the CBRS by amendment to Pub. L. 97–348, the enactment date such amendment is substituted for October 18, 1982, in this definition.

(h) *Start of construction* for a structure means the first placement of permanent construction, such as the placement of footings or slabs or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and placement of fill, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include excavation and placement of fill such as for a road.

(i) *Structure* means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

(j) *Substantial improvement* means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or placement cost of the facility (including all "public facilities") as defined in the Stafford Act) either:

(1) Before the repair or improvement is started; or

(2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alternation of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

(k) "System unit" means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by the section 4 of the CBRA, or as modified by the Secretary in accordance with that statute.

§ 206.343 Scope.

(a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including, but not limited to a bridge, causeway, utility, or similar facility.

(b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of these regulations. This assistance includes:

(1) Individual and Family Grants that are not for acquisition or construction purposes;

(2) Crisis counseling;

(3) Disaster Legal services; and

(4) Disaster unemployment assistance.

§ 206.344 Limitations on Federal expenditures.

Except as provided in §§ 206.345 and 206.346, no new expenditures or financial assistance may be made available under authority of the Stafford Act for any purpose within the Coastal Barrier Resources System, including but not limited to:

(a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;

(b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to Section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

§ 206.345 Exceptions.

The following types of disaster assistance actions are exceptions to the prohibitions of § 206.344.

(a) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for:

(1) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and

(3) Restoration of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.

(b) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA;

(1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Stafford Act and are limited to actions that are necessary to alleviate the impacts of the event;

(2) Replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities, except as provided in § 206.347(c)(5);

(3) Repair of air and water navigation aids and devices, and of the access thereto;

(4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and

(6) Repair of nonstructural proejcts for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

§ 206.346 Applicability to disaster assistance.

(a) *Emergency assistance.* The Regional Director may approve assistance pursuant to sections 402, 403, or 502 of the Stafford Act, for emergency actions which are essential to the saving of lives and the protection of property and the public health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:

(1) Removal of debris from public property;

(2) Emergency protection measures to prevent loss of life, prevent damage to improved property and protect public health and safety;

(3) Emergency restoration of essential community services such as electricity, water or sewer;

(4) Provision of access to a private residence;

(5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, or provision of minimal cooking facilities;

(6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);

(7) Home repairs to private owner-occupied primary residences to make them habitable;

(8) Housing eligible families in existing resources in the CBRS; and

(9) Mortgage and rental payment assistance.

(b) *Permanent restoration assistance.* Subject to the limitations set out below, the Regional Director may approve assistance for the repair, reconstruction, or replacement but not the expansion of the following publicly owned or operated facilities and certain private nonprofit facilities.

(1) Roads and bridges;

(2) Drainage structures, dams, levees;

(3) Buildings and equipment;

(4) Utilities (gas, electricity, water, etc.); and

(5) Park and recreational facilities.

§ 206.347 Requirements.

(a) *Location determination.* For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts, the Regional Director shall:

(1) Review a proposed action's location to determine if the action is on or connected to the CBRS unit and thereby subject to these regulations. The appropriate Department of Interior map identifying units of the CBRS will be the basis of such determination. The CBRS units are also identified on FEMA Flood Insurance Maps (FIRM's) for the convenience of field personnel.

(2) If an action is determined not to be on or connected to a unit of the CBRS, no further requirements of these regulations needs to be met, and the action may be processed under other applicable disaster assistance regulations.

(3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in §§ 206.348 and 206.349.

(b) *Emergency disaster assistance.* For each emergency disaster assistance action listed in § 206.346(a), the Regional Director shall perform the required consultation. CBRA requires that FEMA consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of CBRA as defined in section 1 of that statute.

(1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior through the Assistance Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in § 206.346(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

(2) Notification. As soon as practicable, the Regional Director will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Associate Director, SLPS, or his or her designee will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:

(i) Identification of the unit in the CBRS;

(ii) Description of work approved;

(iii) Amount of Federal funding; and
(iv) Additional measures required.

(c) *Permanent restoration assistance.* For each permanent restoration assistance action including but not limited to those listed in § 206.346(b), the Regional Director shall meet the requirements set out below.

(1) Essential links. For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:

(i) No facility may be expanded beyond its predisaster design.

(ii) Consultation in accordance with § 206.348 shall be accomplished.

(2) Channel improvements. For the repair of existing channels, related structures and the disposal of dredged materials:

(i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished.

(3) Energy facilities. For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

(i) No such facility may be repaired, reconstructed or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;

(ii) Consultation in accordance with § 206.348 shall be accomplished.

(4) Special-purpose facilities. For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; and, nonstructural facilities that are designed to mimic, enhance or restore natural shoreline stabilization systems:

(i) Consultation in accordance with § 206.348 shall be accomplished;

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(5) Other public facilities. For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall within the categories identified in paragraphs (c)(1), (2), (3), and (4) of this section:

(i) No such facility may be repaired, reconstructed, or replaced unless it is an "existing facility;"

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 206.348 shall be accomplished;

(iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(6) Private nonprofit facilities. For eligible private nonprofit facilities as defined in these regulations and of the type described in paragraphs (c)(1), (2), (3), and (4) of this section:

(i) Consultation in accordance with § 206.348 shall be accomplished.

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 206.349.

(7) Improved project. An improved project may not be approved for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section, then an improved project for such facilities is not precluded.

(8) Alternate project. A new or enlarged facility may not be constructed on a unit of the CBRS under the provisions of the Stafford Act unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c)(1), (2), (3), or (4) of this section.

§ 206.348 Consultation.

As required by section 6 of the CBRA, the FEMA Regional Director will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

(a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:

(1) Identification of the unit within the CBRS;

(2) Description of the facility and the proposed repair or replacement work; including identification of the facility as an exception under section 6 of CBRA; and full justification of its status as an exception;

(3) Amount of proposal Federal funding;

(4) Additional mitigation measures required; and

(5) A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with § 206.349.

(b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and an opinion whether or not the proposed action meets the criteria for a CBRA exception, and on the consistency of the action with the purposes of CBRA (when such consistency is required). DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Director shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.

(c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Director will submit the issue to the FEMA Assistant Associate Director for Disaster Assistance Programs (DAP). In coordination with the Office of General Counsel (OGC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. After this consultation, the Assistant Associate Director, DAP, determines whether or not to approve the proposed action.

§ 206.349 Consistency determinations.

Section 6(a)(6) of CBRA requires that certain actions be consistent with the purposes of that statute if the actions are to be carried out on a unit of the CBRA. The purpose of CBRA, as stated in section 2(b) of that statute, is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along with Atlantic and Gulf coasts. For those actions where a consistency determination is required, the FEMA Regional Director shall evaluate the action according to the following procedures, and the evaluation shall be included in the written request for consultation with DOI.

(a) *Impact identification.* FEMA shall identify impacts of the following types that would result from the proposed action:

(1) Risks to human life;

(2) Risks of damage to the facility being repaired or replaced;
(3) Risks of damage to other facilities;
(4) Risks of damage to fish, wildlife, and other natural resources;
(5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and
(6) Encouragement of new development.

(b) *Mitigation.* FEMA shall modify actions by means of practicable mitigation measures to minimize adverse effects of the types listed in paragraph (a) of this section.

(c) *Conservation.* FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wildlife resources.

(d) *Finding.* For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Director before funding may be approved for that action.

§§ 206.350—206.359 [Reserved]

Subpart K—Community Disaster Loans

§ 206.360 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 417 of the Act.

§ 206.361 Loan program.

(a) *General.* The Associate Director, State and Local Programs and Support (the Associate Director) may make a Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster and which demonstrates a need for Federal financial assistance in order to perform its governmental functions.

(b) *Amount of loan.* The amount of the loan is based on need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term "fiscal year" as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate for five year maturities as determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This rate is from the monthly Treasury schedule of certified interest rates which takes into consideration the current average yields on outstanding marketable obligations of the United States, adjusted to the nearest ⅛ percent.

(d) *Time limitation.* The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year. Only one loan may be approved under section 417(a) for any local government as the result of a single disaster.

(e) *Term of loan.* The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider requests for an extensions of loans based on the local government's financial condition. The total term of any loan under section 417(a) normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the Community Disaster Loan recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment. (See § 206.367(c).)

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the nonfederal share of any Federal program, including those under the Act.

(g) *Cancellation.* The Associate Director shall cancel repayment of all or part of a Community Disaster Loan to the extent that he/she determines that revenues of the local government during the 3 fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

(h) *Relation to other assistance.* Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

§ 206.362 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan and in the application for loan cancellation, if submitted, and comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the GAR and the FEMA Regional Office to the FEMA Associate Director.

(b) The GAR shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests in major disasters or emergencies.

(c) The Regional Director or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.

(d) The Associate Director, or a designee, shall execute a Promissory Note with the local government, and the Office of Disaster Assistance Programs in Headquarters, FEMA, shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the GAR and the Regional Director. The Associate Director or designee shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

(f) The Comptroller shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

§ 206.363 Eligibility criteria.

(a) *Local government.* (1) The local government must be located within the area designated by the Associate Director as eligible for assistance under a major disaster declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

(2) Criteria considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as result of a major disaster, a

demonstrated need for financial assistance in order to perform its governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential municipal operating services to the community. Eligibility for other assistance under the Act does not, by itself, establish entitlement to such a loan.

(b) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency and must demonstrate a need for financial assistance in order to perform its governmental functions. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the application.

(2) *Substantial loss of tax and other revenues.* The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Criteria used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster;

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year;

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform its governmental functions. The criteria used in making this determination include the following:

(i) Whether there are sufficient funds to meet current fiscal year operating requirements;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(vii) Displacement of revenue-producing business due to property destruction;

(viii) Necessity to reduce or eliminate essential municipal services; and

(ix) Danger of municipal insolvency.

§ 206.364 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the GAR. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the 3 succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the GAR. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere (see § 206.367(c)).

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy for the submission. The Governor's Authorized Representative may request the Regional Director to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the local government's annual operating budget (see § 206.364(b)(2)) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the 3 fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its annual Operating budget, and

(B) A copy of the pertinent State statutes, ordinance, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) Operating Budget. For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(3) Operating budget increases. Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) Revenue and assessment information. The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due. Tax revenues assessed but not collected, or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect, are not a legitimate revenue loss for purposes of evaluating the loan application.

(5) Estimated disaster-related expense. Unreimbursed disaster-related expenses of a municipal operating character should be estimated. These are discussed in § 206.366(b).

(c) *Federal review.* (1) The Associate Director or designee shall approve a community disaster loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance to perform its governmental function as the result of the disaster.

(2) Resubmission of application. If a loan application is disapproved, in whole or in part, by the Associate Director because of inadequacy of information, a revised application may be resubmitted by the local government

within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.

(d) *Community disaster loan.* (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent 3 fiscal years, or

(ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.

(2) Promissory note. (i) Upon approval of the loan by the Associate Director or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (see § 206.364(d)(2)(ii)). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the Note.

(ii) If the State cannot legally cosign the Promissory Note, the local government must pledge collateral security, acceptable to the Associate Director, to cover the principal amount of the Note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(Approved by Office of Management and Budget under Control Number 3067-0034)

§ 206.365 Loan administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

(2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds. A sinking fund should be established to amortize the debt.

(b) *Financial management.* (1) Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the GAR, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall, for the purpose of audits and examination, have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under these regulations.

(c) *Loan servicing.* (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the 3 subsequent fiscal years.

(2) The Headquarters, FEMA Office of Disaster Assistance Programs, will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.

(3) The Headquarters, FEMA Office of Disaster Assistance Programs, shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) *Inactive loans.* If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

§ 206.366 Loan cancellation.

(a) *Policies.* (1) FEMA shall cancel repayment of all or part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget for the local government, including additional unreimbursed disaster-related expenses for a municipal operating character. For loan cancellation purposes, FEMA interprets that term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(2) If the tax and other revenues rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster are reduced during the 3 fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster shall be used without reduction for purposes of computing revenues received. This may result in decreasing the potential for loan cancellations.

(3) If the local government's fiscal year is changed during the "full 3 year period following the disaster" the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.

(4) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures which are not disaster related, except increases due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.

(5) It is not the purpose of this loan program to underwrite predisaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.

(b) *Disaster-related expenses of a municipal operation character.* (1) For purpose of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and other expenses normally budgeted for the general fund, as defined by the Municipal Finance Officers Association.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

(3) Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursed disaster-related expenses.

Examples of such expenses include but are not limited to:

(i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.

(ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.

(iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.

(iv) The cost to the applicant of flood insurance required under Pub. L. 93–234, as amended, and other hazard insurance required under section 311, Pub. L. 93–288, as amended, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

(4) The following expenses are not considered to be disaster-related for Community Disaster Loan purposes:

(i) The local government's share for assistance provided under the Act including flexible funding under section 406(c)(1) of the Act.

(ii) Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.

(iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.

(iv) Expenses incurred by the local government which are reimbursed on the applicant's project application.

(c) *Cancellation application.* A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation through the Governor's Authorized Representative to the Regional Director prior to the expiration date of the loan.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for the fiscal year of the disaster and the 3 subsequent fiscal years;

(ii) Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.

(iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:

(A) The market value of the tax base (dollars);

(B) The assessment ratio (percent);

(C) The assessed valuation (dollars);

(D) The tax levy rate (mils);

(E) Taxes levied and collected (dollars).

(iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.

(v) Other financial information specified in the Application for Loan Cancellation.

(2) *Narrative justification.* The application may include a narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Associate Director to consider in rendering a decision on the cancellation request.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation and FEMA audit, when determined necessary, the Associate Director determines that all or part of the Community Disaster Loan funds should be canceled, the principal amount which is canceled will become a grant, and the related interest will be forgiven. The Associate Director's determination concerning loan cancellation will specify that any uncancelled principal and related interest must be repaid immediately and that, if immediate repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Comptroller.

(2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncancelled portion of the loan must be repaid in accordance with § 206.367.

(4) *Appeals.* If an Application for Loan Cancellation is disapproved, in whole or in part, by the Associate Director or designee, the local government may submit any additional information in support of the application within 60 days of the date of disapproval. The decision by the Associate Director or designee on the submission is final.

(Approved by the Office of Management and Budget under Control Number 3067–0026)

§ 206.367 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against loan at any time without any prepayment penalty.

(b) *Repayment.* To the extent not otherwise cancelled, Community Disaster Loan funds become du and payable in accordance with the terms and conditions of the Promissory Note. The note shall include the following provisions:

(1) The term of a loan made under this program is 5 years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows: $I=P\times R\times T$, where I=the amount of simple interest, P=the principal amount disbursed; R=the interest rate of the loan; and, T=the outstanding term in years from the date of disbursement to date of repayment, with periods less than 1 year computed on the basis of 365 days/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.

(3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Associate Director may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the

loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal debt collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

(c) *Additional time.* In unusual circumstances involving financial hardship, the local government may request an additional period of time beyond the original 10 year term to repay the indebtedness. Such request may be approved by the Associate Director subject to the following conditions:

(1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.

(2) The principal amount shall be the original uncancelled principal plus related interest.

(3) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate.

(4) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than 10 years from the date the new note is executed.

§§ 206.368—206.389 [Reserved]

Subpart L—Fire Suppression Assistance

§ 206.390 General.

When the Associate Director determines that a fire or fires threaten such destruction as would constitute a major disaster, assistance may be authorized, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 206.391 FEMA-State Agreement.

Federal assistance under section 420 of the Act is provided in accordance with a continuing FEMA-State Agreement for Fire Suppression Assistance (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions, consistent with the provisions of applicable laws, Executive Orders, and regulations, as the Associate Director may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed as required to update the continuing Agreement.

§ 206.392 Request for assistance.

When a Governor determines that fire suppression assistance is warranted, a request for assistance may be initiated. Such request shall specify in detail the factors supporting the request for assistance. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a telephone request to the Regional Director, promptly followed by a confirming telegram or letter. (Approved by the Office of Management and Budget under the Control Numbers 3067–0066)

§ 206.393 Providing assistance.

Following the Associate Director's decision on the State request, the Regional Director will notify the Governor and the Federal firefighting agency involved. The Regional Director may request assistance from Federal agencies if requested by the State. For each fire or fire situation, the State shall prepare a separate Fire Project Application based on Federal Damage Survey Reports and submit it to the Regional Director for approval.

§ 206.394 Cost eligibility.

(a) *Cost principles.* See 44 CFR 13.22, Allowable Costs, and the associated OMB Circular A–87, Cost Principles for State and Local Governments.

(b) *Program specific eligible costs.* (1) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.

(2) Costs for use of publicly owned equipment used on eligible fire suppression work based on reasonable State equipment rates.

(3) Costs to the State for use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. Only direct costs for use of Federal Excess Personal Property (FEPP) vehicles and equipment on loan to State Forestry and local cooperators, can be paid.

(4) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.

(5) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.

(6) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.

(7) Mobilization and demobilization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.

(8) Eligible costs of local governmental firefighting organizations which are reimbursed by the State pursuant to an existing cooperative mutual aid agreement, in suppressing an approved incident fire.

(9) State costs for suppressing fires on Federal land in cases in which the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis. This provision is an exception to normal FEMA policy under the Act and is intended to accommodate only those rare instances that involve State fire suppression of section 420 incident fires involving co-mingled Federal/State and privately owned forest or grassland.

(10) In those instances in which assistance under section 420 of the Act is provided in conjunction with existing Interstate Forest Fire Protection Compacts, eligible costs are reimbursed in accordance with eligibility criteria established in this section.

(c) *Program specific ineligible costs.* (1) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

(2) Any costs not incurred during the incident period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.

(3) State costs for suppressing a fire on co-mingled Federal land where such costs are reimbursable to the State by a Federal agency under another statute (see 44 CFR part 151).

§ 206.395 Grant administration.

(a) Project administration shall be in accordance with 44 CFR part 13, and applicable portions of subpart G, 44 CFR part 206.

(b) In those instances in which reimbursement includes State fire suppression assistance on co-mingled State and Federal lands (§ 206.394(b)(9)), the Regional Director shall coordinate with other Federal programs to preclude any duplication of payments. (See 44 CFR part 151.)

(c) Audits shall be in accordance with the Single Audit Act of 1984, Pub. L. 98–502. (See subpart G of this part.)

(d) A State may appeal a determination by the Regional Director on any action related to Federal assistance for fire suppression. Appeal procedures are contained in 44 CFR 206.206.

§§ 206.396–206.399 [Reserved]

Dated: January 6, 1990.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 90–1137 Filed 1–22–90; 8:45 am]

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Tuesday
January 23, 1990

Part III

Environmental Protection Agency

40 CFR Parts 260, 261 and 262

Mining Waste Exclusion; Section 3010 Notification for Mineral Processing Facilities; Designated Facility Definition; Standards Applicable to Generators of Hazardous Waste; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261 and 262

[SWH-FRL-3699-3; EPA/OSW-FR-90-013]

Mining Waste Exclusion; Section 3010 Notification for Mineral Processing Facilities; Designated Facility Definition; Standards Applicable to Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's final rule removes five of 20 conditionally retained mineral processing wastes from the exemption from hazardous waste regulations provided by section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA), often referred to as the Bevill exclusion. The five wastes removed from the Bevill exclusion by today's final rule are: Furnace off-gas solids from elemental phosphorus production, process wastewater from primary lead processing, air pollution control dust/sludge from lightweight aggregate production, sulfate process waste acids from titanium dioxide production, and sulfate process waste solids from titanium dioxide production. Wastes removed from the exclusion are subject to hazardous waste regulations if they are found to exhibit a hazardous characteristic or are otherwise identified or listed as hazardous.

Three wastes previously proposed on September 25, 1989 (54 FR 39298), for removal from the Bevill exclusion are retained under the exclusion by this final rule. Those three wastes are: (1) Treated residue from roasting/leaching of chrome ore; (2) process wastewater from coal gasification; and (3) process wastewater from hydrolfluoric acid production. The Bevill exclusion also is retained for 12 of the original 13 other conditonally retained wastes, which will be addressed, along with 5 other wastes in a Report to Congress and subsequent Regulatory Determination by January 31, 1991.

Today's rule makes technical corrections to the definition of "beneficiation" that was promulgated on September 1, 1989 (54 FR 36592) and also waives the RCRA Section 3010 notification deadline for mineral processing facilities that are located in authorized states and that generate wastes removed from the exclusion in the September 1, 1989 final rule. Because of confusion expressed by the regulated community in response to statements made in the preamble of the September 1 rule, today's rule also extends the RCRA Section 3010 notification deadline for mineral processing facilities that are located in unauthorized states and that generate wastes removed from the exclusion by the September 1, 1989 final rule. Notification will now be required in unauthorized states by April 23, 1990.

Today's final rule also amends the RCRA Subtitle C definition of "designated facility" and the standards applicable to generators of hazardous waste to clarify the requirements for completing hazardous waste shipment manifests for transporting wastes from one state where they are regulated as hazardous to another in which they are not regulated as hazardous.

DATES: Effective Date: July 23, 1990. Not later than April 23, 1990, all persons in unauthorized states who generate, transport, treat, store, or dispose of wastes removed from temporary exclusion by this rule or the September 1, 1989 final rule and which are characteristically hazardous under 40 CFR part 261, subpart C, must notify EPA of these activities pursuant to section 3010 of RCRA.

See sections V and VI of the preamble below for additional dates and details.

FOR FURTHER INFORMATION, CONTACT: RCRA/Superfund Hotline at (800) 424-9346 or (202) 382-3000, or for technical information contact Dan Derkics or Bob Hall, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 382-3608, or (202) 475-8814, respectively.

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Context

Section 3001(b)(3)(A)(ii) of the Resource Conservation and Recovery Act (RCRA) temporarily excludes "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous waste under Subtitle C of RCRA, pending completion of certain studies by EPA. In 1980, EPA temporarily interpreted this exclusion, often referred to as the Bevill exclusion, to encompass "solid waste from the exploration, mining, milling, smelting and refining of ores and minerals" (45 FR 76619, November 19, 1980).

In response to the decision of the District of Columbia Circuit Court of Appeals in *Environmental Defense Fund* v. *EPA*, 852 F.2d 1316, (D.C. Cir. 1988), *cert. denied*, 109 S.Ct. 1120 (1989), EPA proposed criteria by which mineral processing wastes would be evaluated for continued exclusion from hazardous waste regulation until the required studies and subsequent regulatory determination was made. On September 1, 1989 (see 54 FR 36592), EPA provided the final Bevill exclusion criteria. Twenty mineral processing wastes were conditionally retained within the scope of the Bevill exclusion pending the analysis of newly collected data. The Bevill exemption was retained for the following five mineral processing wastes, which will be studied in a Report to Congress.

1. Slag from primary copper processing.

2. Slag from primary lead processing.
3. Red and brown muds from bauxite refining.
4. Phosphogypsum from phosphoric acid production.
5. Slag from elemental phosphorus production.

All of the other mineral processing wastes that were permanently removed from the Bevill exclusion by the September 1, 1989 rule are subject to RCRA Subtitle C regulation if they are solid wastes and exhibit one or more of the characteristics of hazardous waste as defined in 40 CFR part 261 or are otherwise listed as hazardous waste.

On September 25, 1989 (54 FR 39298), EPA reevaluated the status of the 20 conditionally retained wastes. Applying the high volume and low hazard criteria contained in the September 1, 1989 final rule, the Agency proposed to permanently remove seven mineral processing wastes from the Bevill exclusion and retain 13 other mineral processing wastes within the exclusion for study in a Report to Congress. The seven mineral processing wastes proposed for removal from the Bevill exclusion were:

1. Roast/leach ore residue from primary chromite production;
2. Process wastewater from coal gasification;
3. Furnace off-gas solids from elemental phosphorus production;
4. Process wastewater from hydrofluoric acid production;
5. Process wastewater from primary lead processing;
6. Sulfate process waste acids from titanium dioxide production; and
7. Sulfate process waste solids from titanium dioxide production.

The 13 mineral processing wastes proposed for temporary retention in the Bevill exclusion were:

1. Gasifier ash from coal gasification;
2. Calcium sulfate wastewater treatment plant sludge from primary copper processing;
3. Slag tailings from primary copper processing;
4. Fluorogypsum from hydrofluoric acid production;
5. Air pollution control dust/sludge from iron blast furnaces;
6. Iron blast furnace slag;
7. Air pollution control dust/sludge from lightweight aggregate production;
8. Process wastewater from primary magnesium production by the anhydrous process;
9. Process wastewater from phosphoric acid production;
10. Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
11. Basic oxygen furnace and open hearth furnace slag from carbon steel production;
12. Chloride process waste solids from titanium tetrachloride production; and
13. Slag from primary zinc processing.

