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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 900

Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This rule amends the regulation issued by OPM for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards (UFAS). Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.


ADDRESSES: Copies of this notice are available on tape for persons with impaired vision. They may be obtained from the EEO Division, OPPEO, U.S. Office of Personnel Management, 1900 E Street N.W., Room 2439, Washington, DC 20415; (202) 606-2460.

FOR FURTHER INFORMATION CONTACT: John E. Gimperling at (202) 606-2460 (voice/TDD). This is not a toll free number.

SUPPLEMENTARY INFORMATION: On July 6, 1989 (54 FR 25242), OPM published a proposed rule that would amend its existing regulation for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to UFAS. OPM received no comments. It decided to adopt the rule as final.

Background

Section 504 (29 U.S.C. 794) provides in part that—

No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance * * *.

OPM's current section 504 regulation for federally assisted programs requires that new construction be designed and built to be accessible and that alterations of facilities be made in an accessible manner. It states that OPM "will adopt the Architectural and Transportation Barriers Compliance Board's (ATBCB) 'Minimum Guidelines and Requirements for Accessible Design' when they are issued in final form." The rule suggests that in the interim, new construction or alteration be made in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" published by the American National Standards Institute (ANSI A117.1-1981). As detailed below, the ATBCB issued its guidelines in 1982. The revision set forth in this document will reference UFAS, which is consistent with the ATBCB's guidelines.

On August 7, 1994, UFAS was issued by the four agencies establishing standards under the Architectural Barriers Act (49 FR 31526 [see discussion infra]). The Department of Justice (DOJ), as the agency responsible under Executive Order 12250 for coordinating the enforcement of section 504, has recommended that agencies amend their section 504 regulations for federally assisted programs or activities to establish that, with respect to new construction and alterations, compliance with UFAS shall be deemed to be in compliance with section 504. Because some facilities subject to new construction or alteration requirements under section 504 are also subject to the Architectural Barriers Act, governmentwide reference to UFAS will diminish the possibility that recipients of Federal financial assistance would face conflicting enforcement standards. In addition, reference to UFAS by all Federal funding agencies will reduce potential conflicts when a building is subject to the section 504 regulations of more than one Federal agency.

Background of Accessibility Standards

The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and federally funded buildings to be designed, constructed, and altered in accordance with accessibility standards. It also designates four agencies (the General Services Administration, the Departments of Defense and Housing and Urban Development, and the United States Postal Service) to prescribe the accessibility standards. Section 502(b)(7) of the Rehabilitation Act of 1973, as amended, directed the Architectural and Transportation Barriers Compliance Board (ATBCB) to issue minimum guidelines and requirements for these standards. 29 U.S.C. 792(b)(7). The guidelines 1 now in effect are found at 36 CFR part 1190.

In 1984, the four standard-setting agencies issued UFAS as an effort to minimize the differences among their Barriers Act standards, and among those standards and accessibility standards used by the private sector. The General Services Administration (GSA) and Department of Housing and Urban Development (HUD) have incorporated UFAS into their Barriers Act regulations (see 41 CFR subpart 101-19.6 and 24 CFR part 40, respectively). In order to ensure uniformity, UFAS was designed to be consistent with the scoping and technical provisions of the ATBCB's minimum guidelines and requirements, as well as with the technical provisions of ANSI A117.1-1984. ANSI is a private, national organization that publishes recommended standards on a wide

1 The minimum guidelines were established on August 4, 1982 (47 FR 39364), and amended on September 14, 1988 (53 FR 35210), February 3, 1989 (55 FR 7044), and August 23, 1989 (54 FR 34677).

2 The ATBCB Office of Technical Services is available to provide technical assistance to recipients upon request relating to the elimination of architectural barriers. Its address is in U.S. ATBCB, Office of Technical Services, 1111 18th Street NW., Suite 500, Washington, DC 20036. The telephone number is (202) 633-7904 (voice/TDD). This is not a toll free number.

The final rule amends the current regulation implementing section 504 in programs or activities receiving Federal financial assistance from OPM to refer to UFAS.

OPM has determined that it will not require the use of UFAS, or any other standard, as the sole means by which recipients can achieve compliance with the requirement that new construction and alterations be accessible. To do so would unnecessarily restrict recipients' ability to design for particular circumstances. In addition, it might create conflicts with State or local accessibility requirements that may also apply to recipients' buildings and that are intended to achieve ready access and use. It is expected that in some instances recipients will be able to satisfy the section 504 new construction and alteration requirements by following applicable State or local codes, and vice versa.

Some facilities may be covered by both section 504 and the Architectural Barriers Act. Nothing in this rule relieves recipients whose facilities are covered by the Barriers Act and that Act's implementing regulations from complying with the requirements of UFAS or any other Barriers Act standard or requirements that may be in effect.

Effect of Amendment

OPM's current section 504 rule requires that new facilities be designed and constructed to be readily accessible to and usable by persons with handicaps and that alterations be accessible to the maximum extent feasible. The amendment does not affect these requirements but merely provides that compliance with UFAS with respect to buildings (as opposed to "facilities," a broader term that encompasses buildings as well as other types of property) shall be deemed compliance with these requirements with respect to those buildings. Thus, for example, an alteration is accessible "to the maximum extent feasible" if it is done in accordance with UFAS. It should be noted that UFAS contains special requirements for alterations where meeting the general standards would be impracticable or infeasible (see, e.g., UFAS sections 4.1.6(1)(b), 4.1.6(3), 4.1.6(4), and 4.1.7).

The amendment also includes language providing that departures from particular UFAS technical and scoping requirements are permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the building. Allowing these departures from UFAS will provide recipients with necessary flexibility to design for special circumstances and will facilitate the application of new technologies that are not specified in UFAS. As explained under "Background of Accessibility Standards," OPM anticipates that compliance with some provisions of applicable State and local accessibility requirements will provide "substantially equivalent" access. In some circumstances, recipients may choose to use methods specified in model building codes or other State or local codes that are not necessarily applicable to their buildings but that achieve substantially equivalent access.

The amendment requires that the alternative methods provide "substantially equivalent" or greater access, in order to clarify that the alternative access need not be precisely equivalent to that afforded by UFAS. Application of the "substantially equivalent access" language will depend on the nature, location, and intended use of a particular building. Generally, alternative methods will satisfy the requirement if in material respects the access is substantially equivalent to that which would be provided by UFAS in such respects as safety, convenience, and independence of movement. For example, it would be permissible to depart from the technical requirement of UFAS section 4.10.9 that the inside dimensions of an elevator car be at least 68 inches or 80 inches (depending on the location of the door) on the door opening side, 54 inches, if the clear floor area and the configuration of the car permits wheelchair users to enter the car, make a 360° turn, maneuver within reach of controls, and exit from the car. This departure is permissible because it results in access that is safe, convenient, and independent, and therefore substantially equivalent to that provided by UFAS.

With respect to UFAS scoping requirements, it would be permissible in some circumstances to depart from the UFAS new construction requirement of one accessible principal entrance at each grade floor level of a building (see UFAS section 4.1.2(0)), if safe, convenient, and independent access is provided to each level of the new facility by a wheelchair user from an accessible principal entrance. This departure would not be permissible if it required an individual with handicaps to travel an extremely long distance to reach the spaces served by the inaccessible entrances or otherwise provided access that was substantially less convenient than that which would be provided by UFAS.

It would not be permissible for a recipient to depart from UFAS's requirements that, in new construction of a long-term care facility, at least 50% of all patient bedrooms be accessible (see UFAS section 4.1.4(0)(b)), by using large accessible wards that make it possible for 50% of all beds in the facility to be accessible to individuals with handicaps. The results is that the population of individuals with handicaps in the facility will be concentrated in large wards, while able-bodied persons will be concentrated in smaller, more private rooms. Because convenience for persons with handicaps is therefore compromised to some great extent, the degree of accessibility provided to persons with handicaps is not substantially equivalent to that intended to be afforded by UFAS.

It should be noted that the amendment does not require that existing buildings leased by recipients meet the standards for new construction and alterations. Rather, it continues the current Federal practice under section 504 of treating newly leased buildings as subject to the program accessibility standard for existing facilities.

UFAS contains specific requirements for additions to existing buildings (see UFAS section 4.1.5). The amendment references UFAS only for "design, new construction, or alteration of buildings," and does not mention additions specifically. For purposes of section 504, an addition is considered by OPM as new construction" or "alteration." Thus, the lack of reference to additions in the rule should not be read to exempt additions from the accessibility requirements.

* This will be the case even if UFAS is revised to be consistent with a 1988 amendment to the ATBCB minimum guidelines to provide minimum guidelines and requirements for accessible leased facilities. On September 14, 1988 (53 FR at 35510), the ATBCB amended its minimum guidelines to establish requirements for standards for buildings leased by the Federal Government. 36 CFR 1190.33 (1989). The requirements apply to leased buildings even if they are not altered. Section 1190.34(a) requires that any building or facility that is to be leased by the Federal Government, without having been designed or constructed in accordance with its specifications, comply with the standards for new construction (§ 1100.31), incorporate the features listed in the standards for alterations (§ 1100.33(c)), or, if no such space is available, be altered to include certain accessible elements and spaces. These requirements will be incorporated into UFAS and will apply to buildings covered by the Architectural Barriers Act. However, existing buildings leased by recipients are not covered by the Act unless the buildings are to be altered.
Buildings under design on the effective date of this amendment will be governed by the amendment if the date that bids were invited falls after the effective date. This interpretation is consistent with GSA's Barriers Act regulation incorporating UFAS, at 41 CFR subpart 101-19.8.

The revision includes language modifying the effect of UFAS section 4.1.6(l)(g), which provides an exception of UFAS 4.1.6. Accessible buildings: Alterations. Section 4.1.6(l)(g) of UFAS states that "mechanical rooms and other spaces which normally are not frequented by the public or employees of the building or facility or which by nature of their use are not required by the Architectural Barriers Act to be accessible are excepted from the requirements of 4.1.6." Particularly after the development of specific UFAS provisions for housing alterations and additions, UFAS section 4.1.6(l)(g) could be read to exempt alterations to privately owned residential housing, which is not covered by the Architectural Barriers Act unless leased by the Federal Government for subsidized housing programs. This exception, however, is not appropriate under section 504, which protects beneficiaries of housing provided as part of a federally assisted program. Consequently, the amendment provides that, for purposes of this section, section 4.1.6(l)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries, or result in the employment or residence therein of persons with handicaps.

This exception does not apply to a room merely because it contains mechanical equipment. For instance, the exception shall not be read to exempt from the requirements of UFAS a "mechanical room" with a photocopier, control mechanisms and operating equipment for a large heating and air conditioning system, and controls for a security system. Since the room would be frequented by employees, it is not excepted from UFAS. In this case, the control mechanisms, including switches, thermostats, and alarms, used by employees should be on an accessible path and mounted at the proper height.

The revision also provides that whether or not the recipient opts to follow UFAS in satisfaction of the ready access requirement, the recipient is not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. This provision does not relieve recipients of their obligation under the current regulation to ensure program accessibility.

This document has been reviewed by DOJ. It is an adaptation of a prototype prepared by DOJ under Executive Order 12250 of November 2, 1980. The ATBCB has been consulted in the development of this document in accordance with 28 CFR 41.7.

The regulation is not a major rule within the meaning of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 5 CFR Part 900

Administrative practice and procedure, Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Government employees, Grant programs, Handicapped, Intergovernmental relations, Investigations, Loan programs.

For the reasons set forth in the preamble, 5 CFR part 900 is amended as follows:

PART 900—[AMENDED]

1. The authority citation for subpart G of part 900 is revised to read as follows: Authority: 29 U.S.C. 794.

2. Section 900.705, paragraph (f) is revised to read as follows:

§ 900.705 Program accessibility.

(f)(1) Effective as of August 23, 1990. Design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 41–19.8) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoring requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(l)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

Constance Berry Newman,
Director.

[FR Doc. 90–17289 Filed 7–23–90; 8:45 am]
BILLING CODE 6325–01–48

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0704]

Delegation of Authority to Staff Director of Division of Banking Supervision and Regulation to Approve Issuance of the List of Foreign Margin Stocks

July 18, 1990.

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising paragraph (c)(18) of § 265.2 of its Rules Regarding Delegation of Authority (12 CFR 265.2(c)) to delegate to the Staff Director of the Division of Banking Supervision and Regulation the authority to approve issuance of the list of foreign margin stocks and to conform the reference in paragraph (c)(18) to the recent revision of Regulation T (12 CFR Part 220).

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, or Scott Holz, Attorney, Division of Banking Supervision and Regulation, (202) 452–2761. For the hearing impaired only, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452–5544.

SUPPLEMENTARY INFORMATION: On March 21, 1990, the Board approved amendments to Regulation T (55 F.R. 11158) to permit the marginability of certain foreign securities and to accommodate settlement and clearance of transactions in foreign securities. Foreign stocks that meet the Board’s criteria for marginability will appear on a new list of foreign margin stocks to be published in conjunction with the Board’s quarterly list of OTC margin stocks. The Board is revising the paragraph delegating authority to the Staff Director of the Division of Banking Supervision and Regulation to approve issuance of the OTC margin stock list by adding authority to approve the issuance of the list of foreign margin stocks.
The March 1990 amendments to Regulation T also included a
renumbering of the provisions of
§ 220.17, concerning the lists of OTC margin stocks and foreign margin stocks. The citation to provision of
230.17 of Regulation T contained in the
Board’s Rules Regarding Delegation of Authority is being changed to conform
to the new numbering of that Regulation T section.

Public Comment

The provisions of 5 U.S.C 553(b)
regarding notice, public comment, and
defered effective date were not
followed in connection with the
adoption of this amendment because the
change to be effected is procedural in
nature and does not constitute a
substantive rule subject to the
requirements of the section. The Board’s
expanded rule making procedures have
ever been followed for the same reason.

List of Subjects in 12 CFR Part 265

Authority delegations (government agencies), Banks, Banking Federal Reserve System.

For the reasons set forth above, 12 CFR part 265 is amended as follows:

PART 265—RULES REGARDING
DELEGATION OF AUTHORITY

1. The authority citation of part 265
continues to read as follows:

2. Section 265.2 is amended by
revising paragraph (c)(18) to read as follows:
§ 265.2 Specific functions delegated to
Board employees and to Federal Reserve Banks.

(c) * * *

(18) Under the provisions of sections
207.6(d), 220.17(f), and 221.7(d) of this
chapter (Regulations G, T, and U,
respectively) to approve issuance of the
lists of OTC margin stocks and foreign margin stocks and to add, omit, or
remove any stock in circumstances
indicating that such change is necessary
or appropriate in the public interest.

By order of the Board of Governors of the

William W. Wiles,
Secretary of the Board.

[FR Doc. 90-17200 Filed 7-23-90; 8:45 am]
BILLING CODE 6210-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3812-9]

Georgia; Final Authorization of State
Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Georgia has applied for final
authorization of revisions to its
hazardous waste program under the
Resource Conservation and Recovery Act (RCRA).
Environmental Protection Agency (EPA) has reviewed Georgia’s
application and has made a decision, subject to public review and comment,
that Georgia’s hazardous waste program revision satisfies all of the requirements
necessary to qualify for final authorization. Thus, EPA intends to approve
Georgia’s hazardous waste program revisions. Georgia’s application for
program revision is available for public review and comment.

DATES: Final authorization for Georgia
shall be effective September 24, 1990,
unless EPA publishes a prior Federal
Register action withdrawing this
immediate final rule. All comments on
Georgia’s program revision application
must be received by the close of

ADDRESSES: Copies of Georgia’s
program revision application are
available during 8 a.m. to 4 p.m. at the
following addresses for inspection and
copying: Georgia Department of Natural
Resources, Land Protection Branch, Room
1114, 205 Butler Street SE, Floyd
Towers East, Atlanta, Georgia 30334;
404/656-2833; U.S. EPA Headquarters
Library, PM 211A, 401 M Street SW.,
Washington, DC 20460; 302/382-5926;
U.S. EPA Region IV, Library, 345
Courtland Street NE., Atlanta, Georgia
30365; 404/347-4218. Written comments
should be sent to Narindar Kumar at the
address listed below.

FOR FURTHER INFORMATION CONTACT:
Narindar Kumar, Chief, State Programs
Section, Waste Programs Branch, Waste
Management Division, U.S.
Environmental Protection Agency, 345
Courtland Street, NE, Atlanta, Georgia
30365; (404) 347-2234.

SUPPLEMENTARY INFORMATION:

A. Background
States with final authorization under section 3006(b) of the Resource
Conservation and Recovery Act (“RCRA” or “the Act”), 42 U.S.C.
6929(b), have a continuing obligation to
maintain a hazardous waste program
that is equivalent to, consistent with,
and no less stringent than the Federal
hazardous waste program. In addition,
as an interim measure, the Hazardous
and Solid Waste Amendments of 1984
(Pub. L. 98-618, November 8, 1984,
hereinafter “HSWA”) allows States to
revise their programs to become
substantially equivalent instead of
equivalent to RCRA requirements
promulgated under HSWA authority.
States exercising the latter option
receive “interim authorization” for the
HSWA requirements under section
3006(g) of RCRA, 42 U.S.C. 6929(g), and
later apply for final authorization for the
HSWA requirements. The State of
Georgia has received final authorization
for the July 15, 1985, HSWA Codification
Rule.

Revisions to State hazardous waste
programs are necessary when Federal or
State statutory or regulatory authority is
modified or when certain other changes
occur. Most commonly, State program
revisions are necessitated by changes to
EPA’s regulations in 40 CFR parts 290-
266 and 124 and 270.

B. Georgia
Georgia initially received final
authorization on August 21, 1984.
Georgia received authorization for
revisions to its program on September
18, 1986. On June 30 and October 14,
1986, Georgia submitted program
revision applications for additional
program approvals. Today, Georgia is
seeking approval of its program
revisions in accordance with 40 CFR
271.21(b)(3).

EPA has reviewed Georgia’s
application, and has made an immediate
final decision that Georgia’s hazardous
waste program revisions satisfy all of
the requirements necessary to qualify
for final authorization. Consequently,
EPA intends to grant final authorization
for the additional program modifications to
Georgia. The public may submit
written comments on EPA’s immediate
final decision up until August 23, 1990.
Copies of Georgia’s application for
program revision are available for
inspection and copying at the locations
indicated in the “ADDRESSES” section
of this notice.

Approval of Georgia’s program
revisions shall become effective
September 24, 1990, unless an adverse
comment pertaining to the State’s
revisions discussed in this notice is
received by the end of the comment
period. If an adverse comment is
received EPA will publish either (1) A
withdrawal of the immediate final
Federal Register / Vol. 55, No. 142 / Tuesday, July 24, 1990 / Rules and Regulations

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**Land Disposal Restrictions; Corrections**

- Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces; Technical Corrections.

**Listing of EBDC**

- Standards for Generators—Waste Minimization Certifications.

**Exports of Hazardous Waste (with the exception of 262.53 “Notification of Intent to Export”).**

**Paint Filter Test; Correction**

**Hazardous Waste Tank Systems**

**Small Quantity Generators**

**Four Spent Solvents Listing**

**EDS Waste Listing**

**Spent Pickle Liquor, Clarification**

**Hazardous Waste Miscellaneous Units**

**Identification and Listing of Hazardous Waste**

**List (Phase I) of Hazardous Constituents for Groundwater Monitoring**

**Definition of Solid Waste; Technical Corrections**

**Correction to Listing of Commercial Chemical Products and Appendix VII Constituents**

**Standards for Hazardous Waste Storage and Treatment Tank Systems**

**Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee**

**Identification and Listing of Hazardous Waste**

**List (Phase I) of Hazardous Constituents for Groundwater Monitoring**

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<table>
<thead>
<tr>
<th>Provision</th>
<th>FR reference</th>
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<th>State authority</th>
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<tr>
<td>Listing of Spent Pickle Liquor (K062).</td>
<td>51 FR 19320</td>
<td>May 28, 1986</td>
<td>391-3-11-07(1)</td>
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<tr>
<td>Liability Coverage</td>
<td>51 FR 25350</td>
<td>July 11, 1986</td>
<td>391-3-11-05(1)</td>
</tr>
<tr>
<td>Standards for Hazardous Waste Storage and Treatment Tank Systems.</td>
<td>51 FR 25422</td>
<td>July 14, 1986</td>
<td>391-3-11-02(1)</td>
</tr>
<tr>
<td>Burnings of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces.</td>
<td>52 FR 11619</td>
<td>April 13, 1987</td>
<td>391-3-11-07(3)</td>
</tr>
<tr>
<td>Land Disposal Restrictions; Corrections.</td>
<td>52 FR 21010</td>
<td>June 4, 1987</td>
<td>391-3-11-10(1)</td>
</tr>
</tbody>
</table>
Georgia is not seeking authorization to operate in Indian Lands.

C. Decision

I conclude that Georgia's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised.

Georgia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3003, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 16, 1990.

Joe R. Franzblau, Acting Regional Administrator.

[FR Doc. 90-17254 Filed 7-23-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-369; RM-6847]

Radio Broadcasting Services; Twin Lakes, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Twin Lakes Broadcasting, Inc., substitutes Channel 290C3 for Channel 290A at Twin Lakes, Iowa, and modifies its license for Station KTLD to specify operation on the higher powered channel. Channel 290C3 can be allotted to Twin Lakes in compliance with the Commission's minimum distance separation requirements and can be used at Station KTLD's present transmitter site. The coordinates for this allotment are North Latitude 42°32’-09” and West Longitude 94°40’-48”. With this action, this proceeding is terminated.


FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-369, adopted June 29, 1990, and released July 18, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 220), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20007.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:


§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allocations is amended for Twin Lakes, Iowa, by removing Channel 288A and adding Channel 290C3.

Federal Communications Commission.

Kathleen B. Levitz, Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-17087 Filed 7-23-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-28; RM-5896, RM-6345]

Radio Broadcasting Services; Weed and Mt. Shasta, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.
SUMMARY: This document substitutes Channel 272C1 for Channel 265A at Weed, California, and modifies the Class A license of Florence M. Gaskey for Station KWHO(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with an expanded coverage FM service (RM-5890). See 53 FR 5287, February 23, 1988. Additionally, Channel 300C1 is substituted for Channel 237A at Mt. Shasta, and the Class A license of Shasta Cascade Broadcasting Corporation for Station KEDY(FM) is modified to specify operation on the higher powered channel, thereby providing that community with an expanded coverage FM service (RM-6345). Coordinates for Channel 272C1 at Weed are 41°21'12" and 122°15'55". Coordinates for Channel 300C1 at Mt. Shasta are 41°19'09" and 122°19'35". With this action, the proceeding is terminated.


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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission’s Report and Order, MM Docket No. 88-20, adopted June 29, 1990, and released July 16, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 250), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission’s copy contractors, International Transmission Service, 1819 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73: Radio Broadcasting

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:


§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Mt. Shasta, California by removing Channel 237A and adding Channel 300C1, and for Weed, California by removing Channel 265A and adding Channel 272C1.

Federal Communications Commission.

Kathleen B. Levitz,
Deputy Chief, Policy and Rules Division, Mass Media Bureau
FR Doc. 90-17099 Filed 7-23-90; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 199

[Docket No. PS-102; Notice No. 4]

Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Interpretation and availability of guidelines.

SUMMARY: On December 18, 1989, RSPA issued a final rule partially granting petitions for reconsideration of the November 21, 1988 final rule requiring operators of pipeline facilities for the transportation of natural gas or hazardous liquids and operators of liquefied natural gas facilities to have an anti-drug program for employees who perform certain sensitive safety-related functions covered by the pipeline safety regulations. In response to numerous requests, this notice sets forth RSPA’s interpretation of 49 CFR 199.9, and provides information on how to obtain copies of guidance documents RSPA has issued to assist operators in complying with part 199.

ADRESSES: Copies of the documents referenced in this notice may be obtained by writing or telephoning the Office of Pipeline Safety, Research and Special Programs Administration, room 8417, 400 Seventh Street SW., Washington, DC 20590-0001; (202) 366-4595.

FOR FURTHER INFORMATION CONTACT: Mr. Cesar De Leon, Assistant Director for Regulation, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001; (202) 366-1640.

SUPPLEMENTARY INFORMATION: On November 21, 1988, RSPA published a final rule (53 FR 47084) entitled “Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations.” The rule requires pipeline operators to have an anti-drug program which includes pre-employment, post-accident, random, and reasonable cause drug testing, and an Employee Assistance Program (EAP) for education and training regarding the effects and consequences of drug use.

On April 13, 1989, RSPA published a notice of delay in the implementation dates (54 FR 14922) to permit reevaluation of its rule in light of Supreme Court decisions, and to consider several petitions for reconsideration. The implementation dates were delayed to April 20, 1990, for operators with more than 50 employees subject to testing, and to August 21, 1990, for operators with 50 or fewer such employees. RSPA issued a final rule partially granting the petitions for reconsideration on December 10, 1989 (54 FR 51042).

Since publication of the November 1988 final rule, RSPA has received numerous requests for interpretations of 49 CFR part 199. In September 1989, RSPA issued “Guidelines For Implementing An Anti-Drug Program For Pipeline Personnel.” (Correction issued June 13, 1990), and in April 1990, issued “Additional Guidelines For Implementing An Anti-Drug Program For Pipeline Personnel.” RSPA also responded by letter to many of the requests for interpretations, and in April 1990, issued a compilation of the questions and answers entitled, “Most Frequently Asked Questions Concerning the Implementation of 49 CFR part 199.” ("Questions") Although these documents have been widely distributed, RSPA believes it is important to publish notice in the Federal Register of their availability from the Office of Pipeline Safety at the address noted above under "ADRESSES."

One issue that has been raised and was addressed in the "Questions," is the meaning of 49 CFR 199.9. Section 199.9 provides that an operator may not knowingly use as an employee any person who fails a drug test required by 49 CFR part 199 and the Medical Review Officer determines that there is no legitimate medical explanation for the positive test result. Section 199.9(b) states that this prohibition does not apply, however, to a person who has:

1. Passed a drug test under DOT Procedures;
2. Been recommended by the medical review officer for return to duty in accordance with § 199.15(c); and
3. Not failed a drug test required by this part after returning to duty. (Emphasis added)

Several persons have written to RSPA inquiring if the language in § 199.9(b)(3) is intended to mean that a person may fail a DOT-required drug test and be returned to duty only once, and that any subsequent drug test failure means a permanent removal from the covered
position. Such an interpretation, these persons suggested, could result in a lifetime bar from covered positions in the pipeline industry. RSPA's response to one of those letters, which was reprinted in the “Questions,” was that “199.9(b)(3) requires that the employee be removed from the covered position without the opportunity for future reinstatement.” That statement was incorrect and the “Questions” guidance document will be revised in accordance with the following paragraph.

Interpretation of 49 CFR 199.9

Under § 199.9(a)(1), an employee who tests positive must be removed from the covered position. It is at the operator's discretion whether to terminate the employee, move the employee to a non-covered position, or offer the employee the opportunity for rehabilitation and subsequent return to duty. If the employee subsequently returns to duty and again tests positive, the operator must again remove the employee from the covered position. However, it was not RSPA's intention in drafting § 199.9(b) to limit the number of times that an employee could test positive, and subsequently be reinstated to that or any other covered position, after a negative retest and a return-to-duty recommendation from the Medical Review Officer. Upon a subsequent positive test, the operator has the same alternatives available in dealing with the employee, i.e., termination, moving the employee to a non-covered position, or offering an opportunity to return to duty.