The September 25, 1989 notice also proposed to modify the RCRA subtitle C definition of "designated facility" for purposes of clarifying the requirements for completing hazardous waste manifests for wastes transported from one State where they are regulated as hazardous to another in which they are not regulated as hazardous. Under the proposed modification, if a waste is sent to an authorized State where the waste is not regulated as hazardous, then the designated facility must be a facility allowed by the State to accept the waste. The Agency solicited public comments on the appropriateness of these modifications as well as on the data used to make the proposed Bevill exclusion decisions.

B. Overview of Today's Rule

Today's final rule establishes the status of 20 mineral processing wastes which were proposed either for removal from or retention in the Bevill exclusion in the September 25, 1989 notice of proposed rulemaking (NPRM). In addition, today's rule contains technical corrections to the September 1, 1989 final rule. Furthermore, today's final rule also promulgates a clarification to the definition of "designated facility" that the Agency proposed on September 25, 1989.

This final rule completes the rulemaking regarding the Bevill status of mineral processing wastes until the completion of the required report to Congress and Regulatory Determination. In establishing the current status for these 20 mineral processing wastes, the Agency has considered information presented in public comment on the September 25 proposal together with additional analysis of previous EPA industry survey and field data and, where appropriate, has modified the decisions.

As in the September 25 proposal, the Agency evaluated the 20 mineral processing wastes by applying the high volume and low hazard criteria contained in the September 1, 1989 final rule, using a three-step process. First, the Agency applied the high volume criteria to the available waste generation data. For each waste, the Agency obtained facility-specific annual waste generation rates for the period 1983–1988 and calculated the highest average annual facility-level generation rate. Mineral processing wastes generated above the volume criteria thresholds (an average rate of 45,000 metric tons per facility for non-liquid wastes, and 1,000,000 metric tons for liquid wastes) passed the high volume criterion.

In the second step, the Agency evaluated each of the 20 wastes with respect to the low hazard criterion using the relevant waste characteristics. EPA considered a waste to pose a low hazard only if the waste passed both a toxicity test (Method 1312) and a pH test.

The third step involved consolidating the results from the first two steps to determine the appropriate Bevill status of the 20 conditionally retained mineral processing wastes. Applying these criteria, the Agency is today removing the Bevill exclusion for the following five mineral processing wastes:

1. Furnace off-gas solids from elemental phosphorus production.
2. Process wastewater from primary lead processing.
3. Air pollution control dust/sludge from lightweight aggregate production.
4. Sulfate process waste acids from titanium dioxide production.
5. Sulfate process waste solids from titanium dioxide production.

The following 15 mineral processing wastes are to be retained within the exclusion (in addition to the five already retained in the September 1 rule), pending preparation of a Report to Congress and the subsequent Regulatory Determination:

1. Treated residue from roasting/leaching of chrome ore;
2. Gasifier ash from coal gasification;
3. Process wastewater from coal gasification;
4. Calcium sulfate wastewater treatment plant sludge from primary copper processing;
5. Slag tailings from primary copper processing;
6. Fluorogypsum from hydrofluoric acid production;
7. Process wastewater from hydrofluoric acid production;
8. Air pollution control dust/sludge from iron blast furnaces;
9. Iron blast furnace slag;
10. Process wastewater from primary magnesium production by the anhydrous process;
11. Process wastewater from phosphoric acid production;
12. Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
13. Basic oxygen furnace and open hearth furnace slag from carbon steel production;
14. Chloride process waste solids from titanium tetrachloride production; and
15. Slag from primary zinc processing.

Today's rule also contains technical corrections to the September 1, 1989 final rule. The Agency's review of the final rule, as well as public comments, revealed slight differences between portions of the regulatory language and the corresponding discussion in the preamble. As a result, today's rule includes minor editorial changes to the

language of September 1 final rule. These changes are fully described in Section II.

In addition, EPA is promulgating a clarification to the definition of "Designated Facility" as defined in 40 CFR 260.10. The Agency is amending this definition for purposes of clarifying the requirements for completing hazardous waste manifests for wastes transported from one State where they are regulated as hazardous to another in which they are not regulated as hazardous. Today's clarification allows such generators to ship the waste to a facility in an authorized State in which the waste is not yet regulated as hazardous, as long as the facility receiving the wastes is allowed by the State to receive the waste. This rule also clarifies that it is the responsibility of the generator to assure that any out-of-state transporter and designated facility sign the manifest form that accompanies the waste shipment.

C. Future Activities

This rule establishes the boundaries of the temporary exclusion from hazardous waste regulations for mineral processing wastes provided by RCRA section 3001(b)(3)(A)(ii). All 20 mineral processing wastes for which the Bevill exclusion has been retained will be subject to detailed study by EPA.[1] The findings of these studies will be contained in a Report to Congress that will be submitted by July 31, 1990.

Six months after submission of this report, the Agency will publish a Regulatory Determination stating whether or not any of the studied wastes will be regulated under Subtitle C of RCRA as hazardous wastes, or that such regulation is unwarranted.

II. Analysis of and Response to Public Comments on Bevill Status of 20 Mineral Processing Wastes Proposed on September 25, 1989

This section summarizes and discusses the comments received on the September 25, 1989 proposal. In general, this discussion is limited to the issues germane to the September 25th proposal. Comments on other issues are not discussed here, except in a few instances where the Agency believes it is important to restate its position to avoid confusion or misunderstanding in the regulated community. The Agency did review all of the comments received, however, and comments not discussed here are summarized in a background document in the docket.

A. General Comments on EPA's Application of the Final Bevill Criteria

1. Sources of Volume and Hazard Data

a. Volume Data. One commenter argued that the volume data supporting the proposed determinations of whether proposed waste streams are high volume lack adequate verification. Specifically, the commenter contended that tremendous discrepancies are evident between the data provided by commenters and the data reported from the 1989 National Survey of Solid Wastes from Mineral Processing Facilities for the following four waste streams: Coal gas process wastewater, elemental phosphorous furnace off-gas solids, lead process wastewater, and titanium dioxide sulfate process waste solids.

EPA agrees that some of the data reported in the comments and the data from the surveys that were used in developing waste volume estimates for the proposal are not in close agreement. As a result, in developing today's rule, the Agency has relied almost exclusively on data collected in the 1989 National Survey of Solid Wastes from Mineral Processing Facilities, which was conducted under RCRA Section 3007 authority, under the assumption that the various respondents realize that submission of false data is a punishable offense. The Agency believes that these are the most recent and accurate data available.

Additional analysis of responses to the surveys, carried out in response to these comments, has indicated some variability in the way in which respondents interpreted the survey instructions. In developing the proposed rule, EPA relied primarily on the responses to survey question 2.11 ("How much of the special waste did this processing unit generate in 1988?") to derive the average facility waste volumes. Additional review of the survey responses has indicated that in some instances the volume data that the Agency expected to be reported in response to question 2.11 were in fact reported in other sections of the questionnaire that requested information related to waste treatment plants, surface impoundments and other waste management units (i.e., sections 4 through 6.)[2]

As a consequence, EPA has been careful to select the response to the appropriate survey question (which sometimes is not question 2.11) in developing today's final rule. For example, the appropriate waste volume data were sometimes provided in response to question 4.18 ("What was the quantity of sludge/solid outflows from this wastewater treatment plant in 1988?"), question 5.6 ("Approximately how much of the total amount of accumulated sludge/solids in this surface impoundment on December 31, 1988 was added during 1988?"), or question 6.4 ("What were the inflows to this waste management unit and what was the quantity of each inflow in 1988?"). In those cases where responses to questions contained in sections 4 through 6 of the survey have been selected for use by the Agency, the responses are in much better agreement with the data provided in comments. In a number of cases, as discussed more fully in section III, below, estimated waste generation rates have been revised, and in fact, in a few instances, the Agency's evaluation of whether particular waste streams comply with the high volume criterion has been reversed. Documentation addressing the Agency's calculation of waste volumes can be found in the docket supporting this final rule.

The commenter also criticized the Agency for liberally granting Confidential Business Information (CBI) designations to responses submitted by industry respondents to the National Survey. These designations, they claimed, have impeded independent verification of the volume data, noting that for residue from roasting/leaching of chrome ore and titanium dioxide sulfate process waste acids, all of the facilities generating these waste streams designated their relevant survey data as CBI. The commenter stated that if the public is unable to scrutinize these data because of their confidentiality, then the Agency should make a professional verification of the information provided.

Under the provisions of section 3007 of RCRA, facilities providing information to EPA can designate information, in whole or in part, as CBI. EPA has not automatically granted claims for CBI status. Rather, EPA reviewed the CBI claims made for data submitted by mineral processing facilities in support of this rulemaking and, when claims for CBI status appeared excessive, requested, often successfully, that the CBI claims be

[1] These include the five wastes for which the temporary exclusion was retained in the September 1, 1989 final rule and the 15 wastes for which the exclusion is retained in today's rule.

[2] This occurs most often for the five wastes that are covered by this rulemaking for which data were not specifically requested in the survey. Apparently, a number of facility operators either neglected to read, misunderstood, or ignored the instruction to provide information on *way* waste that they considered eligible for Bevill status, irrespective of whether it was on EPA's *preliminary* list.

reduced or eliminated. In addition, EPA has included aggregated CBI data in the publicly available documentation supporting the development of today's rule to the extent that this could be done without revealing company-specific CBI information.

As discussed above, facilities that submit either CBI or non-CBI data requested by EPA under RCRA 3007 authority are subject to enforcement action if they submit false data. As a result, the Agency believes that data collected under Section 3007 authority can be relied upon without additional verification, regardless of whether it is CBI or not. In addition, as a practical matter, the schedule required by the Appeals Court for this rulemaking did not provide the time needed to conduct such verification.

One commenter stated that for some of the wastes of interest, EPA volume determinations are based on a fraction of those facilities generating the waste. As a result, the commenter contends, EPA lacks a sufficient basis for determining whether proposed wastes meet the high volume criterion. In instances where EPA lacks data on more than 25 percent of the facilities generating the waste, the commenter believes that EPA should not make a volume determination without determining whether the facilities providing the volume data are representative of the industry; the Agency should also attempt to obtain data on the remaining facilities. The commenter maintained that in the absence of survey data, EPA should not rely completely upon data provided in public comments.

EPA responds that, as dicussed above and in more detail in Section III of this preamble, further analysis of the survey data has shown that the survey responses do in fact provide adequate waste volume data for all but one of the 20 mineral processing wastes covered by today's rulemaking. With the exception of this one waste, waste volume data are available in the survey for far more than 25 percent of the facilities generating the waste. For the one waste with limited data available in the survey, basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production, data provided by the American Iron and Steel Institute (AISI) were used for the volume determination. These data were verified through comparison with the survey data that were provided for several of the facilities for which AISI also provided volume data.

b. *Hazard Data.* Several commenters argued that the Agency used too few samples, especially when results were inconsistent, or neglected to sample inactive facilities for determining the hazard of waste streams. As a result, the commenters argued, the samples were not representative of the entire industry. Other commenters contended that many inconsistencies in the waste sampling data were overlooked in making proposed exclusion decisions.

EPA responds that, as clearly stated in the September 25, 1989 NPRM, the low hazard criterion was established in the September 1, 1989 final rule and is not subject to public comment at this time. For further discussion of the development and application of the low hazard criterion, refer to 54 FR 36592. In applying the final Bevill low hazard criterion, EPA has not ignored any apparent inconsistencies or widely varying concentrations. The low hazard criterion is applied using the lower 80 percent confidence interval that, as a practical matter, allows for one or more samples to exhibit contaminant concentrations above relevant standards, without disqualifying the waste for Bevill status. Inactive facilities were not sampled because they are affected by today's rulemaking only if in the future they resume operation or actively manage historical accumulations of wastes for which the Subtitle C exemption is being removed by today's rule. The Agency believes that it would be inappropriate and impractical to consider these speculative future activities in developing today's rule. (For further discussion see 54 FR 36595–36597.)

Another commenter disputed EPA's use of data submitted by waste generators for the low hazard determinations, stating that the use of these data contradicts the criteria set in the September 1, 1989 rule.

As explained in the preamble to the September 1, 1989 final rule, EPA established that low hazard determinations are to be based on EPA Method 1312 data unless

i. The waste is generated at five or more facilities; and

ii. Substantial additional relevant data are available and the preponderance of these additional data indicate that the waste should be considered low hazard, where:

a. Relevant data are defined as data that result from analysis of waste extracts obtained by EPA Methods 1310, 1311, and 1312, ASTM Test Method D3987–81, or comparable procedures that Agency has reason to believe produce reliable and representative data; and

b. To be considered substantial, the additional data must characterize the waste at 3 plants (other than those two plants where Method 1312 results exceed 100 times the MCLs) or at least half of the facilities that generate the waste (other than those two plants where Method 1312 results exceed 100 times the MCLs), whichever number of plants is larger. (54 FR 36630)

The Agency wishes to point out that there is no explicit or implicit assumption in this low hazard criterion about the source of the data that the Agency is to use in making low hazard determinations. Accordingly, EPA has used available Method 1312 data regardless of source (e.g., EPA, industry) in making low hazard determinations in today's rule (and, indeed, the September 25, 1989 proposal).

B. Comments on the 13 Waste Streams Proposed for Retention

This section discusses comments received on each of the 13 mineral processing wastes for which EPA proposed to retain the Bevill exemption. The comments received on each of the wastes generally are presented under one of three subheadings: Processing Criterion/Waste Definition, Volume, or Hazard. These subheadings appear only when they are relevant to comments identified for the waste being discussed, so for many of the 13 wastes, one or more of the subheadings are not included.

1. Gasifier Ash From Coal Gasification

One commenter supported EPA's proposed retention of gasifier ash from coal gasification within the Bevill exclusion.

2. Calcium Sulfate Wastewater Treatment Plant Sludge From Primary Copper Processing

One commenter agreed with EPA's proposed determination that calcium sulfate wastewater treatment plant sludges from primary copper processing are high volume, low hazard materials and, thus, qualify for the Bevill exclusion and further study.

a. Processing Criterion/Waste Definition. One commenter asserted that no rational basis exists for distinguishing between calcium sulfate and sodium hydroxide sludges, arguing that both are generated in identical treatment plants, and both are reprocessed in the primary copper processing operation to recover additional copper. The commenter indicated that the only difference between the two sludges is the type of reagent used (lime or sodium hydroxide) to neutralize acidic aqueous streams that enter the treatment plants. The commenter reasoned that the only explanation for this disaggregation is the amount of sludge resulting from use of the different neutralizing reagents.

The Agency has considered the comment and finds these arguments unconvincing. EPA believes that the type of reagent used is an important factor in determining the chemical nature and quantity of the sludge generated. As explained in the preamble to the April, 1989 proposed rule (54 FR 15316), EPA believes that there are significant differences between these materials, and accordingly, has retained this distinction in today's final rule.

b. Volume. Three commenters addressed the volume data for this waste. One commenter agreed with EPA's determination that calcium sulfate wastewater treatment plant sludge meets the high volume criterion. Another commenter contended that all wastewater treatment plant sludge from primary copper processing should be studied under the Bevill Amendment. If the generation rates for calcium sulfate and sodium hydroxide sludges are added, they noted, the resulting average is above the 45,000 metric ton per year cutoff. The third commenter claimed that public comment data submitted by waste generators and survey data for those same wastes are not consistent. The third commenter noted that, in public comments, industry submitted an average annual generation rate for calcium sulfate wastewater treatment plant sludge from primary copper processing of 75,750 MT/yr (comments of Kennecott Utah Copper on October 20, 1988 NPRM), while according to EPA's survey data, the average generation rate for this waste stream was 1,179,341 MT/yr. Because these data are not in agreement, the third commenter concluded that all of the volume data are suspect, especially when EPA had previously estimated an annual generation rate of 38,033 MT/yr, a volume that would not have supported a high volume determination.

The Agency agrees that the volume data cited by the commenter appear to be inconsistent. The Agency has reviewed the survey data and found that these apparent inconsistencies arise from the fact that appropriate waste volume data sometimes were reported in sections 3 through 6 of the questionnaire, rather than section 2, which was used to develop average volume data for the proposed rule. As a result, these differences have since been resolved and are explained in Section III, below, and a background document in the docket, which present the Agency's revised waste generation estimates. Finally, EPA's previous volume estimate of approximately 38,000 MT/yr average per facility was based on an aggregation of calcium sulfate and sodium hydroxide sludge, which the Agency has concluded is inappropriate. [3]

c. Hazard. Two commenters addressed the hazard level of calcium sulfate wastewater treatment plant sludge from primary copper processing. One agreed with EPA's proposed determination that the waste meets EPA's low hazard criterion. However, another commenter asserted that EPA's sampling data demonstrated that calcium sulfate wastewater treatment sludge from primary copper processing exhibits the hazardous waste characteristic of EP-toxicity for arsenic, cadmium, and selenium, and questioned why it was not proposed for removal from the Bevill exclusion on that basis alone.

EPA finalized the low hazard criterion in the September 1, 1989 rule, and is not entertaining comments on it. The Agency's rationale for the low hazard criterion is outlined in 54 FR 36592. As discussed in the September 25, 1989 proposal, the waste does not exhibit levels of toxic constituents above those established by the September 1, 1989 final rule.

3. Slag Tailings From Primary Copper Processing

Two commenters supported EPA's proposed retention of slag tailings from primary copper processing for further study, asserting that EPA properly determined the waste to be high volume and low hazard.

a. Processing Criterion/Waste Definition. One commenter stated that at its facility, slag tailings are produced when the ore input to the mill is supplemented with slag from the facility's primary copper smelting operations. Because the slag tailings cannot be differentiated from the ore tailings, the commenter argues that the Bevill exemption, as either a processing waste or a beneficiation waste, should be retained for the slag tailings.

While EPA plans to study copper slag tailings in a report to Congress, EPA disagrees with the commenter's contention that the fact that the waste is generated in combination with a beneficiation waste is relevant to the decision that inclusion in the report to Congress is appropriate. The Agency has decided to include this waste in the report to Congress because it is a mineral processing waste that is both high volume and low hazard according to the criteria previously established. The Agency will, however, examine the current practices that involve co-management of a beneficiation waste and a mineral processing waste in the report to Congress.

b. Volume. Three commenters concurred that slag tailings from primary copper processing meet EPA's high volume criterion. One commenter submitted complete volume data for this waste stream in the Survey, stating that it generates more than a million metric tons per year of the waste stream. Another commenter claimed that about 3,700,000 short tons of tailings, of which approximately 22,000 short tons were slag tailings, were generated by its facility.

4. Air Pollution Control Dust/Sludge From Iron Blast Furnaces

One commenter asserted that the Agency's proposal for retention of iron and steel industry wastes within the Bevill exclusion is fully supported by the data. These wastes are mineral processing wastes, and they meet the criteria as high volume, low hazard wastes.

5. Iron Blast Furnace Slag

One commenter asserted that the Agency's proposal for retention of iron and steel industry wastes within the Bevill exclusion is fully supported by the data. These wastes are mineral processing wastes, and they meet the criteria as high volume, low hazard wastes.

6. Basic Oxygen Furnace and Open Hearth Furnace Air Pollution Control Dust/Sludge From Carbon Steel Production

One commenter asserted that the Agency's proposal for temporary retention of iron and steel industry wastes within the Bevill exclusion is fully supported by the data. These wastes are mineral processing wastes, and they meet the criteria as high volume, low hazard wastes.

One commenter argued, however, that EPA's volume data is incomplete, because for some wastes, the volume determinations are based on only a fraction of the facilities generating the waste. In the case of basic oxygen and open hearth furnace APC dust/sludge from carbon steel production, the commenter maintained that EPA based its volume determination on data from only four of 27 facilities. The commenter argued that the Agency made no effort to determine if these few facilities were

[3] Available data indicate that sludge resulting from treatment of wastewaters from primary copper processing using sodium hydroxide is generated in much smaller volumes than calcium sulfate sludges resulting from treatment with lime. As a result, an average annual sludge volume that includes both types of sludges is significantly lower than one that is based only on calcium sulfate sludge.

representative of the industry in general, or if the facilities were unusually large or small and would skew the data.

In response to this comment, EPA has carefully reviewed all data available from the industry survey and from other sources. The Agency's revised waste generation estimate (presented in Section III, below), is based upon data obtained from the vast majority of active carbon steel facilities. These data show that this is a high volume waste.

7. Basic Oxygen Furnace and Open Hearth Furnace Slag From Carbon Steel Production

One commenter asserted that the Agency's proposal for temporary retention of iron and steel industry wastes within the Bevill exclusion is fully supported by the data. These wastes are mineral processing wastes, and they meet the criteria as high volume, low hazard wastes.

8. Fluorogypsum From Hydrofluoric Acid Production

a. Volume. One commenter agreed with EPA's proposed determination that fluorogypsum from hydrofluoric acid production meets the high volume criterion.

b. Hazard. One commenter agreed with EPA's proposed determination that fluorogypsum meets the low hazard criterion.

9. Air Pollution Control Dust/Sludge From Lightweight Aggregate Production

a. Volume. One commenter argued that EPA's volume data are incomplete, because for this waste, the volume determination was based on only a fraction of the facilities generating the waste. The commenter maintained that EPA based its volume determination for lightweight aggregate APC dust/sludge on data from only six of the 28 facilities it believes to generate the waste. The commenter argued that the Agency made no effort to determine if these few facilities were representative of the industry.

In response to this comment, EPA has carefully reviewed all data available from the industry survey and from other sources. The Agency's revised waste generation estimate (presented in Section III, below), is based upon data obtained from the majority of active lightweight aggregate production facilities. These data show that this is not a high volume waste.

10. Process Wastewater From Primary Magnesium Production by the Anhydrous Method

a. Hazard. One commenter questioned EPA's decision not to propose for removal from the Bevill exclusion process wastewater from primary magnesium processing by the anhydrous method even though EPA's sampling demonstrated that the waste exhibits the hazardous waste characteristic of corrosivity (pH level of 1.22). EPA should, they contended, further consider this data in preparing its Report to Congress.

The Agency generally agrees with the commenter that relevant hazard data should be considered in the study of the waste stream when preparing the Report to Congress. However, EPA finalized the low hazard criterion in the September 1, 1989 rule, and is not currently entertaining comments on it. The Agency's rationale for the low hazard criterion is outlined in 54 *FR* 36592. As discussed in the 9/25/89 proposal, the waste does not exhibit a pH below the Bevill hazard criterion value of 1.

11. Process Wastewater From Phosphoric Acid Production

Four commenters stated that EPA correctly proposed that process wastewater from phosphoric acid production be retained within the scope of the Bevill Amendment and that EPA should retain this waste within the Bevill exclusion in the final rule.

a. Processing Criterion/Waste Definition. One commenter argued that process water recirculated in the phosphate complex, including the gypsum stacking system, is not discarded. Process water's nutrient value, which is extracted for fertilizer products, and its utilization as a coolant and transport medium, are not activities that should cause it to be classified as a solid waste as defined by the Resource Conservation and Recovery Act.

EPA responds that the definition of solid waste is an issue that is not open for comment in connection with today's rulemaking. EPA wishes to point out, however, that the issue of when cooling water is a solid waste has been discussed in previous rulemakings. Specifically, in the preamble to the January 4, 1985 (50 FR 614) final rule that established the current definition of solid waste, the Agency indicated that cooling water managed entirely in a closed-loop system was not considered to be reclaimed and, thus, would be eligible for the closed-loop exclusion. The Agency also indicated, however, that secondary materials managed in impoundments would not be eligible for the closed-loop exclusion. In addition, the surface impoundments collecting cooling water off of gypsum stacks are waste treatment units, further indication that the contents are solid wastes.

(i) Comments on phosphogypsum transport water. One commenter supported EPA's inclusion of the water used to transport phosphogypsum within the definition of process wastewater from phosphoric acid production.

(ii) Comments on stack runoff. Three commenters argued that "stack runoff" should be included in the definition of process wastewater from phosphoric acid production. One commenter maintained that stack runoff is comprised of "phosphogypsum transport" water, which is specifically included in the definition of process wastewater from phosphoric acid production. The commenter further stated that the definition of process wastewater from phosphoric acid production, which includes "several points in the wet process," is intended to include all process wastewater generated at all points within that process. A second commenter reasoned that, just as process wastewater managed in a pond that receives precipitation continues to be process wastewater, gypsum transport water that is temporarily trapped within a gypsum stack and receives precipitation continues to be gypsum transport water. The commenter also indicated that because runoff from dry stacks is not hazardous, and as runoff from wet stacks contains transport water which has been retained, stack runoff should also be retained within the Bevill Amendment.

One commenter noted that comments from previous rulemakings and other documents may have led to the incorrect impression that phosphogypsum stack runoff standing alone exhibits characteristics of hazardous waste. The commenter also indicated that they believe the Agency has resolved this issue satisfactorily, however, by including water used for phosphogypsum transport in the description of phosphoric acid process wastewater included in the proposed rule. The commenter further concluded that because only the phosphogypsum transport water entrained in precipitation runoff from phosphogypsum stacks ever exhibits characteristics of hazardous waste, EPA's proposal to include phosphogypsum transport water within the scope of the Bevill Amendment resolves the issue of the status of precipitation runoff.

(iii) Comments on uranium recovery wastewater. Commenters noted that the uranium recovery step of phosphoric acid production follows the reaction of phosphate rock and sulfuric acid and precedes the concentration and

purification steps required to produce commercial grade, also known as merchant grade, phosphoric acid. Two commenters argued that the process wastewater generated from the uranium recovery step of phosphoric acid production must be considered a component of "process wastewater from phosphoric acid production" and, thus, proposed it for retention within the Bevill Amendment.

(iv) Comments on process wastewater from animal feed production. Two commenters maintained that process wastewater from animal feed production should be included in the definition of process wastewater from phosphoric acid production and thus retained in the Bevill exclusion. One commenter claimed animal feed process wastewater, standing alone, meets the Agency's high volume and low hazard criteria. This commenter further argued that the production of animal feed constitutes mineral processing, citing the following reasons: (1) Three key animal feed ingredients (dicalcium phosphate, mono- and dicalcium phosphate, and defluorinated phosphate rock) are produced from beneficiation of either phosphate rock or limestone; (2) processing removes and/or enhances the characteristics of either beneficiated phosphate rock or limestone; (3) none of the materials used is a scrap material; (4) the processes produce final mineral products; and (5) no combination with non-mineral products is involved. Therefore, the commenter argued, process wastewater from such production should be retained within the scope of the Bevill Amendment.

The commenter also addressed several aspects of the production process. The commenter argued that the defluorination step in animal feed production should not prevent process wastewater from animal feed production from remaining within the Bevill exclusion. The production of defluorinated phosphoric acid involves essentially the same process as the production of undefluorinated commercial grade phosphoric acid. Defluorination is only an additional step in acid production in which fluorides are removed from the acid by heat and the addition of a silicon mineral to facilitate removal of fluorine. No meaningful distinction can or should be made regarding defluorinated phosphoric acid simply because defluorination occurs before or after concentration to commercial grade strength.

The commenter further argued that the production of monoammonium phosphate, an animal feed product, constitutes mineral processing, even though the process makes use of ammonia, a non-mineral ingredient. The commenter indicated that ammonia is added to defluorinated commercial grade phosphoric acid in a granulation process, involving approximately 7,000 gallons per minute of phosphoric acid production process water for particulate scrubbing. The commenter maintained that this amount of water is "infinitesimal" compared to the mineral processing process wastewater generated on a daily basis, and thus this small granulation process should be considered co-management and monoammonium phosphate process wastewater should be included within the Bevill exclusion of phosphoric acid process wastewater.

The commenter maintained that, if EPA determined that returning to its source the 7,000 gallons per minute of phosphoric acid process wastewater used during feed grade monoammonium production would result in the removal of the entire phosphoric acid process wastewater system from the Bevill Amendment, the production of feed grade monoammonium phosphate would be ceased and the product removed from the market.

(v) Comments on superphosphate wastewater. One commenter contended that process wastewater from superphosphate production should be retained within the scope of the Bevill Amendment. The commenter argued that data submitted by industry in the mineral processing survey demonstrates that this waste from superphosphate production meets the high volume and low hazard criteria. In addition, the commenter claimed that superphosphate production meets the relevant aspects of the EPA mineral processing definition, stating that the production of superphosphate rock involves the direct reaction of phosphate rock with dilute, not merchant grade, phosphoric acid.

(vi) Comments on ammoniated fertilizer wastewater. Two commenters argued that process wastewater generated in the production of ammoniated phosphate fertilizers (APF) should be retained within the scope of the Bevill Amendment. The inclusion of phosphoric acid process wastewater within the scope of the Bevill Amendment should, they contended, resolve the issue of whether APF process wastewater is included. The influent water to the ammoniated phosphate fertilizer process is the process wastewater from phosphoric acid production, which remains under the Bevill exclusion. The commenter claimed that if APF process wastewater exhibits hazardous characteristics, it is solely because process wastewater from phosphoric acid production is used in APF production. The commenter further argued that the entire APF production process should not be removed from the Bevill exclusion, when the cause of the hazardous characteristic is phosphoric acid wastewater, which is covered under the Bevill exclusion.

(vii) Comments on sulfuric acid wastewater. One commenter contended that captive sulfuric acid production involves mineral processing and is absolutely essential to the production of phosphoric acid by the wet process. The commenter urged EPA to either clarify that sulfuric acid wastewater produced as a result of sulfuric acid production is part of phosphoric acid process wastewater or revise its interpretation of the mixture rule so that such process wastewater can continue to be managed in the sound and cost-effective manner practiced today.

(viii) Response to Comments. In the proposal, EPA noted that process wastewaters are generated at several points in the wet process, included phosphogypsum transport, phosphoric acid concentration, and phosphoric acid temperature control and cooling. (See 54 FR 39303.) As stated previously, the Agency did not intend to imply that these were the only sources of process wastewater from phosphoric acid operations.

The Agency has carefully considered the comments and, based on the information available, agrees, for the reasons described in the comments, that phosphogypsum stack runoff, process wastewater generated from the uranium recovery step of phosphoric acid production, process wastewater from animal feed production (including defluorination but excluding ammoniated animal feed production), and process wastewater from superphosphate production are also the result of mineral processing operations and should be considered part of process wastewater from phosphoric acid production.

As discussed on September 1 (see 54 FR 36621), the Agency does not consider the production of ammoniated phosphate fertilizer from phosphoric acid and ammonia to be a mineral processing operation. For the same reasons, the Agency does not consider the production of ammoniated animal feed from phosphoric acid to be a mineral processing operation. As also discussed on September 1 (see 54 FR 36623), the Agency does not consider wastes from sulfuric acid production to be part phosphoric acid process wastewater.

b. Volume. A commenter stated that the data collected by the Agency at its facility and similar facilities indicate that the process wastewater meets EPA's high volume criterion.

c. Hazard. Two commenters addressed the hazard level of this waste. One supported EPA's proposed determination that process wastewater from phosphoric acid production meets the low hazard criterion. However, one commenter questioned why the waste stream was not proposed for removal from the Bevill exclusion because EPA's sampling data showed that process wastewater from phosphoric acid production exhibits the hazardous waste characteristic of corrosivity (pH values of 2.0, 2.1, 1.8. and 1.5). EPA should, they maintained, further consider this data in preparing its Report to Congress.

The Agency generally agrees with the commenter that relevant hazard data should be considered in the study of the waste stream when preparing the Report to Congress. However, EPA finalized the low hazard criterion in the September 1, 1989 rule, and is not entertaining comments on it. The Agency's rationale for the low hazard criterion is outlined in 54 FR 36592. The waste passes the pH criterion described in that rule.

12. Chloride Process Waste Solids From Titanium Tetrachloride Production

One commenter agreed with EPA's proposal to retain chloride process waste solids from titanium tetrachloride production within the Bevill exclusion.

a. Processing Criterion/Waste Definition. One commenter claimed that EPA, in its description of the "chloride process waste solids from titanium tetrachloride production" in the proposal, described only the "chloride" process for manufacturing titanium dioxide and *not* the "chloride-ilmenite" process. The Agency stated that "the chloride process involves fluidized roasting and chlorination of rutile, synthetic rutile, slag or beneficiated ilmenites." This statement, according to the commenter, essentially describes the "chloride" process that uses "high-grade" ores or beneficiated ores as feedstocks; the chloride-ilmenite process, in contrast, uses "low-grade" ores as the principal feedstock for its process.

In addition, the commenter contended, the Agency incorrectly stated that the product formed is "titanium tetrachloride." This may be true of the "chloride" process that uses "high-grade" ores or previously beneficiated material, but is only partially true of the chloride-ilmenite process. In the "chloride-ilmenite" process, the commenter continued, gaseous iron chlorides are generated first and are subsequently condensed into iron chloride "waste acids". This is the "beneficiation" process. After this, the titanium in the ores is converted at a much slower rate into titanium tetrachloride. Both of these processes, however, occur in a continuous, "one-step" operation. The titanium tetrachloride generated by the chloride-ilmenite process is then used as the feedstock for the ultimate production of titanium dioxide. The commenter expressed concern that EPA appears to incorrectly consider the "chloride-ilmenite" process to be covered within the "chloride process," for which the "mining waste exclusion" was eliminated for "chloride processing waste acids" in the September 1, 1989 final rule. The commenter objected to this conclusion because the chloride-ilmenite process should not be "lumped" with a process that is clearly and substantially different, noting that the distinction between the two processes has been recognized since at least 1970. The commenter claimed that its titanium dioxide plants could be materially and adversely affected by EPA's determinations regarding whether or not "chloride-ilmenite" plants are considered "beneficiation" versus "processing" facilities. The commenter also claimed its "chloride-ilminte" process is not covered by either of the Agency's rulemakings (Sept. 1 and Sept. 25, 1989), and thus would be covered by an upcoming "special study" for beneficiation wastes. The commenter urged EPA to make a determination that the "chloride-ilmenite" process is one of beneficiation of low grade ilmenite ore and "chlorination" and should be made subject to the upcoming RCRA 8002(p) special studies to determine the appropriate waste management requirements.

In response to these comments, EPA reviewed the court opinions and related EPA effluent limitation guidelines cited by the commenter for precedents for considering the chloride-ilmenite process to be significantly different from the conventional chloride process. The Agency also referred to written comments submitted by the same commenter in response to previous proposed rulemakings addressing the scope of the Mining Waste Exclusion. Based upon this review, EPA agrees with the commenter that the chloride-ilmenite process is different than the conventional chloride process in that ilmenite ore used as the feed stock to the process contains much larger quantities of iron, which must be removed, than the feed stocks used by other chloride processes. In addition, EPA agrees that, in part, the chloride-ilmenite process involves beneficiation of ores or minerals. Nevertheless, the Agency continues to believe that it is reasonable to consider the chloride-ilmenite process to be a part of the general "chloride process" category for purposes of this rulemaking because the process destroys the identity of the mineral, produces titanium tetrachloride gas (a saleable mineral product), and generates wastes which are functionally identical to, although larger in volume than, the wastes generated by other chloride process facilities. Moreover, because the "beneficiation" wastes and the "processing" wastes generated by the chloride-ilmenite process are inseparable, according to EPA effluent guidelines development documents and as argued by the commenter, the Agency concludes that the "chloride-ilmenite" process must be considered a mineral processing operation for purposes of this rulemaking.

The Agency also notes that the commenter's contention that the "chloride-ilmenite" process is not covered by the description of the chloride process provided in the September 1, 1989 final or the September 25, 1989 proposal is incorrect. While the description of the chloride process provided in these rules does not describe the "chloride-ilmenite" process in detail due to Confidential Business Information claims made by the commenter, the Agency has clearly considered this process to be one of the several chloride processes covered by these previous rulemakings and, therefore, this rulemaking as well. This fact is clearly demonstrated by the inclusion of the commenter's facilities in the background documentation for these rulemakings. Accordingly, all solid wastes generated by this process are subject to EPA's reinterpretation of the Mining Waste Exclusion, including this rulemaking.

b. Volume. One commenter agreed with EPA's determination that chloride process waste solids satisfy the high-volume criterion. Another commenter submitted volume data, claiming that the waste streams from the "chloride-ilmenite" process are generated at over 1,400,000 and 600,000 tons annually in two facilities.

c. Hazard. One commenter agreed with EPA's determination that chloride process waste solids satisfy the low-hazard criterion.

13. Slag From Primary Zinc Processing

One commenter asserted that EPA properly applied the high volume/low

hazard criteria to slag from primary zinc processing in the September 25 proposal.

a. Hazard. One commenter questioned EPA's decision not to propose to remove slag from primary zinc processing from the Bevill exclusion because the sampling data demonstrated that the waste exhibits the hazardous waste characteristic of EP-toxicity for lead. They stated that EPA should further consider these data in preparing its Report to Congress.

The Agency generally agrees with the commenter that all relevant hazard data should be considered in the study of the waste stream when preparing the Report to Congress. However, EPA finalized the low hazard criterion in the September 1, 1989 rule, and is not currently entertaining comments on it. The Agency's rationale for the low hazard criterion is outlined in 54 FR 36592. As discussed in the September 25, 1989, proposal, the waste passes the toxicity criterion described in that rule.

C. Comments on the Seven Wastes Proposed for Removal

This section discusses comments received on each of the seven mineral processing wastes for which EPA proposed to remove from the Bevill exemption. The comments received on each of the wastes generally are presented under one of three subheadings: Processing Criterion/ Waste Definition, Volume, or Hazard. These subheadings appear only when they are relevant to comments identified for the waste being discussed, so for many of the seven wastes, one or more of the subheadings are not included.

1. Roast/Leach Ore Residue From Primary Chromite Processing

a. Processing Criterion/Waste Definition. Two commenters remarked on the designation of the waste stream. One commenter contended that the original designation of roast/leach ore residue from primary processing of chrome ore referred to the ore residue solids in the form currently being disposed (after treatment), not the form in which the waste is generated. The commenter stated that it is the waste as disposed that has the potential to enter the environment, and that this waste is low hazard and high volume and should be retained. Another commenter argued that because the ore used in production of chromium chemicals contains not only chrome but also other compounds (e.g., magnesium silicate), the term "chrome ore" or "chromium ore" would be more appropriate for use by the Agency.

EPA agrees with both of these comments. In today's final rule, the Agency bases its evaluation of this waste's compliance with the Bevill criteria on *treated* residue from roasting/leaching of chrome ore.

b. Hazard. Three commenters addressed the apparent failure of this waste stream to meet the low hazard criterion. One commenter agreed with EPA's proposed determination, and provided data that indicated that treated waste from chromite ore processing is occasionally EP toxic, based on data it received from American Chrome and Chemical.

One commenter acknowledged that residue from the roasting/leaching of chrome ore is hazardous at the point of generation. The commenter asserts, however, that through treatment at the wastewater treatment plant in compliance with the facility's NPDES permit, the waste stream ceases to exhibit the hazardous waste characteristic for chromium; both the liquid and non-liquid fractions of the stream are rendered non-hazardous. The commenter states that this treatment practice has been demonstrated to, and accepted by, the State of North Carolina.

Another commenter maintained that, in making its hazard determination for this waste, EPA relied on samples taken from an inappropriate stage of the waste management process. The commenter claimed that the materials from the post-treatment stage, and in particular the solids, are non-hazardous and qualify for the exclusion. In addition, they contended, this treatment does not affect the volume of the waste.

The Agency has reviewed the available data and agrees with the commenters that these data indicate that the *treated* residue from roasting/ leaching of chome ore is low hazard. The Agency notes, however, that waste management activities associated with the untreated wastes, including the treatment operation itself, are not exempted from Subtitle C requirements by the Bevill amendment because prior to treatment the waste is not low hazard (although any tanks involved in the treatment process may qualify for the wastewater treatment until exemption under 40 CFR 264.1(g)(6)).

2. Process Wastewater From Coal Gasification

a. Processing Criterion/Waste Definition. One comenter described the production process for coal gasification. The production of coal gas (and thus process wastewater) involves, first, the controlled combustion of lignite. This produces a raw gas stream sent first to the Raw Gas Cooling and Shift Conversion units and then to the Rectisol unit. The Rectisol unit removes acid gases CO_2, H_2S, CS_2, and COS) and produces synthetic fuel gases. These gases undergo methanation and gas compression and then are delivered to a pipeline as synthetic natural gas A coproduct, naphtha, is also produced. "Gas liquor" is also produced by the cooling and refining of the raw gas stream.

The commenter added that the Gasification, the Raw Gas Cooling Shift Conversion, and the Rectisol units all produce gas liquor streams which are routed to the Gas Liquor Separation unit. During the gas liquor separating process, another coproduct, tar oil, is recovered. Afterwards, the gas liquor is sent to the Phenosolvan unit where crude phenol is recovered. Ammonia is then recovered in the Phosam unit, which discharges a "stripped gas liquor." The stripped gas liquor is sent to the Cooling Tower for use as a make-up water. Other liquids used as make-up water include: small quantities of filtered Dissolved Air Flotation water from the oily water sewer system, softened water from the potable water treatment plant, a small stream from the Rectisol unit, and small volumes of distillate water from the Multiple Effect Evaporators. The comenter also notes that: (1) Stripped gas liquor comprises over 70 percent of the make-up water in the Cooling Tower; (2) the Cooling Tower is operated with a blowdown rate of approximately 350 to 500 gallons per minute or 650,000 to 995,056 metric tons per year; and (3) the Cooling Tower blowdown is directed to the Multiple Effect Evaporators.

The commenter argued that because the stripped gas liquor is continuously used, and is not discharged by the facility, it cannot logically be regarded as a "waste." The commenter added, however, that if EPA does consider stripped gas liquor to be a waste, then it is the "process wastewater" generated by the facility.

EPA has reviewed the information provided in these comments and the National Survey response provided by the commenter and concluded that the available information indicates that stripped gas liquor is a solid waste that does not appear to be eligible for the closed-loop exemption because it sometimes is stored in an impounded prior to use. (See above discussion regarding phosphoric acid process wastewater and January 4, 1985 notice (50 FR 614.) However, EPA also concludes that stripped gas liquor is the principal aqueous waste generated by the gasification process and thus is

process wastewater and remains a Bevill waste.

b. Volume. Two commenters urged EPA to reconsider its proposed determination that process wastewater from coal gasification fails the high volume criterion. They contended that the data cited by EPA in the September 25, 1989 Federal Register were not accurate. Both commenters stated that process wastewaters are actually generated at a rate that far exceeds one million metric tons per year. One commenter claimed that rather than being generated at a rate of 598,030 metric tons per year, this waste is produced at a rate of approximately 5,000,000 metric tons per year. The commenter believed that this error was based on the Agency's misunderstanding of the gasification process and on its own response to the mineral processing waste questionnaire. The commenter identified the process wastewater as "cooling water" because, as discussed above, they do not consider it a waste. The commenter submitted the following volume data:

1986—4,910,000 metric tons;
1987—5,020,000 metric tons;
1988—4,830,000 metric tons; and
1989—5,050,000 metric tons.

The volume reported for 1989 is through October and projected through the end of the year.

EPA has carefully reviewed the comments and survey information and agrees that: (1) The facility mischaracterized the point of generation when it initially completed the 1989 National Survey, which EPA used in developing the proposal; and (2) process wastewater from coal gasification meets the high volume criterion because it is clearly generated in quantities above the applicable criterion value of 1,000,000 mt/yr average per facility established by the September 1 final rule.

c. Hazard. A commenter supported EPA's proposed determination that coal gasification process wastewater meets the low hazard criterion.

3. Furnace Off-Gas Solids From Elemental Phosphorus Production

One commenter supported EPA's decision to remove furnace off-gas solids from elemental phosphorus production from the Bevill exclusion.

a. Processing Criterion/Waste Definition. One commenter raised several issues about the definition of this waste stream. The commenter supported EPA's proposed determination that furnace off-gas solids are "solids," even though one facility generates the waste in the form of a slurry. The commenter notes that furnace off-gas solids from elemental phosphorous production are generated either as a solid waste stream or as a slurry and contends that the term "elemental phosphorus off-gas solids" was specifically defined to include, among other things, "precipitator slurry." EPA's assertion that the commenter aggregated off-gas solids with scrubber blowdown is, the commenter claimed, incorrect. The commenter also claimed that further examination shows that the material stream is more properly classified as "phossy water" and that one result of reclassification is that 1.5 million tons of furnace off-gas solids should be reclassified as "phossy water." The commenter maintained that the regulatory status of "phossy water" for the September 1, 1989 Final Rule was based upon data that understated the generation rate of this process stream by approximately one-half. The commenter further maintained that all furnace off-gas solids waste streams need to be similarly classified to prevent this rulemaking from having inequitable competitive effects between companies.

EPA agrees that the waste stream in question should be defined uniformly across all facilities that generate it. Because the waste stream is generated (and managed) as a solid at the majority of facilities where it is generated, EPA's position is that the waste of interest is a solid. As a result, at the two facilities at which the off-gas solids are collected in a liquid, the high volume and low hazard criteria have been applied to the solids entrained within these liquid wastes, as determined by the settled solids reported by the facilities in their responses to the National Survey. The liquid portions of the wastes, as generated, clearly fail the applicable high volume criterion (average annual generation rate of more than one million metric tons per year).

b. Volume. A commenter stated that the waste stream encompassing furnace off-gas solids from elemental phosphorous production is generated as a liquid at one facility. The commenter concurred that the stream does not meet the high volume criterion. Another commenter argued that because of the relatively low volume of the furnace off-gas solids (4,885 mt/yr), the treatment of these solids as hazardous wastes is reasonable and practicable.

However, one commenter argued that the volume determination must be made using data from all facilities that generate furnace off-gas solids. EPA's proposed determination that the average rate of generation per facility is 4,885 metric tons per year was, they contended, based on incomplete information because data from facilities that submitted data as Confidential Business Information were not included. The commenter further contended that when all five facilities' furnace off-gas solids material streams are considered, the per plant facility average for the "furnace off-gas solids" is 44,012 metric tons per year, and that this average is well within any statistical margin for error and thus, furnace off-gas solids should be deemed a "high volume" waste.

As stated above, "furnace off-gas solids" generated at two facilities that reported using wet collection systems are defined as the solids removed from the scrubber waters. Furnace off-gas solids generated by three other facilities are in fact solids as generated. Revised (and final) waste generation determinations have been prepared on this basis and are presented in Section III, below. These data show that furnace off-gas solids is not a high volume waste.

c. Hazard. Two commenters addressed the hazard level of furnace off-gas solids from elemental phosphorus production. One commenter stated that the analytical information it provided in the 1989 National Survey demonstrated that the waste stream is not a hazardous waste under the RCRA characteristic of corrosivity. The other commenter contended that samples of the slurry of furnace off-gas solids were found to contain cadmium in concentrations as great as 249 percent of the regulatory level of 100 times the MCL.

Review of EPA's sampling data indicated that this waste passes the low hazard criterion, as discussed in Section III below.

4. Process Wastewater From Hydrofluoric Acid Production

a. Processing Criterion/Waste Definition. Two commenters described the hydrofluoric acid production process. The hydrofluoric acid production process extracts mineral values by reaction of mineral rock with sulfuric acid, creates a calcium sulfate co-product, fluorogypsum, which is slurried to disposal, and circulates process wastewater through a pond system prior to reuse in the processing facility. One commenter noted that additional process wastewater is generated by cleaning the hydrofluoric acid gas.

One commenter argued that EPA's determination to list separately fluorogypsum and process wastewater from hydrofluoric acid production is impractical. The similarities between

the two waste streams are such that at the Calvert City, Kentucky hydrofluoric acid plant, the two are co-mingled at the point of generation. The commenter claimed that the proposed regulation would impose different regulatory requirements on two similar wastes (because fluorogypsum would remain excluded, but process wastewater would not), which from a practical perspective, is unreasonable since the requirements applicable to one will affect the management of the other. EPA should allow process wastewater from hydrofluoric acid production to retain its status under the Bevill exclusion, and should not evaluate fluorogypsum and process wastewater separately, because the two streams are essentially identical.