Issued: July 18, 1990.

George W. Tenley, Jr.
Director, Office of Pipeline Safety.

[FR Doc. 90–17238 Filed 7–23–90; 8:45 am]

BILLING CODE 4910–60–M
Proposed Rules

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 AGRICULTURE

Food and Nutrition Service

7 CFR Part 245


AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule; correction.


FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Acting Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division at (703) 756-3730.

In proposed rule document 90-15503, beginning on page 28033 in the issue of Monday, July 9, 1990, make the following correction:

On page 28044, in the third column, section 14 of the preamble to the proposed rule should read as follows:

14. Deletion of Reference to OMB Circular A-60 (Section 246.24(a))

OMB Circular A-60, which addressed the Federal responsibilities for oversight of grantee information systems, was superseded by OMB Circular A-130 in 1996. Circular A-130 covers Federal agency requirements, and as such, does not pertain to the administration of the WIC Program as addressed through 7 CFR part 245. Therefore, the reference in § 246.24(a) to OMB Circular A-60 is deleted.

Dated: July 13, 1990.
George A. Braley,
Acting Administrator, Food and Nutrition Service.

[FR Doc. 90-16992 Filed 7-23-90; 8:45 am]
BILLING CODE 4410-30-M

DEPARTMENT OF THE TREASURY

Departmental Offices

31 CFR Part 1

Privacy Act of 1974; Notice of Proposed Rule Exempting a System of Records from Certain Requirements

AGENCY: Departmental Offices, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a proposed amendment to 31 CFR 1.36 to exempt a new system of records, the FinCEN Data Base, Treasury/DO .200, from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with legal prohibitions against the disclosure of certain kinds of information, and to protect certain information on individuals maintained in the system of records.

DATES: Comments must be received no later than August 23, 1990.

ADDRESSES: Please submit comments to Department of the Treasury, Office of the Deputy Assistant Secretary (Law Enforcement), Room 4330, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Persons wishing to review the comments should make an appointment with the Office of the Deputy Assistant Secretary (Law Enforcement) at 566-5054.


SUPPLEMENTARY INFORMATION: By Treasury Department Order No. 105-08, issued on April 25, 1990, the Secretary of the Treasury established the Office of the Director, Financial Crimes Enforcement Network ("FinCEN"), in the Office of the Assistant Secretary (Enforcement). FinCEN's mission is to provide a governmentwide, multisource intelligence and analytical network in support of the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes by Federal, State, local, and foreign law enforcement agencies.

Among FinCEN's principal responsibilities are (1) to maintain a governmentwide data access service, with access, in accordance with legal requirements, to (A) information collected by Treasury, including report information filed under the Bank Secrecy Act and section 6050 of the Internal Revenue Code; (B) information regarding national and international currency flows; (C) other records and data maintained by other Federal, State, local and foreign agencies, including financial and other records developed in specific cases; and (D) other privately and publicly available information; and (2) to analyze and disseminate the available data to (A) identify possible criminal targets to appropriate Federal, State, local, and foreign law enforcement agencies; (B) support ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax forfeiture proceedings; (C) identify possible instances of non-compliance with the Bank Secrecy Act to Federal agencies with delegated responsibility for Bank Secrecy Act compliance; (D) evaluate and recommend possible uses of special currency reporting under 31 U.S.C. 5326; and (E) determine emerging trends and methods in money laundering and other financial crimes.

Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury is publishing separately a notice of a new system of records, the FinCEN Data Base, Treasury/DO .200, to be maintained by FinCEN. FinCEN is establishing this system of records to implement the mandate set forth in Treasury Department Order No. 105-08.

Under 5 U.S.C. 552a(j)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a "if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of
identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

Under 5 U.S.C. 552a(k)(1), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system or records relates to matters specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

Finally, under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a "if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section."

The Department of the Treasury is hereby giving notice of a proposed rule to exempt the FinCEN Data Base from certain provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of subjects in 31 CFR Part 1
Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

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

2. Section 1.36 of Subpart C is amended by adding the following text immediately preceding the heading THE INTERNAL REVENUE SERVICE:

§ 1.36 Systems exempt in whole or in part from Provisions of 5 U.S.C. 552a and this part.

OFFICE OF THE ASSISTANT SECRETARY FOR ENFORCEMENT

Notice of Exempt System

(a) In general. The Assistant Secretary of the Treasury for Enforcement exempts the system of records entitled "FinCEN Data Base" (Treasury/DO .200) from certain provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(b) Authority 5 U.S.C. 552a (j) and (k); 31 CFR 1.23(C).

(c) General exemptions under 5 U.S.C. 552a(k)(2). Pursuant to 5 U.S.C. 552a(j)(2), the Assistant Secretary for Enforcement hereby exempts the FinCEN Data Base system of records, maintained by the Financial Crimes Enforcement Network ("FinCEN"), an office reporting to the Assistant Secretary for Enforcement, from the following provisions of the Privacy Act of 1974:

5 U.S.C. 552a(c)(3) and (4);
5 U.S.C. 552a(d)(1), (2), (3) and (4);
5 U.S.C. 552a(e)(1), (2) and (3);
5 U.S.C. 552a(e)(4) (G), (H) and (I);
5 U.S.C. 552a(e)(5) and (8);
5 U.S.C. 552a(f) and;
5 U.S.C. 552a(g).

(d) Specific exemptions under 5 U.S.C. 552a(k)(2). To the extent that the system of records may contain information subject to the provisions of 5 U.S.C. 552b(1) regarding national defense and foreign policy information classified pursuant to Executive order, the Assistant Secretary for Enforcement hereby exempts the FinCEN Data Base system of records from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(c)(4); 5 U.S.C. 552a(d)(1), (2), (3), and (4); 5 U.S.C. 552a(e)(1); 5 U.S.C. 552a(e)(4) (G), (H), and (I); and 5 U.S.C. 552a(f).

(e) Specific exemptions under 5 U.S.C. 552a(k)(2). To the extent that the exemption under 5 U.S.C. 552a(f)(1) does not apply to the FinCEN Data Base, the Assistant Secretary for Enforcement hereby exempts the FinCEN Data Base system of records from the following provisions of 5 U.S.C. 552a pursuant to 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d)(1), (2), (3), and (4); 5 U.S.C. 552a(e)(1); 5 U.S.C. 552a(e)(4) (G), (H), and (I); and 5 U.S.C. 552a(f).

Reasons for exemptions under 5 U.S.C. 552a(j)(2) and (k)(2).

The Assistant Secretaryckt the Treasury, in exercising regulatory functions and responsibilities, has determined that this proposed rule

(i) Permits access to records contained in the FinCEN Data Base would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension; By (A) discovering the facts which would form the basis of their arrest, (B) enabling them to destroy or alter evidence of criminal conduct that would form the basis of their arrest, (C) learning that criminal investigators had reason to believe that a crime was about to be committed, or (D) learning that they are not identified in the system of records, or (E) individually.

(ii) Permits access to records contained in the FinCEN Data Base would provide individuals with information concerning the nature of any current investigations and would enable them to avoid detection or apprehension; By (A) discovering the facts which would form the basis of their arrest, (B) enabling them to destroy or alter evidence of criminal conduct that would form the basis of their arrest, (C) learning that criminal investigators had reason to believe that a crime was about to be committed, or (D) learning that they are not identified in the system of records, or (E) individually.

(iii) Permits access to investigatory files and records could, moreover,
disclose the identity of confidential sources and informers and the nature of the information supplied and thereby endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide information unless they believe that their identities will not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair FinCEN's ability to carry out its mandate.

(iv) Furthermore, providing access to records contained in the FinCEN Data Base could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities and thereby endanger the physical safety of those undercover officers or their families by exposing them to possible reprisals.

(v) By compromising the law enforcement value of the FinCEN Data Base for the reasons outlined in (i) through (iv) of this paragraph, permitting access in keeping with these provisions would discourage other law enforcement and regulatory agencies, foreign and domestic, from freely sharing information with FinCEN and thus would restrict FinCEN's access to information necessary to accomplish its mission most effectively.

(vi) Finally, the dissemination of certain information that FinCEN may maintain in the FinCEN Data Base is restricted by law.

(3) 5 U.S.C. 552a(e)(2), (3) and (4), (e)(6), (j), and (f)(4) permit an individual to request amendment of a record pertaining to him or her and require the agency either to amend the record, or to note the disputed portion of the record and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend on the individual's having access to his or her records, and since these rules propose to exempt the FinCEN Data Base from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (2) above, these provisions should not apply to the FinCEN Data Base.

(4) 5 U.S.C. 552(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute that the agency made in accordance with 5 U.S.C. 552a(i) to any record that the agency disclosed to the person or agency if an accounting of the disclosure was made. Since this provision depends on an individual's having access to and an opportunity to request amendment of records pertaining to him or her, and since these rules propose to exempt the FinCEN Data Base from the provisions of 5 U.S.C. 552a relating to access to and amendment of records, for the reasons set out in paragraph (2) above, this provision ought not apply to the FinCEN Data Base.

(5) 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of records available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient.

(i) The application of this provision would impair the ability of law enforcement agencies outside the Department of the Treasury to make effective use of information provided by FinCEN. Making accountings of disclosures available to the subjects of an investigation would alert them to the fact that another agency is conducting an investigation into their criminal activities and could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would be able to take measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographical areas, or by destroying or destroying evidence that would form the basis for arrest.

(ii) Moreover, providing accountings to the subjects of investigations would alert them to the fact that FinCEN has information regarding their criminal activities and could inform them of the general nature of that information. Access to such information could reveal the operation of FinCEN's information-gathering and analysis systems and permit violators to take steps to avoid detection or apprehension.

(6) 5 U.S.C. 552a(e)(2) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. The application of this provision to the FinCEN Data Base could impair FinCEN's ability to provide useful information to law enforcement agencies since revealing sources for the information could (i) disclose investigative techniques and procedures, (ii) result in threats or reprisals against informers by the subjects of investigations, and (iii) cause informers to refuse to give full information to criminal investigators for fear of having their identities as sources disclosed.

(7) 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain," as defined in 5 U.S.C. 552a(a)(9), includes "collect"; and "disseminate." The application of this provision to the FinCEN Data Base could impair FinCEN's ability to collect and disseminate valuable law enforcement information.

(i) At the time that FinCEN collects information, it often lacks sufficient time to determine whether the information is relevant and necessary to accomplish a FinCEN purpose.

(ii) In many cases, especially in the early stages of investigations, it would be impossible immediately to determine whether information collected is relevant and necessary, and information that initially appears irrelevant and unnecessary often may, upon further evaluation or upon collision with information developed subsequently, prove particularly relevant to a law enforcement program.

(iii) Not all violations of law discovered by FinCEN analysts fall within the investigative jurisdiction of the Department of the Treasury. To promote effective law enforcement, FinCEN will have to disclose such violations to other law enforcement agencies, including State, local, and foreign agencies, that have jurisdiction over the offenses to which the information relates. Otherwise, FinCEN might be placed in the position of having to ignore information relating to violations of law not within the jurisdiction of the Department of the Treasury when that information comes to FinCEN's attention during the collection and analysis of information in its records.

(8) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision to the FinCEN Data Base would impair FinCEN's ability to collate, analyze, and disseminate investigative, intelligence, and enforcement information.

(i) Most information collected about an individual under criminal investigation is obtained from third parties, such as witnesses and informers. It is usually not feasible to
rally upon the subject of the investigation as a source for information regarding his criminal activities.

(ii) An attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his criminal activities so as to avoid apprehension.

(iii) In certain instances, the subject of a criminal investigation is not required to supply information to criminal investigators as a matter of legal duty.

(iv) During criminal investigations it is often a matter of sound investigative procedure to obtain information from a variety of sources to verify information already obtained.

(v) Finally, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation reveals that the subject was not involved in any criminal activity.

(10) 5 U.S.C. 552a(e)(5) requires an agency to maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination.

(i) Since 5 U.S.C. 552a(a)(3) defines “maintain” to include “collect” and “disseminate,” application of this provision to the FinCEN Data Base would hinder the initial collection of any information that could not, at the moment of collection, be determined to be accurate, relevant, timely, and complete. Similarly, application of this provision would seriously restrict FinCEN’s ability to disseminate information pertaining to a possible violation of law to law enforcement and regulatory agencies. In collecting information during a criminal investigation, it is often impossible or unfeasible to determine accuracy, relevance, timeliness, or completeness prior to collection of the information. In disseminating information to law enforcement and regulatory agencies, it is often impossible to determine accuracy, relevance, timeliness, or completeness prior to dissemination, because FinCEN may not have the expertise with which to make such determinations.

(ii) Information that may initially appear inaccurate, irrelevant, untimely, or incomplete may, when collated and analyzed with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting results obtained during criminal investigations.

(11) 5 U.S.C. 552a(e)(6) requires an agency to make reasonable efforts to serve notice on an individual when the agency fails to maintain accurate, relevant, timely, and complete records.

(12) 5 U.S.C. 552a(g) provides for civil remedies to an individual when an agency wrongfully refuses to amend a record or to review a request for amendment, when an agency wrongfully refuses to grant access to a record, when an agency fails to maintain accurate, relevant, timely, and complete records which are used to make a determination adverse to the individual, and when an agency fails to comply with any other provision of 5 U.S.C. 552a so as to adversely affect the individual. The FinCEN Data Base should be exempted from this provision to the extent that the civil remedies may relate to provisions of 5 U.S.C. 552a from which these rules propose to exempt the FinCEN Data Base, since there should be no civil remedies for failure to comply with provisions from which FinCEN is exempted. Exemption from this provision will also protect FinCEN from baseless civil court actions that might hamper its ability to collate, analyze, and disseminate investigative and intelligence, law enforcement data.

(g) Exempt information included in another system. Any information from a system of records for which an exemption is claimed under 5 U.S.C. 552a(j) or (k) which is also included in another system of records retains the same exempt status such information has in the system for which such exemption is claimed.


Linda M. Combs,
Assistant Secretary of the Treasury (Management).

[FR Doc. 90-17214 Filed 7-23-90; 8:45 am]

BILLING CODE 4810-25

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 82 and 83

RIN 3067-A562

Federal Crime Insurance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule increases the Federal Crime Insurance Program (FCIP) rates which apply to commercial properties located in eligible states. It also authorizes reclassification of commercial businesses and separate classifications for burglary and robbery premiums. Definitions of alarm systems are modified to enforce a higher and more effective standard of protection.

DATES: Comments must be received on or before September 24, 1990.


SUPPLEMENTARY INFORMATION: These amendments to the FCIP regulations are the result of the experience gained over the past nineteen years the Program has been in operation.

The current commercial rating program under the FCIP was instituted in 1985. That change was instituted to more closely realign the Program with the underwriting and rating methods used by the private insurance sector. The Program was expanded at that time from 3 classes to 6 premium classes. Premium class relativities were based on industry rating values, the amount of insurance relativities, gross receipts classifications, and the philosophy of a single countrywide rating territory. At that time, the entire rating structure was adjusted to produce a 35% revenue level increase.

In 1987, rates were uniformly increased by 10% and risk and alarm classifications were revised. In 1988, the assignment of business classes to premium classes was reviewed and changed. In 1989, another uniform rate increase of 5% was made. In spite of the above revisions, in order to approach a more self-sustaining status, the Federal Insurance Administration will need to impose an overall rate increase of approximately 15% to offset heavy losses under commercial coverage and the higher-than-average administrative expenses associated with operating a single-line residual market program.

However, inasmuch as the enabling legislation that authorized the Program requires that crime insurance be made available at affordable rates for purposes of comparison, the FIA has maintained an ongoing study of rating of crime insurance coverages provided by the voluntary insurance market.

In this regard, the recent study conducted by FCIP's servicing carrier, NCSI, and its actuary, Tillinghast, indicate that the Insurance Services Office (ISO) advisory rates have increased five times since 1985, a rate of increase far in excess of FCIP rates. However, although a substantial FCIP rate increase would be appropriate, the Administrator proposes a rate increase of only 15%, the maximum allowable by recent controlling legislation, and for commercial classes only. Residential risk experience has been self-sustaining and therefore, is not subject to an increase.

To provide an incentive for hazard mitigation, the Federal Crime Insurance Program allows rate credits for various types of alarm systems. However, experience has demonstrated that to maintain the integrity of these credits, it is necessary to reinforce the definitions of the alarm descriptions to assure that the discounts are given only to properly qualified installations which will prevent or reduce the likelihood of loss.

FCIP studies have shown that Underwriters Laboratories, Inc. (UL) is the most competent organization that quality controls most providers, manufacturers and servicing companies involved in the burglary protection field. Consequently, this rule would require UL certification of Central Station Alarm Systems when repetitive losses indicate a growing problem for a specific risk.

The inability of many alarm systems to reduce losses arises from the fact that some insureds have installed alarms which they purchased from department stores, hardware stores, electronic stores or drug stores. Many times these insureds, not having the training necessary to correctly put the equipment in service, installed the apparatus but were unable to make its operation reliable. In addition, other business owners who had silent or local alarms installed by alarm companies subsequently found that regular maintenance was not supplied and repair of a malfunctioning alarm was difficult to obtain.

Some of the Central Station systems, in an effort to reduce the price of their installation, have eliminated a basic requirement of an effective system—they did not have "line security" in the hook up. Without line security, the phone wire or electric lines could be cut, and the alarm rendered useless. Of course, with line security such a disruption would trigger the alarm. This will be a requirement in order to qualify as a Central Station System.

Another oversight with respect to some Central Stations with Guard Response has resulted from the failure to supply the guards with keys to the premises. An alarm sounds, the guards respond but cannot enter the property until the owner comes to the site from home or picks up the message on his telephone answering service, which on a weekend may mean a considerable delay.

So that the current insureds may have sufficient time to meet these tightened requirements, we are notifying insureds and their alarm companies directly by mail. FCIP will require that the insured have an alarm company complete a certificate outlining the type equipment, its operation, and the service it supplies.

These efforts are designed to assure that the protective devices upon which the Program's insureds must rely are able to provide the enhanced protection of which they should be capable. Such improved protection can reduce losses and may also help make it possible for insureds to qualify for crime insurance protection under the overall property protection policies offered in the private insurance market.

The Tillinghast actuarial study also recommended a number of changes to the commercial business classifications due to poor loss experiences. These changes are set forth in § 82.24(d).

FEMA has determined, based upon an Environmental Assessment, that the proposed rule does not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket files and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

The proposed rule does not have a significant economic impact on a substantial number of small entities and has not undergone regulatory flexibility analysis.

The proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and hence, no regulatory analysis has been prepared.

FEMA has determined that this proposed rules does not contain a collection of information requirements as described in section 3504(b) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 82, 83
Federal crime insurance program.

Accordingly, 44 CFR parts 82 and 83 are amended as follows:

PART 82—PROTECTIVE DEVICE REQUIREMENTS

1. The authority citation for part 82 continues to read as follows:

Subpart A—General

2. In §82.1 paragraph (b)(c) (i) and (j) are revised and paragraph (n) is added to read as follows:

§ 82.1 Definitions.

(b) Central station, supervised service alarm system means a silent alarm system that is professionally installed and is regularly maintained, that is constantly in operation, that is equipped with a telephone and electricity line security mechanism that activates the alarm if either line is cut, and which signals upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises.

(n) Central station, supervised service alarm system that is professionally installed and is regularly maintained, and is certified by Underwriters Laboratory (U/L) means a silent alarm system that is constantly in operation, that is equipped with a telephone and electricity line security mechanism that activates the alarm if either line is cut, and which signals upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises, at a private sentry or guard headquarters that is attended and monitored 24 hours a day, that dispatches guards to the protected premises for which they have keys immediately upon the activation of the alarm, that periodically checks the operation and effectiveness of the system, and that notifies law enforcement authorities as soon as a breach of the premises is confirmed.

§ 82.2 Purpose of protective device requirements.

(d) As a further control on claims frequency and severity, the following minimum protective device requirements apply if the policyholder has had 2 or more claims each for a payment of $500 or more, in the immediate 3 years preceding the period ending 4 months prior to renewal.

<table>
<thead>
<tr>
<th>Premium class</th>
<th>Protective device code</th>
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<td>A</td>
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<td>5</td>
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<td>2</td>
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</tr>
<tr>
<td>1</td>
<td>N/A</td>
</tr>
</tbody>
</table>

(e) For those policyholders with no claims in the immediate 3 years preceding the period ending 4 months prior to renewal, protective device requirements are liberalized as follows:

<table>
<thead>
<tr>
<th>Premium class</th>
<th>Protective device code</th>
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</thead>
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<td>C</td>
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<td>4</td>
<td>C</td>
</tr>
<tr>
<td>3</td>
<td>E</td>
</tr>
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<td>2</td>
<td>E</td>
</tr>
<tr>
<td>1</td>
<td>N/A</td>
</tr>
</tbody>
</table>

§ 82.5 Inspection of commercial premises.

(b) Coverage under a commercial crime insurance policy indemnifying against burglary losses shall not commence unless it is determined that the premises sought to be insured complies with all applicable protective device requirements. Provided, that all commercial premises whose exterior doors and accessible openings are found upon inspection to be protected by central station supervised service alarm systems or silent alarm systems (as those systems are defined in paragraphs (b), (c), (f), and (n) §82.1) shall not be required to comply with the provisions of paragraphs (b) and (e) of §82.31 pertaining to the protection of those exterior doors and accessible openings by such devices as bars, grillwork, and other physical barriers. The benefit of this provision, therefore, applies also to commercial premises which, because of their particularly high risk inventories of merchandise continue to be required by paragraphs (f)(1) and (2) of §82.31 to have exterior doors and accessible openings protected by specific types of alarm systems, namely, supervised service alarm systems for the highest risk inventories and silent alarm systems for less high risk inventories.

5. Section 82.31(f) is revised in its entirety to read as follows:

§ 82.31 Minimum standards for industrial and commercial properties.

(f) The following types of establishments whose inventories pose a particularly serious risk shall, as a minimum, in addition to the requirements of paragraphs (a), (b) and (d) of this section be protected by the type of alarm system indicated. If the system specified in paragraphs (f)(1) and (f)(2) of this section is not available in the community in which the premises are located, the type of system specified in paragraph (f)(3) of this section shall be permitted.

1. Central Station (with Guard dispatch) supervised service alarm system shall be required for the following businesses:

(i) Beer/Wine (wholesale)
(ii) Boutiques
(iii) Cameras/Photo/Film Processing
(iv) Clothing Childrens 12 & Under
(v) Clothing Mfg., Tailoring
(vi) Clothing Men's
(vii) Clothing Women's
(viii) Drug Stores
(ix) Drugs (wholesale)
<table>
<thead>
<tr>
<th>Code</th>
<th>Business description</th>
<th>Class</th>
<th>Burglary</th>
<th>Robbery</th>
<th>Alarm type</th>
</tr>
</thead>
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<tr>
<td>02</td>
<td>Amusement Enterprises</td>
<td>2</td>
<td>3</td>
<td>D</td>
<td></td>
</tr>
<tr>
<td>04</td>
<td>Billiard/Pool Parlor</td>
<td>2</td>
<td>4</td>
<td>D</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>Art Supplies</td>
<td>5</td>
<td>5</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>Gift Store/Pool</td>
<td>4</td>
<td>4</td>
<td>D</td>
<td></td>
</tr>
<tr>
<td>49</td>
<td>Religious Organizations</td>
<td>3</td>
<td>4</td>
<td>D</td>
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</tr>
</tbody>
</table>

**PART 83—COVERAGES, RATES, AND PRESCRIBED POLICY FORMS**

6. The authority citation for part 83 continues to read as follows:


7. Section 83.24(d) is revised in its entirety to read as follows:

§83.24 Classification of commercial risks.

(d) Following are minimum alarm requirements for various classifications of businesses:

<table>
<thead>
<tr>
<th>Code</th>
<th>Business description</th>
<th>Class</th>
<th>Burglary</th>
<th>Robbery</th>
<th>Alarm type</th>
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<td>4</td>
<td>D</td>
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<td>Art Supplies</td>
<td>5</td>
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<td>C</td>
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<td>Gift Store/Pool</td>
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<td>4</td>
<td>D</td>
<td></td>
</tr>
</tbody>
</table>

8. Section 83.24(d) continues to read as follows:

(d) Following are minimum alarm requirements for various classifications of businesses:

<table>
<thead>
<tr>
<th>Code</th>
<th>Business description</th>
<th>Class</th>
<th>Burglary</th>
<th>Robbery</th>
<th>Alarm type</th>
</tr>
</thead>
<tbody>
<tr>
<td>02</td>
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<td>2</td>
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<td>D</td>
<td></td>
</tr>
<tr>
<td>04</td>
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<td>4</td>
<td>D</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>Art Supplies</td>
<td>5</td>
<td>5</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>Gift Store/Pool</td>
<td>4</td>
<td>4</td>
<td>D</td>
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</tr>
</tbody>
</table>
**FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1990**

<table>
<thead>
<tr>
<th>Code</th>
<th>Business description</th>
<th>Business description</th>
<th>Class Bur-</th>
<th>Class</th>
<th>Rob-</th>
<th>Alarm type</th>
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<td>6</td>
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<td>19</td>
<td>Launderies</td>
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<td>3</td>
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<tr>
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<td>Leather Products</td>
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<td>4</td>
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<td>20</td>
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<td>21</td>
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**Annual Premiums—Gross Receipts**

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<td>$300</td>
</tr>
<tr>
<td></td>
<td>$14,000</td>
<td>$252</td>
<td>$252</td>
<td>$312</td>
<td>$312</td>
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<tr>
<td></td>
<td>$15,000</td>
<td>$262</td>
<td>$262</td>
<td>$324</td>
<td>$324</td>
</tr>
</tbody>
</table>

8. In Section 83.25 paragraphs (e) and (f) are revised in their entirety to read as follows:

§ 83.25 Commercial crime insurance rates.

(c) The following tables shall be used to determine rates for commercial risks.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1990

<table>
<thead>
<tr>
<th>Code</th>
<th>Business description</th>
<th>Business description</th>
<th>Class Bur-</th>
<th>Class</th>
<th>Rob-</th>
<th>Alarm type</th>
</tr>
</thead>
<tbody>
<tr>
<td>60</td>
<td>Stationery/Books/Printing/Paper.</td>
<td>B/C</td>
<td>3</td>
<td>4</td>
<td>D</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Tavern/Bar/Lounge.</td>
<td>D</td>
<td>4</td>
<td>4</td>
<td>D</td>
<td></td>
</tr>
<tr>
<td>61</td>
<td>Tax/Limousines (robbery only).</td>
<td>C</td>
<td>2</td>
<td>3</td>
<td>E</td>
<td></td>
</tr>
<tr>
<td>80</td>
<td>Theatre/Lounge.</td>
<td>E</td>
<td>4</td>
<td>4</td>
<td>D</td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>Tobacco Dealers (retail).</td>
<td>C</td>
<td>5</td>
<td>5</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>72</td>
<td>Tobacco Dealers (wholesale).</td>
<td>B</td>
<td>3</td>
<td>4</td>
<td>B</td>
<td></td>
</tr>
<tr>
<td>81</td>
<td>Variety/Department Stores.</td>
<td>D</td>
<td>6</td>
<td>6</td>
<td>B</td>
<td></td>
</tr>
<tr>
<td>71</td>
<td>Vending Machines.</td>
<td>D</td>
<td>5</td>
<td>5</td>
<td>B</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Code</th>
<th>Business description</th>
<th>Business description</th>
<th>Class Bur-</th>
<th>Class</th>
<th>Rob-</th>
<th>Alarm type</th>
</tr>
</thead>
<tbody>
<tr>
<td>611</td>
<td>Sports Goods/General.</td>
<td>B</td>
<td>5</td>
<td>5</td>
<td>C</td>
<td></td>
</tr>
<tr>
<td>612</td>
<td>Electroplating (storage).</td>
<td>C</td>
<td>6</td>
<td>6</td>
<td>C</td>
<td></td>
</tr>
</tbody>
</table>

**Notes:**
- The tables above include rates for various types of industries and businesses.
- The rates are listed in different categories based on the amount of insurance.
- The rates are presented in a tabular format, with columns for different classes of insurance and rows for different amounts of insurance.
- The rates are used to determine the premiums for commercial crime insurance.

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**Federal Register**

Vol. 55, No. 142 / Tuesday, July 24, 1990 / Proposed Rules
**FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1990—Continued**

<table>
<thead>
<tr>
<th>Amount of insurance</th>
<th>Less than $10,000 option</th>
<th>$10,000 to $199,999 option</th>
<th>$200,000 to $499,999 option</th>
<th>$500,000 to $999,999 option</th>
<th>$1,000,000 or greater option</th>
</tr>
</thead>
<tbody>
<tr>
<td>10,000</td>
<td>206</td>
<td>655</td>
<td>759</td>
<td>799</td>
<td>812</td>
</tr>
<tr>
<td>20,000</td>
<td>258</td>
<td>789</td>
<td>814</td>
<td>839</td>
<td>844</td>
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<tr>
<td>30,000</td>
<td>306</td>
<td>865</td>
<td>869</td>
<td>883</td>
<td>888</td>
</tr>
<tr>
<td>40,000</td>
<td>356</td>
<td>943</td>
<td>949</td>
<td>956</td>
<td>956</td>
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<tr>
<td>50,000</td>
<td>404</td>
<td>1,022</td>
<td>1,035</td>
<td>1,043</td>
<td>1,046</td>
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<tr>
<td>60,000</td>
<td>452</td>
<td>1,101</td>
<td>1,116</td>
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<td>1,127</td>
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<tr>
<td>70,000</td>
<td>500</td>
<td>1,179</td>
<td>1,196</td>
<td>1,204</td>
<td>1,206</td>
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<tr>
<td>80,000</td>
<td>548</td>
<td>1,257</td>
<td>1,274</td>
<td>1,282</td>
<td>1,284</td>
</tr>
<tr>
<td>90,000</td>
<td>596</td>
<td>1,335</td>
<td>1,352</td>
<td>1,360</td>
<td>1,363</td>
</tr>
<tr>
<td>100,000</td>
<td>644</td>
<td>1,412</td>
<td>1,429</td>
<td>1,437</td>
<td>1,440</td>
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<tr>
<td>110,000</td>
<td>692</td>
<td>1,489</td>
<td>1,506</td>
<td>1,514</td>
<td>1,517</td>
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<tr>
<td>120,000</td>
<td>740</td>
<td>1,567</td>
<td>1,584</td>
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<tr>
<td>130,000</td>
<td>788</td>
<td>1,645</td>
<td>1,662</td>
<td>1,670</td>
<td>1,673</td>
</tr>
</tbody>
</table>

**Option 1:** Burglary only.

**Option 2:** Robbery only.

**Option 3:** A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.

Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.
(f) If the premises are protected by an acceptable burglar alarm system, class E safe, supervised safe alarm system, holdup alarm or armored car service, premium discounts shall be permitted as follows:

I. Burglary Credits

<table>
<thead>
<tr>
<th>PREMISES ALARM SYSTEM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Code</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>E None</td>
</tr>
<tr>
<td>D Local or silent*</td>
</tr>
<tr>
<td>C Central station</td>
</tr>
<tr>
<td>B Central station</td>
</tr>
<tr>
<td>A Central station</td>
</tr>
</tbody>
</table>

*Professionally installed with maintenance.

Note: Multiply the burglary premium by the appropriate factor.

II. Robbery Credits

PROTECTION SERVICE

<table>
<thead>
<tr>
<th>Hold up buttons</th>
<th>Armored Car</th>
<th>None</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>.65</td>
<td>.90</td>
</tr>
<tr>
<td>No</td>
<td>.65</td>
<td>.95</td>
</tr>
<tr>
<td></td>
<td>.95</td>
<td>1.00</td>
</tr>
</tbody>
</table>

Note: Multiply the robbery premium by the appropriate factor.

Package Discount

Apply a factor of .90 to the total premium if both burglary and robbery are purchased.

Harold T. Duryee,
Federal Insurance Administrator.
[FR Doc. 90-16746 Filed 7-23-90; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AA71

Refuge-Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to amend certain regulations in 50 CFR part 32 that pertain to migratory game bird, upland game, and big game hunting on individual national wildlife refuges. Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified, deleted or added to. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant modifications to ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge hunting programs consistent with State regulations.

DATES: Comments must be received on or before August 23, 1990.


FOR FURTHER INFORMATION CONTACT: Robert Karges, U.S. Fish and Wildlife Service, Division of Refuges, 1849 C Street NW., MS 670-ARL SQ, Washington, DC 20220; Telephone (703) 358-2043.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting on national wildlife refuges. Hunting is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure the safety of refuge users and neighbors. On many refuges, the Service policy of adopting State hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled “Conformance with Statutory and Regulatory Authorities.” Refuge-specific hunting regulations may be issued only after a wildlife refuge is opened to migratory game bird, upland game, or big game hunting through publication in the Federal Register. These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. Previously issued refuge-specific regulations for migratory game bird, upland game, and big game hunting are contained in 50 CFR 32.12, 32.22, and 32.32 respectively. Some of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. It is, therefore, the purpose of this proposed rulemaking to seek public input regarding these proposed amendments. Accordingly, interested persons may submit written comments to the Assistant Director, Refuges and Wildlife (address above) by the end of the comment period. All substantive comments will be considered by the Department prior to issuance of a final rule.

Conformance With Statutory and Regulatory Authorities The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 669k) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing and public recreation, accommodations and access, when he determines that such uses are compatible with the major purpose(s) for which the area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting plans are developed for each refuge prior to opening it to hunting. In many cases, refuge-specific hunting regulations are included in the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the refuge was established. Initial compliance with the NWRSAA and Refuge Recreation Act is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect
on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, governmental agencies or geographic regions. The Regulatory Flexibility Act of 1988 (5 U.S.C. 601 et seq.) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The proposed amendments to the codified refuge-specific hunting regulations would make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this proposed rule is not a “major rule” within the meaning of E.O. 12291 and would not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has received approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). These requirements are presently approved by OMB under 1018-0014 Economic and Public Use Permits. These requirements impose no new reporting or recordkeeping requirements that must be cleared by OMB.

Paperwork Reduction Act

The Service has approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). These requirements are presently approved by OMB as cited below:

<table>
<thead>
<tr>
<th>Type of information collection</th>
<th>OMB approval No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic and public use permits</td>
<td>1018-0014</td>
</tr>
</tbody>
</table>

Public reporting burden for this form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973. (16 U.S.C. 1531-1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes proposed in this rulemaking would not substantially alter the existing uses of the refuges involved. Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunting areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1002 Northeast Holladay Street, Portland, Oregon 97232-4181; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas.

Assistant Regional Director—Refuges and Wildlife U.S. Fish and Wildlife Service, Box 1300, Albuquerque, New Mexico 87103; Telephone (505) 766-1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.


Region 4—Alabam, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Service Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 725-3507.


Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158; Telephone (617) 695-9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming.

Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 392-8145.

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting regulations for these refuges).


List of Subjects in 50 CFR Part 32


Accordingly, it is proposed to amend part 32 of chapter I of title 50 of the Code of Federal Regulations as set forth below:

1. The authority citation for part 32 would continue to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 668d, 668dd, 668ff, 668kk, 718i.

2. Section 32.12 would be amended by revising paragraphs (d)(1) and (d)(9); adding paragraphs (d)(3)(iv) and (f)(7)(vii); revising paragraphs (k)(2), (l), (q), (r), (u)(3), (u)(4), (u)(5) and (u)(6); redesignating paragraph (y)(1) as (y)(2); adding new paragraph (y)(3); removing paragraphs (cc)(2)(v) and (vi) revising paragraphs (dd)(3) and (hh)(11)(v); adding paragraphs (hh)(4)(v) and (hh)(11)(vi); revising paragraphs (mm)(1) and (mm)(5)(vi), (mm)(7)(i) and (v); adding paragraphs (mm)(1) and (mm)(5)(vii), (mm)(5)(viii) and (mm)(7)(vi) revising paragraphs (pp) and (qq)(4)(ii) and (iv) adding new paragraph (qq)(4)(vii), revising paragraphs (qq)(5)(iv), (qq)(6) and (qq)(7)(iii) and (iv) as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(d) Arizona and California—(1) Cibola National Wildlife Refuge.

Hunting of geese, ducks, coots, moorhens, mourning and white winged doves is permitted on designated areas.
of the refuge subject to the following conditions:
(i) Non-toxic shot is required for all migratory game bird hunting. It is prohibited to possess migratory game bird with lead shot in possession.
(ii) Legal weapon shall be shotgun only.
(iii) Special Use Permits are required for all hunting guides.
(iv) Hunting is not permitted within 50 yards of any road or levee or within 250 yards of any farm worker.
(v) Neither hunters nor dogs may enter closed areas to retrieve game.
(vi) Pit or permanent blinds are not permitted.
(vii) Migratory game bird hunting will cease at 3:00 p.m. each day.
(viii) The following additional restrictions apply to Zone IIIA:
(A) During the Arizona waterfowl season, Farm Unit 2 is closed to dove hunting until noon each day.
(B) In Farm Unit 2, waterfowl hunters must remain within 50 feet of designated stations while hunting except when actively retrieving downed birds.
(C) During the goose season, the Hart Mine Marsh Area is closed to hunting until 10 a.m. daily.
(D) Hunters are restricted to 10 shells per day, except in the Hart Mine Marsh area.
(2) Havasu National Wildlife Refuge.
(iv) Waterfowl, coot, and dove hunters shall possess and use, while in the field, only non-toxic shot.
(3) Imperial National Wildlife Refuge. Hunting of mourning and white-winged doves, ducks, coots, gallinules, geese and common snipe is permitted on designated areas of the refuge subject to the following conditions:
(i) Pits and permanent blinds are not permitted.
(ii) Waterfowl, coot, and dove hunters shall possess and use, while in the field, only non-toxic shot.
(4) Lower Klamath National Wildlife Refuge.
(vii) Only nonmotorized boats and boats with electric motors are permitted in Units 4c, d, e, and f.
(k) Illinois—
(2) Crab Orchard National Wildlife Refuge.
(i) Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville and Greenbriar land areas, plus Orchard, Turkey, and Sawmill and Grassy Islands, from sunrise to posted closing times each day during the goose season. Waterfowl hunting in these areas, including lake shorelines, is permitted only from existing refuge blinds during the goose season. Hunters must comply with the special rules posted at the blind drawing site.
(ii) All hunters are prohibited from possessing alcoholic beverages in the hunting areas.
(iii) Outside of the controlled goose hunting areas, only portable or temporary blinds may be used. Blinds may not be located beyond the shoreline of refuge waters, must be removed or dismantled at the end of each day's hunt, and must be located a minimum of 100 yards apart.
(m) Illinois, Iowa, and Missouri—
Mark Twain National Wildlife Refuge.
(1) On the Big Timber Division, including Turkey and Otter Islands, only temporary wood or brush blinds are permitted. Blinds cannot be locked or otherwise sealed against public entry. Blinds are open to the public on a first-come, first-served basis if not occupied 30 minutes after the start of the legal shooting hours.
(2) On the Gardner Division, waterfowl and coot hunting is permitted only from blinds constructed on sites posted by the Illinois Department of Conservation.
(n) Maine—Rachel Carson National Wildlife Refuge. Hunting of ducks, geese, coots, woodcock and snipe is permitted on designated areas of the refuge subject to the following condition: Permits are required.
(2) Islesford National Wildlife Refuge. Hunting of geese, ducks, coots, woodcocks, snipe, and dove is permitted on designated areas of the refuge subject to the following condition: Permits are required.
(y) Mississippi—
(2) Hillside National Wildlife Refuge. Hunting of mourning doves, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.
(3) Mathews Brake National Wildlife Refuge. Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.
(4) Morgan Brake National Wildlife Refuge. Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.
(5) Noxubee National Wildlife Refuge. Hunting of ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.
(6) Panther Swamp National Wildlife Refuge. Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.
(y) Nevada—
(1) Ash Meadows National Wildlife Refuge. Hunting of geese, ducks, coots, moorhens, snipe, and dove is permitted on designated areas of the refuge subject to the following condition: Permits are required.
(3) Mattamuskeet National Wildlife Refuge. Hunting of swans, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.
(hh) Oregon—
(4) Cold Springs National Wildlife Refuge.
(v) The refuge is closed from 10:00 p.m. to 5:00 a.m.
(11) Umatilla National Wildlife Refuge.
(v) Hunters may not possess or use more than 20 shells per day.
(vii) The refuge is closed from 10:00 p.m. to 5:00 a.m. except for the Hunter Check Station parking lot, which is open each morning two hours prior to State shooting hours for waterfowl.
(mm) Texas—
(1) Anahuac National Wildlife Refuge.
(ii) The refuge unit located north of Onion Bayou and Jackson Ditch, known as the East Unit, is open to hunting only on designated days of the week. Notice of actual hunting days is issued as provided in 50 CFR 25.31.
(vi) Use of airboats is permitted only in accordance with guidelines issued as provided in 50 CFR 25.31.
(7) Texas Point National Wildlife Refuge.
(i) Hunting is permitted only on designated days of the week. Notice of actual hunting days is issued as provided in 50 CFR 25.31.
(v) Use of airboats is permitted only in accordance with specific guidelines issued as provided in 50 CFR 25.31.

(vi) Only shotguns are permitted.

(pp) Virginia—Chincoteague National Wildlife Refuge. Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required on the non-guided public hunting areas on Wildcat Marsh and Morris Island.

(2) On Wildcat Marsh, compartments 1-4 are reserved for guided hunting only, with refuge designated commercial guides.

(3) Permanent blinds are not permitted in public hunting areas.

(4) Permanent blinds are permitted in compartments 1-4 on Wildcat Marsh during the season but must be removed within 10 days following the end of the season.

(5) Blind sites are limited to one party of hunters, with a maximum of 4 hunters per party.

(6) Hunters shall possess and use personal property on the refuge between one hour after sunset and 5:00 a.m. or leave decoys or other overnight.

(vii) Hunters may not possess or use more than 20 shells per day.

(8) Ridgefield National Wildlife Refuge.

(9) Hunters may not use or possess more than 20 shells per day.

(10) Toppenish National Wildlife Refuge. Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only within 50 feet of designated blind sites except when shooting to retrieve crippled birds.

(ii) Hunters may not use or possess more than 20 shells per day.

(11) Louisiana—Twain National Wildlife Refuge.

(iii) The refuge is closed from 10:00 p.m. to 5:00 a.m. No decoys or other personal property may be left on the refuge overnight.
(2) Montezuma National Wildlife Refuge.
   (i) All hunters must possess a valid daily hunting permit card.
   (ii) A Special Use Permit is required for night hunting of furbearers.
   (iii) Hunting is permitted from the close of the turkey season through the close of the respective state season.
   (iv) Shotguns only are permitted, except that .22 caliber rimfire firearms may be used to take furbearers at night.

(1) Illinois—Crab Orchard National Wildlife Refuge.

(2) Hunters using the Closed Area are required to check in at the refuge visitor contact station prior to hunting and must comply with the special rules provided to them.

(3) Deer hunting is not permitted in the controlled goose hunting areas during the permitted waterfowl hunting hours.

(4) Illinois, Iowa, and Missouri—Mark Twain National Wildlife Refuge.

(1) Hunting is permitted in the Gardner and Big Timber Division, including Turkey and Otter Island.

(2) Hunting of antlerless deer only is permitted on the Delair Division during a portion of the November and/or during specially designated dates subject to the following conditions:
   Permits are required, hunters must be 16 years of age or older, and hunting hours will be 7:30 a.m. until 3:30 p.m.

(f) Louisiana—

(4) D’Arbonne National Wildlife Refuge—

(i) Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the first day of the Union Parish either-sex season and the following Friday and Saturday.

(ii) Two consecutive days of either-sex deer hunting with muzzleloaders and archery will be permitted beginning the first Saturday in December.

(9) Upper Ouachita National Wildlife Refuge—

(i) Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the first day of the Union Parish either-sex season and the following Friday and Saturday.

(ii) Two consecutive days of either-sex deer hunting with muzzleloaders and archery will be permitted beginning the first Saturday in December.

(1) Maine—

(2) Rachel Carson National Wildlife Refuge. Hunting of deer is permitted on designated areas of the refuge subject to the following conditions:
   Permits are required.

(y) Mississippi—

(2) Hillside National Wildlife Refuge. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:
   Permits are required.

(3) Mathews Brake National Wildlife Refuge. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition:
   Permits are required.

(5) Pungo National Wildlife Refuge. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:
   Permits are required.

(6) Panther Swamp National Wildlife Refuge. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:
   Permits are required.

(7) Yazoo National Wildlife Refuge. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:
   Permits are required.

(8) New York—

(2) Montezuma National Wildlife Refuge.

(i) All hunters must possess a valid daily hunting permit card.

(ii) Hunting of deer is permitted on designated portions of the refuge by archery, shotgun, or muzzleloader only during established refuge seasons set within the general State deer season.

(iii) Hunters during the refuge firearms season, must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored blaze orange clothing or material.

(5) North Carolina—

(2) Great Dismal Swamp National Wildlife Refuge—

(vi) Hunting and/or possession of loaded firearms on refuge roads and roads open to public is prohibited.

(5) Pungo National Wildlife Refuge. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following conditions:
   Permits are required.

(5) Tennessee—(1) Chickasaw National Wildlife Refuge. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:
   Permits are required.

(3) Hatchie National Wildlife Refuge. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following conditions:
   Permits are required.

(4) Morgan Brake National Wildlife Refuge. Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition:
   Permits are required.
refuge subject to the following condition: Permits are required.

(4) * ★ ★ *

Lower Hatchie National Wildlife Refuge. Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * ★ *

(2) Virginia— ★ ★ ★

Chincoteague National Wildlife Refuge. Hunting of sika deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.
(ii) Dogs are not permitted.
(iii) During the State firearms season, hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

* * * * *

(3) Great Dismal Swamp National Wildlife Refuge. ★ ★ ★

(ii) Only shotguns, 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bows and arrows, are permitted.
(iii) Dogs are not permitted.
(iv) Hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.
(v) Hunting and/or possession of loaded firearms on refuge roads including road rights-of-way is prohibited.
(vi) Hunters are required to sign in and sign out.

* * * * *

(2) Wisconsin— ★ ★ ★

Necedah National Wildlife Refuge. ★ ★ ★

(i) Hunting with a loaded rifle or shotgun within 50 feet of the centerline of all refuge roads or trails, as shown on the refuge hunting leaflet or discharging these weapons from, across, down, or alongside these roads and trails is prohibited.

* * * * *

(iv) Refuge Areas 1, 2, 4, 5, and 6 are open to deer hunting during the State gun and both early and late archery seasons.
(v) Refuge Area 3 is open to deer hunting during the State gun and late archery season.
(vi) Target or practice shooting is not permitted.

* * * * *

Dated: June 18, 1990.

Bruce Blanchard
Director, Fish and Wildlife Service

[FR Doc. 90-17233 Filed 7-23-90; 8:45 am]
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 COMMERCE

National Oceanic and Atmospheric Administration

Buffer Zone Around Principle Steller Sea Lion Rookeries; Determinations on Exemption Requests

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of determination on two requests for exemptions to the 3-mile buffer zone.

SUMMARY: Two requests for exemptions to the 2-nautical-mile buffer zone established around principle Steller sea lion rookeries have been received by NMFS's Alaska Regional Office. The request for an exemption from the Chirikof Cattle Company was granted on July 6, 1990, and the request from the Afognak Wilderness Lodge was denied on July 6, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Zimmerman, Alaska Region, National Marine Fisheries Service, P.O. Box 21068, Juneau, Alaska 99802 (907-586-7233).

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1990, NMFS published an emergency interim rule (55 FR 12045) that added Steller (northern) sea lions to the Threatened Species List under the Endangered Species Act. This emergency interim rule contained several protective regulations, to be codified at 50 CFR 227.12(a), including the establishment of buffer zones around 32 sea lion rookeries in the Gulf of Alaska and the Aleutian Islands. These buffer zones prohibit the approach of any vessel within 3 nautical miles of these rookeries or the approach of any person on land not privately owned within one-half statutory mile or within sight of the listed rookery sites, whichever is greater.

The emergency interim rule gives the Director, Alaska Region, NMFS, (Regional Director) with the concurrence of the Assistant Administrator for Fisheries, NOAA, the authority to grant exemptions to the prohibitions of the rule (50 CFR 227.12(a)(6)). Exemptions allowing entry into buffer zones may be granted only if (1) the activity will not have a significant adverse impact on Steller sea lions, (2) the activity has been conducted historically and traditionally in the buffer zones, and (3) there is no feasibly available and acceptable alternative to, or site for, the activity. The Alaska Region, NMFS, has received formal exemption requests from the Chirikof Cattle Company and from the Afognak Wilderness Lodge.

Chirikof Cattle Company

On June 5, 1990, Mr. Wayne McCrary, of the Chirikof Cattle Company, Chirikof Island, Alaska, submitted to the Alaska Region a written request for exemption to allow entry into the buffer zone around the sea lion rookeries on Chirikof Island. The information supplied by Mr. McCrary and discussions with NMFS staff who are familiar with Chirikof Island all indicate that the Chirikof Cattle Company request meets the conditions required for granting an exemption:

(1) Granting this exemption should not have any significant, adverse impact on the sea lion rookery. Ranching activities do not occur in the buffer area, rather they are primarily on the northern (opposite) portion of the island. The exemption was requested to allow access to the ranch manager's house, which is located just within the buffer area on the southwestern side of the island. The house's location and the topography in the immediate area, however, partially hide it from the sea lions on the rookery. Disruption of sea lions on the rookery has not been a problem.

(2) There is a long historical record of use of the island by the company. The Cattle Company, a family operation, has had a lease from the U.S. Bureau of Land Management to graze cattle on Chirikof Island since 1930.

(3) There appears to be no reasonable and feasible alternative to the use of this house.

For these reasons, the Alaska Region granted this exemption to the Chirikof Cattle Company. In the letter of authorization dated July 6, 1990, to the Chirikof Cattle Company, the Regional Director stressed that all human activities on Chirikof Island, including all ranching activities, all deliveries of supplies, and all movement of personnel to and from the island, whether by air or by sea, are to be conducted as far away from the sea lion rookeries as is possible and that no disruption or disturbance of the sea lions on the rookery is allowed.

Afognak Wilderness Lodge

On June 5, 1990, Roy and Shannon Randalls, of Afognak Wilderness Lodge, Seal Bay, Alaska, submitted to the Alaska Region a written request for exemption to allow entry into the buffer zone around the sea lion rookeries on Marmot Island. Mr. Roger Smith of Kodiak, Alaska, submitted a letter of recommendation on behalf of the Randalls. Sea lion rookeries on Marmot Island have been a major attraction for guests during the 17 years that the Randalls have owned and operated the Afognak Wilderness Lodge.

On July 6, 1990, the Alaska Region denied the Afognak Wilderness Lodge request because it does not meet the legal requirements for granting an exemption. Alternative sites are available for viewing sea lions at haulouts rather than at the Marmot Island rookeries and guests at Afognak Wilderness Lodge have access to alternative wildlife experiences, as well.

Dated: July 17, 1990.

William W. Fox, Jr.,
Assistant Administrator for Fisheries.

Federal Register

Vol. 55, No. 142

Tuesday, July 24, 1990
This information will be used by contracting officers to identify those offerors that have already met the qualifications requirements.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 7,882; responses per respondent, 100; total annual responses, 788,200; hours per response, 0.04; and total response burden hours, 60,389.

Obtaining copies of proposals: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, D.C. 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0083, Qualifications Requirements.

Dated: July 15, 1990.
Margaret A. Willis,
FAR Secretariat.

[FR Doc. 90-17165 Filed 7-23-90; 8:45 am]
BILLING CODE 6220-24-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 94-66, 44 U.S.C. 3501 et. seq.) The listing does not include a collection of information contained in new or revised regulations which are to be submitted under section 3504(b) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission [FERC]); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by August 23, 1990. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 226 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:

SUPPLEMENTARY INFORMATION: The energy information collections submitted to OMB for review were:

1. Economic Regulatory Administration
2. ERA-766R
3. 1005-0073
4. Recordkeeping Requirements of DOE's Allocation and Price Rules
5. Extension
6. Recordkeeping
7. Mandatory
8. Businesses or other for profit
9. 250 recordkeepers
10. 3 year retention period
11. 10 hours per recordkeeper
12. 2,500 hours
13. The ERA-766R requires firms in all segments of the oil industry to maintain only those records essential to the orderly and timely completion of the oil pricing enforcement program. Firms not having such records would be exempt from the recordkeeping requirements of 10 CFR 210.1.

and

1. Energy Information Administration
2. EIA-876/E
3. 1905-0068
4. Residential Transportation Energy Consumption Survey
5. Revision
6. Triennially
7. Voluntary
8. Individuals or households
9. 3,000 respondents
10. 3,000 responses
11. 15 minutes per response
12. 750 hours
13. Forms EIA-876/E will provide information on the number and types of vehicles per household, annual mileage, gallons of fuel consumed, fuel type used, price paid for fuel, annual fuel expenditures and fuel efficiency as measured by miles-per-gallon. Data will be published. Respondents are households.

Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 722(b), and 790a.

Issued in Washington, DC, July 18, 1990.

Yvonne Bishop,
Director, Statistical Standards, Energy Information Administration.

[F] Doc. 90-1727 Filed 7-23-90; 8:45 am
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP90-1730-000 et al.]

Kentucky West Virginia Gas Co. et al.,
Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Kentucky West Virginia Gas Co.
   [Docket No. CP90-1730-000]

   Take notice that on July 9, 1990, Kentucky West Virginia Gas Company (Kentucky West), P.O. Box 1388, Ashland, Kentucky 41105-1388, requests authorization in Docket No. CP90-1730-000 to suspend temporarily firm sales service to the City of Paintsville Kentucky (Paintsville), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

   Consistent with Article VII of a stipulation and agreement filed July 9, 1990, in Docket Nos. TQ89-1-46-000, et al., Kentucky West proposes to suspend sales service to Paintsville under the service agreement dated August 20, 1987, for ten years beginning October 1, 1990, and shall continue to be suspended for as long as Paintsville receives all or substantially all of its natural gas supplies from third parties. It is indicated that to the extent sufficient surplus supplies are available to it, Kentucky West would agree to waive the temporary suspension and make sales to Paintsville at the then-effective Rate Schedule GSS rates if Paintsville’s third-party suppliers experience an emergency gas failure during the suspension period.

   Comment date: July 23, 1990, in accordance with Standard Paragraph F at the end of this notice.