EPA disagrees. The two waste streams are identifiably distinct (one is a solid and the other a liquid) and are generated by different parts of the production process. The fact that they are currently co-managed does not imply that they should or must be co-managed.

b. Volume. Two commenters disagreed with EPA's proposed determination that process wastewater from hydrofluoric acid production failed to meet the high volume criterion. One commenter questioned the basis for EPA's decision, given the lack of data. The commenter argued that the waste was not included in the 1989 National Survey of Solid Wastes from Mineral Processing Facilities. Therefore, in the September 25, 1989 NPRM, the average rate of generation of process wastewater from hydrofluoric acid was listed as "n/a". Yet EPA determined that this liquid waste stream was not generated in quantities over 1,000,000 metric tons per year through calculations or interpretations of survey results, which were not provided in the background documents. The second commenter argued that EPA may have overlooked or misunderstood the Survey data. In fact, they stated, process wastewater from hydrofluoric acid production is generated at an average rate per facility far in excess of 1 million metric tons per year. The commenter resubmitted its Survey, which includes a process flow diagram of the hydrofluoric acid process. Information is also provided on the volume of process wastewater generated and managed in sections 5 and 6 of the Survey.

One commenter supported EPA's application of the high volume criterion to the reported process wastewater inflows to surface impoundments. The commenter maintained that the flow rate to surface impoundments can be used to estimate process wastewater flow rates. According to the commenter, data available through plant NPDES records, the commenter claimed, indicate that the flow rate does exceed the 1,000,000 metric tons per year Bevill criterion. Specifically, the most recent water balance, submitted as part of the NPDES renewal application, indicated that the inflow to surface impoundments from the hydrofluoric acid production process was 2,079,400 gallons per day, which is equivalent to 2,900,000 metric tons per year, according to the commenter.

The Agency has carefully reviewed these comments and the revised survey submitted by the commenter and agrees that process wastewater from hydrofluoric acid production satisfies the high volume criterion, as discussed below in section III.

c. Hazard. Two commenters addressed the hazard level of process wastewater from hydrofluoric acid production. One commenter agreed with EPA's proposed determination that the waste is low hazard. Another commenter claimed, however, that EPA's sampling data demonstrated that process wastewater from hydrofluoric acid production exhibits the hazardous waste characteristic of corrosivity (pH values of 1.4 and 1.86), and questioned EPA's failure to remove the waste from the Bevill exclusion. The commenter also urged EPA to consider this data in preparing its Report to Congress.

The Agency generally agrees with the commenter that all relevant hazard data should be considered in the study of the waste stream when preparing the Report to Congress. However, EPA finalized the low hazard criterion in the September 1, 1989 rule and is not currently entertaining comments on it. The Agency's rationale for the low hazard criterion is outlined in 54 FR 36592. EPA's sampling data indicate that this waste does not exhibit a pH of less than 1, and therefore, complies with the low hazard criterion.

5. Process Wastewater From Primary Lead Processing

a. Processing Criterion/Waste Definition. One commenter claimed that EPA must study all process wastewaters from primary lead production, contending that once EPA completes its study, it will realize that these are not wastes, because process wastewaters from primary lead production are reused within the primary lead production circuit. RCRA hazardous waste requirements, therefore, are not appropriate.

In response to this comment, EPA notes that the extent to which this waste stream is managed through "closed loop" recycling, and hence, is not subject to RCRA requirements, would be addressed in the Report to Congress, if this material were found to meet the Bevill special waste criteria. The waste does not meet these criteria, however, and thus will not be included in the Report to Congress. Nevertheless, if the waste is managed in such a way that it does not meet the definition of a solid waste, then RCRA hazardous waste requirements would not apply.

One commenter urged EPA to clarify its definition of process wastewater from primary lead production so that all waters that are collected from processing operations are specifically included in that definition. The commenter states that the only reason for EPA's including contact cooling water in the definition of process wastewater and not including acid plant blowdown is the arbitrary elimination of one relatively large volume process water stream from the volume amount. In addition, defining this waste as "waters that are uniquely associated with processing operations that have accumulated contaminants to the point that they must be removed from the mineral production system" is confusing. Do the waters need to be removed from the system, or do the contaminants need to be removed from the waters?

EPA responds that the reasons for distinguishing between different aqueous waste streams generated in the mineral processing industry have been discussed at length in previous rulemaking notices (54 FR 15316, April 17, 1989; and 54 FR 36592, September 1, 1989.) Briefly, EPA believes the distinctions it has made are appropriate based on the available information concerning the waste characteristics and points of generation in the process. As explained in the preamble to the September 1, 1989 final rule, EPA has considered acid plant blowdown and other wastewaters from primary lead processing to be two distinct wastes because these wastes have substantially different characteristics. EPA believes that the definition of wastewater clearly indicates that it is the wastewater that needs to be removed from the system because it is the wastewater and not the contaminants to which the definition refers.

b. Volume. One commenter stated that the volume EPA used as a basis for proposing to eliminate process wastewater from primary lead production was less than the actual amount generated at its plants. The commenter argued that this incorrect determination was a result of artificial

limitations on the actual amount of water that could be reported as "process wastewater" in the National Survey of Solid Wastes from Mineral Processing Facilities, where EPA only solicited information on processing units associated with the generation of process waters. According to the commenter, EPA inappropriately reduced the number of streams counted toward the volume cutoff by focusing on only a few process water streams. The commenter maintained that its internal data indicate that the volumes of process wastewater from primary lead production generated by its plants exceed the 1,000,000 metric ton threshold. Another commenter was dismayed by EPA's conclusion that process wastewater from primary lead processing was low volume, because there is no way to verify the numerical data used to arrive at the average of 785,562 metric tons per year.

EPA responds that the National Survey requested data on the quantity of wastewater generated by all mineral processing operations at each facility surveyed, and that the responses provided indicate that process wastewater is not a large volume waste. EPA is limited in the amount of information it can present on the waste generation calculations used to develop the September 25 proposal because one of the commenters has requested Confidential Business Information status for their information.

c. Hazard. One commenter objected to EPA's on-site sampling methods. If, in the survey, the Agency requests information on process wastewaters, other waste streams, such as process water from sintering, should not be sampled for the hazard determination.

Because of the scheduling constraints imposed by the Court of Appeals, EPA's waste sampling effort had to be conducted before the final contours of the beneficiation/processing boundary had been established. Thus, EPA sampled wastes that are, in hindsight, outside the scope of the current rulemaking. The analytical results for wastes that are outside the scope of this rulemaking (i.e., process water from sintering) have not been used in evaluating compliance with the low hazard criterion. Instead, EPA has used results from samples of wastes that are the subject of this rulemaking (i.e., slag granulation water) in determining that this is not a low hazard waste.

6. Sulfate Process Waste Acids From Titanium Dioxide Production

a. Hazard. One commenter stated that sulfate process waste acids from its facility meet EPA's low hazard criterion and should therefore be retained in the Bevill exclusion. The commenter disputed the selenium concentrations published in the proposed rule, stating that if EPA asserts that the sample exceeding the criterion comes from the commenter's facility, then the Agency is mistaken. The commenter notes that the sulfate process waste acid sample was essentially analyzed three times: once as is, once using the SPLP, and once for EP toxicity. In the leaching procedures (SPLP and EP Toxicity) the sample is filtered and the filtrate analyzed. The solids (if any) are leached and the leachate is analyzed. Since there were no solids, the three analyses should have agreed. In actuality, the concentration for selenium was below the detectable limit for two of the samples, while selenium showed up on the SPLP sample at a level of 6.3 mg/1. The commenter retained a portion of the sample that was collected for EPA and had it analyzed for EP Toxicity. Selenium concentrations were below detectable limits. The commenter also claimed to have made facility improvements which have caused sulfate process waste acids to become less acidic. The overall average pH from 1984 through 1988 was 1.02.

EPA agrees that the reported SPLP selenium concentration that is questioned by the commenter does appear to be anomalous, but believes that the other data, including the pH data, collected during EPA's sampling visits are accurate and provide a sufficient basis for applying the low hazard criterion to this waste stream. The average pH data provided by the commenter are not relevant to this rulemaking because average pH values do not have meaning and are not consistent with the data requirements specified in the low hazard criterion for the pH test.

7. Sulfate Process Waste Solids From Titanium Dioxide Production

a. Volume. Two commenters urged EPA to reconsider its preliminary conclusion that sulfate process waste solids fail to meet the high volume criterion. One commenter indicated that sulfate process waste solids are generated, in the form of a slurry, at a rate of 86,800 short tons [78,728 metric tons) per year as indicated in the November 21, 1988 comments and the response to EPA's National Survey of Solid Wastes from Mineral Processing. Another industry commenter claimed that EPA miscalculated the volume of sulfate process waste solids generated annually. The commenter stated that a total of 49,900 metric tons are handled. The values used for suspended solids were from the commenter's quarterly samples, which have been taken since 1984. According to the commenter, these volumes confirm those given, in comments provided in response to the October 10, 1988 proposal of 85,000 tons/year, which included chloride wastes. The commenter further indicated that these wastes, together with the treatment residuals, will bring the total solids handled to well over 500,000 tons per year.

It is EPA's position that the waste of interest is the dewatered waste solids taken from the drum filter at one facility, rather than the slurry from the clarifier, as suggested by the commenter, because the available information indicates that the primary purpose of the dewatering operation performed by the drum filter is to return product solution to the production process and, thus, it resembles a processing operation more closely than it does a waste treatment operation. Accordingly, EPA has used the reported quantity of drum filter cake rather than the quantity of slurry sent to the drum filter in evaluating the compliance of this waste stream with the high volume criteria. After further analysis, the Agency has concluded that the revised waste generation rates reported by the second commenter are reasonable, though the underlying data are not readily apparent in the commenter's response to the National Survey. Revised (and final) waste generation estimates, which indicate that this is not a high volume waste, are presented in section III, below.

D. Relationship of the Proposed Rule to Subtitle C of RCRA

1. The Mixture Rule

a. General comments. In their comments on the September 25 proposal, a number of commenters objected to the Agency's interpretation of the mixture rule in the September 1, 1989 final rule and questioned what the impact of the mixture rule would be upon the Bevill determinations contained in the September 25 proposal. Commenters requested that EPA reconsider its interpretation of the mixture rule as it applies to Bevill excluded wastes that are mixed with relatively small volumes of non-excluded wastes. Commenters noted that a mixture of a Bevill excluded waste and a characteristically hazardous waste would be considered a non-excluded hazardous waste. Particularly in the phosphate industry, commenters objected to this classification, arguing that if the non-excluded waste in a mixture shares the

same hazardous characteristic as the Bevill excluded waste, the Bevill status of the resulting mixture should not be withdrawn.

Commenters also requested that the Agency clarify the mixture rule in a number of ways. First, they suggested that EPA clarify whether mineral processing wastes that are temporarily excluded from RCRA Subtitle C requirements may be used (e.g., as air pollution control scrubber water) in production units that do not generate Bevill wastes, and similarly whether non-Bevill excluded wastes may be used in production units that generate Bevill excluded wastes. In particular, commenters requested clarification of the status of a Bevill-excluded waste that is used in a non-Bevill production unit when the waste exhibits a characteristic or hazardous waste after use in the non-Bevill operation only because the Bevill waste that is an input to the non-Bevill process exhibits the hazardous characteristic.

In addition, commenters argued that the October 26, 1989 supplement to the proposed regulations for burning of hazardous waste in boilers and industrial furnaces (54 FR 43718) conflicts with the interpretation of the mixture rule established in the September 1, 1989 final rule. The proposed rule on burning states that residues would remain within the Bevill exclusion if the character of the residual is determined by the Bevill material. In contrast, the September 1 final rule states that any material burned with a low volume, non-Bevill waste would be regarded as hazardous even if the characteristic exhibited is the same as the characteristic of the Bevill waste. Commenters requested that the Agency reconcile these conflicting interpretations of the mixture rule by adopting the approach in the proposed rule on burning.

b. Comments related to phosphoric acid production. Commenters from the phosphoric acid industry requested that the Agency provide a supplementary explanation of its mixture rule position as it relates to phosphoric acid process wastewaters, and allow for public comment. The ammoniated phosphate fertilizer (APF) process utilizes process wastewater as an influent and then returns it to the originating phosphate complex pond. One commenter contended that APF process wastewater does not exhibit hazardous characteristics when generated separately from a facility that produces phosphoric acid. Therefore, the commenter argued, APF wastewater must not contribute the hazardous characteristic found in phosphoric acid process wastewater, and thus it should not trigger the removal of phosphoric acid process wastewater from the Bevill exclusion. Phosphate industry commenters urged the Agency to reject any interpretation of the mixture rule that would remove phosphate complex pond water from the Bevill exemption because it contained process wastewater used in the APF process.

Commenters urged the Agency to adopt an interpretation of the mixture rule consistent with the position advocated in the October 26, 1989 proposal (54 FR 43718) on burning, and allow small amounts of sulfuric acid process wastewater to be combined in the general process wastewater system without the removal of the entire system from the Bevill exclusion. Phosphate industry commenters objected to the mixture rule interpretation contained in the September 1, 1989 final rule in which the addition of sulfuric acid process wastewater to a phosphoric acid complex's water recirculation system would result in the entire system being removed from the Bevill exclusion. According to one commenter, although sulfuric acid process wastewater displays the same characteristic of corrosivity as phosphoric acid process wastewater, the addition of sulfuric acid process wastewater may constitute less than one percent of the daily wastewater generated at an average facility, and thus should not affect the Bevill status of the entire waste stream.

c. Comments related to hydrofluoric acid production. One commenter requested clarification on the use of *hydrofluoric acid* process wastewater in an aluminum fluoride plant, and asked the Agency to address the use of Bevill excluded characteristic wastes as a source of influent to other processes. The commenter argued that hazardous characteristics displayed by water existing the aluminum fluoride facility are solely from hydrofluoric acid (HF) process wastewater. Thus, the commenter asserted, the Agency's interpretation of the mixture rule should have no bearing on whether HF process wastewater remains within the Bevill exclusion. The commenter requested that if the Agency interprets the mixture rule such that the use of process wastewater in the aluminum fluoride plant results in all water in the pond where that water is finally disposed being removed from the Bevill exclusion, EPA should supplement the proposed rule with its rationale for such a decision, and allow for additional public comment.

d. Comments related to coal gasification. One commenter objected to the Agency's possible determination, based upon the mixture rule, that process wastewater from coal gasification is hazardous. The commenter asserted that if process wastewater was disposed of immediately rather than used in a cooling tower, the waste stream would not demonstrate hazardous characteristics; however, important water conservation and disposal practices could not then be practiced. Thus, the commenter concluded, the Agency should not withdraw the Bevill exclusion for coal gasification process wastewaters based upon hazardous characteristics when those characteristics result from appropriate water conservation and disposal practices.

e. Response to comments. In response to these questions and issues raised by commenters regarding the mixture rule, EPA makes the following observations. First, like the criteria established for identifying wastes eligible for the Bevill exemption, the Agency's position on the mixture rule was finalized on September 1, 1989 and is not open for comment as part of this rulemaking. Second, the Agency plans to add comments to the docket for the October 26th notice regarding the alleged contradiction between the October 26, 1989 (54 FR 43718) supplement to the proposed regulations for burning of hazardous waste in boilers and industrial furnaces and the mixture rule in the September 1, 1989 final rule. Third, wastes from operations that are not mineral processing operations based on the definition of mineral processing contained in the September 1 final rule are not mineral processing wastes regardless of the nature of any inputs (including Bevill wastes) to that process. Finally, the mixture rule is not a factor in today's decision to retain the Bevill exemption for process wastewater because Bevill wastes are being evaluated, not mixtures.

2. Land Disposal Restrictions

Two commenters expressed concern about the impact of Land Disposal Restrictions (LDRs) on wastes newly removed from the Bevill exclusion. One commenter stated that the Agency cannot accurately estimate the economic impact of the proposed rule until the "Third Third" rule is promulgated.

The second commenter requested that the Agency consider mineral processing wastes removed from the Bevill exclusion, "newly identified" wastes

under the LDRs. Since "chloride-ilmenite" wastes from titanium production were not considered RCRA hazardous wastes on November 9, 1984, the date of HSWA enactment, the commenter asserted that they must be considered newly identified wastes. The commenter argued that without terming these wastes newly identified, the facility would unfairly have to meet the hammer date of August 8, 1990 for California List wastes. Facilities that generated a waste subject to California List restrictions on underground injection were granted a two year national capacity variance during which they could either plan new capacity or submit a "no-migration" petition. The commenter maintained that equal opportunity must be granted to mineral processing facilities to develop new capacity or submit no-migration petitions.

In addition, the commenter asked that the Agency delay the applicability of the LDRs to chloride-ilmenite wastes by determining that such wastes are beneficial wastes and subject to further study by EPA. This would allow the Agency, according to the commenter, additional time to evaluate the protectiveness of underground injection for chloride-ilmenite wastes.

EPA responds that, as explained in the September 1, 1989 final rule and in the proposed land disposal restrictions (LDRs) for the third third schedule wastes (54 FR 48372, 48378; November 22, 1989), the Agency believes the wastes that are brought under Subtitle C regulation by today's final rule to be "newly identified" wastes for purposes of establishing LDR standards under section 3004(g)(4) of RCRA. (54 FR 36624). Accordingly, EPA has proposed that newly identified mineral processing wastes not be subject to the BDAT standards that the Agency proposed on November 22, 1989 (54 FR 48372) for characteristic hazardous wastes. As required by RCRA section 3004(g)(4)(C), EPA plans to study the mineral processing wastes removed from the temporary exemption to determine BDAT for ones that exhibit one or more characteristics of a hazardous waste. (See 54 FR 48493.) The Agency has taken comment on this issue in connection with the LDR proposal and will address the issue, including the costs, if any, of requirements when it promulgates that rule. Finally, the reader should refer to the discussion on individual waste streams and process definitions for clarification of the status of chloride-ilmenite wastes.

3. Retroactive Application of Subtitle C Requirements

One commenter expressed concern over the retroactive application of Subtitle C to chromium-contaminated fill, and criticized the Agency for not specifically considering chromium-contaminated fill in redefining the scope of the Bevill exclusion, the economic impact screening, or the sampling effort. The commenter asserted that EPA should make a separate Bevill determination regarding the status of chromium-contaminated fill. The commenter wished to confirm that chromium-contaminated fill already in a lined containment facility would not be affected by the loss of Bevill exempt status. In addition, the commenter stated that if fill excavated after the effective date of the rule was subject to RCRA Subtitle C regulation, it could impose a severe economic burden upon the commenter.

The commenter argued that samples gathered by the Agency in the summer of 1989 from operating plants are not representative of the chromium contaminated fill in question at the commenter's facility. The commenter maintained that the conditions at the facility demonstrate that the waste stream satisfies the low hazard criterion. Due to its mixture with soils and other non-hazardous materials, long *in-situ* residence time, and weathering, the chromium fill material may be of a different physical and chemical nature than the wastes from chrome ore processing generated at operating plants, according to the commenter. Although soil samples from the initial excavation of this waste stream exceed the EP toxicity levels for chromium, more recent samples and ground-water samples have not been EP toxic. The commenter concluded that retaining chromium contaminated fill within the Bevill exclusion would allow for hazard testing of the material and adequate time to develop treatment options.

Based on the available information, EPA believes that chromium-contaminated fill is not a separate, discrete mineral processing waste because it may be, and likely is, as noted by the commenter, comprised of a mixture of mineral processing waste, non-mineral processing waste, and non-waste (e.g., soil) materials. In addition, EPA observes that the untreated residue from roasting/leaching of chrome ore is not low hazard and, thus, is not eligible for the Bevill exemption. As a result, the comments on the status of chromium-contaminated fill are only germane if the fill contains treated residue from roasting/leaching of chrome ore similar to that which is currently being generated, which will need to be determined on a case-by-case basis. Because the composition of the fill and, therefore, the relevance of any data on the chemical composition of the fill is unclear, the Agency believes inclusion of such data in reaching a conclusion on the status of treated residue from roasting/leaching of chrome ore would be both inappropriate and impractical.

E. Costs and Impacts of the Proposed Rule

1. Technical Feasibility

Two commenters claimed that it would be technologically infeasible to manage their wastes according to subtitle C requirements. One commenter argued that it would be technologically infeasible to manage fluorogypsum or process wastewater from hydrofluoric acid production according to the minimum technology requirements or the LDRs. Another commenter maintained that insufficient land is available to retrofit existing waste management systems in order to manage phosphate rock processing wastes under subtitle C and the LDRs.

Because both of these wastes are retained within the Bevill exclusion by either the September 1 final rule, or today's rule, they will be studied in the Report to Congress which will address, among other issues, the technical feasibility of managing Bevill wastes under subtitle C of RCRA.

2. Compliance Cost Estimates

A commenter disapproved of EPA's analysis of economic impacts, contending that the Agency should include the costs due to corrective action requirements and land disposal restrictions (LDRs), because by ignoring these costs, EPA has underestimated the total costs of compliance. The difficulty of estimating these costs is, the commenter claimed, no justification for assuming zero costs for these requirements. Two of the wastes proposed for withdrawal from the Bevill exclusion are high-volume, and for those materials, LDR treatment is likely to be very costly. In addition, corrective action may impose high costs at some facilities.

EPA did not estimate the costs associated with land disposal restrictions because it is not possible, nor is it Agency policy, to estimate the effects of imposing regulations that do not yet exist. These economic impacts, if any, will be addressed by the Agency when it promulgates land disposal restriction treatment standards.

Nonetheless, EPA has, in both the September 25 proposed and today's final rule, estimated the costs associated with stabilizing residues from liquid waste treatment so as to make them amendable to land disposal. Therefore, while it is not possible, at present, to define BDAT (and thus, LDR impacts) for any wastes removed from the Bevill exclusion, EPA has attempted to capture some of the likely costs associated with future waste disposal activities. Prospective corrective action costs are by nature site-specific and difficult to estimate. Currently available information does not allow EPA to estimate these costs with confidence. To the extent, therefore, that any additional facilities are brought into the subtitle C on-site waste management system by this rule, EPA may have underestimated cost and economic impacts. The reader is referred to section VII below for additional discussion of the specific features of the methodology employed.

A commenter also indicated that the Agency also should recognize that commodity producers cannot pass compliance costs on to product consumers.

EPA responds that, in the Economic Impact Analysis provided in the September 25 NPRM, the Agency considered, on a commodity specific basis, the extent to which potential compliance costs could be passed through to consumers. As indicated in this analysis (and restated in Section VII, below) EPA believes that the commenter's suggestion that all mineral processors in all commodity sectors are "price takers," having no ability to pass through cost increases and therefore having to absorb them internally, is demonstrably untrue.

One commenter maintained that in order to accurately estimate the economic and regulatory impacts of the proposed rule, EPA must first resolve the issues of the "mixture rule," retroactivity and regenerated wastes. In particular, one commenter charged that EPA has not considered, as required by Executive Order 12291, the economic impact of excluding chromium contaminated fill from Bevill status. Also, to truly identify the economic and regulatory impacts of the proposed rule, the Agency should obtain information from all inactive facilities.

EPA responds that these issues were addressed in the September 1, 1989 final rule and are not relevant to this rulemaking. To briefly restate the positions outlined in that final rule, however, EPA maintains that Subtitle C regulations will not be imposed retroactively. However, active management of an historical accumulation of waste will subject a facility to Subtitle C regulations if the material exhibits one or more characteristics of a hazardous waste.

3. Compliance Cost, Market, and Economic Impact Estimates

a. Treated residue from roasting/leaching of chrome ore. According to one commenter, if the Agency imposes subtitle C requirements for chrome ore processing waste used as fill, on-site treatment of the fill will become burdensome and expensive. Also, if future excavated fill must be managed as a hazardous waste, depending on the amounts of hazardous waste involved, a severe economic burden may result without any commensurate gain in health or environmental benefits. In addition, loss of Bevill status for the chromium-contaminated fill at a City of Baltimore wastewater treatment plant in Patapsco, Maryland, may prematurely interrupt the process of developing treatment alternatives.

The Agency does not view this issue as relevant to the status of the 20 waste streams addressed in today's rule because it is not clear that the fill material is one of the mineral processing wastes covered by today's rule.

Commenters contended that the cost of compliance with RCRA subtitle C for inactive facilities should be addressed by EPA. A commenter maintained that the docket should include information on existing inactive waste sites as well as the number of chrome ore "fill" sites that will be affected by the proposed rule.

EPA responds that inactive facilities were not sampled because they are not pertinent to this rulemaking.

Several commenters disagreed with the compliance cost estimate for residue from roasting/leaching of chrome ore. One commenter argued that the waste should be retained in the Bevill exemption because of the significant costs that corrective action requirements could impose. According to the commenter, disposal and treatment costs will be at least an additional $2 million over the Agency's estimate of compliance costs. Another commenter, however, claimed that because its waste stream is treated on-site under the facility's NPDES permit and the treated waste is non-hazardous, there is no need for its facility to modify in any way current treatment or disposal practices, and thus there is no cost for compliance if the waste stream is removed from the Bevill exclusion.

One commenter contended that the impact of the removal of residue from roasting/leaching of chrome ore from the Bevill exclusion was incorrectly estimated because EPA did not fully evaluate all of the information provided in the National Survey of Mineral Processors. In addition, not all of the samples taken from the facility by EPA were analyzed.

EPA responds that it used available Method 1312 data to evaluate compliance with the low hazard criterion. Because of time constraints, the Agency analyzed the samples collected on an "as generated" basis prior to analyzing those collected on an "as managed" basis; the former are directly pertinent to and necessary for the Bevill rulemaking process while the latter are primarily of use in preparing the Report to Congress. Since publication of the September 25 proposal, however, the Agency has had an opportunity to analyze additional samples. Based upon these new analyses and analyses performed in support of the September 25 proposal, the Agency agrees that the *treated* residue from roasting/leaching of chrome ore does not exhibit hazardous characteristics and hence, would not be subject to new regulatory requirements and associated costs if removed from the Bevill exclusion. The treated waste is, however, being retained under the Bevill exemption because it is both low hazard and high volume.

b. Process wastewater from coal gasification. EPA received several comments arguing that removing process wastewater from coal gasification from the Bevill exemption would impose severe economic impacts and would not in any way enhance the environment. The commenters maintained that the additional $1 million in annual compliance costs (commenter's estimate) are unreasonable and would accomplish nothing except for increasing compliance costs, in light of the reuse of the fluids in the same industrial process. EPA should not, they stated, impose economic burdens upon the industry. Also, one commenter asserted that North Dakota will lose substantial amounts of tax revenues and employment opportunities if RCRA subtitle C regulation makes it economically infeasible to continue operating the Great Plains facility. Commenters representing the electric utility industry claimed that additional regulatory controls under RCRA over wastewater discharges from coal gasification are unnecessary and burdensome to the electric utility industry because the wastewater discharges are subject to NPDES permits under the Clean Water Act.

As discussed in section III, below, based upon further data in the form of a revised survey response provided by the facility in question, EPA now concludes that the waste stream does satisfy the high volume criterion and so will be retained for further study. Discussion of the prospective economic impacts of removing the waste from the Bevill exclusion as part of this rulemaking is, therefore, moot.

c. Furnace off-gas solids from elemental phosphorus production. One commenter agreed that due to the low cost of compliance with subtitle C regulations, treatment of furnace off-gas solids from elemental phosphorus production as hazardous wastes is reasonable and practicable. One elemental phosphorus industry commenter asserted that this company's waste stream is not hazardous, and therefore, no compliance costs will be incurred. EPA was unable to confirm this for the particular facility in question, and the commenter-supplied data was insufficient to confirm that the facility's waste will not exhibit a hazardous characteristic. The Agency has, accordingly, maintained its conservative approach to estimating potential cost and economic impacts associated with this rule by assuming that the waste is hazardous and that the facility will be affected by the rule even though this may not turn out to be the case.

d. Process wastewater from hydrofluoric acid production. One commenter reported that becaue of the co-mingling of fluorogypsum and process wastewater at the Calvert City, Kentucky plant, the annual estimated flow would be 2,900,000 metric tons per year, and not 103,526 metric tons per year as assumed in the Technical Background Document "Development of the Cost and Economic Impacts of Implementing the Bevill Mineral Processing Waste Criteria." Because these volumes differ by an order of magnitude, the effect on EPA's estimation of compliance costs for hydrofluoric acid waste streams subject to subtitle C at a Calvert City plant would be significant. As discussed below in section III, based upon further data in the form of a revised survey provided by one of the facilities in question and detailed written comments from the other, it appears that the waste stream meets the high volume criterion and the compliance costs that commenter claimed would be significant will in fact not be incurred.

e. Sulfate process waste solids from titanium dioxide production. One commenter questioned EPA's conclusion that the proposed rule would have no economic impact on the commenter's facility. The commenter understands that under EPA's policy, non-excluded wastes which are disposed prior to the effective data of the rule which would make them subject to Subtitle C requirements would not be subject to direct Subtitle C controls such as closure and post-closure care requirements. In the commenter's case, solid wastes from the sulfate and chloride processes were accumulated in surface impoundments until October of 1988. Since that time, however, only non-hazardous wastes have been added. The commenter assumes that consistent with EPA's policy, these impoundments will not be subject to closure and post-closure requirements.

EPA responds that the commenter is correct in his assumption as long as the wastes previously placed in the surface impoundments are not actively managed after the effective data of today's rule. As discussed in the September 1, 1989 final rule, EPA will not be applying Subtitle C requirements retroactively. For further discussion of this issue see 54 FR 36592.

f. Wastes from phosphoric acid production. Commenters from the phosphate rock processing industry contended that the industry could not competitively withstand the costs of complying with Subtitle C or the LDR requirements. They contended that it is infeasible, if not impossible, to manage process wastewaster from phosphoric acid production in compliance with subtitle C requirements, especially in view of the upcoming land disposal restrictions on characteristic wastes. It is essential that the Agency retain process wastewater from phosphoric acid in the Bevill Amendment exclusion.

As discussed below, EPA believes that process wastewater from phosphoric acid production complies with the high volume and low hazard criteria and therefore the waste steam is today retained within the Bevill exclusion. The need for and technical and economic feasibility of subjecting this material to Subtitle C requirements will be addressed in the Report to Congress.

F. Requests for Clarifications/Technical Corrections on the September 1, 1989 Final Rule

One commenter brought to the Agency's attention a difference between the preamble and rule language in the September 1, 1989 final rulemaking. In the preamble to the final rule, the Agency states that "roasting and autoclaving are considered beneficiation operations if they are used to remove sulfur and/or other impurities in preparing an ore or mineral, or beneficiated ore or mineral, for leaching." (54 FR 36618) In addition, the commenter indicated that the Agency states that

> chlorination is sometimes used prior to gold leaching operations in a procedure functionally identical to roasting and autoclaving (i.e., to change a sulfide ore to a chemical form more amenable to leaching). EPA recognizes that this type of pretreatment operation may be an integral part of leaching operations, and accordingly, considers non-destructive chlorination of ores, minerals, or beneficiated ores or minerals when used as a pretreatment step for leaching, to be a beneficiation operation. (54 FR 36618)

The commenter noted, however, that the language of the rule differs slightly and refers specifically only to "roasting in preparation for leaching." The commenter requested that EPA clarify the language of the September 1 final rule so that pretreatment autoclaving and chlorination, as well as roasting, are clearly considered beneficiation operations.

The Agency has reviewed the language of the September 1, 1989 final rule and agrees with the commenter that the rule could be read so that pretreatment autoclaving and chlorination might not be considered beneficiation activities. As discussed in the preamble, this was not the Agency's intention. Thus, the languge of § 261.4(b)(7) has been revised in today's rule to read

> "For purposes of this paragraph, beneficiation of ores and minerals is restricted to the following activities: * * * roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching * * *"

G. Concerns With Administrative Procedures

Commenters on the proposed rule made a number of requests to the Agency regarding the procedures EPA has followed for administering the mineral processing rulemakings. One commenter requested that EPA defer final action on the proposed rule pending: (1) Judicial review of the September 1, 1989 final rule; (2) clarification of the applicability of the rules to inactive processing facilities; and (3) a review of the mixture rule. Another commenter requested that the Agency publish its rationale and allow for public comment if EPA decides that process wastewater from the production of animal feed, ammoniated phosphate fertilizer, and phosphate complex ponds are not within the scope of the Bevill exclusion. The same commenter asked

that all documents used for previous rulemakings be included in the current docket (MW2P). One commenter asked EPA to assess the analytical results of the hazard sampling data and carefully compare them with the commenter's own split samples. Finally, one commenter sought additional time for public review and comment on the background documents for the high volume criterion. The commenter claimed that the documents were not available for comment before the September 25th proposed rule, yet support the criterion made final in the September 1st rule.

Because of court-imposed deadlines, the Agency is compelled to promulgate today's final rule on an accelerated schedule (signature by January 15, 1990). In order to ensure that all information compiled for previous rulemakings is fully available to the public, the Agency has incorporated by reference previous mineral processing waste dockets, except for the final rule relisting six smelter wastes (53 FR 35412, September 13, 1988), into the current docket. EPA believes that the public has been provided an adequate opportunity to comment on this rulemaking and, therefore, an additional comment period is not required. In addition, EPA believes clarification of the applicability of the rules to inactive facilities and review of the mixture rule are not required or appropriate in the context of this rulemaking because EPA's position on these issues was established in the September 1, 1989 final rule.

III. Revised Application of the Final Criteria for Defining Bevill Mineral Processing Wastes

This section of the preamble presents clarifications to the waste stream definitions used in the proposal, revised waste volume data and additional discussion of selected data used in evaluating compliance with the low hazard criterion. Only those waste streams for which noteworthy changes have been made to the proposal are discussed in detail. A summary of the Bevill status of the 20 mineral processing wastes is also presented.

A. Clarification of Waste Stream Definitions

Based on careful review of public comments, and additional analysis of previous EPA studies and company responses to the 1989 National Survey of Solid Wastes from Mineral Processing Facilities, the Agency has made the following decisions concerning the definition of candidate Bevill waste streams, related process descriptions, and the numbers of facilities generating each waste.

1. Treated Residue From Roasting/Leaching of Chrome Ore

The residue from roasting/leaching of chrome ore of concern in this rule is the settled residue following treatment of the slurried leaching waste. Both facilities that reported generating residue from roasting/leaching of chrome ore pump their untreated waste directly to an onsite treatment unit. In contrast to the September 25 NPRM, this final rule temporarily retains the exclusion from hazardous waste regulations for only those treated solids which are entrained in the slurry as it leaves the treatment facility and which settle out in disposal impoundments. Available data indicate that this mineral processing waste is both low hazard and high volume. As indicated in the proposal, the untreated waste is not low hazard.

2. Process Wastewater From Coal Gasification

The definition of process wastewater from the coal gasification operation has been revised to clarify that process wastewater from coal gasification is the "stripped gas liquor" generated during the gasification of the coal. This process wastewater may be run through several subsequent storage, treatment, and reuse operations. This stripped gas liquor was originally not nominated by the facility because of a misunderstanding about its status as a solid waste. In comments provided on the September 25 proposal, however, the company has requested that the entire stripped gas liquor stream be considered "process wastewater" rather than just the portion reported previously. EPA believes that the stripped gas liquor is a solid waste at the one facility that generates the waste, and has evaluated the extent to which the material complies with the final Bevill criteria accordingly. Because the facility's response to the 1989 National Survey indicates that the process stream, in part, is stored in surface impoundments, EPA does not consider its management system to be closed-loop recycling, meaning that for present purposes, the Agency believes this material is not eligible for the closed-loop exemption. However, this does not affect the Bevill status of the waste.

3. Slag Tailings From Primary Copper Processing

EPA has identified, as a result of public comments, an additional facility that processes slag from primary copper processing and thereby generates slag tailings. This increases the number of facilities known by EPA to generate slag tailings to three.

4. Furnace Off-Gas Solids From Elemental Phosphorus Production

This waste stream will continue to be defined, depending on the facility in question, as either the solid or semi-solid material generated from the phosphorus furnaces or as the entrained solids contained within scrubber waters generated from cleaning furnace off-gases. In no instance is the scrubber water itself considered to be the candidate Bevill waste because it is not a high volume waste.

5. Process Wastewater From Phosphoric Acid Production

This waste stream, for purposes of determining Bevill status, includes the following process streams resulting from phosphoric acid plant operations: water from phosphoric acid production operations through concentration to merchant grade acid; phosphogypsum transport water; phosphogypsum stack runoff; process wastewater generated from the uranium recovery step of phosphoric acid production; process wastewater from animal feed production operations that qualify as mineral processing operations based on the definition of mineral processing that the Agency finalized on September 1; and process wastewater from superphosphate production. As proposed on September 25, phosphoric acid process wastewater is high volume and low hazard waste and is, therefore, retained in the exemption, although the data used to arrive at this conclusion have been modified in response to public comments.

6. Chloride Process Waste Solids From Titanium Tetrachloride Production

The "chloride-ilmenite" process reportedly employed by three titanium tetrachloride production facilities, for purposes of this rule, continues to be considered a processing operation. The primary reason for this determination is the understanding that during this "two-stage" process, the operation destroys the identity of the mineral, produces titanium tetrachloride gas (a mineral product), and generates wastes which are functionally identical to the wastes generated by the chloride process at the other six titanium tetrachloride facilities. The fact that the ore being utilized is of a different type and grade is not justification for classifying the operation as beneficiation. In addition, by the company's own admission, wastes from each part of the "two-step

beneficiation-chlorination" process are not separable. Accordingly, the wastes generated by this chlorination process are subject to EPA's reinterpretation of the Mining Waste Exclusion that was finalized on September 1 and this rulemaking. Assessments of volume and hazard performed both for the September 1 final rule and the September 25 proposal included "chloride-ilmenite" facilities as well as other chloride process facilities. These previous assessments, as well as updates made in support of this final rule, indicate that chloride process waste solids from titanium tetrachloride production are high volume and low hazard and, therefore, are retained in the exemption. Other wastes generated by the chloride process (i.e., wastes other than the chloride waste solids) were classified as non-Bevill mineral processing wastes by the September 1 rule.

B. Compliance with the High Volume Criterion

Revised waste generation rate estimates for the 20 conditionally retained wastes are presented in Table 1. Many of these estimates have been revised since publication of the September 25 proposal, primarily because of three factors. First, revised definitions or clarifications of what constitutes the individual waste streams have led the Agency to in some cases include, remove, or otherwise revise data related to volume estimates for particular waste streams.

Second, EPA has revised estimates in a limited number of cases in direct response to new data or other information (e.g., clarification of survey responses) contained in public comments on the proposal.

Finally, EPA has, for this final rule, revised one average annual per-facility waste volume presented in Table 1, not because of new information, but because the Agency has included confidential business information (CBI) in the calculation, after determining that the data could be aggregated and used without disclosing proprietary information. The Agency notes that this estimate is essentially the same as that used to make the high volume determination for the proposed rule; the average annual per-facility waste volume presented in Table 1 of the proposal did not, however, include data from the CBI facilities. In cases where proprietary information would be revealed by presenting in Table 1 the actual average based on CBI data, the Agency has either completely withheld the data from the table (i.e., where the only two facilities in the sector both requested confidentiality, e.g., chrome ore and titanium dioxide sulfate process), has presented the sole non-CBI facility volume (i.e., where only one of several facilities is non-CBI, e.g., copper calcium sulfate sludge and lead process wastewater) or has published an average based on the non-CBI data (i.e., where only one of several facilities in CBI, e.g., steel wastes).

The Agency wishes to reiterate that the fundamental source of data for evaluating compliance with the high volume criterion has been, and continues to be, the 1989 National Survey. In order to account for market fluctuations, EPA allowed facilities to submit information in public comment on the September 25 proposal explaining, as necessary, that the reported generation rates for 1988 did not accurately reflect typical waste generation rates at the facility. In response, a small number of facilities chose to revise their survey responses, as noted above, but none claimed that relying upon 1988 data *per se* would produce an inaccurate result. Accordingly, EPA has, for this final rule, relied exclusively, with one exception described below, on its own in-depth analysis of written responses to the National Survey to evaluate waste-by-waste compliance with the high volume criterion.

1. Treated Residue From Roasting/Leaching of Chrome Ore

With the clarification that the waste in question is the treated residue and not the waste as it leaves the leach operation, EPA has reviewed the CBI data reported for the treated waste and confirmed that the waste stream as defined is, indeed, a high volume waste solid. Both facilities generate the non-liquid Bevill waste at rates in excess of 45,00 mt per year.

2. Process Wastewater From Coal Gasification

With the determination that process wastewater from coal gasification is stripped gas liquor, EPA has reviewed the quantities of the total process water generated at the facility and confirmed that the waste stream as redefined is, indeed, a high volume liquid waste.

3. Calcium Sulfate Wastewater Treatment Plant Sludge From Primary Copper Processing

The Agency has reviewed its analysis of the volume data provided for this waste stream in the National Survey. EPA has determined that the waste volume presented in the proposed rule for the non-CBI facility is not representative of the calcium sulfate sludge, but of the sludge and the combined transport liquid. The waste volume used to evaluate the status of the waste, therefore, has been revised to reflect the quantity of actual sludge generated. These revised numbers are consistent with (1) the estimates made for previous proposed and final rules regarding the reinterpretation of the Bevill exclusion and (2) volume estimates presented in the facility's comments regarding those proposals. EPA notes that a review of the data from the CBI facility leaves some doubt as to the point in the process at which the residual waste stream is the Bevill waste, and therefore which waste volume should be used. The Agency, however, has confirmed that even a conservative calculation using the smallest volume reported still yields an average which exceeds the 45,000 metric ton threshold for the high volume criterion. EPA concludes, therefore, that the waste stream meets the high volume criterion.

4. Slag Tailings From Primary Copper Processing

With the addition of the third facility to the group of facilities generating this waste, the Agency reviewed the available survey data and revised the industry average generation rate for slag tailings to take into account for all three facilities that generate the waste. After revision of the quantity estimates, the waste stream continues to pass the high volume criterion.

5. Furnace Off-Gas Solids From Elemental Phosphorus Production

Confidential Business Information for three elemental phosphorus facilities was included in the recalculation of the average waste volume presented in Table 1 of today's rule, and this value was used to evaluate compliance with the high volume criterion. These CBI data were also used to evaluate compliance with the high volume criterion for the September 25 proposal, but were not presented in the NPRM in an effort, which upon closer examination proves unnecessary, to protect the confidentiality of the data.

The average waste volume in Table 1 represents the actual solids generated from cleaning the furnace off-gas; in some cases, these solids may have been entrained in scrubber water.[4] For EPA's calculations, however, the quantities of solids contained in these scrubber waters as reported in the surveys (either as percent solids in the scrubber water

[4] The available data indicate that the scrubber water is not a high volume waste.

or quantity of sludge generated from scrubber water settling) were the volumes ascribed to those facilities for purposes of developing the sector-wide annual waste generation rate. The average per-facility volume of this waste continues to be below the high volume criterion.

6. Process Wastewater From Hydrofluoric Acid Production

The Agency proposed to withdraw this waste stream as a low volume waste due to the failure of the facilities to provide waste generation data in the comments in which the waste streams were originally nominated or in their responses to the National Survey. Both facilities reportedly producing Bevill waste from hydrofluoric acid production have subsequently presented the Agency with volume data in comments and (in one case) a revised facility survey. The Agency has reviewed these industry comments and the additional survey data and has concluded that process wastewater from hydrofluoric acid production satisfies the high volume criterion for liquids. As the waste stream has been determined to be low-hazard, the process wastewater is retained in the Bevill exclusion.

7. Process Wastewater from Primary Lead Production

The Agency has reevaluated its methodology for volume estimation of this waste stream, and has subsequently removed from the analysis one facility which was not operated on a consistent basis (37 days in 1988). The Agency's analysis indicates, however, that although removal of this facility from the analysis increases the average annual per-facility waste volume, the process wastewater is not generated on a sector-wide basis in quantities sufficient to meet the high volume criterion. The waste stream, therefore, has been withdrawn from the Bevill exclusion. The value reported in Table 1 is the volume of process wastewater from the remaining non-CBI facility; this is not the actual sector facility average used to make the high volume determination.

8. Air pollution control dust/sludge from lightweight aggregate production

EPA has revised its estimate of the volume of this waste stream based on additional analysis of information included in the surveys submitted by the majority of the lightweight aggregate facilities. Waste management data submitted in the survey were analyzed to determine more accurately the actual generation of solids, in lieu of basing the estimates on solids entrained in wastewaters. These revised estimates, confirmed by data submitted by commenters addressing the earlier proposed reinterpretations, were used to calculate a new sector average for the waste stream. The Agency acknowledges that the facilities that use air pollution controls other than wet scrubbers, a minority in the sector, have not been represented in the analysis because data are not available on the quantities of APC dust that these facilities may generate. Data collected in the National Survey for the iron and steel industry, however, indicates that APC dust resulting from dry collection methods is typically of lower volume than sludges generated from wet scrubbers. As a result, EPA believes that inclusion of APC dust volume data in the analysis would not increase the facility average, much less double the average as would be needed to meet the high volume criterion. Based on EPA's revised estimate, air pollution control dust/sludge from lightweight aggregate production does not pass the high volume criterion and is hereby withdrawn from the Bevill exclusion.

9. Sulfate Process Waste Solids from Titanium Dioxide Production

Waste solids from the production of titanium dioxide using the sulfate process are removed from the processing operations and managed in multiple ways at the two facilities that employ the sulfate process. In its original response to the 1989 National Survey, one facility reported an aggregated volume of waste solids from chloride and sulfate processing operations. Because EPA was unable to disaggregate the volume of wastes from chloride v. sulfate processing operations at this facility, EPA used data provided by the other sulfate process facility as the basis for the average annual per facility waste generation rate in the proposal. In comments on the proposed rule, the facility that had previously reported aggregated volume data provided separate volume data for choride and sulfate process waste solids. As a result, for today's proposal, EPA has developed a revised per-facility average annual waste generation rate that is based on data from both facilities. However, as in the proposal, the waste is not high volume. The waste stream, therefore, has been withdrawn from the Bevill exclusion.

TABLE 1.—RESULTS OF APPLYING THE HIGH VOLUME CRITERION TO TWENTY CONDITIONALLY RETAINED PROCESSING WASTES*

Commodity sector	Conditionally retained waste	Solid or liquid	Average per facility generation (mt/yr)	Notes	No. of facilities reporting	Passes high volume criterion
Coal gas	Gasifer ash	Solid	240,000	B	1	Yes.
Coal gas	Process wastewater	Liquid	4,830,000	C	1	Yes.
Copper	Calcium sulfate wastewater treatment plant sludge.	Solid	78,000	A, B, D	2	Yes.
Copper	Slag tailings	Solid	503,915	C	3	Yes.
Elemental phosphorus	Furnace off-gas solids	Solid	11,044	A, C	5	No.
Hydrofluoric acid	Fluorogypsum	Solid	266,780	C	2	Yes.
Hydrofluoric acid	Process wastewater	Liquid	4,300,000	C	2	Yes.
Iron	Air pollution control dust/sludge	Solid	51,662	B, C	24	Yes.
Iron	Blast furnace slag	Solid	724,506	B	26	Yes.
Lead	Process wastewater	Liquid	856,000	A, C, D	5	No.
Lightweight aggregate	Air pollution control dust/sludge	Solid	15,813	B, C	17	No.
Magnesium	Anhydrous process wastewater	Liquid	2,465,000	B	1	Yes.
Phosphoric acid	Process wastewater	Liquid	67,402,600	A, B, C	18	Yes.
Sodium chromate/bichromate	Treated residue from roasting/leaching of chrome ore.	Solid	W/H	A, B	2	Yes.
Steel	Basic oxygen furnace and open hearth furnace air pollution control dust/sludge.	Solid	60,892	A, C, E	25	Yes.
Steel	Basic oxygen furnace and open hearth furnace slag.	Solid	553,844	A, B	26	Yes.
Titanium dioxide	Sulfate process waste acids	Liquid	W/H	A, B	2	Yes.