APPENDIX

[Docket No. CP90-1722-000, et al.]

<table>
<thead>
<tr>
<th>Docket number (date filed)</th>
<th>Shipper name</th>
<th>Peak day average day annual Mcf</th>
<th>Receipt 🅃 points</th>
<th>Delivery points</th>
<th>Contract date rate schedule service type</th>
<th>Related docket, start up date</th>
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<tr>
<td>CP90-1722-000 (7-11-90)</td>
<td>Unifield Natural Gas Group, Limited Partnership</td>
<td>30,000 2,000 730,000 100,000 15,300</td>
<td>IL, LA, TN, TX, OLA, OTX, OLA, TX, LA, MS, AL</td>
<td>IN, MS, LA</td>
<td>4-1-90, PT, Interruptible</td>
<td>ST90-3504-000, 4-1-90</td>
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<tr>
<td>CP90-1723-000 (7-11-90)</td>
<td>Phibro Energy, Inc.</td>
<td>3,584,500</td>
<td>IL, LA, TN, TX, OLA, OTX, OLA, TX, LA, MS, AL</td>
<td>Interruptible</td>
<td>5-4-90, IT, Interruptible</td>
<td>ST90-2010-000, 5-5-90</td>
</tr>
</tbody>
</table>

Fed Offshore Louisiana and Offshore Texas are shown as OLA and OTX.

Southern’s quantities are in MMBtu.

3. United Gas Pipe Line Co.
   [Docket No. CP90-1691-000]

   Take notice that on July 6, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-1691-000 a request pursuant to Section 157.205 of the Commission’s Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon by sale to Boral Bricks, Inc. (Boral Bricks) approximately 946 feet of 2-inch lateral pipeline formerly serving Boral Bricks in Section 5, T7-R8E, Lincoln County, Mississippi pursuant to United’s blanket certificate issued in Docket No. CP82-450-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

   United states that this lateral line was originally certificated in Docket No. G-232. According to United, sales service to Boral Bricks was abandoned in Docket No. CP86-746-000 and the
metering station was abandoned pursuant to authority granted in Docket No. CP90-201-000. United states that the meter station that was abandoned in Docket No. CP90-201-000 and was located on the lateral line to be conveyed was replaced with a domestic meter by Entex, Inc. (Entex), a local distribution company, who resells to Boral Bricks. United states that Entex proposes to move this domestic meter to the tap location upstream of the lateral line proposed to be conveyed. Therefore, United avers that the proposed abandonment would not result in any loss of service by Entex, and that Entex is the only customer served by this line.

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Stingray Pipeline Co. [Docket No. CP90-1684-000]

Take notice that on July 8, 1990, Stingray Pipeline Company (Stingray), Post Office Box 1642, Houston, Texas 77251-1842, filed in Docket No. CP90-1684-000 a request pursuant to § 157.205 of the Commission's Regulations. Stingray commenced such service for authorization to transport natural gas on behalf of Continental Natural Gas, Inc. (Continental), a marketer of natural gas, under the blanket certificate issued pursuant to § 284.223 of the Commission's Regulations. Stingray proposes to receive the subject gas at various existing points of receipt in Louisiana, Offshore Louisiana and Offshore Texas system. Stingray will then transport and deliver the gas to Holly Beach, OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EH2-A330) located Offshore Texas. No new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementation provision of § 284.223(a)(1) of the Commission's Regulations. Stingray commenced such self-implementation service on May 1, 1990, as reported in Docket No. ST90-3030-000.

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX IX

<table>
<thead>
<tr>
<th>Docket number (date filed)</th>
<th>Applicant</th>
<th>Shipper name</th>
<th>Peak Day &amp; average annual</th>
<th>Points of Receipt</th>
<th>Delivery</th>
<th>Start up date rate schedule</th>
<th>Related dockets</th>
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<tr>
<td>CP90-1713-000 7-10-90</td>
<td>ANR Pipeline Company, 500 Renaissance Center, Detroit, MI 48243</td>
<td>Entex Energy Management, Inc.</td>
<td>32,584</td>
<td>LA, OK</td>
<td>WI, MI</td>
<td>5-10-90, ITS</td>
<td>CP98-632-000 ST90-3227-000</td>
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<tr>
<td>CP90-1714-000 7-10-90</td>
<td>ANR Pipeline Company, 500 Renaissance Center, Detroit, MI 48243</td>
<td>Entex Energy Management, Inc.</td>
<td>75,000</td>
<td>LA, OK, KS, TX</td>
<td>WI, MI</td>
<td>5-10-90, ITS</td>
<td>CP98-532-000 ST90-2274-000</td>
</tr>
</tbody>
</table>

1 Quantities are shown in dekatherms unless otherwise indicated.
2 The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. ANR Pipeline Co. [Docket Nos. CP90-1713-000 & CP90-1714-000]

Take notice that on July 10, 1990, ANR Pipeline Company (Applicant) filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

These prior notice requests are not consolidated.
[Docket Nos. CP90-1717-000, CP90-1718-000, CP90-1719-000, CP90-1720-000]
Take notice that on July 10, 1990, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77201, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.¹

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX
[Docket No. CP90-1717-000, et al.]

<table>
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<tr>
<th>Docket number (date filed)</th>
<th>Shipper name</th>
<th>Peak Day³ average annual</th>
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<th>Start up date rate schedule service type</th>
<th>Related ² docket contract date</th>
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<tr>
<td>CP90-1717-000 (7-10-90)</td>
<td>Delta Pipeline Company</td>
<td>10,000</td>
<td>LA, OLA</td>
<td>6-1-90, ITS-1 &amp; ITS-2, Interruptible.</td>
<td>ST90-3334-000, 4-1-90.</td>
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<td>4,000</td>
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<td>CP90-1718-000 (7-10-90)</td>
<td>Paragon Gas Company</td>
<td>11,000</td>
<td>OLA</td>
<td>6-1-90, ITS-2, Interruptible.</td>
<td>ST90-3333-000, 6-1-90.</td>
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<td>CP90-1719-000 (7-10-90)</td>
<td>Catamount Natural Gas, Inc.</td>
<td>100,000</td>
<td>LA, OLA</td>
<td>6-5-90, ITS-1 &amp; ITS-2, Interruptible.</td>
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<td>LA, OLA</td>
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<td>ST90-3486-000, 12-22-90, 11-1-90.</td>
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<td>70,000</td>
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<td>25,550,000</td>
<td>KY, LA, MS, TN, OLA</td>
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¹ These prior notice requests are not consolidated.
² If an ST docket is shown, 120-day transportation service was reported in it.
³ Quantities are shown in MMBtu.
⁴ Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
⁵ ITS-1 agreement amended 4-17-90; ITS-2 agreement amended 1-22-90.

[Docket Nos. CP90-1690-000 and CP90-1693-000]
Take notice that on July 6, 1990, the above listed companies filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.⁴

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX
[Docket No. CP90-1690-000, et al.]

<table>
<thead>
<tr>
<th>Docket number (date filed)</th>
<th>Applicant</th>
<th>Shipper name</th>
<th>Peak Day¹ average annual</th>
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<th>Related ³ docket contract date</th>
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<tr>
<td>CP90-1690-000 (7-6-90)</td>
<td>United Gas Pipe Line Company, P.O. Box 1470, Houston, TX 77251</td>
<td>Midcon Marketing Corporation</td>
<td>154,500</td>
<td>LA</td>
<td>5-1-90, FTS</td>
<td>CP90-6-000, ST90-3491-000</td>
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<td>154,500</td>
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<td>56,992,500</td>
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⁴ These prior notice requests are not consolidated.
APPENDIX—Continued

[Docket No. CP90-1690-000, et al.]

<table>
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<th>Docket number (date filed)</th>
<th>Applicant</th>
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<tr>
<td>CP90-1693-000 (7-6-90)</td>
<td>Inland Gas Company, Inc., P.O. Box 1160, Ashland, KY 41105-1190, Mountain Enterprises, Inc.</td>
<td>KY 1,000 400 84,000</td>
<td>KY</td>
<td>5-21-90, ITS</td>
</tr>
</tbody>
</table>

\* Quantities are shown in MMBtu unless otherwise indicated.

The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. Texas Eastern Transmission Corp.


Take notice that on July 13, 1990, Texas Eastern Transmission Corporation (Applicant) filed in the above referenced docket, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission’s Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission’s Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for the shipper under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.

APPENDIX

[Docket No. CP90-1716-000, et al.]

<table>
<thead>
<tr>
<th>Docket number (date filed)</th>
<th>Applicant</th>
<th>Shipper name</th>
<th>Peak Day* average annual Points of Receipt Delivery</th>
<th>Start up date rate schedule Related * dockets</th>
</tr>
</thead>
</table>

\* Quantities are shown in MMBtu unless otherwise indicated.

The CP docket corresponds to applicant’s blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.


Take notice that on July 11, 1990, Texas Eastern Transmission Corporation (Applicant) filed in the above referenced docket, a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission’s Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice request which is on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to the transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket number and initiation date of the 120-day transaction under § 284.223 of the Commission’s Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for the shipper under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: August 27, 1990, in accordance with Standard Paragraph G at the end of this notice.
10. Amerada Hess Corp.

[Docket No. CP90-1721-000, et al.]


Take notice that on May 18, 1990, Amerada Hess Corporation (Amerada Hess) of P.O. Box 2040, Tulsa, Oklahoma 74102, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission’s (Commission) regulations thereunder for authorization as successor-in-interest to TXP Operating Company (TXP) to continue the service authorized under the certificates previously issued to TXP listed in the Appendix hereto and requesting that Amerada Hess be substituted for TXP in any proceedings related to those dockets. Amerada Hess also requests that TXP’s rate schedules listed in the Appendix hereto be redesignated as those of Amerada Hess, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Effective January 1, 1989, LL&E and LLOXY assigned their interests in certain properties to Amerada Hess. As a result Amerada Hess has acquired all of the interests of LL&E and LLOXY in the properties subject to the certificates issued to LL&E and LLOXY in the dockets listed in the Appendix hereto.

Comment date: August 2, 1990, in accordance with Standard Paragraph J at the end of this notice.

11. Amerada Hess Corp.

[Docket No. CP90-1721-000, et al.]

July 16, 1990.

Take notice that on June 13, 1990, Amerada Hess Corporation (Amerada Hess) of P.O. Box 2040, Tulsa, Oklahoma 74102, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission’s (Commission) regulations thereunder for authorization as successor-in-interest to The Louisiana Land and Exploration Company (LL&E) and LLOXY Holdings, Inc. (LLOXY) to continue the service authorized under the certificates previously issued to LL&E and LLOXY listed in the Appendix hereto and requesting that Amerada Hess be substituted for LL&E and LLOXY in any proceedings related to those dockets. Amerada Hess also requests that LL&E’s and LLOXY’s rate schedules listed in the Appendix hereto be redesignated as those of Amerada Hess, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: August 2, 1990, in accordance with Standard Paragraph J at the end of this notice.
12. Transcontinental Gas Pipe Line Corp.
[Docket No. CP90-1711-000]
July 16, 1990.

Take notice that on July 10, 1990, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1398, Houston, Texas 77251, filed in Docket No. CP90-1711-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157-205) for authorization to install an additional point of delivery for a certain existing gas sales customer and a certain existing transportation customer, and to construct and operate certain appurtenant facilities under Transco's blanket certificate issued in Docket No. CP82-426-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Public Service Electric and Gas Company (PSE&G) is currently a sales and transportation customer of Transco under various rate schedules. It is further stated that pursuant to approval on September 29, 1989, of Transco's August 7, 1989 Revised Stipulation and Agreement in Docket No. CP89-68 et al., PSE&G has a total firm transportation entitlement of 417,749 Mcf per day. Transco states that New Jersey Natural Gas Company (New Jersey Natural) is an existing firm and interruptible transportation customer of Transco. It is stated that pursuant to an interruptible transportation agreement dated March 1, 1988, New Jersey Natural has an interruptible transportation entitlement of 178,000 Mcf per day. It is stated that such transportation service for New Jersey Natural is rendered pursuant to Transco's blanket certificate issued in Docket No. CP88-328-000. Transco indicates that its existing tariff does not prohibit the addition of the proposed delivery point.

It is stated that Transco has agreed to install facilities at a new point of delivery for PSE&G located at approximate Milepost 6.75 on the 42-inch Lower New York Bay Extension (Main Line C), hereinafter referred to as the Sayreville Delivery Point. The proposed Sayreville Delivery Point would be designed for a maximum daily rate of up to 264,000 Mcf per day. Transco states that neither PSE&G's total firm transportation allocation nor New Jersey Natural's interruptible entitlement would be altered from its current level. It is stated that Transco has sufficient system capacity to accomplish deliveries at the Sayreville Delivery Point without detriment or disadvantage to Transco's other gas sales customers. Further, the addition of the Sayreville Delivery Point would have no effect on Transco's peak day or annual volumetric deliveries to PSE&G and New Jersey Natural would continue to have their sales and transportation entitlements as stated hereinabove. Transco states that PSE&G requires service at the Sayreville Delivery Point as soon as possible and New Jersey Natural would require service at this point later in 1990.

Transco states that the Sayreville Delivery Point was originally proposed as a new delivery point in the Niagara Cogen Project Application in Docket No. CP89-710-000, currently pending before the Commission. Transco states that although authorization for construction of the Sayreville Delivery Point is sought in this prior notice application, Transco has reflected the volumes required for service in the Niagara Cogen Project in the total volumes stated herein. Transco requests that such delivery point remain a part of the Niagara Cogen Project Application, as such delivery point must be authorized as a point of delivery for service in that docket.

It is further stated that Transco would construct, install, own and operate at the Sayreville Delivery Point a 20-inch valve tap connection, two measuring and regulating stations and other appurtenant facilities. It is stated that the costs of construction of the aforementioned facilities are listed in Exhibit Z-2 to Transco's request, which total $2,188,000. Transco states that costs associated with the facilities for PSE&G, except for costs attributable to the service to be provided pursuant to the Niagara Cogen Project, shall be directly reimbursed by PSE&G. Costs associated with the facility for New Jersey Natural shall be directly reimbursed by New Jersey Natural. The construction, installation and operation of such facilities would comply with the environmental requirements set forth in § 157.206(d) of the Regulations, it is stated.

Comment date: August 30, 1990, in accordance with Standard Paragraph G at the end of the notice.

13. Texas Gas Transmission Corp.
[Docket Nos. CP90-1731-000 and CP90-1732-000]
July 16, 1990.

Take notice that on July 12, 1990, Texas Gas Transmission Corporation (Texas Gas), 3000 Frederica Street, Owensboro, Kentucky 42301, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.*

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: August 30, 1990, in accordance with Standard Paragraph G at the end of the notice.

* These prior notice requests are not consolidated.
**APPENDIX**

(Docket No. CP90-1731-000, et al.)

<table>
<thead>
<tr>
<th>Docket number (date filed)</th>
<th>Applicant</th>
<th>Shipper name</th>
<th>Peak Day(^1) average annual</th>
<th>Points of Receipt</th>
<th>Points of Delivery</th>
<th>Start up date rate schedule</th>
<th>Related (^2) dockets</th>
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<tr>
<td>CP90-1731-000 (7-12-90)</td>
<td>Texas Gas Transmission, Corporation, Owensboro, KY</td>
<td>Centran Corp</td>
<td>50,000</td>
<td>Offshore LA, LA, TX, IN, KY</td>
<td>LA</td>
<td>6-14-90, 1T</td>
<td>CP98-686-000, STL0-3804-000</td>
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<td>CP90-1732-000 (7-12-90)</td>
<td>Texas Gas Transmission Corporation, 3800-Frederica Street, Owensboro, KY</td>
<td>Costal Gas Marketing Co</td>
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</table>

\(^1\) Quantities are shown in MMBtu unless otherwise indicated.

\(^2\) The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

[Docket No. CP90-1732-000]  
July 16, 1990.

Take notice that on July 10, 1990, Colorado Interstate Gas Company (CIG), Post Office Box 1057, Colorado Springs, Colorado 80944, filed in Docket No. CP90-1732-000 a request pursuant to Sections 7 and 15 of the Natural Gas Act and the Commission's Regulations under the Natural Gas Act for authorization to add two delivery points for service to Peoples Natural Gas Company Division of Utilicorp United, Inc. (Peoples), an existing sales customer of CIG. CIG proposes to add these delivery points pursuant to its blanket certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG states that it proposes to add the Colorado Springs North City Gate located in section 20, Township 13 South, Range 65 West, and Colorado Springs South City Gate located in section 17, Township 14 South, Range 65 West, both in El Paso County, Colorado, to its service agreement with Peoples. CIG requests authority for a maximum sales and transportation daily volume obligation at both new delivery points of 3,000 Mcf equivalent of natural gas. It is stated that both delivery points are existing sales delivery points for the City of Colorado Springs (City). CIG states that it has been advised that after purchasing gas from CIG at the above delivery points, Peoples will have this gas transported by the City to the facilities of Peoples. This sale of Peoples was formerly by the City, it is stated.

CIG states that no change in Peoples' total daily or annual entitlement is proposed by this request. CIG further states that it believes that it would experience no significant impact on its peak day or annual sales resulting from the addition of the proposed delivery points and the anticipated deliveries resulting from the proposal would be accommodated by CIG's existing transmission system without detriment or disadvantage to CIG's other customers.

Comment date: August 30, 1990, in accordance with Standard Paragraph G at the end of the notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.205). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if on motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the
appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell, 
Secretary. 
[FR Doc. 90-17192 Filed 7-23-90; 8:45 am] 
BILLING CODE 6717-01-M

[Docket Nos. RP90-12-005 and CP89-1554-004] 

Colorado Interstate Gas Co.; Tariff Filing

July 17, 1990.

Take note that on July 13, 1990, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets to its FERC Gas Tariff Original Volume No. 3, to be effective August 1, 1990:

First Revised Sheet No. 94 
First Revised Sheet No. 95 
First Revised Sheet No. 97 
Original Sheet No. 87A 
Original Sheet No. 95B 
First Revised Sheet No. 100 
First Revised Sheet No. 101

CIG states that the purpose of this filing is to eliminate the presently effective "challenge" procedure under which certain interruptible service is curtailed and to replace that procedure with a procedure that will allow those interruptible shippers who do receive service during times of curtailment to continue to receive service subject to certain conditions.

CIG states that copies of its filing were served on all holders of CIG's Volume No. 3 Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell, 
Secretary. 
[FR Doc. 90-17192 Filed 7-23-90; 8:45 am] 
BILLING CODE 6717-01-M

[Docket No. RP90-175-004] 

Colorado Interstate Gas Co.; Compliance Filing

July 17, 1990

Take note that Colorado Interstate Gas Company ("CIG") on July 13, 1990, tendered for filing the following tariff sheets to revise its FERC Gas Tariff Original Volume No. 1, to be effective August 1, 1990:

Sixth Revised Sheet No. 61G12 
Third Revised Sheet No. 81G12-A 
Original Sheet No. 61G12-F

CIG states that the above-referenced tariff sheets are being filed in compliance with the Commission's Orders issued in Docket Nos. RP89-178, et al. and that the sheets reflect new Buyout-Buydown costs incurred by CIG from its former pipeline supplier, Northwest Pipeline Corporation.

CIG states that copies of its filing were served upon all of the parties to these proceedings and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Commission and are available for public inspection.

Lois D. Cashell, 
Secretary. 
[FR Doc. 90-17193 Filed 7-23-90; 8:45 am] 
BILLING CODE 6717-01-M

[Docket No. TM90-2-41-001] 

Paiute Pipeline Co.; Proposed Change In FERC Gas Tariff

July 17, 1990.

Take notice that on July 16, 1990, Paiute Pipeline Company (Paiute) tendered for filing First Revised Sheet No. 11 of its FERC Gas Tariff, Original Volume No. 1, for the purpose of recovering the additional fixed charge allocations of take-or-pay buyout and buydown costs assigned to Paiute by its upstream pipeline supplier, Northwest Pipeline Corporation (Northwest).

Paiute states that the instant filing reflects its bowthrough of direct billed fixed charge allocations of take-or-pay buyout and buydown costs from three separate Northwest Order No. 500 cost recovery proceedings. On January 1, 1990, Northwest's filing in Docket No. RP90-50-000 was accepted by the Commission, reflecting Northwest’s recovery of $1,620,042 of take-or-pay buyout and buydown costs from which $29,533 was direct billed to Paiute by Northwest. Thereafter on April 1, 1990, the Commission accepted Northwest's filing in Docket No. RP90-90-000 reflecting Northwest's recovery of an additional $673,469 of take-or-pay buyout and buydown costs. Pursuant to the Commission's action in Docket No. RP90-90-000, Paiute was directed billed by Northwest $15,912. Most recently, on July 1, 1990, the Commission accepted Northwest's filing in Docket No. RP90-118-000 implementing the recovery of an additional $4,839,120 in Order No. 500 take-or-pay buyout and buydown costs. Paiute's allocation of costs related to Northwest's Docket No. RP90-118-000 is $63,124.

Paiute's First Revised Sheet No. 11 of its FERC Gas Tariff, Original Volume No. 1, reflects the recovery of $333,569, representing the sum of the three direct billed take-or-pay buyout and buydown costs discussed above pursuant to the specific tariff procedures accepted by the Commission in Docket Nos. RP90-245-000,001.

In the instant filing, Paiute also requests that the Commission address an apparent inconsistency in its directives concerning Paiute's approved tariff procedure for recovery of direct billed take-or-pay buyout and buydown costs. Paiute's tariff sheets, as accepted by the Commission on October 27, 1989, required Paiute to file to track changes in its upstream pipeline supplier's Order No. 500 cost recovery rates within a 30-day time period. This Commission approved provision is inconsistent with the Commission's later order of February 23, 1990 in Docket No. RP89-245-001 requiring Paiute to file to track any such changes made by Northwest within a 15-day time period. For the Commission's consideration in clarifying this apparent inconsistency, Paiute noted that its pipeline supplier, Northwest operates on a 30-day billing
cycle. Paiute is not actually billed for the charges until the billing cycle which follows the Commission's acceptance of the new amounts is completed.

Therefore, Paiute respectfully requested the new amounts is completed.

follows the Commission's acceptance of Paiute the 30-day time currently contained in its tariff for filing to track changes in its upstream supplier's Order No. 500 equitable sharing cost recovery rates.

Paiute has requested the Commission to waive the applicable provisions of section 4 of the Natural Gas Act and § 154.222 of the Commission's Regulations to permit its filing herein to become effective as of August 1, 1990.

Paiute states that copies of the filing were served on Paiute's jurisdictional sales customers, interested parties and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 90-17194 Filed 7-23-90; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-25-NG]

Elizabethtown Gas Co.; Application for Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for long-term authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of an application filed by Elizabethtown Gas Company (Elizabethtown) on April 11, 1990, as amended June 29, 1990, for authorization to import up to 10,000 Mcf per day of Canadian natural gas over an initial term of 15 years. The proposed imports would be purchased from Western Gas Marketing Limited (WGML), a subsidiary of TransCanada Pipelines Limited (TCPL). Also, WGML could offer and Elizabethtown could purchase an additional 5,000 Mcf per day on a best-efforts basis.

The requested volumes would be delivered to Elizabethtown at the Niagara point of Tennessee Gas Pipeline Company (Tennessee) near Niagara Falls, New York, and transported in the United States by Tennessee, National Fuel Gas Supply Corporation and Transcontinental Gas Pipe Line Corporation. On June 15, 1990, the Federal Energy Regulatory Commission (FERC), in FERC Docket No. TP80-2-1, issued a Final Environmental Impact Statement (FEIS) which included an evaluation of the facilities proposed to be constructed in order to deliver the proposed imports to Elizabethtown.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.
The annual contract quantity would be 54,790 MMcf of natural gas in excess of the daily contract quantity on a best-efforts basis. Any purchases of excess gas would be used in determining the annual triggering quantity.

Elizabethtown could also increase the firm daily contract quantity by up to 5,000 Mcf per day by notifying WGML in writing. Such daily contract quantity increase would be effective 25 months after receipt of notice, subject to regulatory authorizations.

Pursuant to the gas sales contract, Elizabethtown would purchase gas on the basis of a two-part demand/commodity rate. The demand charge would consist of: (1) The demand toll application to the firm transportation of the gas on TCPL's and NOVA Corporation of Alberta's pipeline systems, and (2) a supply reservation charge reflecting WGML's costs in securing a gas supply, maintaining and administering such gas supply and arranging for the transportation of the gas.

The commodity charge would be calculated by subtracting the demand charge from an adjusted base price. The adjusted base price would be seasonally differentiated and recalculated monthly. During the winter season (November-March) the adjusted base price would be indexed to the weighted average cost of long-term firm gas supplies purchased by Elizabethtown. The adjusted base price for purchases up to a 30 percent load factor, would be indexed to the average cost of all gas supplies purchased by Elizabethtown. For those summer purchases in excess of a 30 percent load factor, the commodity charge would be the lesser of the spot gas price or the No. 6 fuel oil price in Elizabethtown's market.

In addition, Elizabethtown would pay any demand and commodity charges, on an as-billed basis, equal to the charge for transportation on TCPL’s pipeline system as approved by Canada’s National Energy Board applicable to the provision of deliveries at pressures in excess of 400 kilopascals at the Niagara delivery point.

The gas sales contract allows for yearly renegotiation of the pricing provisions upon written notice, and for arbitration if renegotiation does not result in a mutually agreeable resolution. Furthermore, TCPL has warranted WGML’s performance under the gas sales contract.

The decision on this application for import authority will be made consistent with the DOE’s gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters to be considered in making a public interest determination in a long-term import proposal such as this include the need for the gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this import arrangement is in the public interest because the price of the gas is competitive and its Canadian supplier is reliable. Parties opposing the import arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested import is approved, the authorization would be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. The FERC, on June 15, 1980, issued an FEIS on the impacts of constructing and operating proposed facilities related to this project. The DOE will independently review the results of the FERC environmental evaluation on these facilities in the course of making its own environmental determination. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application, must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding.
although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties’ written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the record developed, unless a party requests oral argument. The July 2, 1990 FIFRA ERP supersedes the following previously issued documents:

Except for the civil penalty assessment matrix, the February 10, 1988 FIFRA section 7(c) Enforcement Response Policy remains in effect.

Dated: July 17, 1990.
Connie A. Musgrove,
Acting Director, Office of Compliance Monitoring, Office of Pesticides and Toxic Substances.

[FR Doc. 90-17253 Filed 7-23-90; 8:45 am]
BILLING CODE 6550-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OFP-140000; FR 3799-6]

Availability of Enforcement Response Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the revised Enforcement Response Policy (ERP) for the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This policy, which was issued on July 2, 1990, will be used by the Agency to determine the appropriate civil penalty or other enforcement action to be taken in response to violations of FIFRA. The FIFRA ERP is for use by EPA personnel only, for Federal actions.

ADDRESSES: Persons interested in receiving a copy of the FIFRA ERP should contact: FIFRA ERP, Pesticide Enforcement Policy Branch, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.


SUPPLEMENTARY INFORMATION: On July 2, 1990, the EPA issued an updated FIFRA Enforcement Response Policy (ERP). Once the documentation of a FIFRA violation is complete, the FIFRA ERP will be used by the Agency to select the appropriate enforcement response in consideration of the type and severity of the FIFRA violation. The types of enforcement responses described in the ERP include:

(1) Notices of Detention under FIFRA section 17(c).
(2) Notices of Warning under FIFRA sections 9(c)(3) and 14(a)(2).
(3) Stop Sale, Use, or Removal Orders under FIFRA section 13(e).
(4) Seizures under FIFRA section 13(d).
(5) Injunctions under FIFRA section 16(c).
(6) Civil administrative penalties under FIFRA section 14(a).
(7) Denials, suspensions, modifications, or revocations of Federal applicator certifications under 40 CFR part 171.
(8) Criminal referrals under FIFRA section 14(b).
(9) Recalls. Also described in the FIFRA ERP is the EPA’s policy on “Settlement With Conditions” for civil penalties assessed for violations of FIFRA.

The FIFRA ERP includes: action

AGENCY

ENVIRONMENTAL PROTECTION

BILLING CODE 6550-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

July 18, 1990.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission’s copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20007.

For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 355-7513.

OMB Number: 3060-0130.
Title: Private Fixed, Mobile, and Radio-location Services Supplementary Information to FCC Form 574.
Form Number: FCC Form 574B.
Action: Extension.
Respondents: Individuals or households, state or local governments, businesses or other for-profit (including...
small businesses, and non-profit institutions.
Frequency of Response: On occasion.
Estimated Annual Burden: 300

Responses: 300 Hours.

Needs and Uses: The FCC Form 3785 is a supplement to FCC Form 3784, and must be filed by HP applicants to provide additional data to enable the FCC to comply with treaty agreements and report data to the International Telecommunications Union to aid in resolution of disputes between member nations. The FCC will collect and maintain the data. Treaty personnel will report the data as required.

OMB Number: 3060-0444.
Title: 800 MHz Construction Letter.
Form Number: FCC Form 800A.
Action: Revision.
Respondent: Individuals or households; businesses or other for-profit (including small businesses).
Frequency of Response: On occasion.
Estimated Annual Burden: 4,000
Responses: 4,000 Hours.

Needs and Uses: In accordance with FCC Rules, licensees are required to complete FCC Form 800A to verify that a station has been placed in operation. The data is used by Commission staff to determine whether the license is entitled to their authorization to operate.

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[Fed. Reg. 90-17200 Filed 7-23-90; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Parties:

Crowley Caribbean Transport, Inc.
Sea-Land Service, Inc.
Seaboard Marine Ltd.
Sea-Land Service, Inc.
Crowley Caribbean Transport, Inc.

Synopsis: The proposed amendment would add Neptune Orient Lines, Ltd. as a party to the Agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: July 18, 1990.

Joseph C. Polking,
Secretary.

[Fed. Reg. 90-17223 Filed 7-23-90; 8:45 am]
BILLING CODE 6730-01-M

Security for the Protection of the Public Financial Responsibility To Meet Liabilities Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Princess Cruise Lines Inc. and Astramar S.P.A., 10100 Santa Monica Blvd., Los Angeles, CA 90067-4189.

Vessels: CROWN PRINCESS.


Joseph C. Polking,
Secretary.

[Fed. Reg. 90-17223 Filed 7-23-90; 8:45 am]
BILLING CODE 6730-01-M

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's
Transportation Services, Inc., et al.; Implementing regulations at 46 CFR part 540, as amended:

Princess Cruise Lines Inc. and Astrumar S.P.A., 10100 Santa Monica Blvd., Los Angeles, CA 90067-4289.

Vessel: RECAL PRINCESS. 


Joseph C. Polking,
Secretary.

[FR Doc. 90-17224 Filed 7-23-90; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 90-20]

Transportation Services, Inc., et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Incorporated as agent for Sea-Land Service, Inc. and Crowley Caribbean Transport, Inc. (“Complainant”) against American Import Co. (“Respondent”) was served July 18, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to remit ocean freight charges lawfully assessed pursuant to the applicable tariff for shipments of containerized pine handles from Honduras to the United States between December 1988 and November 1989.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan (“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 July 18, 1990, and the final decision of the Commission shall be issued by November 15, 1991.

Joseph C. Polking,
Secretary.

[FR Doc. 90-17223 Filed 7-23-90; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 90-19]

Transportation Services, Inc., et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Incorporated as agent for Sea-Land Service, Inc. and Crowley Caribbean Transport, Inc. (“Complainant”) against American Import Co. (“Respondent”) was served July 18, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to remit ocean freight charges lawfully assessed pursuant to the applicable tariff for shipments of containerized frozen beef from Honduras to the United States between December 1988 and January 1989.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan (“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.

Joseph C. Polking,
Secretary.

[FR Doc. 90-17221 Filed 7-23-90; 8:45 am]
BILLING CODE 6730-01-M

[Docket No. 90-22]

Transportation Services, Inc., et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Transportation Services, Incorporated as agent for Crowley Caribbean Transport, Inc. (“Complainant”) against Idwell, Thompson & Matheous, Inc. (“Respondent”) was served July 18, 1990. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing and refusing to remit ocean freight charges lawfully assessed pursuant to the applicable
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 July 18, 1991, and the final decision of the Commission shall be issued by November 15, 1991.

Joseph C. Polking, Secretary.

[FR Doc. 90-17222 Filed 7-23-90; 8:45 am] BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 15, 1990

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 15, 1990. The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that economic activity is continuing to expand moderately. Total nonfarm payroll employment increased more slowly in March and April after sharp advances earlier in the year; its average growth thus far this year has been above that in the second half of 1989, in part because of the hiring of temporary workers for the census. In April, the civilian unemployment rate moved up to 5.4 percent. Industrial production declined in April, reflecting what appears to be a temporary cutback in the manufacture of motor vehicles. Consumer spending has been sluggish on balance in recent months; outlays for goods have been weak while expenditures for services have remained strong. Business spending for equipment has been rising, but construction activity, both residential and nonresidential, appears to have weakened after a temporary boost early in the year. The nominal U.S. merchandise trade deficit narrowed somewhat in January and February from its average rate in the fourth quarter. Consumer prices continued to rise at a faster pace in March than in 1989; producer prices were down somewhat further in April, reflecting additional unwithholding of the earlier surge in prices of food and energy. The latest data on employment costs suggest some deterioration in underlying trends.

Short-term interest rates have declined a little on balance since the Committee meeting on March 27, while rates in long-term debt markets have risen slightly over the period. In foreign exchange markets, the trade-weighted value of the dollar rose from other G-10 currencies declined considerably over the intermeeting period.

Growth of M2 slowed in April and that of M3 remained relatively weak. Through April, expansion of M2 and M3 was a little above the midpoint and around the lower end, respectively, of the ranges established by the Committee for 1990.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 3 to 7 percent and 2 1/2 to 7 1/2 percent respectively, measured from the fourth quarter of 1989 to the fourth quarter of 1990. The monitoring range for growth of total domestic nonfinancial debt was set at 5 to 9 percent for the year. The behavior of the monetary aggregates and developments in foreign exchange and domestic financial markets, slightly greater reserve restraint or slightly lesser reserve restraint would be consistent with growth of M2 and M3 over the period from March through June at annual rates of about 4 and 3 percent respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are expected to be consistent with growth of M2 and M3 over the period from March through June at annual rates of about 4 and 3 percent respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are consistent with the Committee’s range for growth of both monetary aggregates.

The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from March through June at annual rates of about 4 and 3 percent respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are consistent with the Committee’s range for growth of both monetary aggregates.

By order of the Federal Open Market Committee, July 17, 1990.

Normand Bernard, Assistant Secretary, Federal Open Market Committee.

[FR Doc. 90-17224 Filed 7-23-90; 8:45 am] BILLING CODE 6720-01-M

Ira Hoberman, et al.; Change in Bank Control Acquisitions of Shares of Banks or Bank Holding Companies

The notifications listed below have applied under the change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board’s Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).
Texas: First City, Texas-Tyler, Tyler, Texas.


William W. Wiles, Secretary of the Board.

[FR Doc. 90-17202 Filed 7-23-90; 8:45 am]
BILLING CODE 6210-01-M

Interbanc Financial Group, Inc., 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 summarizing the evidence that would be presented at a hearing. Unless otherwise noted, comments regarding each of these applications must be received not later than August 17, 1990.

A. Federal Reserve Bank of Atlanta

1. Interbanc Financial Group, Inc., Fort Lauderdale, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Interbanc Savings and Loan Association, Fort Lauderdale, Florida, which will convert to a bank.

B. Federal Reserve Bank of St. Louis


1. First National Insurance Agency, Inc., Exeter, Nebraska; to acquire an additional 8.4 percent of the voting shares, for a total of 51.9 percent, of First National Bank in Exeter, Exeter, Nebraska, for a total of 51 percent.

D. Federal Reserve Bank of Dallas

1. First Canadian Bancorp, Inc., Houston, Texas; to acquire 500 percent of the voting shares of Lipscomb Bancshares, Inc., Higgins, Texas, and thereby indirectly acquire First National Bank in Higgins, Higgins, Texas.


William W. Wiles, Secretary of the Board.

[FR Doc. 90-17201 Filed 7-23-90; 8:45 am]
BILLING CODE 6210-01-M

Valley Holding Co.; Application To Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

The 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 affects, 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. Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 17, 1990.

A. Federal Reserve Bank of Minneapolis

1. Valley Holding Company, Ronan, Montana; to engage de novo in the sale of credit life and health and accident insurance in conjunction with the lending function at Valley Bank of Ronan pursuant to § 225.23(h)(6)(i) of the Board's Regulation Y. These activities will be conducted in Lake County, Sander County, Missoula County, and Flathead County, Montana.


William W. Wiles, Secretary of the Board.

[FR Doc. 90-17203 Filed 7-23-90; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BDP-597-N]

Medicare and Medicaid Programs;

ICD-9-CM Coordination and Maintenance Committee Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee. The public is invited to participate in the discussion of the topic areas.

DATES: The meeting will be held on Thursday, July 26, 1990, from 9 a.m. to 4 p.m. Eastern Daylight Savings Time.

ADDRESS: The meeting will be held in room 357A/359A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrice Robins, (301) 488-6594.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both
health-related DHHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use in Federal programs. The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modifications, updating, and use in Federal programs. It is co-chaired by the National center for Health Statistics and the Health Care Financing Administration.

The Committee holds public meetings to present proposed coding changes and other educational issues. The meetings provide an opportunity for input concerning these issues to representatives of organizations active in medical coding, as well as physicians, medical record administrators, and other members of the public. The Committee encourages the public to participate in these meetings. After considering the comments presented at the public meetings, the Committee makes recommendations concerning the proposed changes to the Director of NCHS and the Administrator of HCFA for their approval.

At this meeting, the Committee will discuss: balloon dilation of the prostate, spinal bone growth stimulator, harvesting and retrieval of ovum (egg) and implantation of embryo into fallopian tube, extracranial-intracranial (EC-IC) arterial bypass surgery, holter monitoring, gastrointestinal hemorrhage, urinary dysfunction, prolonged pregnancy, addenda for volumes 1 and 2, and other topics.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program; No. 13.773, Medicare- Hospital Insurance Program; No. 13-774, Medicare— Supplementary Medical Insurance)

Dated: July 11, 1990.

Gail R. Wilensky, Administrator, Health Care Financing Administration.

[FR Doc. 90-17162 Filed 7-23-90; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

National Practitioner Data Bank; User Fee

The Health Resources and Services Administration (HRSA), Public Health Service (PHS), Department of Health and Human Services (DHHS), is announcing the fee that will be charged entities and individuals authorized to request information from the National Practitioner Data Bank when the Data Bank becomes operational. The date that the Data Bank will open for operation will be announced through a separate Notice in the Federal Register.

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99-960, as amended (42 U.S.C. 11101 et seq.). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information. In the fiscal year 1991 budget request, proposed appropriations language would authorize user fees to cover the full cost of operating the Data Bank and would authorize the fees collected to remain available until expended.

Final regulations at 45 CFR part 60, published in the Federal Register on October 17, 1989, set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations should be consulted for the definition of terms used in this announcement. These regulations govern the reporting and disclosure of information concerning:

(1) Payments made for the benefit of physicians, dentists, and other health care practitioners as a result of medical malpractice actions and claims; and
(2) Certain adverse actions taken regarding the licenses, clinical privileges, and membership in professional societies of physicians and dentists.

In accordance with §§ 60.10 and 60.11 of the regulations, information in the Data Bank will be available to the following persons, entities, or their authorized agents:

(a) A hospital that requests information at the time a physician, dentist, or other health care practitioner applies for a position on its medical staff (courtesy or otherwise), or for clinical privileges at the hospital.

(b) A hospital that requests information concerning a physician, dentist, or other health care practitioner who is on its medical staff (courtesy or otherwise) or has clinical privileges at the hospital.

(c) A physician, dentist, or other health care practitioner who requests information concerning himself or herself.

(d) Boards of Medical Examiners or other State licensing boards.

(e) Health care entities which have entered or may be entering employment or affiliation relationships with a physician, dentist, or other health care practitioner, or to which the physician, dentist, or other health care practitioner has applied for clinical privileges or appointment to the medical staff.

(6) An attorney, or individual representing himself or herself, who has filed a medical malpractice action or claim in a State or Federal court or other adjudicative body against a hospital, and who requests information regarding a specific physician, dentist, or other health care practitioner who is also named in the action or claim. Provided, that this information will be disclosed only upon the submission of evidence that the hospital failed to request information from the Data Bank as required by § 60.10(a) of the regulations, and may be used solely with respect to litigation resulting from the action or claim against the hospital.

(7) A health care entity with respect to professional review activity.

A Federal agency authorized to request information from the Data Bank. The agency must employ or otherwise engage under arrangement (e.g., such as a contract) the services of a physician, dentist, or other health care practitioner, or have the authority to sanction such practitioners covered by a Federal program and enter into a memorandum of understanding with DHHS regarding its participation in the Data Bank.

A person or entity requesting information in a form which does not permit the identification of any particular health care entity, physician, dentist, or other health care practitioner.

As stated in § 60.12(c)(1) of the regulations, "A request for information from the Data Bank will be regarded as also an agreement to pay the associated fee." Effective on the date the Data Bank opens, a fee of $2.00 will be charged for each request for information concerning any particular physician, dentist, or other health care practitioner. Individuals and entities (including Federal entities) authorized to request information from the Data Bank will be charged a fee either when information regarding a particular physician, dentist, or other health care practitioner is disclosed to them, or when they are informed by the Data Bank that it does not record on a particular physician, dentist, or other health care practitioner.

When a request is for information on more than one physician, dentist, or other health care practitioner, the total fee will be $2.00 times the number of individuals about whom information is being requested. (For example, if a hospital submits a request for information about each of the 30 individuals comprising its medical staff, the fee would be: $2.00 X 30 = $60.00.) Individuals requesting
To prepare Environmental Impact Statement; Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement on a rights-of-way for water and gas pipelines located in northern Washoe County, Nevada.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Carson City District, Lahontan Resource Area, will be directing the preparation of an EIS to be prepared by a third party contractor on the impact of proposed Washoe County right-of-way for water and gas pipelines for a project transporting groundwater from the Fish Springs Ranch area in northern Washoe County to the metropolitan area of Washoe County, referred to as the Truckee Meadows Project, proposed on public and private lands.

The lands being considered as suitable for the State to select under the Enabling Act in the planning amendment are described as follows:

Salt Lake Meridian
T. 34 S., R. 13 W., Sec. 35, SE 1/4.
Containing 160.00 acres in Iron County, Utah.
DATES: Written comments will be accepted until August 23, 1990.

ADDRESSES: Written comments should be sent to Mike Phillips, Area Manager, Lahontan Resource Area; Carson City District Office; Bureau of Land Management; 1535 Hot Springs Road, Suite 300; Carson City, Nevada 89706-0638.

FOR FURTHER INFORMATION CONTACT: Write to the above office or call Dave Loomis at (702) 885-6100.

SUPPLEMENTARY INFORMATION: Washoe County, Nevada has submitted a Right-of-Way Application to the Bureau of Land Management (BLM) for the purpose of constructing and maintaining a 36-inch diameter buried water pipeline from private property known as the Fish Springs Ranch on the Nevada side of Honey Lake Valley, 31 miles north of Reno; and, a 6-inch diameter buried natural gas pipeline from west of Wadsworth; Nevada to intersect the water pipeline route at Bedell Flat, at which point it would parallel the water pipeline north to Fish Springs Ranch.

The purpose of the 38-mile pipeline is to transport up to 17,500-acre feet (5.54 billion gallons) of water annually to be utilized by Washoe County within the Truckee Meadows area. Applications to transport the water from Fish Springs Ranch for use in the Truckee Meadows have been submitted to the Nevada State Engineer, who has noticed a hearing for June 21 and 22, 1990, and July 19, 20 and 21, 1990 in the Washoe County Commission Chambers, Reno, Nevada. As a result of the hearing, the State Engineer, who is responsible for the appropriation of waters within the State of Nevada, will rule on the applications. Processing of the preliminary draft EIS will be contingent upon Washoe County receiving a favorable ruling by the State Engineer on its applications for interbasin transfer.

The County is pursuing this water source for the Truckee Meadows to supplement existing and growing demand consistent with Washoe County's master plan. The County has pursued the Truckee Meadows Project as a reliable source of water in concert with its local planning objectives.

The proposed water pipeline traverses approximately 35 miles of BLM administered lands in the Lahontan Resource Area of BLM's Carson City District. Another 2.8 miles of the proposed water pipeline route traverses private lands.

Two pump stations, occupying about one-third acre each, would be constructed. One station, which includes a 500,000-gallon storage tank, would be located on private lands at the beginning of the pipeline. The other would be located on BLM administered lands in Bedell Flat near the halfway point of the pipeline. Two storage tanks, with a capacity of 2.5 million gallons each, will be constructed on public lands near the pipeline terminus east of Lemmon Valley. The pump stations will be operated with energy provided by natural gas. Production wells will be located in the area of the Fish Springs Ranch.

Construction of the pipeline is estimated to take six months with construction estimated to begin in the late spring of 1991. Cost of the pipeline project is estimated at $78 million. During the construction phase, the project would employ approximately 100 people. When completed, operation, maintenance and security personnel would total about 10 employees.

The natural gas pipeline will be approximately 57 miles in length, of which 20 miles will parallel the water pipeline. From its origin at the Paiute Natural Gas Pipeline near Wadsworth, to the water pipeline through public lands, construction would be adjacent to existing roads to the extent practicable. The gas pipeline would traverse approximately ten miles of BLM administered lands before intersecting the water pipeline right-of-way at Bedell Flat in Washoe County.

The scoping process for the EIS will include: (1) identification of issues to be addressed; (2) identification of viable alternatives; and (3) notification of interested groups, individuals and agencies so that additional information concerning these issues can be obtained. Public hearing(s) will be conducted on the Draft Environmental Impact Statement.

Dated: July 17, 1990.

Fred Wolf, Acting State Director, Nevada.

[FR Doc. 90-17260 Filed 7-23-90; 8:45 am]
BILLING CODE 4310-HC-M

Exchange of Public and Private Lands in Owyhee County, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—ID-16452; exchange of public and private lands in Owyhee County, Idaho.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Boise Meridian

T. 8 S., R. 5 E., Sec. 21: S1/4SW1/4; Sec. 12: SE1/4SW1/4; Sec. 18: SW1/4NW1/4, E1/4NW1/4, SE1/4SW1, W1/4SE1/4, SE1/4SE1/4; Sec. 14: SE1/4NW1/4, E1/4NW1/4SE1/4, NW1/4SE1/4, NE1/4SE1/4.

T. 8 S., R. 6 E., Sec. 27: NW1/4SE1/4; Sec. 34: NE1/4, SE1/4SE1/4; Aggregating 910 acres, more or less in Owyhee County, Idaho.

In exchange for the above lands, the BLM proposes to acquire the following described private lands from Raymond and Bonnie Colyer:

Boise Meridian

T. 9 S., R. 3 E., Sec. 19: E1/4E1/4; Sec. 20: NW1/4NW1/4; Sec. 30: E1/4NW1/4, NE1/4SE1/4.

T. 10 S., R. 2 E., Sec. 3: SW1/4NW1/4, W1/2SW1/4, SE1/2NW1/4; Sec. 10: SW1/4SE1/4, E1/4NW1/4, NW1/4SE1/4; Aggregating 660 acres, more or less in Owyhee County, Idaho.

DATES: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705. Objections will be reviewed by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: John Sullivan at (208) 334-1582. The Environmental Assessment/Land Report is also available for review at the above address.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire private inholdings containing riparian and bighorn sheep habitat, and open space values, while disposing of scattered tracts of public land that are difficult and uneconomic to manage. Over half of the acreage being acquired lies adjacent to the Little Jacks Creek Wilderness Study Area. Acquisition of these inholdings will further the objectives of BLM's Recreation 2000, Fish and Wildlife 2000, and riparian/wetland initiatives, and will greatly improve management efficiency and effectiveness. The public interest will be well served by the completion of this exchange.

Publication of this notice in the Federal Register segregates the public
lands from operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first.

The exchange will be completed on an equal value basis. Full equalization of values will be achieved through acreage adjustment and/or cash payment in an amount not to exceed 25 percent of the value of the lands being transferred out of Federal ownership.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. The United States reserves to itself a right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 [43 U.S.C. 956].

2. The patent will be issued subject to those rights for a road held by the Owyhee County Road and Bridge Department, its successors or assigns, under the authority of Section 8 of the Act of July 26, 1866, Revised Statute 2477 (43 U.S.C. 932, 14 Stat. 253); Serial No. ID-942-00-4730-12.

Dated: June 28, 1990.

J. David Brunner, District Manager.

[FR Doc. 90-17176 Filed 7-23-90; 8:45 am]

BILLING CODE 4310-00-M

[30040] Federal Register / Vol. 55, No. 142 / Tuesday, July 24, 1990 / Notices

[FR Doc. 90-17165 Filed 7-23-90; 8:45 am]

Supplementary Information:

On July 6, 1990, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Salt Lake Meridian.

T. 1 N., R. 16 W.,
Sec. 4, Lots 1-4, SW 1/4, SW 1/4.
Sec. 3, Lots 1-4, NW 1/4, NW 1/4.
Sec. 2, Lots 1-4, NE 1/4, NE 1/4.
Sec. 1, Lots 1-4, SE 1/4, SE 1/4.

T. 2 N., R. 16 W.,
Sec. 1, Lots 1-4, SW 1/4, SW 1/4.
Sec. 2, Lots 1-4, NW 1/4, NW 1/4.
Sec. 3, Lots 1-4, NE 1/4, NE 1/4.
Sec. 4, Lots 1-4, SE 1/4, SE 1/4.
Sec. 5, NE 1/4.
Sec. 6, SE 1/4.
Sec. 7, NE 1/4.
Sec. 8, SW 1/4.
Sec. 9, NW 1/4.
Sec. 10, SE 1/4.
Sec. 11, NW 1/4.
Sec. 12, SW 1/4.
Sec. 13, W 1/4.
Sec. 14, E 1/2.
Sec. 15, SE 1/4.

The purpose of the withdrawal is to protect the Bonneville Salt Flats Special Recreation Management Area.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Utah State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection the the proposed
withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Utah State Director at the above indicated address, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: July 16, 1990.
James M. Parker, State Director.

BILLING CODE 4310-DQ-M

Bureau of Reclamation

Central Valley Project, California, Realty Action; Competitive Sale of Federal Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described tract of land has been identified for disposal under the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), at no less than the appraised fair market value. The Bureau of Reclamation will accept bids on the land described below and will reject any bids for less than $76,000, the appraised value.

DATES: September 26, 1990.

FOR FURTHER INFORMATION CONTACT: Bill Grangood, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630, telephone (916) 988-1707.

SUPPLEMENTARY INFORMATION: The property is described as a tract of land in the Rancho de los Americanos being a portion of Tract One as described in the Grant Deed recorded in Book 69-10 at page 25 and a portion of Tract One as described in Book 69-05-02 at page 758, both Official Records of Sacramento County, CA, containing an area of 1.90 acres, more or less.

The land will be offered for sale through the competitive bidding process. A sealed bid sale will be held at the Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA on September 26, 1990, at which time the sealed bids will be opened. Sealed bids will be accepted at the Folsom Office until close of business on September 25, 1990.

Reclamation may accept or reject any and all offers, or withdraw any land or interest in land for sale, if, in the opinion of the Regional Director, consummation of the sale would not be fully consistent with the Act of February 2, 1911 (36 Stat. 895, 43 U.S.C. 374), or other applicable laws. Should the land remain unsold, it may be reoffered for sale at a later date as determined by the Regional Director.

The sale of the land is consistent with the Bureau of Reclamation land use planning, and it was determined that the public interest would best be served by offering this land for sale.

The sale of the land will be subject to easements or rights-of-way existing or of record in favor of the public or third parties.

For a period of 60 days from the date of this notice, interested parties may submit comments to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825. Any adverse comments will be evaluated by the Regional Director who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the Regional Director, this Realty Action will become the final determination of the Department of the Interior.

Dated: July 6, 1990.
Neil W. Schild, Acting Regional Director, Mid-Pacific Region, Bureau of Reclamation.

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Availability of Draft Recovery Plan for Stephanomeria Malheurensis (Malheur Wirelettuce) for Review and Comment


ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Malheur wirelettuce. This species occurs in a single locality approximately 26 miles south of Burns, Oregon. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 24, 1990, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may examine a copy during normal business hours at the Boise Field Station, U.S. Fish and Wildlife Service, 4606 Overland Road, Room 576, Boise Idaho, 83705 or the Portland Regional Office, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232-4101. Written comments and materials regarding the plan should be addressed to Mr. Charles Lobdell at the above Boise, Idaho address.

Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above Portland, Oregon address.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Parenti at the above Boise, Idaho address (telephone 208-334-1991 or 8-564-1991).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service’s endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will
consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans. Malheur wirelettuce is known to occur in nature at only a single locality approximately 26 miles south of Burns, Oregon, at the South Narrows Area of Critical Environmental Concern on Bureau of Land Management (Bureau) land.

The principle causes of its decline are habitat modifications associated with the invasion of exotic species (cheatgrass), grazing by native herbivores, and fire. Recovery efforts for the Malheur wirelettuce will focus on maintaining and enhancing the existing population by searching for and securing any new populations found and reestablish additional plantings at the Narrows Area of Critical Environmental Concern. Several public and private entities are cooperating in the Malheur wirelettuce recovery program, including the Bureau, Boise State University, Malheur Field Station, Berry Botanic Garden and High Desert Conferences.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 18, 1990.

William E. Martin,
Acting Regional Director.

[FR Doc. 90-17210 Filed 7-23-90; 8:45 am]
BILLING CODE 4310-58-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-469 (Preliminary)]

High-Information Content Flat Panel Displays and Subassemblies Thereof From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-

469 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of high-information content flat panel displays and subassemblies thereof, however provided for in the Harmonized Tariff Schedule of the United States (HTS) that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by September 4, 1990. For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT:

Debra Baker (202-252-1180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on July 18, 1990 by the Advanced Display Manufacturers Association, Washington, DC. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

Pursuant to § 207.3 of the Commission's rules (19 CFR 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on August 7, 1990 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202-252-1180) not later than August 3, 1990 to arrange for their appearance.

Parties in support of the imposition of
antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

**Written Submissions**

Any person may submit to the Commission on or before August 10, 1990 a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in §207.15 of the Commission’s rules (19 CFR 207.15). If briefs contain business proprietary information, a nonbusiness proprietary version is due August 13, 1990. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with §201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled “Business Proprietary Information.” Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§201.6 and 207.7 of the Commission’s rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to §207.7(a) of the Commission’s rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than August 14, 1990. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs. A nonbusiness proprietary version of such additional comments is due August 15, 1990.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to §207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: July 20, 1990.