TABLE 1.—RESULTS OF APPLYING THE HIGH VOLUME CRITERION TO TWENTY CONDITIONALLY RETAINED PROCESSING WASTES*—Continued

Commodity sector	Conditionally retained waste	Solid or liquid	Average per facility generation (mt/yr)	Notes	No. of facilities reporting	Passes high volume criterion
Titanium dioxide	Sulfate process waste solids	Solid	W/H	A, C	2	No.
Titanium tetrachloride	Chloride process waste solids	Solid	89,349	A, B	9	Yes.
Zinc	Slag	Solid	157,000	B	1	Yes.
Total number of wastes meeting high volume criterion						16
Total number of wastes failing high volume criterion						4

*Data are from 1989 National Survey of Solid Wastes from Mineral Processing Facilities, except as noted.
W/H—withheld to avoid disclosing confidential business information (CBI).
A. The data for one or more of the generating facilities are CBI.
B. Generation data are obtained directly from the survey.
C. Calculated or interpreted by EPA based on information provided in the survey and public comments.
D. Data presented is from one facility; one or more of the generating facilities are CBI. Reported number was not used to make Bevill determination; average including CBI facilities does not change Bevill status.
E. Generation data was obtained from the survey for 12 facilities; data for 13 facilties was reported by AISI.

C. *Compliance with the Low Hazard Criterion*

Consistent with the low hazard criterion established on September 1, 1989, the Agency has used only waste analysis data derived using EPA Method 1312 because there was no compelling evidence that any of the 20 mineral processing wastes "is generated at five or more facilities; and substantial additional relevant data are available and the preponderance of these additional data indicate that the waste should be considered low hazard." (See 54 FR 36630.) The majority of the Method 1312 data used are the result of EPA sampling at selected facilities, but some results are for split samples or other sample analysis results provided by operating facilities.

In addition, for today's final rule, the Agency has utilized newly available data from EPA's 1989 waste sampling effort to make low hazard determination for certain waste streams or components of waste streams that may have been included by redefinition or clarification of the waste stream or the operation's process in today's final rule. Final results of EPA's application of the low hazard criterion are presented in Table 2.

1. Treated Residue from Roasting/Leaching of Chrome Ore

With the clarification that the waste in question is the treated residue from roasting/leaching of chrome ore and not the waste as it leaves the leaching operation, EPA has reviewed its waste sampling data of the treated residue, and has confirmed that the treated residue passes the low hazard criterion.

2. Process wastewater from coal gasification

With the determination that process wastewater from coal gasification is "stripped gas liquor," EPA has reviewed the sampling data for the stripped gas liquor generated at the facility, and established that the waste stream as redefined is a low hazard liquid waste.

3. Process wastewater from primary lead production

The Agency has responded to concerns from one commenter that a composite wastewater sample taken at one facility was not a sample of their process wastewater, but included additional process waste streams. In response, EPA analyzed non-composited samples of slag granulation water, which reportedly accounts for more than 90 percent of the process wastewater at this facility. This sample was found to exceed the low hazard criterion. Because the process wastewater also exceeded the criterion at a second facility, EPA concludes that this waste stream is not low hazard.

TABLE 2.—RESULTS OF APPLYING THE LOW HAZARD CRITERION TO TWENTY CONDITIONALLY RETAINED MINERAL PROCESSING WASTES

Commodity sector	Conditionally retained waste	No. of fac. believed to generate waste	No. of fac. sampled by EPA	No. of fac. submitting method 1312 data	Passes low hazard criterion	Reason for failure
Coal gas	Gasifier ash	1	1	0	Yes	N/A
Coal gas	Process wastewater	1	1	0	Yes	N/A
Copper	Calcium sulfate wastewater treatment plant sludge.	2	2	0	Yes	N/A
Copper	Slag tailings	2	2	1	Yes	N/A
Elemental phosphorus	Furnace off-gas solids	5	2	0	Yes	N/A
Hydrofluoric acid	Fluorogypsum	3	2	1	Yes	N/A
Hydrofluoric acid	Process wastewater	3	2	0	Yes	N/A
Iron	Air pollution control dust/sludge	30	4	0	Yes	N/A
Iron	Blast furnace slag	30	4	0	Yes	N/A
Lead	Process wastewater	5	3	0	No	As, Cd, Pb
Lightweight aggregate	Air pollution control dust/sludge	28	2	0	Yes	N/A
Magnesium	Anhydrous process wastewater	1	1	0	Yes	N/A
Phosphoric acid	Process wastewater	28	2	0	Yes	N/A
Sodium chromate/bichromate	Treated residue from roasting/leaching of chrome ore.	2	2	0	Yes	N/A

TABLE 2.—RESULTS OF APPLYING THE LOW HAZARD CRITERION TO TWENTY CONDITIONALLY RETAINED MINERAL PROCESSING WASTES—Continued

Commodity sector	Conditionally retained waste	No. of fac. believed to generate waste	No. of fac. sampled by EPA	No. of fac. submitting method 1312 data	Passes low hazard criterion	Reason for failure
Steel	Basic oxygen furnace and open hearth furnace air pollution control dust/sludge.	27	3	0	Yes	N/A
Steel	Basic oxygen furnace and open hearth furnace slag.	27	3	0	Yes	N/A
Titanium dioxide	Sulfate process waste acids	2	2	0	No	pH, Cr
Titanium dioxide	Sulfate process waste solids	2	2	0	Yes	N/A
Titanium tetrachloride	Chloride process waste solids	9	3	0	Yes	N/A
Zinc	Slag	1	1	0	Yes	N/A
Total number of wastes meeting low hazard criterion						18
Total number of wastes failing low hazard criterion						2

D. *Bevill Status of Conditionally Retained Mineral Processing Wastes*

The Bevill status of the 20 conditionally retained mineral processing wastes is presented in Table 3. Fifteen of the 20 wastes have been retained and will be studied in the Report to Congress and addressed by the subsequent Regulatory Determination. The other five wastes, will, as of the effective date of this rule, become subject to regulation as hazardous wastes under subtitle C of RCRA if they exhibit hazardous characteristics.

TABLE 3.—RESULTS OF APPLYING BOTH BEVILL CRITERIA TO TWENTY CONDITIONALLY RETAINED MINERAL PROCESSING WASTES

Commodity sector	Conditionally retained waste	No. of fac. believed to generate waste	Passes high volume criterion	Passes low hazard criterion	Retained within Bevill exclusion
Coal Gas	Gasifier ash	1 Yes	Yes	Yes	
Coal Gas	Process wastewater	1	Yes	Yes	Yes.
Copper	Calcium sulfate wastewater treatment plant sluge	2	Yes	Yes	Yes.
Copper	Slag tailings	2	Yes	Yes	Yes.
Elemental Phosphorus	Furnace off-gas solids	5	No	Yes	No.
Hydrofluoric Acid	Fluorogypsum	3	Yes	Yes	Yes.
Hydrofluoric Acid	Process wastewater	3	Yes	Yes	Yes.
Iron	Air pollution control dust/sludge	30	Yes	Yes	Yes.
Iron	Blast furnance slag	30	Yes	Yes	Yes.
Lead	Process wastewater	5	No	No	No.
Lightweight Aggregate	Air pollution control dust/sludge	28	No	Yes	No.
Magnesium	Anhydrous process wastewater	1	Yes	Yes	Yes.
Phosphoric Acid	Process wastewater	28	Yes	Yes	Yes.
Sodium Chromate/Bichromate	Treated residue from roasting/leaching of chrome ore.	2 Yes	Yes	Yes	
Steel	Basic oxygen furnance and open hearth furnace air pollution control dust/sludge.	27	Yes	Yes	Yes.
Steel	Basic oxygen furnace and open hearth furnace slag	27	Yes	Yes	Yes.
Titanium Dioxide	Sulfate process waste acids	2	Yes	No	No.
Titanium Dioxide	Sulfate process waste solids	2	No	Yes	No.
Titanium Tetrachloride	Chloride process waste solids	9	Yes	Yes	Yes.
Zinc	Slag	1	Yes	Yes	Yes.
Total number of wastes retained within Bevill exclusion					15
Total number of wastes withdrawn from Bevill exclusion					5

IV. Analysis of and Response to Comments on Clarification to the Definition of "Designated Facility" and Modification of the Standards Applicable to Generators of Hazardous Waste

In the proposed rule of September 25, 1989, EPA proposed a clarification to the definition of designated facility regarding waste shipments from a state where a waste is subject to the hazardous waste regulations to a state where the waste is not yet regulated as hazardous. This circumstance can arise when EPA lists or identifies a new waste as hazardous under its pre-HSWA authority. In such a case, the waste is subject to RCRA hazardous waste regulations only in those states that do not have interim or final authorization to operate the RCRA program. In a state authorized by EPA to operate a hazardous waste program in lieu of the federal program (under the authority of section 3006 of RCRA), the waste would not be subject to RCRA requirements until the state revises its program to classify the waste as hazardous and receives EPA authorization for these requirements. This set of circumstances results from the fact that RCRA allows states a specified time to adopt new regulations in order to minimize disruptions to the implementation of authorized state programs. In contrast, that situation does not occur when the wastes are newly listed or identified pursuant to the HSWA authorities since Congress

specified that HSWA provisions are to be implemented by EPA in all states until such time as states are authorized to implement the new regulations.

EPA's generator regulations require a generator of hazardous waste to "designate on the manifest one facility which is permitted to handle the waste described on the manifest.' (See 40 CFR 262.20). The regulations clearly state that the facility designated on the manifest is the "designated facility" as defined in § 260.10 (See the direct reference in the definition of "designated facility" to the manifest requirement in § 262.20). A designated facility as currently defined in 40 CFR 260.10 must either (1) have an EPA permit (or interim status) in accordance with parts 270 and 124, (2) have a permit from a state authorized in accordance with part 271, or (3) be a recycling facility that is regulated under § 261.6(c)(2) or subpart F of part 266, and must also be designated on the manifest by the generator pursuant to § 262.20.

It has become apparent that when promulgated in 1980, the definition of "designated facility" did not contemplate the above situation which has potentially broad impacts on the RCRA program. EPA's current interpretation of the statute is that the manifest requirement and the definition do not apply to materials that are not officially identified as RCRA hazardous wastes in the state that is receiving the wastes. Today's clarification amends the definition of "designated facility" and the standards applicable to generators of hazardous waste in 40 CFR 262.23, in order to make this interpretation clear to the public and the regulated community.

A. General Comments on the Proposed Definition

A number of commenters supported EPA's effort to clarify the existing regulations so that the parties affected by non-HSWA waste identifications and listings know the status of these wastes and the management standards that apply to them when they are shipped across state borders. These commenters indicated that the proposed revision to the definition of "designated facility" in § 260.10 offers additional clarity and an appropriate level of flexibility to assist both the regulatory agencies and the regulated community. Several commenters also supported the proposed change to § 262.23 by adding paragraph (e) to clarify the requirement that the generator must ensure that the designated facility returns the manifest to the generator to complete the waste tracking procedures as required by RCRA regulations.

Two commenters argued that the statute prohibits EPA from making this change to the definition of designated facility. These commenters pointed out that RCRA Section 3002 (a)(5), which sets out standards applying to hazardous waste generators, requires use of a manifest system

> * * * to assure that *all such hazardous waste* is designated for treatment, storage or disposal in and arrives at, treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) *for which a permit has been issued as provided in the subtitle* * * * (emphasis added).

Section 3003(a)(4), pertaining to transporters, contains substantially similar language.

The commenter argues that these provisions require materials that officially have the status of RCRA hazardous waste to go to facilities holding Subtitle C permits. EPA generally agrees with this view. EPA, however, notes that the mining wastes that become hazardous wastes as a result of this federal rule will not have official status as RCRA Subtitle C wastes in all states at the same time. New RCRA rules—including new waste identification rules—that are promulgated using statutory authorities in effect before the 1984 HSWA amendments take effect only in states that are not yet authorized to implement the pre-1984 RCRA hazardous waste program. Currently, only 7 states lack authorization for the pre-1984 program. Consequently, today's rule will take effect only in those states. In all other states, Subtitle C regulation of these wastes must wait for the states to promulgate parallel regulations or statutory changes, and obtain EPA approval to implement these new additions to their Subtitle C programs. This process can take many months. See generally 50 FR 28729–28730 (July 15, 1985), describing RCRA Section 3006. See also the state authorization section to today's notice.

Consequently, EPA believes that the "permitted facility" requirements of sections 3002(a)(5) and 3003(a)(4) apply only within the boundaries of those states where the relevant mining wastes have officially attained the status of RCRA-regulated subtitle C "hazardous wastes." Status as a "hazardous waste" is, indeed, the basic prerequisite for the exercise of any subtitle C jurisdiction. If a material is not yet a hazardous waste in the state to which it is sent for treatment, storage, or disposal, no subtitle C regulations apply. A manifest is not legally required, and the facility that accepts the waste need not have a subtitle C permit. EPA, in fact, would be unable to enforce manifest and permitting requirements in a state where a material is not yet a subtitle C hazardous waste.

Since at least two interpretations of the statute are possible, EPA may exercise its discretion to choose the view that best promotes the overall policy goals of RCRA. EPA believes that there are sound policy considerations favoring the "jurisdictional" view, which considers the materials RCRA hazardous waste status to be a jurisdictional prerequisite.

The commenters' interpretation of RCRA sections 3002(a)(5) and 3003(a)(4) would force newly regulated wastes that are generated in unauthorized states to be managed in those states. Essentially, these wastes would be "trapped" in these unauthorized states, and they could only be managed in avoidance with the treatment, storage, and disposal alternatives that are available in those states (which could be limited). This is primarily because TSD facilities in authorized states would not be able to obtain the necessary permit modification or change in interim status. Since the wastes are not yet hazardous in these states. One problem which can arise from this situation is that the facilities best suited to the management of wastes which are newly listed or identified may not be located in the states where the rulemaking is in effect. The Agency believes that such facilities should not be precluded from accepting wastes from states where the rule is in effect while the state in which they are located is seeking authorization for the waste stream.

One example of particular interstate concern involves a mixed waste stream (i.e., a waste stream that contains both hazardous waste and radioactive waste) called scintillation cocktails. Scintillation cocktails are commonly generated by approximately 10,000 hospitals and universities across the country. This waste stream became regulated pursuant to non-HSWA authority as described in the July 3, 1986, Federal Register notice, and therefore were initially regulated under the RCRA program only in the unauthorized states. Approximately 80 percent of the national capacity for treatment of these particular wastes resides with one facility. The Agency understands that this facility is in compliance with state standards that are equivalent to the federal RCRA requirements. However, the facility is located in a state that has not yet received mixed waste authorization, and therefore the facility does not have a

RCRA permit or interim status. If all these scintillation cocktails were required to go to RCRA permitted facilities as suggested by these commenters, a significant number of waste shipments from thousands of generators would be disrupted. In fact, in this case the Agency believes that such a restriction would generally result in less protective waste management since it is doubtful that the wastes would be treated and recovered to the same degree as is presently occurring at this large facility.

The Agency would also like to point out that, without the flexibility provided by today's rule, there would likely be a significant disincentive for states to adopt new waste listings unless they were confident that adequate treatment, storage, or disposal capacity exists for wastes within the state. This is because generators in the first few states to adopt the waste listing would not be able to send their wastes to facilities in other authorized states (which are the vast majority of states) that have not adopted the listing because the TSD facilities in these states would not be able to obtain the necessary RCRA permit modifications or changes in interim status. EPA believes that this disincentive would not be desirable.

The same two commenters, in arguing that EPA's proposal should be withdrawn, contended that there is no firm evidence that the problem hypothetically facing the regulated community actually exists. The commenters stated that the problem is miniscule, if not completely illusory. The commenters indicated that the problem that EPA attempts to address in the rulemaking could only arise if EPA lists or identifies a waste as hazardous pursuant to non-HSWA authorities; the generator needs to send the waste off-site and the only available off-site waste facilities capable of managing the waste are located in authorized states. The commenters indicated this scenario would occur in only a very limited number of circumstances, and therefore does not warrant any change to the definition of designated facility. The commenters go on to say that EPA can only identify three non-HSWA rulemakings resulting in newly listed or identified wastes.

EPA strongly disagrees with the statement that this is an illusory problem for the following reasons. In the September 25 proposal, EPA identified three recent non-HSWA rules only as illustrative examples of situations where interstate shipments could be a problem. However, there have been other non-HSWA rules that list or bring in new waste streams, namely: Redefinition of solid waste (January 4, 1985); and mixed waste (July 3, 1986). Furthermore, the Agency recently proposed additional non-HSWA listings for wood preserving wastes, and may in the future consider the regulation of other waste streams under the Agency's pre-HSWA authority. Furthermore, as discussed in the mixed waste scintillation cocktail example above, the Agency has already encountered situations of interstate shipments affecting thousands of generators, indicating that the problem being addressed in today's rule is a real one and deserves clarification.

The same two commenters argued that EPA's proposal could create a disincentive for waste generators to ship their wastes to licensed hazardous waste facilities. This disincentive could result from allowing the generator to choose to ship its hazardous waste to either a hazardous waste facility or a nonhazardous waste facility. Given the alternatives, a generator may simply choose the least cost option.

The Agency acknowledges that this approach to interstate shipments may appear to be a disincentive to the management of these hazardous wastes in subtitle C facilities. However, the Agency believes that there are other circumstances that mitigate this apparent disincentive. First, this situation is temporary. States are required to adopt federal RCRA waste listings or identifications within specified deadlines. Second, until that regulatory adoption, these wastes will be regulated under subtitle D of RCRA and any other applicable requirements of the receiving state. Last, some generators will elect to send their wastes to subtitle C facilities or other facilities that perform equivalent treatment in order to minimize any potential future liability resulting from the management of their wastes.

The two commenters also noted that the practice of shipping newly listed or identified wastes to facilities in states where the waste is unregulated would be limited to the period of time an authorized state requires to promulgate the new listing or characteristic. However, the commenters maintained that while such a period is finite, it is not necessarily short and can take up to three and a half years, assuming that authorized states comply with EPA regulations for revising state programs. The commenter further indicated that there are no immediate consequences for the state or the regulated community in that state if the state fails to meet these deadlines.

It should be recognized that the three and a half year period is the maximum allowed by the state authorization regulations. Generally, states are required to adopt federal program changes within two years (or three years if the state needs to amend its statute). Some extensions of these deadlines are available. However, EPA recognizes that while some states have been able to meet the authorization deadlines, others have not due to the number and complexity of the changes to RCRA regulations in the past few years. The Agency intends to place increased emphasis on prompt state adoption of new waste listings to ensure uniform, national coverage of newly listed or identified wastes. It should also be noted that there is a lag time between state adoption of a requirement and the official EPA action to authorize that state to implement the regulation under RCRA authority. Therefore, in many cases states are regulating these new activities in a manner equivalent to the RCRA program well before they have received authorization.

B. Relationship Between Today's Clarification and Non-RCRA State Hazardous Wastes

One commenter was concerned about the situation where a waste is generated in a state which, as a matter of state law only, regulates the waste as hazardous, but is transported to a receiving state that does not. In this case, the receiving state is under no federal compulsion to amend its regulations to add that waste to its list of hazardous wastes, since the listing of the non-RCRA waste is a matter of state law. EPA has no jurisdiction over this situation. Thus, this clarification of the definition of designated facility does not apply to state listed non-RCRA hazardous waste.

A second commenter shared the above concern but also stated that EPA's proposed clarification does not distinguish between state and federally classified hazardous waste. The commenter contended that the Agency should stipulate that this clarification only applies to federally regulated wastes, that the Agency did not intend to preclude the receiving state from designating the type of facility which can manage such state-classified hazardous waste, and that federal authorization is irrelevant to the interstate transportation of state-classified wastes.

The Agency recognizes the issue presented by the commenter; however, EPA believes that this is not a comment on the clarification to the definition of the term "designated facility" as

proposed on September 25, 1989. Rather, the issue raised by this commenter concerns the requirements of the current definition. Indeed, the current definition does not apply to non-RCRA hazardous wastes since it only applies to the hazardous wastes that the Federal government has authority to regulate (i.e., federally listed or identified hazardous wastes). If a state chooses to be more stringent and regulate additional wastes not regulated under RCRA, that state must adapt it's RCRA regulations with regard to the definition of designated facility to accommodate these new wastes. Each state must determine, therefore, how it will regulate the out-of-state shipment of state-listed wastes. Furthermore, the Agency does not, under the original definition or this subsequent clarification, intend to specify to authorized states the types of facilities that can manage state-classified hazardous wastes. Finally, EPA also does not, with this clarification or the original rule, seek to regulate the interstate transportation of state-classified wastes. Neither the original federal definition, nor today's clarification has any impact on the state regulation of state-classified hazardous wastes or the out-of-state shipment of these wastes.

C. Who Can Qualify as a Designated Facility?

One commenter argued that EPA's proposed clarification raised ambiguities by suggesting that some kind of approval is needed in a state receiving a waste, even if none is required by state law. The concept of a state having to provide an "allowance" to a facility in order for it to accept wastes that are not regulated in the first place appeared to be burdensome and unnecessary. One commenter stated that EPA should acknowledge that a waste that is not regulated in a receiving state can be sent to any facility in that state so long as nothing under state law disqualifies it from receiving such waste.

EPA would like to clarify that under today's rule, the laws of the receiving state determine which facilities may accept and manage the waste streams. The receiving state also determines what prior approvals, licenses, permits, etc., if any, are necessary. Today's clarification adds no additional approval requirements on facilities managing non-hazardous wastes from other states. The requirements placed on these facilities are a matter of stated law.

D. Which Standards Apply to Interstate Shipments?

Another commenter argued that the standards of the state where the generator is located should apply to the treatment, storage, or disposal of hazardous waste, rather than the standards of the receiving state because it would be extremely burdensome for the generator of a hazardous waste to keep track of the continuously evolving hazardous waste regulations of all fifty states.

The Agency disagrees with this commenter. A state can only apply its laws and regulations to facilities over which they have jurisdiction (i.e., facilities within the stated boundaries). Therefore, if a generator is sending wastes to a facility out-of-state, the treatment, storage, or disposal standards that apply are those of the state where the TSD facility is located. It is incumbent on the generator to know the requirements of the states where the wastes will be managed. However, much of the responsibility for complying with the receiving state's regulations falls on the TSD facility. In most cases, the generator simply has to ask a potential receiving TSD facility if it is allowed to manage the generator's wastes by its state government. The Agency does not believe that this is particularly burdensome to the generator.

E. Other Comments

A minor technical correction is also included in the rule language of "designated facility" to clarify that an interim status facility in an authorized state may be a designated facility. EPA believes that it is universally understood that these interim status facilities can accept hazardous waste shipments, and this was the original intent of the provision. Therefore, in the first sentence of the rule a parenthetical clause is added with the words "or interim status".

The Agency has noted and corrected the typographical error that appeared in the proposed rule as follows: Under proposed § 260.10(4), the generator is designated on the manifest pursuant to § 262.20, not § 260.20.

F. Manifesting requirements

Today's clarification will not alter the requirement that a generator offer his waste only to transporters who have EPA identification numbers. (See 40 CFR 262.12(c)). Thus, if a newly listed waste is transfered between transporters in a state where the waste is not yet hazardous, both transporters should be identified on the manifest. The initial transporter is still required to keep the copy of the manifest on file.

In order to ensure that the waste reaches the designated facility, EPA is requiring the generator to arrange that the designated facility owner or operator sign and return the manifest to the generator, and that out-of-state transporters sign and forward the manifest to the designated facility. The return of the manifest to the generator will "close the loop" on the disposition of the generated waste and allow the generator to attempt to resolve any discrepancies in the manifest, as required by 40 CFR 262.42. This new requirement parallels the requirements in 40 CFR 264.71 and 265.71. However, as opposed to those sections, which require the receiving facility to return the manifest, § 262.23(e) puts the burden on the generator to ensure the return of the manifest when the waste is sent to a facility in a state not yet authorized to treat the waste as hazardous. EPA believes that this approach is appropriate, since the facility receiving the waste and any out-of-state transporters may not be subject to subtitle C regulation, if they do not otherwise handle any RCRA hazardous wastes. It should be noted that with this approach the designated facility and out-of-state transporters are not required to obtain EPA identification numbers since the waste is not hazardous in their state. (Of course, once the state becomes authorized to regulate the particular waste as hazardous, the facility would need a RCRA Subtitle C permit (or interim status) to continue managing the waste and all transporters would need EPA identification numbers.)