Kenneth R. Mason,
Secretary.

[FR Doc. 90-17342 Filed 7-23-90; 8:45 am]
Dr. Erwin Williams of the James Couzens Medical Center. The medical center did not respond and Dr. Erwin Williams died in either late 1985 or January or February 1986. A review of the computer printout of prescriptions filled by Respondent revealed that a large majority of these purportedly issued by any doctor named Williams were dated after February 1986, and most of these prescriptions were filled after May 31, 1986, the date Dr. Erwin Williams' DEA registration expired.

A professor of pharmacology at the University of Michigan reviewed certain of Respondent's records and determined that Respondent did not meet the minimum standards of pharmacy practice. As he stated in his report, "[the prescriptions presented should have indicated to the pharmacist[s] that the medications were not being used for legitimate medical purposes even though the prescriptions may have been written by licensed physicians." The professor further stated that, "[e]xception action that should have been taken by the pharmacist[s] should have been to not dispense the prescriptions and report the physicians and patients to the proper authorities, and since this was not done the pharmacist[s] did not meet minimum standards of practice."

After the execution of the administrative inspection warrant in May 1987, Respondent continued to order large quantities of highly abused substances. For the period January 1 to June 30, 1988, Respondent ranked third in the State of Michigan in purchases of codeine-base products. Alfred Silverman testified at the hearing in this matter that he believed that a pharmacist's "duty is to serve the community for the community's welfare and to do that by filling the prescriptions as written by the physician in the manner and form that the physician has recommended or written," and "to make sure that he dispenses what it is that the doctor wrote for and that the patient has an understanding of what they're taking." He further testified that he never questioned a doctor's prescribing Doriden and Tylenol with codeine simultaneously because "that's within his province and his prerogative."

The Administrator may revoke a DEA Certificate of Registration and deny any pending application for such registration, if he determines that the continued registration would be inconsistent with the public interest. 21 U.S.C. 823(f) and 824(a)(4). Pursuant to 21 U.S.C. 823(f), "[i]n determining the conduct of controlled substances. [4] Compliance with applicable State, Federal, or local laws relating to controlled substances. [5] Such other conduct which may threaten the public health or safety." It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of the factors, and give each factor the weight he deems appropriate. See, Henry J. Schwetz Jr., M.D., Docket No. 86-42, 54 FR 16422 (1989); Neville H. Williams, D.D.S., Docket No. 87-37, 53 FR 23465 (1988).

In this case, the first and third factors do not apply. However, there is extensive evidence relating to Respondent's dispensing practices and compliance with state and Federal law relating to controlled substances, and thus the second and fourth factors are relevant.

The administrative law judge noted that 21 CFR 1306.04(a) provides that: A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.

"[T]he corresponding responsibility of a pharmacist means, among other things, that a pharmacist is obligated to refuse to fill a prescription if he knows or has reason to know that the prescription was not written for a legitimate medical purpose."

The administrative law judge concluded that the record establishes that Respondent filled prescriptions for customers who received controlled substances in quantities far exceeding those recommended by the Physician's Desk Reference too frequently, and for excessive periods of time. Customers received the same controlled substances from several different physicians. This circumstance alone should have aroused Alfred Silverman's suspicions as the validity of their prescriptions. Furthermore, many of these customers received both Tylenol with codeine #4 and Doriden, a combination which Alfred Silverman should have known was highly abused. Finally, Respondent filled hundreds of controlled substance prescriptions purportedly issued by a physician who was, in fact, dead.

The administrative law judge concluded that it is not necessary to find that Alfred Silverman in fact knew that many prescriptions presented to him were not written for a legitimate medical purpose, for there is no question that a conscientious pharmacist would have been suspicious of these prescriptions and would have refused to fill them. There is also no question that Alfred Silverman's filling of these prescriptions demonstrated an utter disregard for his responsibility as a DEA registrant. Additionally, Alfred Silverman's refusal to acknowledge the impropriety of his dispensing practices, and his ordering of large quantities of many of the substances at issue in this proceeding, even after the initiation of the investigation, give rise to the inference that Respondent is not likely to act more responsibly in the future.

The administrative law judge concluded that Respondent's continued registration is not in the public interest and recommended that its DEA Certificate of Registration be revoked and any pending applications be denied. The Acting Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. The number of controlled substance prescriptions filled by Respondent, as well as the frequency, duration, combination of drugs and prescribing physicians, screamed for Respondent to recognize that these were not legitimate prescriptions. Instead, Respondent filled these prescriptions without question. Such total disregard for the public health and safety will not be tolerated.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AM9607334, previously issued to Medic-Aid Pharmacy, be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective August 23, 1990.
DEPARTMENT OF LABOR
Office of the Secretary
Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background
The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review
As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The title of the recordkeeping/reporting requirement.
- The Office of the Department issuing this recordkeeping/reporting requirement.
- The number of forms in the request for approval, if applicable.
- An estimate of the number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.
- The number of forms in the request for approval, if applicable.
- An abstract describing the need for and uses of the information collection.

Comments and Questions
Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/OSHA/PWBA/VESTS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension
Occupational Safety and Health Administration
Notice of Alleged Safety and Health Hazards, OSHA—7 Form 1218-0004
On occasion Individuals or households 10,500 respondents; 4,686 total burden hours; 40 average minutes per response

The OSHA-7 Form is used by employees to report unhealthful and/or unsafe conditions in the workplace. Employee reports are authorized by section 8(f) of the Occupational Safety and Health Act. The information is used by OSHA to evaluate the alleged hazardous working conditions and to schedule an inspection or respond in another manner, as appropriate.

Employment Standards Administration Certificate of Medical Necessity 1213-0113; CM-899
Annually Businesses or other for-profit; non-profit institutions; small businesses or organizations 10,000 respondents; 4,000 total burden hours; 20–40 min. per response; 1 form
This form is completed by the miner's doctor and is used by DCMWC to determine if the miner beneficiary meets the specific impairment standards to qualify for durable medical equipment; home nursing care and/or pulmonary rehabilitation.

Mine Safety and Health Administration Application for Use of Explosive Materials and Blasting Units (30 CFR 22606) 1218-0005
On Occasion Businesses or other for-profit; small businesses or organizations 7 respondents; 1 hour per response; total burden 7 hours
In the absence of permissible explosives or blasting units having adequate blasting capacity for metal and nonmetal hassy mines, this standard provides procedures by which mine operators shall notify MSHA of all nonapproved explosive materials and blasting units to be used prior to their use in underground gassy metal and nonmetal mines.

MSHA uses this information to ensure that safe practices are followed, and to determine that the procedures and safeguards used protect the safety of all persons in the mine during ignition and operation of a retort.

Reinstatement
Pension and Welfare Benefits Administration Suspension of Benefits Regulation 1210-0048
Other (Whenever benefits are suspended) Small businesses or organizations 59,771 responses; 14,943 hours; 25 hours per response

DOL Regulation § 2550.203–3 allows a plan to suspend an individual's pension benefits if the individual continues to work or returns to work. The plan is required to notify the individual during the first calendar month or payroll period in which the plan withheld payment of the reasons for the suspension.

Signed at Washington, DC, this 19th day of July, 1990.

Paul E. Larson, Departmental Clearance Officer.
[FR Doc. 90-17243 Filed 7-23-90; 8:45 am]

Employment and Training Administration
[TA-W-24,426]
Maine Woods Livermore Falls Division Livermore Falls, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (22 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 29, 1990 applicable to all workers of Maine Woods, Livermore Falls Division, Livermore Falls, Maine. The notice was published in the Federal Register on July 12, 1990 (55 FR 20699).

The Department also issued a certification, TA-W-20,348 for the same worker group on January 20, 1988 which expired on January 20, 1990.
The Department, on its own motion, is amending TA-W-24,420 by deleting the April 27, 1989 impact date and inserting a new impact date of January 20, 1990 in order to delete the overlap period for coverage in the two certifications. The amended notice applicable to TA-W-24,420 is hereby issued as follows:

All workers of Maine Woods, Livermore Falls Division, Livermore Falls, Maine who became totally or partially separated from employment on or after January 20, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of July 1990.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-17246 Filed 7-23-90; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period July 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24,426; Raw Hide Fleshing

Machinery Corp., Macungie, PA

TA-W-24,300; Sombur Machine & Tool Co., Port Huron, MI

TA-W-24,406; Vincenzo Fashions, Newark, NJ

TA-W-24,400; R.M.R. Corp., Elkton, MD

TA-W-24,338; Eleni Fashions, Inc., Newark, NJ

TA-W-24,306; Martec, Inc., Wallingford, CT

TA-W-24,298; Ervite Corp., Erie, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24,412; Chrysler Corp., Stickney Rd Assembly Plant, Toledo, OH

Increased imports did not contribute importantly to workers separations at the firms.

TA-W-24,337; Cinch Connectors, Pocahontas, AR

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-24,411; Bowman Transportation, Godsdon, AL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24,507; Magee's Enterprises, Alma, WA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-24,445; Lake Shore, Inc., Marquette, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-24,415; Datadac Addressograph, Holmesville, OH

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-24,379; Garfield Sportswear, Inc., Garfield, NJ

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,427; Viner Brothers, Inc., Presque Isle, ME

A certification was issued covering all workers separated on or after April 20, 1989.

TA-W-24,430; Apertus Technologies/ Lee Data Corp., Eden Prairie, MN

A certification was issued covering all workers separated on or after May 2, 1990.

TA-W-24,405; Supercraft Coats, Garfield, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,402; Rosario's Sportswear, PA

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,407; Warrenton Rubber Co., Warrenton, CA

A certification was issued covering all workers separated on or after April 23, 1989 and before November 30, 1989.

TA-W-24,304; Napco Security Systems, Pine Brook, NJ

A certification was issued covering all workers separated on or after February 16, 1990 and before June 18, 1990.

TA-W-24,432; Arthur Winer, Cary, IN

A certification was issued covering all workers separated on or after May 17, 1989.

TA-W-24,392; N & R Fashions, Paterson, NJ

A certification was issued covering all workers separated on or after April 11, 1989.

TA-W-24,419; La Fashions, Hoboken, NJ

A certification was issued covering all workers separated on or after April 21, 1989.

TA-W-24,382; General Motors Corp., Hydramatic Div., Three River, MI

A certification was issued covering all workers separated on or after May 5, 1990.

TA-W-24,403; S & F Modewell, Passaic, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,338; The Chamberlain Group, Inc., Nogales, AZ

A certification was issued covering all workers separated on or after April 19, 1989.

TA-W-24,360; Arcadia Fashions, Paterson, NJ
A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,363; Action Tungsten, Inc.
East Brunswick, NJ

A certification was issued covering all workers separated on or after January 1, 1990 and prior to July 1, 1990.

TA-W-24,413; Clair Manufacturing Co.,
Thurmont, MD

A certification was issued covering all workers separated on or after January 1, 1990.

TA-W-24,334; The Chamberlain Group,
Inc., Hot Springs, AR

A certification was issued covering all workers separated on or after April 19, 1989.

TA-W-24,358; Vandel Services, Inc.,
East Newark, NJ

A certification was issued covering all workers separated on or after April 18, 1989.

TA-W-24,364; American Design &
Fashion, Inc., Passaic, NJ

A certification was issued covering all workers separated on or after May 11, 1989.

TA-W-24,367; Conca D'oro, Paterson,
NJ

A certification was issued covering all workers separated on or after April 18, 1989.

I hereby certify that the aforementioned determinations were issued during the month of July 1990. Copies of these determinations are available for inspection in room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 18, 1990.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

BILLYING CODE 4510.30-M

Mine Safety and Health Administration

Pontiki Coal Corp.; Petition for
Modification of Application of
Mandatory Safety Standard

Pontiki Coal Corporation, Caller No. 801, Lovely, Kentucky 41231 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 1 Mine (I.D. No. 15-08413) located in Martin 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 seals in the return aircourse be examined on a weekly basis.

2. Due to adverse roof conditions, seals in the return aircourse cannot be safely examined. To require certified persons to make weekly examinations would result in a diminution of safety.

3. As an alternate method, petitioner proposes that—
   (a) An air monitoring station would be established to monitor the air quality and quantity passing in front of the seals;
   (b) The air quality and quantity would be continuously monitored by a mine-wide monitoring and control system installed on the surface. Any alarms would be promptly investigated and appropriate corrective action would be taken; and
   (c) The sensors used to monitor the air quality and quantity would be examined and calibrated weekly.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided 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 August 23, 1990. Copies of the petition are available for inspection at that address.

Dated: July 17, 1990.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

BILLYING CODE 4510.43-M

[U.S. Steel Mining Co., Inc.; Petition for
Modification of Application of
Mandatory Safety Standard

U.S. Steel Mining Company, Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15219-4776 has filed a petition to modify the application of 30 CFR 75.440(c) (hoisting equipment; general) to its Oak Grove Mine (I.D. No. 15-00651) located in Jefferson County, Alabama. 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 cages, platforms, or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. The size and weight of a manufactured brakecar installed on the mine's 27 degree slope would result in a diminution of safety.

3. As an alternate method, petitioner proposes to use a mantrip hoist at the mine as follows:
   (a) The hoist would be used only as an alternate mantrip. The elevator would be used as the primary means of transporting employees in and out of the mine;
   (b) Only three mantrip cars attached to the control car would be raised or lowered at a time. The combined weight of these cars is far less than the breaking strength of the hoist rope;
   (c) In addition to coupling to the control car, a safety rope would be affixed to the control car and the mantrip cars when the mantrips are being raised or lowered; and

BILLYING CODE 4510.35-M

Kreamer Textiles, Womelsdorf, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Kreamer Textiles, Womelsdorf, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-24,317; Kreamer Textiles,
Womelsdorf, Pennsylvania

Signed at Washington, DC this 17th day of July 1990.

Marvin M. Fooks.
Director, Office of Trade Adjustment Assistance.

BILLYING CODE 4510.30-M
(c) The hoist rope would be x-rayed every 90 days to ensure the integrity of the rope has not been compromised.

4. The advisor states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided 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 August 23, 1990. Copies of the petition are available for inspection at that address.

Dated: July 17, 1990.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-17244 Filed 7-23-90; 8:45 am]
BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Postponement of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Annuities of the Advisory Council on Employee Welfare and Pension Benefit Plans scheduled to be held at 9 a.m. Thursday and Friday, July 26–27, 1990, in Room 5–4215 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210, has been rescheduled to meet at 8:00 a.m., Tuesday, August 21, 1990, in Room C–2313 U.S. Department of Labor Building.

This nine member Working Group was formed by the Advisory Council to study issues relating to Annuities for employee welfare plans covered by ERISA.

The purpose of the August 21, meeting is to focus on the following issues:

(1) Whether objective criteria can or should be formulated to guide both fiduciaries and participants in determining whether a prudent annuity provider selection process has been followed.

(2) Whether certain types of actual or potential conflict of interest circumstances can be identified which are or should be the basis for requiring a fiduciary to seek independent advice (or an independent fiduciary) for purposes of making an annuity provider selection, and/or whether certain actual or potential conflict of interest circumstances can be identified which require that a particular annuity provider be barred from serving as a particular plan's annuity provider.

(3) Whether the appropriate ERISA agency (or agencies) can or should issue a formal list of approved ERISA annuity providers as a method of legal control or safe-harbor with respect to annuity provider selection.

(4) Any collateral fiduciary concerns that may flow from the above, e.g., fiduciary insurance problems.

(5) If the Work Group's deliberations indicate that there is some flaw in ERISA's current fiduciary rules that needs legislative amendment in order for the fiduciary standards to regulate adequately the selection of annuity providers, the Work Group will address the matter.

The Working Group will also take testimony and or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals, or representatives of organizations, wishing to address the Working Group should submit written requests on or before August 16, 1990 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5977, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before August 16, 1990.

Signed at Washington, DC this 19th day of July, 1990.

David George Ball,
Assistant Secretary for Pension and Welfare Benefits Administration

[FR Doc. 90-17211 Filed 7-23-90; 8:45 am]
BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

(Notice 90–54)

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting; change in meeting location and revised agenda.

Federal Register Citation of Previous Announcement: 55 FR 29120, Notice Number 90–51, July 17, 1990.

Previously Announced Times and Dates of Meeting: August 15, 1990, 8:30 a.m. to 5 p.m. (to be held at Airbus Service Company, Inc.); and August 16, 1990, 8:30 a.m. to 4:30 p.m. (to be held at Miami Viscount Hotel).

Changes in the Meeting Location: Location changed to Capital Gallery, room 303, 600 Maryland Avenue, SW., Washington, DC 20024.


Agenda: Changed as Follows:

Agenda:

August 15, 1990
8:30 a.m.—Report Preparation.
5 p.m.—Adjourn.

August 16, 1990
8:30 a.m.—Report Preparation.
4:30 p.m.—Adjourn.

Contact Person for More Information:
Mr. Ray Hood, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2743.

Dated: July 18, 1990.

Marvin J. Odesky,
Special Assistant to the Associate Administrator for Management.
[FR Doc. 90–17207 Filed 7–23–90; 8:45 am]
BILLING CODE 7510-01-M

[Notice (90–53)]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Solar System Exploration Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science
Solar System Exploration
Technology, Buwalda Room, 151 Arms Building, 1201 E. California Boulevard, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION: The Solar System Exploration Subcommittee provides advice to the Solar System Exploration Division concerning long-range planning in solar system exploration. The Subcommittee will meet to discuss international relations, advanced planning issues, and future plans for the Subcommittee. The Subcommittee is chaired by Dr. Laurence Soderblom and is composed of 23 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Subcommittee). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Type of Meeting: Open

Agenda:

Tuesday, August 7
12 noon—Introduction.
12:15 p.m.—Program Perspective Including Space Exploration Initiative Status.
2:30 p.m.—Status of Approved Programs.
5 p.m.—Adjourn.

Wednesday, August 8
8:30 a.m.—Status of Approved Programs.
1 p.m.—Status of Advanced Programs.
5 p.m.—Adjourn.

Thursday, August 9
8:30 a.m.—Research and Analysis Initiatives.
10:30 a.m.—1991-1992 Strategic Planning.
12 noon—Adjourn.

Dated: July 12, 1990.
Marvin J. Odesky,
Special Assistant to the Associate Administrator for Management, National Aeronautics and Space Administration.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Task Group on Delegate Education, White House Conference Advisory Committee; Meeting

Date and Time: August 14, 1990, Tuesday, Noon—8:00 p.m.; August 15, 1990, Wednesday, 9:00 a.m.—4:00 p.m.
Place: Doubletree Hotel, Two Commerce Place, Nashville, Tennessee 37219, 615/244-8200.

Status: All meetings are open.

Matters To Be Discussed:
Opening Remarks—William G. Asp, Chairman.
Review of delegate education plan.
Recommended roles for state library agencies, Support of others.
Special provisions will be made for handicapped individuals by contacting Christina C. Young, 1-202-254-5100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT:
Christina C. Young, Assistant Director for Delegate Education, White House Conference on Library and Information Services, 1111 18th Street NW., Suite 302, Washington, DC 20036; 1-202-254-5100.

Date: July 17, 1990.
Mary Alice Hedge Rozsar, NCLIS Associate Executive Director, Designated Federal Official.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the Dance Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on August 13, 1990, from 9 a.m.—6 p.m. and on August 15 from 9 a.m.—5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on August 13 from 9 a.m.—3:30 a.m. and on August 15 from 2 p.m.—5:30 p.m. The topics will be introductory remarks, and guidelines/policy discussion.

The remaining portions of this meeting on August 13 from 9:30 a.m.—6 p.m., on August 14 from 9 a.m.—6 p.m., and on August 15 from 9 a.m.—2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,
Director, Council and Panel Operations, National Endowment for the Arts.

BILLING CODE 7510-19-M

Meeting of the Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Media Arts Centers Section) to the National Council on the Arts will be held on August 13, 1990, from 9 a.m.—6 p.m. and on August 15 from 9 a.m.—5:30 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on August 13 from 9 a.m.—3:30 a.m. and on August 15 from 2 p.m.—5:30 p.m. The topics will be introductory remarks, and guidelines/policy discussion.

The remaining portions of this meeting on August 13 from 9:30 a.m.—6 p.m., on August 14 from 9 a.m.—6 p.m., and on August 15 from 9 a.m.—2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in
confidentiality to the agency by grant applicants. In accordance with the
determination of the Chairman
published in the Federal Register of
February 13, 1980, these sessions will be
closed to the public pursuant to
subsection (c)(4), (6) and (9)(B) of
section 552b of Title 5, United States
Code.
If you need special accommodations
due to a disability, please contact the
Office of Special Constituencies,
National Endowment for the Arts, 1100
Pennsylvania Avenue NW., Washington,
DC 20506, or call (202) 682-5433.
Yvonne M. Sabine,
Director, Division of Personnel and
Management National
Endowment for the Arts.
[FR Doc. 90-17164 Filed 7-23-90; 8:45 am]
BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 3514(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, Room 1600 G Street NW., Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT:
Mr. John Wilkinson or Ms. Barbara Patala at the above address or (202) 357-7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership
Frederick Berenthal, Deputy Director,
Chairperson Jeff Penstremacher, Assistant Director for Administration, Executive Secretary

Rotating Membership
Adriaan M. de Graff, Head, Special Programs in Materials Research
Section, Division of Materials Research, Directorate for Mathematical and Physical Sciences
Lynn Preston, Deputy Division Director of Cross-Disciplinary Research, Directorate for Engineering
Donald F. Heinrichs, Section Head, Oceanographic Technology Program, Division of Ocean Sciences, Directorate for Geosciences
Charles T. Owens, Head, Information and Analysis Section, Division of International Programs, Directorate for Scientific, Technological and International Affairs
W. Franklin Harris, Executive Officer, Directorate for Biological, Behavioral and Social Sciences
Terence Porter, Director, Division of Research Career Development, Directorate for Science and Engineering Education
Constance K. McLindon, Director, Office of Information Systems, Office of the Director
Charles N. Brownstein, Executive Officer, Directorate for Computer and Information Science and Engineering

Dated: July 18, 1990.
Margaret L. Windus,
Director, Division of Personnel and Management.
[FR Doc. 90-17208 Filed 7-23-90; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee on Improved Light Water Reactors; Meeting

The Subcommittee on Improved Light Water Reactors will hold a meeting on August 8, 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:

Wednesday, August 8, 1990—1:00 p.m. Until the Conclusion of Business

The Subcommittee will review the NRC and industry proposals for the completeness of designs issue. Oral statements may be presented by members of the public, with the concurrence of the 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 and NUMARC 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 therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 301/412-9001) between 7:30 a.m. and 4:15 p.m.

Persons planning to attend this meeting are urged to contact the appropriate individual. Persons desiring arrangements for public attendance are also urged to contact the above named individual one or two days before the scheduled meeting to be advised on any changes in schedule, etc., which may have occurred.

Dated: July 17, 1990.
Gary R. Quitschreiber,
Chief, Nuclear Reactors Branch.
[FR Doc. 90-17237 Filed 7-23-90; 8:45 am]
BILLING CODE 7550-01-M

[Docket No. 50-461]

Illinois Power Co. et al., issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 39 to Facility Operating License No. NPF-62 issued to the Illinois Power Company (IP), and Soyland Power Cooperative, Inc. (the licensee) for operation of the Clinton Power Station, Unit 1, located in DeWitt County, Illinois. The amendment was effective as of the date of issuance.

The amendment changed the Technical Specifications related to Surveillance Requirement 4.4.3.2.1 for Reactor Coolant System leakage detection. The change indicates that the drywell floor and equipment drain sump
leak detection system instrumentation does not include direct quantitative indication of sump level and that the drywell atmospheric radioactivity leak detection system instrumentation does not quantify leakage.

The application for the amendment copies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission’s rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission’s rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the Federal Register of February 18, 1998 (53 FR 4917). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to this action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) The application for amendments dated October 30, 1997; (2) Amendment No. to License No. NPR–62; and (3) the Environmental Assessment and Finding of No Significant Impact dated July 2, 1999 (55 FR 28470). All of these items are available for public inspection at the Commission’s Public Document Room located at the Commission’s Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 1 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner’s right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner’s property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner’s interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts on which the petitioner intends to rely in proving the contention at the
PETITION FOR HEARING

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (In Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Robert A. Capra: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Charles M. Pratt, 10019, attorney for the licensee. Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(f)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to “any matter which the Commission determines to be in controversy among the parties.” The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission’s rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission’s rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, “Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors” (published at 50 FR 41662, October 15, 1985) to 10 CFR 2.1101 et seq. Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. [As outlined above, the Commission’s rules in 10 CFR part 2, subpart G, and § 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.] The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G, apply.

For further details with respect to this action, see the application for amendment dated May 31, 1990, which is available for public inspection at the Commission’s Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Dated at Rockville, Maryland, this 16th day of July, 1990.

For the Nuclear Regulatory Commission.

Robert A. Capra,
Director, Project Directorate 1-1, Division of Reactor Projects—II, Office of Nuclear Reactor Regulations.

[FR Doc. 90-17225 Filed 7-23-90; 8:45 am]
BILLING CODE 7590-01-M
payment would have a specified number of days within which to instruct DTC to: (i) Decrease by a stated quantity the availability of the subject service for a of certain DTC-eligible issues. (within DTC) as permitted by the terms currency (outside DTC) or in U.S. dollars through DTC in accordance with DTC’s normal procedures. 

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC 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

Under DTC’s present procedures, there is no provision for participants to use DTC’s facilities to exercise the option, where available under the terms of an issue, to receive, ex-DTC, dividend/interest or principal payments in the foreign currency in which the security is denominated, rather than to receive the payment through DTC in U.S. dollars. Instead, in order to exercise such an option, a participant must withdraw physical certificates from the depository and arrange for processing of the foreign currency payment directly with the paying agent. In order to achieve, once again, the benefits of immobilization, such a participant would be required to re-deposit the certificates after payment has been made. The proposed rule change would eliminate the inefficiencies and costs for participants associated with the physical movement of certificates solely to exercise the foreign currency payment option and would help remove an impediment to the issuance of foreign-currency denominated issues in book-entry-only (“BEO”) form.

The proposed rule change is consistent with the requirements of section 17A(b)(3) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization’s Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change

The proposed service was requested by some participants in their responses to DTC’s May 12, 1988 program agenda proposals memorandum. More recently, underwriters of foreign-currency denominated issues to be distributed in BEO form through DTC, CEDEL and Euroclear have requested that DTC develop the subject service.

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 reasoning, or (ii) as to which the self-regulatory organization 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
Proposed Rule Change Received from National Association of Securities Dealers, Inc., Relating to OTC Bulletin Board Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 12, 1990, the National Association of Securities Dealers, Inc., ("NASD") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On May 1, 1990, the Commission issued an order approving operation of the NASD's OTC Bulletin Board service ("Service") for a pilot term of one year. The Service provides an electronic quotation medium for NASD members to enter and display quotations in non-NASDAQ securities in which they register as market makers. With respect to every foreign security or ADR quoted in the Service, individual market makers are permitted to update their displayed quotations only twice daily, once between 9 and 9:30 a.m. and once between noon and 12:30 p.m. Domestic securities quoted in the Service are not subject to this update restriction.

The NASD hereby submits, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, a proposed rule change to expand the Service's morning period for quotation updates in foreign securities/ADRs by one-half hour. This would produce a morning update period running from 8:30 to 9:30 a.m. e.t. During this period, individual market makers will still be limited to one update per foreign security or ADR. All other obligations applicable to Service market makers remain unchanged.

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any 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 NASD 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

The purpose of this proposal is to extend, by one-half hour, the morning window for quotation updates by Service market makers registered in foreign securities or ADRs. Several market makers utilizing the Service have informally advised the NASD staff that the current period is insufficient to permit the entry of updates in all affected securities. These market makers have noted that much of the 9-9:30 period is dedicated to updating quotations in NASDAQ and NASDAQ/NMS issues in which they are also registered. Inserting updated quotations in NASDAQ/NMS issues by 8:30 a.m. e.t. is particularly critical because of the Small Order Execution System ("SOES") obligations that attach to such market making commitments. Hence, this task represents a significant operational priority during the period immediately preceding the daily opening of the market.

Moreover, the Service is designed to carry over a market maker's quotation in a security from the previous market session unless that quotation is superseded by an update. Currently, if a firm does not update its quote in a foreign security or ADR by 9:30 a.m., it is precluded from doing so until noon of that day. Consequently, a stale quote remains in Service for at least 2½ hours before the market maker has another opportunity to correct the situation. Although the original quote is not designated as firm, it is unlikely to reflect the market maker's current trading interest based upon orders received or news announced following the previous day's close.

In light of these factors, the NASD believes that it is appropriate to expand the morning window for quotation updates by Service market makers in foreign securities/ADRs to one hour, 8:30-9:30 a.m. E.T. on each business day.

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 such finding or (ii) as to which the NASD 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200-3(a)(12).

Dated: July 16, 1990.
Margaret H. McFarland
Deputy Secretary.

[FR Doc. 90-17187 Filed 7-23-90; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-22210; File No. SR-NASD-89-9, Amdt. No. 2]

Self-Regulatory Organizations; Amendment to Proposed Rule Change by National Association of Securities Dealers, Inc., Relating To Limit Order Capabilities for the Small Order Execution System

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 June 28, 1990, the National Association of Securities Dealers, Inc. (“NASD” or “Association”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) an amendment to the proposed rule change as described in Items I, II, and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change requests permanent approval of the limit order processing capability for the NASD’s Small Order Execution System (“SOES”).1 and the amendments to the proposed rule change describe enhancements to the system that would permit, in certain circumstances, matching and full or partial execution of limit orders.

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 NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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

The NASD’s Small Order Execution System is designed to improve the efficiency of executing transactions in NASDAQ securities through the use of data processing and communications techniques. The addition of limit order processing capability serves the purpose of providing members (and in particular members not having proprietary systems with such capability) with the ability to enter and store limit orders. The system does not impose priorities for execution of customer limit orders vis a vis members’ proprietary transactions. Members are, therefore, responsible for ensuring that customer limit orders are handled in a manner consistent with members’ obligations to their customers. The NASD believes that those obligations are as set forth in Notice to Members 85-12 dated February 15, 1985, and in the opinion and order of the Commission: In Re E.F. Hutton Co., Inc. Securities Exchange Act Release No. 25967 (July 6, 1988).

In response to concerns articulated by the Commission in its order approving the SOES, the NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

1. Alert

The proposed alert will bring to the SOES market maker’s attention those limit orders that are priced within the inside (i.e., within the best bid and offer available at that moment) and that potentially match another order already pending on the Limit Order File. For example, if an order is entered which cannot be executed (because it is away from the inside), but whose price is equal to or better than the price of a previously entered order on the other side, an alert message will be displayed on the market maker’s screen to indicate a potential match.

2. Take-out

The Limit Order File take-out function will be a new feature added to SOES which will allow market makers to execute limit orders at a specific price without changing their quotes. Any active SOES market maker who has an open quote and available exposure in an issue may take out shares in that issue.

Market makers will be able to review a summary of resident limit orders in each security, and enter take-out orders specifying the side of the market (Buy/Sell), the number of shares to be taken out, and the price at which the market maker is willing to execute. The system will receive the take-out, screen it for accuracy, and execute orders from the

file at the take-out price. Orders will be executed on a price/time priority—first in/first out, on a full or partial basis, at the take-out price.

Take-outs will not interfere with the regular processing of SOES limit orders. Orders will continue to be executed against the inside, as long as there is available size in the market maker's exposure limit, while the take-out is being processed.

3. Matching

If, after five minutes, none of the matched orders have been executed, either as a result of a change to the inside, or because a market maker has entered a take-out, the orders on the file will be matched and executed. Matches will include partial execution of orders that match or improve price, but do not match in size. Trades that are the result of a system order match will have a special identifier on both order entry firms' Executed Order Scans, and the indicator will also be incorporated in the execution report in the NASDAQ screen.

The Association believes that the proposed enhancements to the SOES Limit Order File will improve the system's ability to execute effectively customer limit orders by permitting matching of orders entered between the spread, with an opportunity for market maker interaction. The enhancements to the Limit Order File are scheduled to be implemented in December 1990, following Commission approval of the instant filing and a Notice To Members alerting membership of the modifications. The NASD believes that the proposal is consistent with provisions of section 15A under the Act, and in particular section 15A(b)(6) thereunder, which provides that the rules of the Association be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended. Indeed, the proposed enhancements should increase competition by allowing potentially matching orders to interact, and by improving overall the scope and operations of the SOES Limit Order File.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

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 (ii) 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 NASD 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by August 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 16, 1990.

Margaret H. McFarland, Deputy Secretary.

[FR Doc. 90-17188 Filed 7-23-90; 8:45 am] BILLING CODE 8010-01-M

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc. Relating to New Listing Criteria

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 June 20, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by the self-regulatory organization.¹ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add section 703.19 to the NYSE Listed Company Manual ("Manual") to provide listing guidelines to accommodate securities not otherwise covered under existing sections of the Manual.²

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization 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

1 Purpose

(a) Listing Guidelines. In today's financial markets, issuers and underwriters increasingly are proposing to list new types of securities. These securities may contain features

¹ The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.
² Generally, the current listing guidelines for securities are found in section 102 (Domestic Companies) and section 103 (Non-U.S. Companies) of the Manual.
The numerical listing criteria in proposed § 703.19 are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed entities which meet the Exchange’s original listing standards. Such issuers generally will be expected to meet the earnings and net tangible assets criteria set forth in § 102.01 or § 102.02 (Domestic Companies) and 103.01 (Non-U.S. Companies) of the Manual.

The distribution criteria for equity, as set forth in proposed § 703.19, require that domestic companies have a public distribution of 1.1 million trading units with a minimum aggregate market value of $16 million. An issue must have a minimum of 2,000 round-lot holders, or in the alternative 4,200 holders together with an average monthly trading volume of 100,000 shares. The distribution criterion for debt securities requires a minimum public market value of $5 million.

In addition, the Exchange will apply the guidelines for continued listing set forth in §§ 702.00 of the Manual to § 703.19 securities when appropriate (e.g., debt/equity characteristics).

(b) Membership Circular. Securities listed for trading under proposed § 703.19 are likely to possess characteristics common to both debt and equity instruments. For this reason, prior to trading securities admitted to listed under § 703.19, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities particular to handling transactions in such securities. In determining whether such a membership circular is necessary, the Exchange will consider such characteristics of the issue as unit size and term; cash-settlement, exercise or call provisions; characteristics that may affect payment of dividends and/or appreciation potential; whether the securities are primarily of retail or institutional interest; and such other features of the issue that might entail special risks not normally associated with securities currently listed on the Exchange.

(2) Basis

The proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization’s Statement of Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. 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 at 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 NYSE. All submissions should refer to File No. SR-NYSE-90-30 and should be submitted by August 14, 1990.

IV. Commission’s Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE’s proposal to add § 703.19 to its Manual is consistent with the requirements of the Act and the rules.
and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act. In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers, or dealers. In this regard, the Commission believes that the proposed guidelines applicable to the listing of new, innovative securities will provide the flexibility desired by the NYSE, while helping to ensure that only the more financially substantial companies are eligible to have their new products listed on the Exchange. Proposed § 703.19, therefore, should provide a more efficient and expedient process for listing new securities, and will protect investors and the public interest by ensuring that the financial products listed on the Exchange have met predetermined financial criteria set forth by the Exchange, an important consideration due to the additional or contingent financial obligations created by these instruments.

In addition, the Commission believes that the portion of proposed § 703.19 relating to the membership circular addresses the additional regulatory concerns raised by these products. These novel products, by combining features of debt, equity, and securities derivative products, may be more risky and complex than straight stock, bond, or equity warrants. The Commission believes, therefore, that the portion of the proposed rule change requiring the Exchange to evaluate the nature and complexity of each issue in order to determine whether to list a membership circular indicating member firm compliance responsibilities will provide the NYSE with the ability to address, in a flexible manner, any potential sales practice problems and questions that may arise in connection with these new issues. Moreover, the Commission believes that the distribution of this circular should help to ensure that only customers with an understanding of the specific risks attendant to the trading of particular securities products trade these products on their brokers' recommendations. In this regard, the membership circular requirements will help to ensure that investors and the public interest are protected when the new products are traded on the Exchange.

Finally, the Commission believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act because it relates only to those securities which are similar to products currently listed for trading on the Exchange. If a new product raises novel or significant regulatory issues, the NYSE must file a proposed rule change so that the Commission would have an opportunity to review the regulatory structure for the product. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Commission recently approved a substantially similar proposed rule change submitted by the American Stock Exchange ("Amex") which adopted listing criteria for hybrid securities. The Commission believes that any differences between the two proposals do not warrant the postponement of approval of the NYSE proposal. The differences between the two proposals center around the distribution criteria, and the criteria set forth in the NYSE proposal parallel the NYSE's original listing standards which already have been approved by the Commission after careful consideration. Furthermore, the Exchange has stated that several issuers have expressed interest in listing certain new types of hybrid securities products on the NYSE. Because the Amex proposal to list hybrid products has been approved by the Commission, a greater delay in the ability of issuers to list these securities on the NYSE may adversely affect competition between the exchanges, a result detrimental to exchange market trading.

In addition, the Commission recently approved an NYSE proposal and a Midwest Stock Exchange ("MSE") proposal to adopt listing criteria to trade CVRs, which are akin to the type of hybrid products the NYSE proposal would include. The Commission did not receive any comments on those proposals or on the Amex hybrid products filing.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 13, 1990.

Margaret H. McFarland, Deputy Secretary.
[FR Doc. 90-17209 Filed 7-23-90; 8:45 am]
BILLING CODE 4150-01-M

[Rel. No. 34-28218; File No. SR-NYSE-90-17]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Bid-Ask Differentials and Responsibility of Specialists To Make Ten-Up Markets

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). 15 U.S.C. 78o(b)(1) (notice is hereby given that on April 10, 1989 the New York Stock Exchange, Inc. ("NYSE" 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 persons.

19 See Note 5, supra.
20 See Securities Exchange Act Release No. 27753 (March 3, 1990). See FR 8254 (March 8, 1990) (order approving File No. SR-Amex-69-28). The NYSE proposal differs from the Amex proposal in the following four material ways: (1) The NYSE evaluates net tangible assets available to common stock while the Amex uses "stockholder equity"; (2) the NYSE distribution criterion looks to round lot holders, or alternatively all holders together with average monthly trading volume, while the Amex requires a minimum number of holders; (3) the NYSE proposal contains no minimum price per share criterion either for original or continued listing while Amex provides for a minimum redemption price per unit; (4) the NYSE provides a debt listing standard based upon minimum public market value and the Amex has no such listing criteria. See File Nos. SR-NYSE-60-30 and SR-Amex-69-29 to compare the actual listing criteria of both proposals.
23 See note 15, supra.
I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 758 and add Rule 758A as follows (italics indicate material proposed to be added; brackets indicate material proposed to be deleted):

Competitive Options Trader

Rule 758. (a)—No change.

(b)(i) While on the Floor, no Competitive Options Trader shall initiate an Exchange transaction in a kind of option in which he is registered for any account in which he has an interest except in accordance with the following provisions as applied to each kind of option in which he is registered:

(A) through (B)—No change.

(C) A Competitive Options Trader, whenever he enters the trading crowd in other than a floor brokerage capacity or is called upon by a Floor Official or a Floor Broker acting in an agency capacity, shall engage, to a reasonable degree under the circumstances, in dealings for his own account where there exists a lack of price continuity, a temporary disparity between the supply of and demand for option contracts of a particular series or a temporary distortion of the price relationships between option contracts of the same class. Without limiting the generality of the foregoing, a Competitive Options Trader is expected to perform the following activities in the course of contributing to the maintenance of a fair and orderly market:

(I) Bidding and offering so as to create differentials of no more than ¼ of $1 between the bid and the offer for each option contract for which the prevailing bid is [last preceding transaction price was] less than $2 [$1], no more than ½ of $1 where the prevailing bid is [last preceding transaction price was] $2 [$1] or more but does not exceed [less than] $5, no more than ¼ of $1 where the prevailing bid is [last preceding transaction price was] $3 or more but less than $5 but does not exceed [less than] $10, no more than ½ of $1 where the prevailing bid is [last preceding transaction price was] $5 or more but less than $10 but does not exceed [less than] $20 and no more than ¼ of $1 where the prevailing bid is more than [last preceding transaction price was] $20 or more. If the bid/ask differential in the security underlying any in-the-money option series is greater than the bid/ask differential specified herein, the permissible differential for such series shall be identical to that in the underlying security market.

(b)[(i)](C)(1) through Supplementary Material .85 — No change.

Specialist Options Transactions

Rule 758A. (a) At all times other than during rotation, a specialist is required to self (purchase) at least ten contracts at the offer (bid) that is displayed when a purchase (sell) order reaches the trading post where the option class is located for trading. Two Floor Officials may grant exemptions from the rule on a case-by-case basis when exemptions are warranted for, among other things, a change in market conditions or an obvious error in the posting of the display market quote due to reporter error or system malfunction.

(b) Only non-broker dealer customer orders shall be entitled to execution pursuant to the provisions of this rule.

(c) This rule shall apply only to options series that expire during the two nearest term months.

(d) Specialists are not required to display as a market quotation bids or offers of a Competitive Options Trader for less than ten contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The self-regulatory organization 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

NYSE Rule 758(b)(i)(C)(1) currently requires Competitive Options Traders ("COTs") to maintain a specified minimum differential (or spread) between their bids and offers on an option contract. The size of the differential is determined according to the value of the last preceding transaction price for the option contract. The proposed rule change amends the current requirement in three respects to conform the Exchange's requirements with those of the other option exchanges.

First, it sets the applicable differentials according to the prevailing bid in each option contract, rather than to the last preceding transaction price in the contract. This will better ensure that the differential bears a relationship to the current market conditions for the option contract.

Second, the proposed amendment narrows the differential to ¼ of $1 for option contracts where the prevailing bids are at least $1 but less than $2. Currently, a differential of ½ of $1 applies to option contracts where the last transaction price is at least $1 but less than $2. The change to ¼ of $1 should result in improved price continuity and liquidity in lower-priced option contracts. In addition, the proposed rule change conforms the NYSE's bid-ask differentials to those of the other option exchanges in those instances where the value of a bid is exactly equal to $5, $10 and $20.

Third, the NYSE proposes to modify the differential applicable to in-the-money option series by providing that, when the quote differential in the market for the underlying security is greater than the applicable differential set forth in Rule 758, the permissible differential shall be identical to that in the market for the underlying security.

Proposed new Rule 758A would impose on NYSE options specialists the same ten-up obligations in place on the other options exchanges. Specifically, the proposed rule will require options specialists to guarantee the execution of each public customer order for option contracts expiring in the two nearest term months, to a minimum depth of ten contracts, at the best bid or offer that is displayed when the order reaches the specialist's post. The requirement will not apply during a rotation. The proposal provides that two Floor Officials may grant an exemption from the requirement on a case-by-case basis when an exemption is warranted. Specialists will not be required to display as the best bid or offer a COT quote for contracts that expire in the two nearest term months if the quote is for less than ten contracts. The Exchange believes that requiring specialists to make ten-up markets for all public orders for contracts that expire in the two nearest term months at the prevailing bid or offer will promote the public interest by enhancing the quality of the Exchange's option market.
According to the NYSE, the proposed rule change is consistent with section 6(b)(5) of the Act, which provides in pertinent part that the rules of the Exchange are to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the part of the proposal that amends the minimum bid-ask differential requirements be given accelerated approval. The Exchange requests accelerated approval in order to assure uniformity among the rules of the options exchanges and to remove a competitive disparity among the options exchanges.

The Commission finds good cause of amending the minimum bid-ask differential portion of the proposal prior to the thirtieth day of publication of notice of filing thereof in the Federal Register because it will reduce investor confusion by bringing the NYSE's rules into conformity with the bid-ask differential rules of the other options exchanges. In addition, the Commission has previously solicited comment on identical proposals submitted by the other options exchanges and received no response. Moreover, if the Commission is aware of no investor complaints arising out of identical bid-ask spread requirements in place on the other options exchanges.

With respect to the other portion of the proposal, within 35 days of the date of publication of this notice in the Federal Register, or within such longer period (1) as the Commission may designate up to 90 days of such period if it finds such longer period to be appropriate and publishes its reasons for so finding or us to which the self-regulatory organization 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 above-mentioned self-regulatory organization. All submissions should refer to file number (SE-NYSE-90-17) and should be submitted by August 14, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the portion of the proposed rule change [SR-NYSE-90-17] relating to bid-ask spread differential requirements be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 7

Dated: July 13, 1990.

Jonathan G. Katz,
Secretary.

[FR 90-17228 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28215; File No. SR-NYSE-90-24]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Filing and Order Granting Accelerated Temporary Approval to Proposed Rule Change Relating to Amendments to Rule 103A and Extension of Effectiveness of Rule 103A Until May 9, 1991

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") 8 and Rule 19b-4 thereunder 2

notice is hereby given that on May 9, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Exchange proposes to amend Rule 103A ("Specialist Stock Reallocation") to enhance the specialist performance criteria relating to administrative responses and to delete certain outdated or otherwise inapplicable performance criteria. The Exchange also proposes to extend the effectiveness of the rule until May 9, 1991. The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act to enable the provisions of Rule 103A, which expired on May 9, 1990, to continue on an uninterrupted basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 103A to enhance the specialist performance criteria relating to administrative responses contained in the rule, to delete the rule’s performance criteria for the Specialist Performance Evaluation Questionnaire ("SPEQ") and the Opening Automated Report Service ("OARS"), and to delete one of the factors to be considered during the course of an Exchange Performance Improvement Action. The Exchange also proposes to extend the effectiveness of the rule for an additional year until May 9, 1991.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization 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

1. Purpose

The intent of Rule 103A is to encourage a high level of market quality and performance in Exchange listed securities. Rule 103A grants authority to the Exchange’s Market Performance Committee ("MPC") to develop and administer systems and procedures, including the determination of appropriate standards and measurements of performance, designed to measure specialist performance and market quality on a periodic basis to determine whether or not particular specialist units need to take actions to improve their performance. Based on such determinations, the Market Performance Committee is authorized to conduct a formal "Performance Improvement Action" in an appropriate case.

On May 9, 1988, the Commission extended the effectiveness of Rule 103A for two years and approved major revisions to the specialist performance standards and the Performance Improvement Process contained therein. The revised rule defines specific performance measures where below standard performance would trigger a Performance Improvement Action to address cases of substandard specialist performance. The revisions also added structure to the process by which stock reallocations could occur as a result of Rule 103A and provided a means of addressing particularly egregious specialist performance.

The two-year extension period was intended to permit the Exchange to monitor the operation of the revisions under actual conditions and to make any modifications that it deemed appropriate. At this time, the Exchange proposes to extend the effectiveness of Rule 103A, for an additional year, until May 9, 1991 and proposes to amend four of the standards. These are:

(1) Delete the SPEQ performance criteria specified in Rule 103A.10(A)(i), (ii) and (iii) as these cannot be applied to the new SPEQ.
(2) Amend Rule 103A.10(B)(ii) to require a specialist transmit 90% of his OARS reports within 10 minutes of a stock’s opening. This requirement has been rendered obsolete by current technology. The Exchange’s electronic display books automatically send the required report upon execution of the initial trade on the Floor.
(3) Delete the performance criteria pertaining to OARS specified in Rule 103A.10(C)(ii). The rule currently requires that a specialist transmit 90% of his OARS reports within 10 minutes of a stock’s opening. This requirement has been rendered obsolete by current technology. The Exchange’s electronic display books, is unnecessary since all specialist units are equipped with Electronic Display Books.
(4) Delete one of the factors specified in Rule 103A.10(C)(ii) required to be considered by the Market Performance Committee in setting performance improvement goals pertaining to timely turnaround of SuperDOT orders. The factor, whether a specialist unit is equipped with Electronic Display Books, is unnecessary since all specialist units are equipped with Electronic Display Books.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange believes the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed amendments to Rule 103A are consistent with these objectives in that they will enable the Exchange to further enhance specialist performance and the Exchange’s markets. Further, the Exchange has submitted a report to the Commission detailing its experience under the Rule 103A pilot. The proposed rule change addresses deficiencies noted during the pilot. Finally, the proposed extension of the rule will allow the Exchange to continue to administer Rule 103A on an uninterrupted basis.

Statutory Basis

The Exchange believes the basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an Exchange have rules designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed amendments to Rule 103A are consistent with these objectives in that they will enable the Exchange to further enhance specialist performance and the Exchange’s markets. Further, the Exchange has submitted a report to the Commission detailing its experience under the Rule 103A pilot. The proposed rule change addresses deficiencies noted during the pilot. Finally, the proposed extension of the rule will allow the Exchange to continue to administer Rule 103A on an uninterrupted basis.

* See infra, note 20.
* See infra, note 20.
* See infra, note 20.
deficiencies, as described below. The proposed amendments are intended to address these deficiencies and strengthen the program. Accordingly, the Commission finds the amendments to be consistent with sections 6(b)(5) and 11A of the Act.8 First, the Exchange's proposed rule change increases the message response rate performance criterion for administrative messages received through the SuperDOT system. The proposal would require a specialist to respond to 90% of his administrative messages in 10 minutes as opposed to 75% of his messages in 30 minutes. The present standard has been too narrow and failed to distinguish poor performers. The increased message response rate criterion should tighten the standard and encourage a more efficient response time to SuperDOT administrative messages. Second, the Exchange is proposing to delete two technical amendments to its Rule 103A evaluation criteria. Because current technology renders the criteria set forth in Rule 103A.10(C)(i) and (ii) obsolete, it is logical to delete the provisions from the rule. Third, the Exchange is proposing to delete its Rule 103A.10 SPEQ performance criteria. These criteria are based on the old SPEQ, which used absolute rather than relative scoring standards. The old SPEQ proved increasingly inadequate due to grade inflation (i.e., most units received perfect or near perfect scores). The Commission recently approved amendments to the SPEQ that modify the content of some questions, realign the weighting of the questions, and incorporate a relative scoring methodology.10 The NYSE intends to incorporate the revised SPEQ into its Rule 103A program soon. The revised SPEQ, with relative performance measures, should ensure that specialists who are regularly among the lowest ranked specialists based on SPEQ scores would be subject to performance improvement actions by the MPC under Rule 103A regardless of whether their performance met a predetermined level of unacceptable performance.

Although the Exchange's evaluation criteria under Rule 103A.10 include objective standards that measure specialist performance at the opening and closing hours, systematized order turnaround, and the timeliness of a unit's response to status requests,12 the Exchange's proposed scoring methodology in order to determine appropriate minimally acceptable performance standards. After the conclusion of this six-month trial period, the Exchange will set actual relative performance standards for Rule 103A actions based on SPEQ scores received after two quarters of experience with the new questionnaire. Thus, the proposed rule change would delete the old standards contained in Rule 103A.10(A)(i), (ii) and (iii) because these cannot be applied to the new SPEQ. The Commission recognizes that the NYSE, in administering the SPEQ for two quarters before promulgating standards, is attempting to refine the relative performance methodology.11 The Commission believes that discontinuing the old SPEQ standards during this period is not inconsistent with the Act for two reasons. First, the new SPEQ will still have some value as a performance improvement measure during this period.12 Second, the period for limited use of the SPEQ is short, so that the SPEQ will be fully incorporated back into Rule 103A soon. Specifically, prior to the quarter ending September 30, 1990, the Commission will encourage the Exchange to adopt, and file with the Commission as proposed rule changes, minimum relative performance standards so that specialists who are regularly among the lowest ranked specialists based on SPEQ scores would be subject to performance improvement actions by the MPC under Rule 103A regardless of whether their performance met a predetermined level of unacceptable performance.

1 The Commission does not believe that it is mandatory that a new performance questionnaire be administered for some period before actual use. While it is reasonable for the NYSE to acquire empirical data over a short period of time before promulgating standards, an exchange could implement a questionnaire and then revise it if experience demonstrated the need for revisions.
2 The Exchange will impose a freeze on the ability of a specialist unit that has been identified as a true bottom performer during this period based on the results of the revised SPEQ to apply for a new stock allocation. The Exchange also has committed during this interim period to identify the worst performing specialists based on the SPEQ and refer them to the MPC for counseling. Moreover, under Rule 103A, the MPC could determine whether these units, based on other Rule 103A criteria, warranted a performance action.
3 In addition, although NYSE Rule 103A.10 authorizes the Exchange to establish a "market

Continued
rule change does not include objective market making measures in the Rule 103A program. The Commission continues to believe that the Exchange should develop objective performance standards that would measure accurately the traditional indicia of specialist performance; namely, market depth, price continuity and dealer participation and stabilization. Similarly, the Commission believes that the mature status of the Intermarket Trading System ("ITS") as a market structure facility warrants the incorporation of ITS turnover and "trade-through" concerns into the NYSE's Rule 103A performance standards. During the two year Rule 103A pilot, the Exchange has employed the services of an outside expert to study the feasibility of adopting such objective measures of specialist performance. The Exchange has informed the Commission that the consultant is assessing methods to formulate statistical standards to directly measure specialist market making performance, and that the study should be completed during the Fall of 1990.

For the reasons discussed above, the Commission finds that the NYSE's proposal to renew the amended Rule 103A evaluation criteria is consistent with the requirements of section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, perfect the mechanisms of a free and open national market system, and, in general, further investor protection and the public interest in fair and orderly auction markets on national securities exchanges. Further, the Commission finds that the proposal is consistent with section 11(b) of the Act and Rule 11b-1 thereunder which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and protect the mechanism of a national market system. The revisions to Rule 103A, and the ultimate adoption of relative performance criteria, should enhance the Exchange's ability to evaluate specialist performance, resulting in higher performance levels and market quality.

Moreover, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes it is appropriate to approve the proposed rule change on an accelerated basis so that the Exchange can continue to administer its revamped Rule 103A evaluation process without delay or interruption. Additionally, the Commission is approving the amended Rule 103A evaluation criteria. During this time, the Commission and the NYSE will be able to examine the efficacy of its amended specialist evaluation procedures, as well as determine whether to extend the pilot for a further period or make Rule 103A's amended evaluation criteria permanent. Finally, a substantial portion of the current rule was noticed for the full statutory period in 1990, and the Commission did not receive any adverse commentary on the revised Rule 103A program. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change [SR-NYSE-90-24] be, and hereby is, approved for a period ending May 9, 1991. For the Commission, by the Division of Market Regulation, pursuant to delegated authority. Dated: July 17, 1990.