V. Regulatory Implementation and Effective Dates of the Final Rule

EPA is finalizing this rule in accordance with the March 14, 1989 order of the U.S. Court of Appeals for the D.C. Circuit (see *Environmental Defense Fund* v. *EPA*, 852 F.2d 1316 (D.C. Cir. 1988) *cert. denied*, 109 S.Ct. 1120 (1989)). As of the effective date of this final rule (i.e., six months after today or July 23, 1990, the five mineral processing wastes for which the temporary exemption from subtitle C regulations (previously provided by RCRA section 3001(b)(3)(A)(ii)) is being removed by today's rulemaking may be subject to subtitle C requirements in those states that do not have authorization to administer their own hazardous waste programs in lieu of EPA. Generators, transporters, and treatment, storage, and disposal (TSD) facilities that manage any of these five

wastes in authorized states will be subject to RCRA requirements imposed as a result of this final rule only after the state revises its program to adopt equivalent requirements and EPA authorizes the revision.

The requirements imposed as a result of removing the temporary exemption include: Determining whether the solid waste(s) exhibit hazardous characteristics (40 CFR 262.11) and, for those wastes that are hazardous, obtaining an EPA identification number for managing hazardous wastes (40 CFR 262.34); complying with recordkeeping and reporting requirements (40 CFR 262.40–262.43); and obtaining interim status and seeking a permit (or modifying interim status, including permit applications or modifying a permit, as appropriate) (40 CFR Part 270).

A. Section 3010 Notification

When EPA published its September 1, 1989 final rule (54 FR 36592), the Agency removed the temporary exemption from subtitle C regulations for all but twenty-five mineral processing wastes. In that rulemaking, the Agency indicated that all persons generating, transporting, treating, storing, or disposing of one or more of those wastes were to notify either EPA or an authorized state within 90 days (i.e., by November 30, 1989) of such activities, pursuant to section 3010 of RCRA, if those wastes are characteristically hazardous under 40 CFR part 261, subpart C. (see 54 FR 36632.) Following the publication of the September rule, however, a number of facilities expressed confusion regarding the notification requirement because section VII of the preamble to the September 1, 1989 final rule also states that "the final rule is not effective in authorized states because its requirements are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984." (See 54 FR 36633). This statement was correct in regard to the requirement to file a part A permit application and TSD standards. It was not correct in regard to section 3010 notification, which was intended to apply to all persons generating, transporting, treating, storing or disposing of hazardous wastes identified by characteristics regardless of whether in an authorized state or not. Because the September 1, 1989 final rule removed a temporary exemption and thus identified as characteristically hazardous some wastes, section 3010 required notification within 90 days.

Because some potentially affected facilities may have been confused by the September 1 premable and because the Agency has not yet published a clarification, EPA is today eliminating the notification requirement established by the September 1 final rule for facilities in authorized states. For facilities in unauthorized states, the deadline for compliance with the notification requirement established by the September 1 rule is being extended until 90 days following today's publication (i.e., April 23, 1990). EPA has concluded that it is appropriate to waive the notification requirement in authorized states because (1) the universe of newly regulated activities will be identified when state regulations are revised, as they must be for the states to retain authorization; and (2) RCRA identification numbers provided to notifiers in authorized states are obtained by the state from EPA, so in this way EPA is informed of the notifications that authorized states receive.

Accordingly, not later than 90 days following today's publication (i.e., April 23, 1990), all persons in unauthorized states who generate, transport, treat, store, or dispose of wastes that (1) are removed from the Bevill exemption by this final rule, and (2) are characteristically hazardous under 40 CFR part 261, subpart C, must notify EPA of such activities pursuant to Section 3010 of RCRA. Notification instructions are set forth in 45 FR 12746.

Persons who previously have notified EPA or an authorized state of their activities pursuant to section 3010 of RCRA, (i.e., persons who previously have notified EPA or an authorized state that they generate, transport, treat, store or dispose of hazardous waste and have received an identification number—see 40 CFR 262.12, 263.11 and 265.1) need not re-notify.[5] Persons without EPA identification numbers are prohibited from transporting, offering for transport, treating, storing, or disposing of hazardous wastes.

For the same reasons discussed above, facilities managing wastes removed from the exclusion in authorized states need not notify EPA or an authorized state within 90 days of today's rule. Section 3010 Notification will be required of such facilities after the state receives authorization or otherwise amends its program to regulate these or require such notification.

[5] Under the Solid Waste Disposal Amendments of 1980, (Pub. L. 96–462) EPA was given the option of waiving the notification requirement under section 3010 of RCRA following revision of the section 3001 regulations, at the discretion of the Administrator.

B. Compliance Dates for Today's Rule

1. Interim Status and Permit Modifications in Unauthorized States

Facilities in unauthorized states that currently treat, store, or dispose of wastes that have been removed from temporary Bevill exclusion and are characteristically hazardous under 40 CFR Part 261, Subpart C, but have not received a permit pursuant to Section 3005 of RCRA and are not operating pursuant to interim status, may be eligible for interim status (see Section 3005(e)(1)(A)(ii) of RCRA, as amended). In order to operate pursuant to interim status, such facilities must submit a Section 3010 notice pursuant to 40 CFR 270.70(a) within 90 days of today's final rule (i.e., by April 23, 1990, [6] and must submit a part A permit application within six months of today's final rule (i.e., by July 23, 1990). Under section 3005(e)(3), land disposal facilities qualifying for interim status under section 3005(e)(1)(A)(ii) must also submit a part B application and certify that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements within 18 months of today's final rule (i.e., by July 23, 1991). If the facility fails to do so, interim status will terminate on that date.

Completion of final permit application will require individual facilities to develop and compile information on their on-site waste management operations including, but not limited to, the following activities: Ground-water monitoring (if waste management on land is involved); manifest systems, recordkeeping, and reporting; closure and, if appropriate, post-closure requirements; and financial responsibility requirements. The permit applications may also require development of engineering plans to upgrade existing facilities. In addition, many of these facilities will, in the future, be subject to land disposal restrictions (LDR) standards. As explained in the September 1, 1989 final rule and in the proposed LDRs for third scheduled wastes (54 FR 48372, 48492; November 22, 1989) EPA considers wastes that are brought under Subtitle C regulation by today's final rule to be "newly identified" wastes for purposes of establishing LDR standards under section 3004(g)(4) of RCRA. (54 FR 36624). Accordingly, EPA has proposed that newly identified mineral processing

[6] Except persons who previously have notified EPA or an authorized state that they generate, transport, treat, store or dispose of hazardous waste and have received an identification number.

wastes not be subject to the BDAT standards that the Agency proposed on November 22, 1989 for characteristic hazardous wastes. As required by RCRA section 3004(g)(4)(C), EPA plans to study the mineral processing wastes removed from the temporary exemption to determine BDAT for ones that exhibit one or more characteristic of a hazardous waste.

All existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of hazardous wastes covered by today's final rule, and that are currently operating pursuant to interim status under Section 3005(e) of RCRA, must file with EPA an amended Part A permit application within six months of today's publication (i.e., by July 23, 1990), in accordance with § 270.72(a).

Under current regulations, a hazardous waste management facility that has received a permit pursuant to Section 3005 may not treat, store, or dispose of the wastes removed from the temporary exclusion by today's final rule, if those wastes are characteristically hazardous under 40 CFR Part 261, Subpart C, when the final rule becomes effective (i.e., July 23, 1990) unless and until a permit modification allowing such activity has occurred in accordance with § 270.42. Consequently, owners and operators of such facilities will want to file any necessary modification applications with EPA before the effective date of today's final rule. EPA has recently amended its permit modification procedures for newly listed or identified wastes. (See 40 CFR 270.42(g).) For more details on the permit modification procedures, see 53 FR 37912, September 28, 1988.

2. Interim Status and Permit Modifications in Authorized States

Until the state is authorized to regulate the wastes that are being removed from temporary exclusion by today's final rule and that are hazardous under 40 CFR part 261, subpart C, no permit requirements apply. Facilities lacking a permit, therefore, need not seek interim status until state authorization is granted. Any facility treating, storing, or disposing of these wastes on the effective date of state authorization may qualify for interim status under applicable state law. Note that in order to be no less stringent than the Federal program, the state "in existence" date for determining interim status eligibility may not be later than the effective date of EPA's authorization of the state to regulate these wastes. These facilities must provide the state's equivalent of a part A permit application as required by authorized state law.

Finally, RCRA section 3005(e) (interim status) or any authorized state analog apply to waste management facilities qualifying for state interim status. For those facilities managing wastes under an existing state RCRA permit, state permit modification procedures apply.

VI. Effect on State Authorizations

Because the requirements in today's final rule are not being imposed pursuant to the Hazardous and Solid Waste Amendments of 1984, they will not be effective in RCRA authorized states until the state program amendments are efffective. Thus, the removal of the temporary exclusion will be applicable six months after today's publication (i.e., on July 23, 1990) only in those few states that do not have final authorization to operate their own hazardous waste programs in lieu of the Federal program. In authorized states, the reinterpretation of the regulation of non-excluded processing wastes will not be applicable until the state revises its program to adopt equivalent requirements under state law and receives authorization for these new requirements. (Of course, the requirements will be applicable as state law if the state law is effective prior to authorization).

Based on the scope of today's final rule, states that have final authorization (40 CFR 271.21(e)) must revise their programs to adopt equivalent standards regulating non-Bevill mineral processing wastes that exhibit hazardous characteristics as hazardous by July 1, 1991 if regulatory changes only are necessary, or by July 1, 1992 if statutory changes are necessary. These deadlines can be extended by up to six months (i.e., until January 1, 1992 and January 1, 1993, respectively) in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the revision, the state requirements become RCRA Subtitle C requirements in that state. States are not authorized to regulate any wastes subject to today's final rule until EPA approves their regulations. Of course, states with existing standards that address these wastes may continue to administer and enforce their regulations as a matter of state law.

Currently unauthorized states that submit an official application for final authorization less than 12 months after the effective date of today's final rule (i.e., before January 23, 1991) may be approved without including an equivalent provision (i.e., to address non-Bevill mineral processing wastes) in the application. However, once authorized, a state must revise its program to include an equivalent provision according to the requirements and deadlines provided at 40 CFR 271.21(e).

VII. Economic Impact Screening Analysis Pursuant to Executive Order 12291

Sections 2 and 3 of Executive Order 12291 (46 FR 13193) require that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis (RIA) be conducted. A major rule is defined as a regulation that is likely to result in one or more of the following impacts:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individuals, industries, Federal, State, and 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.

Today's final rule completes the Agency's revised interpretation of the Bevill Mining Waste Exclusion for mineral processing wastes. The first part of this reinterpretation, dealing with the vast majority of individual mineral processing waste streams, was made final on September 1, 1989. The preamble to the September 1 rule presented the results of the Agency's economic impact screening analysis, covering scores of small volume mineral processing wastes, and examining cost impacts associated with 39 potentially hazardous low volume wastes in detail. This analysis indicated a total annual compliance cost for subtitle C waste management of about $54 million. As indicated in section III of this preamble, today's final rule removes five additional processing wastes from the Bevill exclusion and subjects them to regulation under subtitle C of RCRA if they exhibit hazardous characteristics.

Consistent with Executive Order 12291, the Agency has completed a revised economic impact screening analysis for the five mineral processing wastes removed from the Bevill exclusion by today's rule. These revisions account for changes in the Bevill status of certain wastes since the September 25, 1989, NPRM and comments received on the original analysis. Results of this revised analysis suggest that three of the five waste streams are likely to exhibit hazardous characteristics at some or all of the

facilities that generate them. One additional waste stream (air pollution control solids from lightweight aggregate production) may be regulated at some facilities under the subtitle C "derived-from" rule. As a consequence, as many as eleven mineral processing facilities in four different commodity sectors may incur compliance costs due to this rule. The Agency estimates that total annual compliance costs are not likely to exceed $18.5 million and therefore concludes that today's final rule is not a "major rule" according to the first criterion of E.O. 12291.[7]

With respect to the other E.O. 12291 criteria, the Agency does not predict a substantial increase in costs or prices for consumers or a significant effect on international trade or employment in connection with today's final rule. Some individual mineral processing facilities in the lightweight aggregate and titanium dioxide sectors may experience significant compliance costs which would affect their ability to compete in their respective commodity sectors. On balance, however, the Agency concludes that today's rule does not constitute a major rule as defined by E.O. 12291.

The following paragraphs of this section briefly restate the Agency's economic impact screening approach and assumptions, and provide revised results.

A. Approach

1. Methodology and Assumptions

The revised screening analysis prepared for today's final rule used essentially the same methodology employed for and described in the September 25, 1989, NPRM (54 FR 39312–16) and accompanying background documents, to which the reader is referred for details.

Substantial differences between the scope and results of the analysis described in the proposed rule and those reported here primarily reflect a shift in the Bevill status of several key waste streams based on new information on waste generation rates and chemical characteristics, as described above in section III. Specifically, the final rule restores the Bevill status for two wastes for which the Agency has previously estimated compliance cost impacts in the September 25 NPRM (roast leach ore residue from chromite processing and process wastewater from hydrofluoric acid production), thus obviating the predicted impacts for these two sectors.

On the other hand, APC dust/sludge from lightweight aggregate production (proposed for retention within the exclusion based upon preliminary review of EPA survey data) has now been removed from the Bevill exclusion following a closer examination of the data, which indicates that average scrubber solid volumes are well below the high volume criterion.

Because EPA waste sampling data and information submitted both in response to the Agency's RCRA section 3007 letter and in public comment indicate that APC solids from lightweight aggregate are unlikely to exhibit hazardous waste characteristics, the Agency believes that removing this material from the Bevill exclusion will not impose any cost or economic impacts on *most* of the 30 or so facilities that generate it. Nonetheless, it is well known that several lightweight aggregate production facilities currently burn listed hazardous wastes as a primary fuel and would hence experience subtitle C regulatory compliance costs as a consequence of the "derived-from" rule (see 40 CFR 261.3(b)(2)(i)).

EPA has not substantially modified its estimates of the distribution and magnitude of the costs or impacts for the remaining four affected waste streams whose status remained unchanged from the September 25 NPRM (elemental phosphorus off-gas solids, primary lead process wastewater, titanium dioxide sulfate process waste acids, and titanium dioxide sulfate process waste solids).

Of the five waste streams reviewed for potential hazard characteristics, the preliminary screening assessment suggests that two—lightweight aggregate APC scrubber solids and sulfate process waste solids from titanium dioxide production—are not likely to exhibit hazardous characteristics under current RCRA hazardous waste test procedures. Therefore, EPA has assumed in its economic impact screening analysis that facilities generating these wastes will experience no compliance cost impacts associated with potential subtitle C regulation of these wastes. The primary exception relates to five (out of 30) lightweight aggregate producers that currently burn listed hazardous wastes as fuel. EPA's information indicates that five facilities operated by the Solite Corporation and one facility operated by the Norlite Corporation burn hazardous waste as fuel; one of the Solite facilities apparently does not generate any solid wastes. With few specific exceptions (based on waste sampling data), the remaining three waste streams were considered hazardous at all facilities, for the characteristics specified, as follows:

- Elemental phosphorus off-gas solids (from wet collection)—EP toxic for cadmium
- Primary lead process wastewater—EP toxic for arsenic, cadmium, and lead, corrosive
- Titanium dioxide sulfate process waste acids—EP toxic for chromium, corrosive

Fourteen facilities in these four affected commodity sectors, were then further analyzed on a site-specific basis in terms of current (baseline) management practices in order to determine consistency with current subtitle C management requirements and to select reasonable site-specific compliance options as a basis for estimating costs.

EPA determined that one of the 14 facilities analyzed on the basis of company-provided data is currently managing hazardous wastes in compliance with current subtitle C requirements, and thus may not incur additional costs when today's rule becomes effective. The data supporting this finding were obtained from responses to EPA's 1987–88 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (TSDR Survey).[8] For some other individual facilities, Data from the National Survey of Solid Wastes from Mineral Processing Facilities document that current practice for several of the wastes (particularly the wastewaters) removed by today's rule includes treatment in a wastewater treatment plant, direct discharge via NPDES permit provisions, and/or recycling to the process generating the waste in question. EPA has reviewed this information, and used it to develop baseline and subtitle C compliance scenarios for this analysis. As a result, estimated compliance costs at several of the facilities affected by today's final rule are zero. That is, removal of the waste from Bevill will impose no operational or economic impacts because these facilities already appear to employ management practices consistent with subtitle C requirements.

2. Costing Assumptions for Lightweight Aggregate APC Scrubber Solids

As discussed above, five facilities producing lightweight aggregate air

[7] The Preamble to the September 25, 1989, proposed rule presented an annual compliance cost estimate of $5.2 million for 9 affected facilities in 5 commodity sectors. The net increase to $18.5 million is attributable entirely to the addition of lightweight aggregate APC scrubber solids to the list of affected wastes.

[8] USEPA. 1989. *Development of the High Volume Criterion for Mineral Processing Wastes.* Special Wastes Branch, Office of Solid Waste. August 18, 1989.

pollution control (APC) scrubber solids will face economic impacts due to the removal of this waste stream from the Bevill exclusion by today's final rule, because they burn listed hazardous waste as fuel. Because this sector was not evaluated in the original screening analysis for the NPRM, the following paragraphs present the Agency's costing approach and engineering design assumptions for evaluating compliance options and estimating costs.

In general, there are a multitude of possible compliance options available to lightweight aggregate producers, varying from conversion to fossil fuels to various possible waste reduction methods to possible delisting petition options. Because of lack of data necessary to perform quantitative cost estimates for most of these alternatives (as well as time constraints on this final court-ordered rule), the Agency's screening analysis has been forced to focus only on the extremely high-cost option of managing the APC scrubber solids (generated as wet sludges) as Subtitle C hazardous wastes. The Agency's cost estimates are thus based on the difference in disposal costs between managing the reported sludge volumes in unlined impoundments or waste piles versus disposal in a permitted subtitle C landfill. For these and other reasons outlined below, the Agency's cost estimates for this sector should be regarded as upper-bound estimates.

The waste quantities potentially subject to subtitle C landfill disposal have been estimated using responses to the industry survey and, in one case, written public comments. Methods for developing these estimates are described in a supplemental technical background document that may be found in the docket for today's rule.[9] The Agency has assumed that the waste quantities reported by the facilities represent relatively dry material, and that dewatering would not be feasible as a volume reduction method prior to land disposal. If dewatering would be possible, then the quantity of waste for subtitle C landfill disposal has been overestimated and, to this extent, EPA has, accordingly overestimated compliance costs, which are directly related to the mass of waste that must be disposed.

The Agency has also conservatively assumed that all lightweight aggregate kilns at each affected facility (most facilities operate three to five kilns) do and will continue to burn *listed* hazardous wastes as fuel. Consequently, in this analysis the entire scrubber solids stream for all facilities is assumed to be affected by the derived-from rule and therefore subject to subtitle C. To the extent that some or all facilities do not burn listed hazardous wastes in all of their kilns and/or do (or could) segregate listed and non-listed (characteristic) hazardous wastes prior to their use as fuel, EPA has further overestimated costs and impacts.

In addition, the Agency has some concerns about the waste volume data reported by one of the two affected firms, the Solite Corporation. Solite's facilities report waste generation rates that are substantially higher than any other lightweight aggregate producer, even when corrected for differences in plant size and production rate. The waste-to-product ratio calculated by EPA for Solite's facilities ranges from 15 percent to more than 25 percent. This is from two and one half to 250 times the ratio calculated for the other reporting facilities generating the same waste. Nonetheless, the data reported in the National Survey and used in this analysis are consistent with information previously submitted to EPA by the company. This may or may not be related to the issue of moisture content discussed above. It should be noted, however, that these very high reported waste generation rates lead directly to significant compliance cost estimates. If actual waste generation rates are lower, actual compliance costs and associated impacts will be less than those predicted here.

Another conservative assumption that the Agency has made in conducting this analysis is that affected firms would continue using current air pollution control methods and, therefore, continue to generate wet APC scrubber solids. Nearly one half of the lightweight aggregate industry currenty uses dry collection methods, including one of the facilities operated by Solite that burns hazardous waste fuel. Waste generation rates using dry collection methods are generally significantly lower than those using wet collection methods. In addition, information submitted to EPA indicates that at some facilities, the APC dust is recycled into the lightweight aggregate kilns from which it is generated, such that the process does not generate any substantial quantity of solid wastes. To the extent that the facilities examined in this analysis could install dry dust collection systems and recycle the solids rather than continue to use wet collection systems, costs and related impacts could be reduced *even if* the facilities continued to utilize listed hazardous wastes as fuel supplements.

Finally, the affected firms, Solite and Norlite, could potentially avoid subtitle C regulation altogether by either (1) converting entirely to other fuels and discontinuing use of listed hazardous wastes as fuel, or (2) having their waste streams de-listed on a site-specific basis. EPA notes here that Solite has indicated in its public comments on the September 25, 1989, and previous proposed rules that it would not continue to accept and burn hazardous waste fuels if the Bevill exemption were to be removed from its wastes. While the Agency recognizes that this course of action is a distinct possibility and perhaps the least cost compliance alternative, the Agency was not able in the present screening analysis to evaluate the available fuel conversion option due to a lack of factual information about such factors as retrofitting costs, thermal value of currently used hazardous waste fuels, and the revenues accruing to the two firms for accepting the hazardous wastes from individual generators. For the same reasons, i.e., insufficient data, it has also not been possible to predict the outcome of any attempt by the firms to have the APC scrubber wastes in question officially delisted (withdrawn from subtitle C regulation) by the Agency.

Similarly, while EPA acknowledges that intermediate alternatives may be available, such as burning only characteristic rather than listed hazardous wastes in at least some kilns, currently available information is insufficient to assess the feasibility or cost implications of this type of operational change.

Consequently, EPA's compliance cost analysis has been conducted using the best currently available information to develop what are essentially worst-case compliance cost estimates for the lightweight aggregate commodity sector. To the extent that the affected facilities can (1) avoid subtitle C regulation by fuel changes and/or equipment modifications or successful delisting petitions, or (2) employ waste-reduction techniques to generate lesser quantities of APC scrubber solids subject to the derived-from rule, the costs and impacts reported here may represent a substantial overestimate.

B. Aggregate and Sector Compliance Costs

The impact screening analysis projects that eleven facilities in four different mineral processing commodity

[9] *Addendum to the Technical Background Document: Development of the Cost and Economic Impacts of Implementing the Bevill Mineral Processing Wastes Criteria.* Economic Analysis Staff, Office of Solid Waste, USEPA. January 12, 1990.

sectors will be affected directly by today's final rule. Thirty-five facilities in these four sectors are expected to be unaffected by today's rule because they either (1) do not generate the processing waste in question, (2) routinely recycle the material as a process input, or (3) produce a waste that apparently does not fail standard EPA hazardous waste test criteria. Another three facilities, one in the titanium dioxide sector, and two in the lead sector, are believed to be unaffected by virtue of already incorporating subtitle C (or equivalent NPDES wastewater treatment) practices in their current waste management systems. In aggregate, the total impact of today's rule is estimated to be about $18.5 million per year. EPA cost estimates for individual commodity sectors and facilities are presented in Table 4.

For the reasons discussed above, the major part of the total estimated compliance costs (86 percent) falls upon the five lightweight aggregate facilities currently burning listed hazardous wastes as fuel. Cost impacts range from $2.5 million annually for the Norlite and Florida Solite facilities to almost $4.6 million annually for Solite's Arvonia, Virginia, facility. The reasons for the large magnitude of these compliance cost estimates are the host of conservative analytical assumptions articulated above, together with the relatively large quantities of scrubber wastes reported by the Solite company.

One other sector, titanium dioxide, is expected to experience aggregate sector impacts of about $1.8 million annually. Within this sector, all of the cost impacts are predicted to fall on one of the two facilities, with the other producer's waste management costs being unaffected by removal from the Bevill exclusion. Three of five primary lead facilities are projected to incur costs. Two primary lead producers, Asarco and Doe Run, are expected to experience annual compliance costs of $41,000 and $235,000, respectively, with estimated costs for their individual primary lead facilities ranging from zero to $201,000 annually, depending on current management practices and plant-specific waste characteristics.

The two (of five) elemental phosphorus plants that are expected to experience impacts have total estimated incremental costs of $179,000 annually, with the vast majority ($173,000) imposed on the facility owned by Occidental Chemical Corporation.

In response to public comments on the analysis presented in the September 25 proposal, EPA wishes to clarify certain aspects of these cost estimates as they relate to land disposal restrictions and corrective action. The Agency did not explicitly address the potential impact of prospective land disposal restrictions in the present economic impact screening analysis. The Agency did, however, develop its compliance cost estimates based on environmentally sound management practices for subtitle C waste disposal. For example, for EP toxic liquid waste streams, the Agency included a solidification and stabilization step in the waste treatment sequence, which would allow any treatment residual (e.g., EP toxic sludge) to be disposed in a subtitle C landfill. While this engineering compliance construct does not necessarily represent a precise BDAT under the LDRs for the wastes in question (because LDRs for characteristic wastes have not been promulgated, nor has BDAT been defined), EPA believes that it is a reasonable and realistic means of characterizing environmentally protective waste management under subtitle C, and captures the essence of what would be required of facility operators when LDRs for these wastes go into effect.

With respect to corrective action, EPA did not consider the effect of corrective action requirements on potential costs and impacts associated with today's rule. Many of the facilities potentially affected by today's are likely to avoid being drawn into the subtitle C system as a treatment, storage, or disposal (TSD) facility and hence avoid becoming subject to corrective action requirements. To the extent that a facility must become permitted, facility-wide corrective action would apply. In the case of the one facility that is already a permitted TSD, today's rule has no incremental impact, because it is already subject to corrective action requirements. Therefore, the Agency believes that the practical consequences of not addressing corrective action requirements in the present screening analysis may not be substantial.

TABLE 4.—SUMMARY OF PRODUCTION, VALUE OF SHIPMENTS, AND COMPLIANCE COSTS

Commodity sector [1]	Number of plants producing commodity	Production [2] (MT/YR)	Unit value [3] ($/MT)	Value of shipments ($/YR)	Compliance costs ($/YR)	Costs per metric ton of product [3] ($/MT)	Costs/value of shipments [3] (percent)
Elemental Phosphorus							
Entire Sector	5	341,950	1688	577,266,155	179,000	0.5	<0.1
Facilities Evaluated	2	174,150	1688	293,992,312	179,000	1.0	0.1
FMC—Pocatello ID		122,449	1688	206,713,345	6,000	<0.1	<0.1
Occidental—Columbia TN		51,701	1688	87,278,968	173,000	3.3	0.2
Lead							
Entire Sector	5	374,633	724	271,162,781	276,000	0.7	0.1
Facilities Evaluated	5	374,633	724	271,162,781	276,000	0.7	0.1
Asarco—East Helena MT [4]		52,189	724	37,775,036	41,000	0.8	0.1
Asarco—Glover MO [4]		52,189	724	37,775,036	0	0.0	0.0
Asarco—Omaha NE [4]		52,189	724	37,775,036	0	0.0	0.0
Doe Run—Buick MO		92,762	724	67,141,706	34,000	0.4	0.1
Doe Run—Herculaneum MO		125,304	724	90,695,969	201,000	1.6	0.2
Lightweight Aggregate							
Entire Sector [5]	30	4,140,642	27.5	113,973,910	16,206,000	3.9	14.2
Facilities Evaluated	5	911,458	27.5	25,088,493	16,206,000	17.8	64.6
Carolina Solite—Norwood NC [6]		220,454	27.5	6,068,143	3,610,000	16.4	59.5
Florida Solite—Green Cove FL [6]		112,491	27.5	3,096,390	2,518,000	22.4	81.3
Kentucky Solite—Brooks KY [6]		175,088	27.5	4,819,414	2,997,000	17.1	62.2
Virginia Solite—Arvonia VA [7]		221,988	27.5	6,110,373	4,553,000	20.5	74.5
Norlite—Cohoes NY [6]		181,437	27.5	4,994,174	2,528,000	13.9	50.6
Titanium Dioxide							
Entire Sector	9	893,878	1891	1,690,482,634	1,817,000	2.0	0.1
Facilities Evaluated	2	114,286	1891	216,134,766	1,817,000	15.9	0.8
Kemira Oy—Savannah GA [8]		54,422	1891	102,921,317	0	0.0	0.0
SCM—Baltimore MD [8]		59,864	1891	113,213,449	1,817,000	30.4	1.6

TABLE 4.—SUMMARY OF PRODUCTION, VALUE OF SHIPMENTS, AND COMPLIANCE COSTS—Continued

Commodity sector [1]	Number of plants producing commodity	Production [2] (MT/YR)	Unit value [3] ($/MT)	Value of shipments ($/YR)	Compliance costs ($/YR)	Costs per metric ton of product [3] ($/MT)	Costs/value of shipments [3] (percent)
Combined total—all four sectors							
All Facilities	49	5,751,103	461	2,652,885,481	18,478,000	3.2	0.7
Affected Facilities Only [9]	11	1,415,726	444	627,906,964	18,478,000	13.1	2.9

[1] Facilities evaluated are those believed to generate wastes that may exhibit hazardous characteristics or be hazardous by virtue of the derived-from rule.
[2] 100 percent capacity utilization is assumed, except as noted.
[3] Totals for unit value, costs per metric ton of product, and costs/value of shipments are calculated and not the sum of the individual facility values.
[4] Capacity and production values apportioned equally among the three Asarco facilities.
[5] Production figure source: Minerals Yearbook. 1987. p. 258.
[6] Production figure as reported by the facility in response to the 1989 National Survey of Solid Wastes from Mineral Processing.
[7] Production figure calculated from firm-wide waste-to-product ratio and reported waste generation rate provided in 11/88 public comments.
[8] Sulfate process only.
[9] Affected facilities are the facilities evaluated having non-zero compliance costs.

C. Economic Impacts

EPA's screening-level analysis of economic impact compared the magnitude of annual compliance costs for each affected facility to the estimated value of shipments. This ratio provides a first approximation of the extent to which the profitability of firms, or, alternatively, commodity prices, or other measures of national impact may be adversely affected by the imposition of regulatory compliance costs.

Sectors or facilities with ratios above one percent were considered vulnerable to moderate to significant financial impacts and were evaluated in more detail in terms of market and industry factors that might affect the ultimate incidence and impact of the costs.

As seen in Table 4, despite the fact that only a small percentage of facilities in the lightweight aggregate sector would be affected (five of thirty), the magnitude of the estimated incremental waste management cost is sufficient to indicate potentially significant sector-wide impacts, particularly at the regional level. Upper bound compliance cost ratios at the level of the individual affected facilities are extreme, ranging from 51 percent to 81 percent of value of shipments.

For the other sectors, only one facility (in the titanium dioxide (sulfate) sector) is predicted to experience impacts somewhat one percent level, at about 1.5 percent. This level of impact is regarded as moderate. The two elemental phosphorus (FMC and Occidental), and primary lead (Asarco and Doe Run) producers examined in this study are expected to experience relatively minor long-term economic impacts. Obviously, firms and facilities already in compliance and with compliance costs of zero (i.e., Kemira and Asarco) will not experience any negative economic impacts associated with this rule.

1. Facility and Sector Impacts

To further explore the economic impact of today's final rule, EPA has examined some of the factors that influence the ability of affected firms to pass through prospective compliance costs to product consumers in the form of higher prices. These factors include absolute price levels, major end uses of the mineral commodity, competition from imports and substitutes, secondary production, and flexibility in other production cost factors.

a. Lightweight Aggregate. Lightweight aggregate has three major uses, which generally reflect its superior performance capabilities as a construction material. The three main applications are in concrete block (61 percent of total consumption), highway resurfacing (19 percent), and structural concrete (18 percent).[10] A fourth, though small use (about 2 percent), involves new applications in recreational and horticultural materials.[11]

Most lightweight aggregate produced in the U.S. is used in manufacturing concrete block. Lightweight aggregate is valued as a high-strength aggregate for concrete forms, because it allows a significant weight savings over heavier aggregates. The weight savings permit structures to be designed at an overall lower cost.[12] Concrete block fabricated from lightweight aggregate also has better insulating properties than block using denser substitutes.

Lightweight aggregate's second major use is in road surfacing, where it is used as an ingredient in asphalt surfaces. It offers superior skid-resistance compared to other bulk fillers.[13] Lightweight aggregate's third major application is as a component of structural concrete, such as in bridge surfaces and floors in high-rise buildings, where its low weight and high strength are useful.[14]

Lightweight aggregate is valued in its main applications because of its weight savings and performance features (skid resistance, insulating abilities, and strength), though substitutes can compete in cases where users do not have stringent requirements for these qualities and are willing to use one of the available substitutes. Competition within lightweight aggregate's primary applications comes from other building materials, with the main substitute being heavy-weight stone (aggregate). Other substitutes include light natural aggregates (pumice or cinders) and foam.[15]

Markets for lightweight aggregate are basically regional or local rather than national. The widespread availability of domestic clays suitable for lightweight aggregate production, the high cost of transportation for aggregates, and the relatively low market value (price) of this commodity limit the size of market areas. As a result, firms in the industry, which are widely scattered across the U.S., are limited in their ability to expand their sales into competitors' territories without actually constructing new plants.

International trade in the lightweight aggregate sector is extremely limited. As shown in Table 5, the United States is a significant net exporter of clays as a general category. Trade data for finished lightweight aggregate are not available, though a trade source indicates that imports have not affected lightweight aggregate's market to a large degree, other than some recent imports of pumice from the Mediterranean area.[16]

[10] Bureau of Mines. *Minerals Yearbook 1987.* "Clays." Page 254.
[11] *Ibid.*
[12] *The Building Estimator's Reference Book.* F.R. Walker Publishers. Lisle, IL. 1989. Page 3.158.
[13] Ampian, Sarkis G. "Clays," in *Mineral Facts and Problems,* U.S. Bureau of Mines. 1987. Page 165.
[14] *Ibid.,* page 165.
[15] J. Ries, Expanded Clay and Shale Institute. Personal communication. December 29, 1989.
[16] *Ibid.*

Energy costs are an important component of production costs for the lightweight aggregate industry. Kilns are reported to require 2.0 to 6.1 million BTUs of fuel per MT of lightweight aggregate produced.[17] Residual oil (the fuel used in most kilns) costs approximately $2.39 per million BTUs in 1988.[18] Assuming this fuel cost, the cost of fuel per MT lightweight aggregate is at least $4.80, and could possibly be as high as $14.60 (though the higher fuel consumption rate might apply at plants configured to use less expensive fuels).

It is therefore apparent that energy costs account for a substantial portion of the margin between the raw material cost of clay ($10 per MT) and the price of finished lightweight aggregate (as low as $24 per MT). Consequently, facilities that can achieve fuel cost savings by using hazardous wastes as fuel supplements are likely to have a substantial current cost advantage over facilities relying solely upon other fuels, such as oil or coal, especially since they can generally charge a disposal fee to waste generators. Compliance costs associated with today's rule would reduce this cost advantage, though if a facility elected to continue using listed hazardous wastes its total production costs would rise above industry norms only to the extent that the incremental compliance costs exceeded the fuel cost savings that it currently enjoys. Alternatively, if the facility elected to stop using the listed hazardous wastes, it would (after any necessary retrofitting) have fuel costs comparable to the majority of other facilities in the industry.

In summary and for several reasons, EPA believes that the lightweight aggregate producers affected by today's rule will not suffer the calamitous economic impacts that might be suggested by the Agency's incremental cost estimates, even if one assumes that these upper limit cost impacts will actually be incurred. First, facilities that currently burn hazardous waste as fuel enjoy a potentially significant cost advantage with respect to their competitors. This advantage may mitigate, perhaps to a considerable extent, the cost impacts of today's rule. In addition, because of the special physical characterictics offered by lightweight aggregate in comparison with conventional aggregates, affected producers may have some ability to pass through compliance costs to local industrial and public sector markets in the form of higher prices, though to an uncertain extent. Finally, high transportation costs and a widely dispersed domestic industry suggest that moderate price increases could be sustained, at least for lightweight aggregate applications that require the low density and high strength offered by this material.

b. Titanium Dioxide. Titanium dioxide is used in pigments for paints and surface coatings, paper manufacturing, and plastics. Half of titanium dioxide production is consumed in pigments, where its competitive position is strong. Demand for high-quality paper also favors titanium dioxide.

The domestic industry supplies most of the titanium dioxide used in the U.S., with imports exceeding exports by only a moderate degree. As a result, titanium dioxide is in a relatively strong domestic market position. Producers using the sulfate process, however, are in a minority and account for only one eighth of domestic production. It is not likely that the one affected producer could establish a premium for its product and would therefore be limited in the extent to which it could recover cost increases.

2. Effects on Consumer Prices

For several reasons, EPA believes that this rule will not create any appreciable changes in consumer prices. The first and principal reason is the generally low overall percentage of compliance costs to product value, which does not exceed one percent for any affected commodity except lightweight aggregate. Combined with this is the fact that not all producers in these sectors are affected equally (many domestic competitors are not affected at all) and that other domestic or foreign competitors could fill production shortfalls, either with identical or substitutable products. Finally, since all the affected commodities are primary intermediate raw material inputs to the production of other finished products, their relative contribution to final consumer goods prices is, in any case, typically quite small.

3. Foreign Trade Impacts

Trade is substantial in many of the mineral commodities covered by today's rule, but is probably only likely to be a factor with respect to titanium dioxide. Basic import and export data for the sectors that generate potentially hazardous wastes are presented in Table 5. Import and export figures for lightweight aggregate (expanded shale) are not available, although international trade is not thought to be a significant factor for this sector. Because imports of titanium dioxide are significant, the ability of the affected domestic producer to raise prices to recover compliance costs, is, as discussed above, further limited, and there may be a modest stimulus towards import expansion.

In view of the above, it is unlikely that the overall trade balance in the domestic minerals industry will be significantly affected by today's rule, though in one sector regulatory cost impacts may increase already positive net imports to a small degree.

[17] Cohen, S.M. and T.R. Lawall. "Fluid Bed Makes Lighter Product," *Rock Products*, July 1989, page 44.

[18] U.S. Department of Energy, Energy Information Administration. *Monthly Energy Review*. December 1988. Table 9-10.

TABLE 5.—IMPORTS AND EXPORTS OF MINERALS, 1987

Commodity sector	Commodity forms(s)	Domestic production		Imports		Exports	
		Quantity (MT)	Value ($000)	Quantity (MT)	Value ($000)	Quantity (MT)	Value ($000)
Elemental Phosphorus.		341,950	577,266	4,463	6,609	20,302	30,796
Lead	Pigs and bars (content) [1]	374,633	271,163	185,673	123,157	10,116	11,945
Lightweight Aggregate.	Clays (all types) [2]	[3] 4,140,642	[3] 113,974	34,191	9,392	3,023,593	512,964
Titanium Dioxide	Titanium Dioxide Pigments (content).	893,878	1,690,483	162,739	236,945	99,731	181,707

Source: Bureau of Mines. Minerals Yearbook 1987. pp. 61, 64, 221, 223, 258, 260, 262, 377, 684, 889, 893, and 894.

[1] Exports include cathodes and sheets.

[2] Import/export data for lightweight aggregate are unavailable.

[3] Data reflect lightweight aggregate production only.

VIII. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354), which amends the Administrative Procedures Act, requires Federal regulatory agencies to consider "small entities" throughout the regulatory process. The RFA requires, in section 603, an initial screening analysis to be performed to determine whether a substantial number of small entities will be significantly affected by a regulation. If so, regulatory alternatives that eliminate or mitigate the impacts must be considered.

In the preamble to the September 25 proposed rule, the Agency presented documentation of and the rules from a screening analysis to determine the potential for significant small business impacts imposed by the proposed reinterpretation of the Mining Waste Exclusion (see 54 FR 39316–7). At that time it was determined that no small business enterprises would be adversely affected by the rule, as proposed.

The changes that have occurred in today's final rule, as distinct from the September 25, 1989, proposal, have served to reduce the number of potentially affected sectors while increasing slightly the number of potentially affected facilities. Based upon the revised cost and economic impact analysis presented above, and further data collection and analysis by the Agency, EPA has concluded that only one small business enterprise, Norlite Corporation, with approximately 75 employees,[19] might be adversely affected by today's final rule. Therefore, EPA concludes that, just as in the September 25 proposal, there will not be a significant adverse impact on a substantial number of small mineral processing companies, because among the affected sectors there is only one small business that is expected to experience impacts from today's final rule.

IX. List of Subjects in 40 CFR 260, 261 and 262

Designated facility, Hazardous waste, Waste treatment and disposal, Recycling, Reporting and recordkeeping requirements, Manifests.

Dated: January 12, 1990.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, parts 260, 261 and 262 of title 40 of the Code of Federal Regulations is amended as follows:

[19] Source: Duns Market Identifiers, Dialog Information Services, Inc., 1989.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.10 is amended by revising the definition "designated facility" to read as follows:

§ 260.10 Definitions.

* * * * *

"Designated facility" means a hazardous waste treatment, storage, or disposal facility which (1) has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of this chapter, (2) has received a permit (or interim status) from a State authorized in accordance with part 271 of this chapter, or (3) is regulated under § 261.6(c)(2) or subpart F of part 266 of this chapter, and (4) that has been designated on the manifest by the generator pursuant to § 260.20. If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

3. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6095, 6912(a), 6921, and 6922.

4. Section 261.4 is amended by revising paragraph (b)(7), to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore. For purposes of § 261.4(b)(7), beneficiation of ores and minerals is restricted to the following activities: Crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and *in situ* leaching. For the purposes of § 261.4(b)(7), solid waste from the processing of ores and minerals will include only the following wastes, until EPA completes a report to Congress and a regulatory determination on their ultimate regulatory status:

(i) Slag from primary copper processing;

(ii) Slag from primary lead processing;

(iii) Red and brown muds from bauxite refining;

(iv) Phosphogypsum from phosphoric acid production;

(v) Slag from elemental phosphorus production;

(vi) Gasifier ash from coal gasification;

(vii) Process wastewater from coal gasification;

(viii) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(ix) Slag tailings from primary copper processing;

(x) Fluorogypsum from hydrofluoric acid production;

(xi) Process wastewater from hydrofluoric acid production;

(xii) Air pollution control dust/sludge from iron blast furnaces;

(xiii) Iron blast furnace slag;

(xiv) Treated residue from roasting/leaching of chrome ore;

(xv) Process wastewater from primary magnesium processing by the anhydrous process;

(xvi) Process wastewater from phosphoric acid production;

(xvii) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(xviii) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(xix) Chloride process waste solids from titanium tetrachloride production;

(xx) Slag from primary zinc processing.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

6. Section 262.23 is amended by adding paragraph (e) to read as follows:

§ 262.23 Use of the manifest.

* * * * *

(e) For shipments of hazardous waste to a designated facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

[FR Doc. 90–1402 Filed 1–22–90; 8:45 am]
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federal register

Tuesday
January 23, 1990

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 16 and 17

Federal Acquisition Regulation (FAR); Streamlining Use of Options on Indefinite Quantity and Requirements Contracts; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16 and 17

Federal Acquisition Regulation (FAR); Streamlining Use of Options on Indefinite Quantity and Requirements Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing to revise the Federal Acquisition Regulation (FAR) in 16.503(b), 16.504(b), and 17.202(c) to remove the implied proscription on the use of requirements contracts and indefinite quantity contracts for other than commercial or commercial-type products, and to clarify policy concerning options for items available on the open market.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 26, 1990, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 89–83 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAR Case 89–83.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed changes to FAR 16.5 and 17.202 may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the proposed rule, if implemented, will remove unnecessarily restrictive regulatory requirements and provide for commercial buying practices, where appropriate. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89–610 (FAR Case 89–83) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection 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.

List of Subjects in 48 CFR Parts 16 and 17

Government procurement.

Dated: January 10, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 16 and 17 be amended as set forth below:

1. The authority citation for 48 CFR parts 16 and 17 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 16—TYPES OF CONTRACTS

2. Section 16.503 is amended by revising paragraph (b) to read as follows:

16.503 Requirements contracts.

* * * * *

(b) *Application.* A requirements contract may be appropriate for acquiring any items or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period. Funds are obligated by each delivery order, not by the contract itself.

* * * * *

3. Section 16.504 is amended by revising paragraph (b) to read as follows:

16.504 Indefinite-quantity contracts.

* * * * *

(b) *Application.* An indefinite quantity contract may be used when (1) the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period and (2) it is inadvisable for the Government to commit itself for more than a minimum quantity. An indefinite-quantity contract should be used only when a recurring need is anticipated. Funds for other than the stated minimum quantity are obligated by each delivery order, not by the contract itself.

PART 17—SPECIAL CONTRACTING METHODS

17.202 [Amended]

4. Section 17.202 is amended by removing paragraph (c)(1), and by redesignating the existing paragraphs (c)(2) through (c)(5) as new (c)(1) through (c)(4).

[FR Doc. 90–1470 Filed 1–22–90; 8:45 am]

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Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 19 and 52
Federal Acquisition Regulation (FAR); Thresholds; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

Federal Acquisition Regulation (FAR); Thresholds

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rules.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing to revise the Federal Acquisition Regulation (FAR) in 19.501(d) and (h) and the clause at 52.219–7 to increase or eliminate certain thresholds.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 26, 1990, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW. Room 4041, Washington, DC 20405. Please cite FAR Case 89–87 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755. Please cite FAR Case 89–87.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed revisions to FAR 19.501(d) and (h) and 52.219–7 are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because (1) acquisitions between $10,000 and $25,000 are still subject to review by the activity small and disadvantaged business utilization specialist; (2) its current application is limited; and, (3) the increase in threshold relieves contractors of a reporting requirement up to the threshold. An Initial Regulatory Flexibility Analysis, has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89–610 (FAR Case 89–87) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection 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.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: January 10, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 19 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 19 and 52 continue to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

§ 19.501 [Amended]

2. Section 19.501 is amended in paragraph (d) by removing the figure "$10,000" and inserting in its place the words "the small purchase limitation in 13.000"; by removing paragraph (h); and by redesignating existing paragraphs (i), (j), and (k) as new (h), (i), and (j).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

§ 52.219–7 [Amended]

3. Section 52.219–7 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the sentence; by removing in the heading to the clause the date "(APR 1984)" and inserting in its place "(DEC 1989)"; by removing in paragraph (c)(2) introductory text of the clause the figure "$10,000" and inserting in its place the words "the small purchase limitation"; and by removing both derivation lines followings "(End of clause)".

[FR Doc. 90–1469 Filed 1–22–90; 8:45 am]

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Tuesday, January 23, 1990

INFORMATION AND ASSISTANCE

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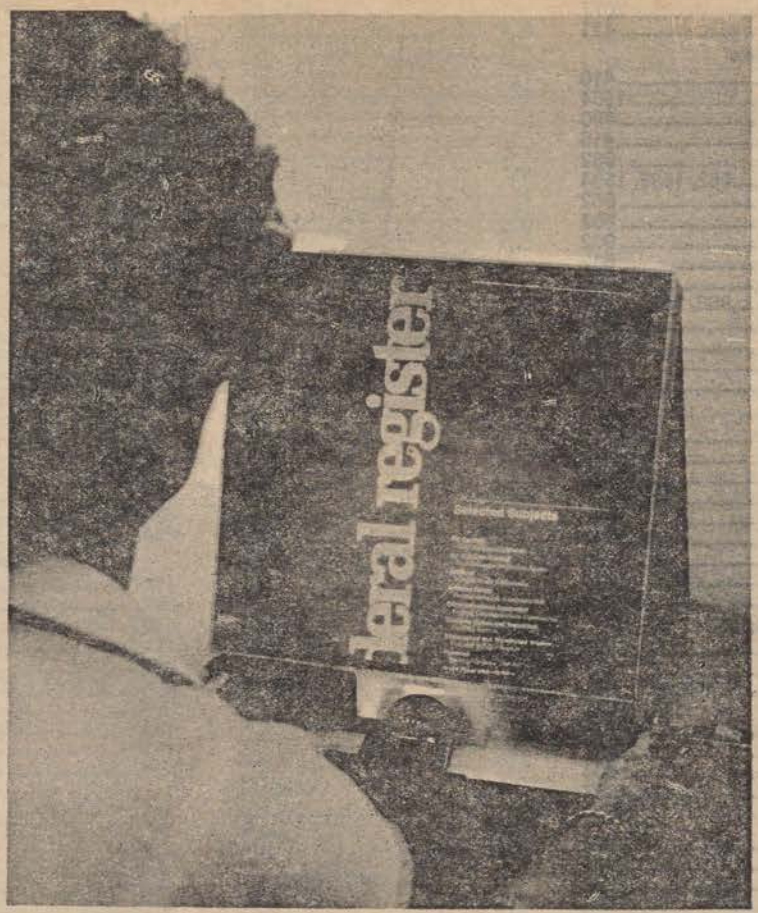

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