Margaret H. McFarland, Deputy Secretary.

[FR Doc. 90-17189 Filed 7-23-90; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-28211; File No. SR-PSE-90-26]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc. Relating to Fees for Alternate Specialist Trades

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78o(b)(1), notice is hereby given that on July 3, 1990, the Pacific Stock Exchange Incorporated ("PSE" 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 persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 of the Act, submitted a proposed rule change to amend its fees for alternate specialist trades. The PSE proposes to reduce the alternate specialist fee from the current $10 per transaction to $5 per transaction for all outgoing Intermarket Trading System ("ITS") and offboard trading.


14 See letter from Rosemary A. MacGuiness, Senior Counsel, PSE, to Diana Luka-Hopson, Division of Market Regulation, Commission, dated July 2, 1990.
III. Date of Effectiveness of the Proposed Rule Change

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective, pursuant to section (b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily rule change, the Commission may summarily rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 may be examined at the principal office of the Exchange. All such statements should refer to File No. SR-PTC-90-03, and should be submitted by August 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 17, 1990.

Margaret H. McFarland,
Deputy Secretary.

Release No. 34-28280; [File No. SR-PTC-90-03]

BILLING CODE 8011-01-M

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any 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 self-regulatory organization 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

The purpose of the proposed rule change is to reduce alternate specialist fees in order to better reflect the Exchange's cost of tracking and monitoring alternate specialists' trades.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members using the facilities of the Exchange.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received from members or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

As the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective as of August 14, 1990. Any person affected thereby may obtain an abridgment of these statements concerning the purpose of and basis for the proposed rule change, and a copy of any written arguments concerning the proposed rule change, from the principal office of the Exchange, and may seek review of the rule change by any method provided for in the Act.

The purpose of the proposed rule change replaces, in its entirety, the text of Article II, Rule 13, section 2 of PTC's rules with proposed new text clarifying the book entry transfers of securities permitted under this rule in support of, and as contemplated by, Article II, Rule 6 and Article III, Rule 2 which, respectively, provide for end-of-day settlement and for the payment of principal and interest advances; and corrects an incorrect cross-reference in the fourth sentence of Article III, Rule 2, section 2(d).
pursuant to Article III, Rule 2, secured by principal and interest payments which are the subject of such advances ("subject principal and interest payments"). While rights in the subject principal and interest payments are, in all likelihood, general intangibles under the Uniform Commercial Code of New York (the "UCC"), certain lenders to PTC urge the alternative view that these rights may be an interest in securities as defined in section 8-102 of the UCC. The proposed rule change clarifies that PTC may effect book entry transfer or pledge of such interest in securities to lenders. The proposal rule change will thus facilitate the payment of principal and interest advances by PTC.

(2) The purpose of the proposed change to the fourth sentence of Article III, Rule 2, section 2(d) is to correct the incorrect cross-reference to the second preceding sentence.

(b) Basis—The basis under the Act for the proposed rule change is the requirement under section 17A(b)(3)(F) that the rules of a clearing agency are to promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change promotes the prompt and accurate clearance and settlement of transactions in securities deposited with PTC.

B. Self-Regulatory Organization’s Statement on Burden on Competition

PTC does not perceive that this proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change has been submitted to certain affected lenders for their review and is the product of discussions with those lenders. PTC has not otherwise solicited, and does not intend to otherwise solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder because the proposed rule change affects a change in an existing service of PTC that (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of PTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of PTC or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 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 PTC. All submissions should refer to file number SR-PTC-90-03 and should be submitted by August 14, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-17183 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23212; File No. SR-PHLX-90-15]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Amendments to Its Fee Schedule

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78o-3(b)(1), notice is hereby given that on June 29, 1990, the Philadelphia Stock Exchange, Inc. ("Phlx" 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 persons.

1. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4 of the Act, submitted a proposed rule change to amend the Phlx’s Schedule of Fees and Charges as follows:

1. A new policy to pass-through all charges covering third party securities information vendors’ equipment and services that are used directly by particular members;
2. A new proprietary stock execution machine equipment charge of $250 per machine per month;
3. A new technology fee chargeable to all members and those foreign currency options participants not also possessing a regular membership payable on a $250 per quarter basis;
4. A change in the charge per direct wire from $40 per quarter to $60 per quarter;
5. A change in the stock execution communication charge from $100 per month to $200 per month;
6. A change in the annual floor trading post licensing fee from $1,250 to $1,500;
7. A change in the annual floor facility fee from $325 to $750;
8. A change in the monthly equity Transaction Fee ("TF") Schedule as follows with a new Schedule of discounts for PACE trades:

<table>
<thead>
<tr>
<th>Value of trades</th>
<th>Current fee per $1,000</th>
<th>New fee per $1,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-10 million</td>
<td>$0.13</td>
<td>0.15</td>
</tr>
<tr>
<td>10-25 million</td>
<td>$0.15</td>
<td>0.14</td>
</tr>
<tr>
<td>25-50 million</td>
<td>$0.11</td>
<td>0.11</td>
</tr>
<tr>
<td>50-75 million</td>
<td>$0.09</td>
<td>0.09</td>
</tr>
<tr>
<td>75-275 million</td>
<td>$0.09</td>
<td>0.07</td>
</tr>
<tr>
<td>275-500 million</td>
<td>$0.09</td>
<td>0.07</td>
</tr>
<tr>
<td>500-750 million</td>
<td>$0.05</td>
<td>0.05</td>
</tr>
<tr>
<td>Over 750 million</td>
<td>$0.03</td>
<td>0.15</td>
</tr>
</tbody>
</table>

 Fees on individual transactions will continue to be capped at 50,000 shares.

NEW PACE TRADE DISCOUNTS

<table>
<thead>
<tr>
<th>Trade size</th>
<th>Current discount off TF</th>
<th>New TF discount (percent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-599 shares</td>
<td>0</td>
<td>60</td>
</tr>
<tr>
<td>600-1,999 shares</td>
<td>0</td>
<td>40</td>
</tr>
<tr>
<td>1,000-2,999 shares</td>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td>Over 2,999 shares</td>
<td>0</td>
<td>15</td>
</tr>
</tbody>
</table>

A new $.25 credit per PACE trade to offset TF.
IL Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any 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 self-regulatory organization has prepared summaries, set forth in Item V 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

The purpose of the proposed rule change is to amend the Phlx Schedule of Fees and Charges. The changes reflected herein represent the first general revisions to that schedule since December 1988.1 The revisions reflect several key policy determinations of the Board of Governors of the Phlx. First, many of the new fees represent greater reliance upon recovering aggregate operating revenues from fixed-nature fees as opposed to variable sensitive fees. This underscores the fact that the Exchange's expense structure has evolved over time to a greater exposure to fixed expenses, due in part to high fixed and recurrent costs of supporting a sophisticated computer infrastructure and an enhanced regulatory program.

Additionally, the vendor pass-through charges represent a policy to discontinue direct Exchange subsidies in this area. This policy is fair and promotes significant efficiencies as members will receive what they pay for and will now have the pricing discipline to order only equipment and services that are necessary. The Exchange, due to its size and economic bargaining position, will still contract directly with vendors on behalf of the membership so that quantity discounts will remain available to the latter. Finally, individual members will not be required to pay charges associated with the trading crowds' overhead displays nor any persons 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.

1. The Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"). A brand new $2.25 credit that can be utilized to offset monthly TF has also been instituted for each PACE trade. These fees will be effective as of July 1, 1990.

The proposed rule change is consistent with section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statements on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either received or requested.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 persons, 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.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 17, 1990.

Margaret H. McFarland,
Deputy Secretary.

[Sec. 60-7216/Filed 7-23-90; 8:45 am]

BILLING CODE: 9110-01-M

[Rel. No. IC—17529; 811-3884]

Massachusetts Tax-Exempt Money Market Fund; Application for Deregistration

July 16, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Massachusetts Tax-Exempt Money Market Fund.

RELEVANT ACT SECTION: Section 12(a)(16).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-6F was filed on July 5, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 13, 1990 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service.

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons may request notification of a hearing by writing to the SEC's Secretary.
Proceeding. Applicant is not presently of its affairs. Any litigation or administrative liabilities. Applicant is not a party to applicant had no shareholders, assets, investment adviser. Connection with the liquidation and dissolution were borne by applicant's trust. In keeping with the terms of that applicant redeemed all outstanding shares at a net asset value of $1.00 shareholder authorization was required for the termination of the shareholders. No trustees provided written notice of the termination of the shareholders. No

Applicant's Representations

1. Applicant is a Massachusetts business trust and an open-end non-diversified management investment company registered under the Act. On October 19, 1963, applicant filed a notification of registration on form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement on Form N-1 under the Securities Act of 1933. The registration statement was declared effective on February 23, 1984. Applicant's initial public offering commenced on February 29, 1984.

2. On February 14, 1990, applicant's board of trustees authorized the termination of applicant pursuant to § 9.2(a)(iii) of applicant's declaration of trust. In keeping with the terms of that Section, the chairman of the board of trustees provided written notice of the termination of the shareholders. No shareholder authorization was required or obtained in connection with applicant's liquidation. On May 31, 1990, applicant redeemed all outstanding shares at a net asset value of $1.00 per share.

3. Pursuant to Massachusetts law, applicant filed a notice of termination with the Massachusetts Secretary of State on May 31, 1990.

4. The expenses incurred in connection with the liquidation and dissolution were borne by applicant's investment adviser.

5. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-17272 Filed 7-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17587; 111-2721]

NEL Tax Exempt Bond Fund, Inc.; Application


AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: NEL Tax Exempt Bond Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Order requested under section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed March 26, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Hearing requests should be received by the SEC by 5:30 p.m. on August 10, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 501 Boylston Street, Boston, Massachusetts 02117.

FOR FURTHER INFORMATION CONTACT: Thomas G. Sheehan, Staff Attorney, (202) 272-7586, or Stephanie M. Monaco, Branch Chief, (202) 272-3022 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant has not been made.

1. Applicant registered as a diversified, open-end management investment company under the 1940 Act on January 13, 1977.

2. On January 13, 1977, Applicant filed a registration statement under the Securities Act of 1933 to register 2,000,000 shares of common stock, having a maximum aggregate offering price of $20,000,000. Applicant's registration statement became effective on March 19, 1977, and the initial public offering commenced on or about that date.

3. Pursuant to Massachusetts law, the New England Tax Exempt Income Fund, a diversified, open-end management investment company, registered under the Act (the "Fund"), a series of The New England Funds, a Massachusetts business trust (the "Trust"), pursuant to an Agreement and Plan of Reorganization dated January 7, 1987 (the "Plan"). Each share of common stock of the Applicant was converted into one share of the Fund. In total, 15,156,417 shares of the Fund having a value of $114,113,829 were issued to the applicant's shareholders pursuant to the Plan previously adopted on December 4, 1986 by the Applicant's shareholders.

4. Applicant sold all of its assets to the New England Tax Exempt Income Fund (the "Fund"), a series of The New England Funds, a Massachusetts business trust (the "Trust"), pursuant to an Agreement and Plan of Reorganization dated January 7, 1987 (the "Plan"). Each share of common stock of the Applicant was converted into one share of the Fund. In total, 15,156,417 shares of the Fund having a value of $114,113,829 were issued to the applicant's shareholders pursuant to the Plan previously adopted on December 4, 1986 by the Applicant's shareholders.

5. Immediately preceding the reorganization, the Applicant had 1,000,000 shares of common stock outstanding, total net value of $114,113,829 and a per share net asset value of $7.53.

6. Applicant has no outstanding assets except its name and its status as a Massachusetts corporation and a registered investment company.

7. Applicant, to the best of its knowledge, is not a party to any litigation or administrative proceeding.

8. Applicant is not engaged, nor does it propose to engage, in any business activity other than those necessary to wind up its affairs. The Board of Directors of the Applicant will take all action necessary to terminate the Applicant's status as a corporation pursuant to the laws of the Commonwealth of Massachusetts.

9. Applicant has no security holders. There are no former security holders of Applicant to whom disbursements in complete liquidation of their interests in Applicant have not been made.
Pinnacle Government Fund, Inc.; Application

July 17, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Pinnacle Government Fund, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on July 11, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 22, 1990, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.


FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Staff Attorney, at (202) 504-2284 or Jeremy N. Rubenstein, Deputy Secretary, at (202) 504-2290 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (900) 231-3262 (in Maryland (301) 235-3900).

Applicant's Representations

1. Applicant was organized as a corporation under the laws of the State of Florida on July 9, 1980. Applicant has ceased to be a corporation pursuant to the filing of articles of dissolution with the State of Florida on March 14, 1990.


4. Pursuant to the Plan, on January 31, 1990, applicant conveyed all of its assets and liabilities to Trinity Liquid Assets Trust (the "Trust"), an open-end, diversified management investment company organized in 1982 as a Massachusetts business trust. In exchange for this conveyance, applicant received units of a new series of the Trust, known as the "Pinnacle Government Fund," equal in number and value to the number and value of shares of the applicant outstanding immediately prior to the reorganization. Applicant thereafter distributed pro rata to its shareholders the units received from the Trust as part of the reorganization. No brokerage commissions were paid in connection with the reorganization.

5. Upon completion of the reorganization, the shareholders of the applicant became shareholders of the Pinnacle Government Fund series of the Trust in a tax-free exchange.

6. The principal purpose of the reorganization was to reduce applicant's operating expenses by reorganizing it as a series of an existing investment company.

7. Expenses relating to the reorganization, in the approximate amount of $14,500, were assumed and paid by the applicant.

8. As of the date of the application, applicant had no assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 90-17223 Filed 7-23-90; 8:45 am]
BILLING CODE 8010-01-M

Public Utility Holding Company Filings


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 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 August 6, 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.

Northeast Utilities, et al. (70-7544)

Northeast Utilities ("NU"), a registered holding company, Western Massachusetts Electric Company and The Quinnescut Company, all located at 174 Bruch Hill Avenue, West Springfield, Massachusetts 01089, The Connecticut Light and Power Company, Northeast Utilities Services Company, Northeast Nuclear Energy Company, and The Rocky River Realty Company, all located on Golden Street, Berlin, Connecticut 06037, and Holyoke Water Power Company, Canal Street, Holyoke, Massachusetts 01040, subsidiaries of NU ("Applicants"), have filed a post-effective amendment to their application-declaration filed under
sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43, 45, and 50a(a)[5] thereunder. 

By prior Commission order, dated November 18, 1988 (HCAR No. 24750), the Applicants were authorized, through December 31, 1990, to enter into short-term borrowing arrangements in the form of bank notes pursuant to lines of credit and revolving credit agreements and commercial paper, open account advances by NU to its subsidiaries, and the continuation of a system money pool, subject to stated limits on the aggregate amount of such borrowings that each Applicant could undertake. By supplemental order dated February 8, 1990 (HCAR No. 25033), Rocky River was authorized to increase the aggregate amount of its short-term borrowing from $15 million to $20 million. The Applicants now seek to amend their existing short-term borrowing authority to permit Rocky River to increase the aggregate amount of its short-term borrowings authorized through December 31, 1990, from $20 million to $25 million. The proceeds of the sale of securities will be used for construction costs for a garage complex located in Berlin, Connecticut.

New England Energy Incorporated, et al. (70-7613)

New England Electric System ("NEES"), a registered holding company, its fuel subsidiary, New England Energy Incorporated ("NEEI") and NEES generation and transmission subsidiary, New England Power Company ("NEPC") (together, "Applicants"), all located at 25 Research Drive, Westborough, Massachusetts, 01582, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rule 45 thereunder.

By prior Commission order in this matter (HCAR No. 24647, March 29, 1989), NEEI was authorized to issue short-term notes to refinance its existing short-term bank debt in connection with its oil and gas exploration program, consisting of the Old Program and the New Program (HCAR No. 23873, October 22, 1985) and the Capital Funds Agreement, the Loan Agreement (both authorized by HCAR No. 23856, April 8, 1985) and the Capital Maintenance Agreement (HCAR No. 23873, October 22, 1985) between NEEI and NEES, so that they would be in effect throughout the term of the Credit Agreement.

NEEI now proposes to amend the Credit Agreement to delete the covenant that NEEI maintain a net worth of not less than $40 million. In connection with this amendment to the Credit Agreement, NEEI and NEES request authority to further amend the Capital Funds Agreement and Loan Agreement to redefine the amount that NEES is committed to invest in NEEI’s Old Program.

Under the Capital Funds Agreement and Loan Agreement, NEES is currently authorized to invest up to $45 million in NEEI’s Old Program. The proposed amendments to the Capital Funds Agreement and Loan Agreement would redefine the amount that NEES is authorized to invest in NEEI from the current amount of $45 million to an amount of $45 million, plus any after-tax loss attributable to the expensing of interest on additional Old Program borrowings under the Credit Agreement. The total amount of additional Old Program borrowings on which interest may be expensed for purposes herein will not exceed $37,200,000, which equals the amount of NEES’ subordinated notes payable to NEES under the Capital Funds Agreement, as of June 15, 1990.

The proposed amendment to the Credit Agreement will provide NEEI with the flexibility to either maintain or reduce its current net worth. To the extent NEEI elects to reduce its net worth through retirement of Old Program subordinated loans to NEES, NEEI would replace the subordinated loans from NEES with additional Old Program borrowings under the Credit Agreement. The interest costs associated with these additional Old Program borrowings would not be included under NEEI’s Fuel Purchase Contract with NEPC. Therefore, the interest on these borrowings would be included as a current expense on NEEI’s annual income statement.

TECO Energy, Inc. (70-7766)

TECO Energy, Inc. ("TECO Energy"), 702 North Franklin Street, Tampa, Florida 33602, a Florida corporation and public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to Rule 2, has filed an application pursuant to sections 9(a)(2) and 10 of the Act.

TECO Energy presently has one wholly owned public-utility subsidiary, Tampa Electric Company ("Tampa Electric"), a Florida corporation engaged in the generation, transmission, distribution, purchase and sale of electricity. Tampa Electric serves over 453,000 retail customers in western central Florida. The application seeks approval for TECO Energy to acquire, directly or indirectly, up to a 100% interest in Hardee Power Partners Limited ("Hardee Power"), a recently-formed Florida limited partnership that is presently wholly owned by two indirect subsidiaries of TECO Energy formed for this purpose. Hardee Power was organized to develop a project ("Project") consisting of the power resources that Hardee Power will use to satisfy its obligations to sell capacity and energy from January 1, 1993 through December 31, 2012 to Tampa Electric and to Seminole Electric Cooperative, Inc. ("Seminole"), an electric generation and transmission cooperative that serves eleven member rural electric cooperatives in Florida. Specifically, the Project will consist of (i) the construction, ownership and operation of a 295 megawatt generation facility (the "Hardee Facility"), (ii) the purchase by Hardee Power for a ten year period beginning with the completion of the Hardee Facility of rights to the output of 145 megawatts of capacity of an existing generating unit of Tampa Electric (the "BB4 Capacity"), and (iii) an expected 145 megawatt upgrade of the Hardee Facility to replace the BB4 Capacity at the end of the ten year period. It is presently anticipated that Seminole and Tampa Electric will purchase electric energy from the planned Hardee Facility capacity addition. The Hardee Facility will be located on a site adjacent to the Tampa Electric service territory and will be directly interconnected with the transmission systems of Tampa Electric system and Seminole. Construction of the Hardee Facility is scheduled to begin in 1993 and commercial operation is scheduled to occur on January 1, 1993. It is presently anticipated that the Hardee Facility will be financed on a project finance basis, consisting of interim financing by a construction loan and long-term financing following commercial operation. At the time long-term financing occurs, it is anticipated that TECO Energy will make an indirect equity contribution to Hardee Power of approximately 20% of the cost of Hardee Facilities. Such cost is expected to be
approximately $200 million. It is also
anticipated that TECO Energy will
guarantee repayment of the construction
loan but will not guarantee repayment of
the long-term financing.

General Public Utilities Corp., et al. (70–
7754)

General Public Utilities Corporation
(“GPU”), 100 Interpace Parkway,
 Parsippany, New Jersey 07054, a
registered holding company, and its
wholly owned subsidiary company, GPU
Nuclear Corporation (“GPUN”), One
Upper Pond Road, Parsippany, New
Jersey 07054, have filed an application
declaration under sections 6(a), 7, 9(a),
10, 12(b) and 13(b) of the Act and Rules
45.90 and 91 thereunder.

By order dated September 5, 1980
(HCAR No. 21708), GPU was authorized
to organize GPUN as a service company
subsidiary responsible for providing
sale operation, maintenance, rehabilitation, design, construction,
start-up and testing of all nuclear
facilities owned by GPU system companies, and related research
and development.

In response to an invitation issued by
Westinghouse Electric Corporation
(“Westinghouse”), dated April 12, 1990,
GPUN has submitted a proposal to
provide radiological decontamination
and asbestos removal services
(“Contract Services”) at the Idaho Falls
Nuclear Facility (“NRF”), for an
initial period of one year with options to
renew for three succeeding one year
periods, on a cost plus fixed fee basis.
The NRF site is operated by
Westinghouse for the United States
Department of Energy (“DOE”).

GPUN has also submitted a proposal
to provide Contract Services at the
Knolls Atomic Power Laboratory
(“KAPL”), in response to an invitation
issued May 7, 1990, by the General
Electric Company (“GE”) which
operates KAPL for DOE. This proposal
is for services for an initial two year
period with an optional two year period,
and a cost plus fixed fee basis.

In the event GPUN is selected as the
contractor for either or both of the
projects, GPUN proposes to form a new
subsidiary company (“NewCo”) which
shall perform the Contract Services.

GPUN also proposes to provide certain
services, including accounting and other
administrative services, to NewCo, at
cost.

It is further proposed that, (1) NewCo
issue and sell, and GPUN acquire, 100
shares of NewCo common stock, for a
total purchase price of $100; and (2)
NewCo fund the cost of providing
Contract Services by borrowing, from
time-to-time, through December 31, 1992,
for terms not exceeding 270 days, an
amount not to exceed an aggregate of $1
million outstanding at any time either
from banks or from GPU, such
borrowings to be evidenced by the
issuance of notes. The continuing
services which GPUN, and its subsidiary
companies, will provide to its affiliated
companies involving radiological
decontamination and asbestos removal
services will be at least three times the
expected level of services GPUN, and its
subsidiary companies, would be
providing to Westinghouse, GE, NRF
and KAPL.

For the Commission, by the Division of
Investment Management, pursuant to
delegated authority.
M. H. McFarland,
Deputy Secretary.

[FR Doc. 90–17199 Filed 7–23–90; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing; Financial News Network, Inc., Common Stock, No Par Value

July 18, 1990.

Financial News Network, Inc. (“Company”) has filed an application with the Securities and Exchange Commission (“Commission”) pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–
2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the

Boston Stock Exchange (“BSE”).

The reasons alleged in the application
for withdrawing this security from
listing and registration include the
following:

The Company’s Common Stock is also
listed on the National Association of
Securities Dealers Automated Quotation
System/National Market System
(NASDAQ/NMS). The Company finds it
to be unduly burdensome and costly to
be listed on both exchanges.

Any interested person may, on or
before August 8, 1990, submit by letter to
the Secretary of the Securities and
Exchange Commission, 450 Fifth Street,
NW., Washington, DC 20549, facts
bearing upon whether the application
has been made in accordance with the
rules of the Exchanges and what terms,
if any, should be imposed by the
Commission for the protection of
investors. The Commission, based on
the information submitted to it, will
issue an order granting the application
after the date mentioned above, unless
the Commission determines to order a
hearing on the matter.

For the Commission, by the Division of
Market Regulation, pursuant to delegated
authority.
Jonathan G. Katz,
Secretary.

[FR Doc. 90–17231 Filed 7–23–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0509]

SLK Capital Corp.; Surrender of License

Notice is hereby given that, pursuant to § 107.105 of the Small Business Administration (SBA) Rules and Regulations governing Small Business Investment Companies (13 CFR 107.105
(1990)), SLK Capital Corporation, 115
Broadway, New York, New York 10006,
incorporated under the laws of the State
of New York has surrendered its License
No. 02/02–0509 issued by the SBA on

SLK Capital Corporation has complied
with all conditions set forth by SBA for
surrender of its license. Therefore, under
the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the above
cited Regulation, the license of SLK
Capital Corporation is hereby accepted
and it is no longer licensed to operate as
a Small Business Investment Company.

For the Commission, by the Division of
Domestic Administration (SBA) Rules and
Regulations, pursuant to § 107.105 of the Small Business Investment Act of 1958, as amended, and pursuant to the above
cited Regulation, the license of SLK
Capital Corporation is hereby accepted
and it is no longer licensed to operate as
a Small Business Investment Company.

(Catalog of Federal Domestic Assistance
Program No. 59.011, Small Business
Investment Companies)

Dated: July 17, 1990.
Bernard Kulik,
Associate Administrator for Investment.

[FR Doc. 90–17252 Filed 7–23–90; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council Meeting

The U.S. Small Business
Administration, Region I Advisory
Council, located in the geographical area
of Hartford, will hold a public meeting
at 8 a.m., on Monday, August 6, 1990, at
the Days Inn, 900 East Main Street,
Meriden, Connecticut, to discuss such
matters as may be presented by
members, staff of the U.S. Small Business
Administration, or others present.

For further information, write or call
Michael P. McHale, District Director,
U.S. Small Business Administration, 330
Main Street, Hartford, Connecticut
06106, phone (203) 240–4670.
Director, Office of Advisory Councils.

[Application No. 04/04-5254]

Application for License to Operate as Growth Capital Corp. (Applicant), 6726 661 Act of 1958, as amended (Act) (15 U.S.C. 301 (d] of the Small Business Investment Companies Act, the Applicant has been organized and will be a source of equity capital and long-term loan funds for qualified small business concerns. The Applicant proposes to conduct its operations with a capitalization of $5,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns.

The Applicant proposes to begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business primarily in the State of Alabama.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to such concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

Notice is hereby given that any person may, no later than 30 days from the date of publication of this Notice, submit written comments on the proposed application. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Huntsville, Alabama area.

The proposed officers, directors, and owner of the Applicant are as follows:

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Percentage of ownership</th>
</tr>
</thead>
<tbody>
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<td>William B. Noojin</td>
<td>Manager</td>
<td>0</td>
</tr>
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<td>Francisco J. Collazo</td>
<td>President/Director</td>
<td>0</td>
</tr>
<tr>
<td>Francisco L. Collazo</td>
<td>Vice President</td>
<td>0</td>
</tr>
<tr>
<td>Carmen A. Collazo</td>
<td>Secretary/Treasurer/Director</td>
<td>0</td>
</tr>
<tr>
<td>COLSA, Inc.</td>
<td>6726 Odyssey Drive, Huntsville, AL 35801.</td>
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The Applicant proposes to begin operations with a capitalization of $1,000,000 and will be a source of equity capital and long-term loan funds for qualified small business concerns.

The Applicant intends to conduct its business primarily in the State of Alabama.

As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act and will provide assistance solely to such concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the applicant under their management including profitability and financial soundness, in accordance with the Act and Regulations.

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<td>Francisco L. Collazo</td>
<td>Vice President</td>
<td>0</td>
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<td>Carmen A. Collazo</td>
<td>Secretary/Treasurer/Director</td>
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<td>6726 Odyssey Drive, Huntsville, AL 35801.</td>
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</table>

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 13, 1990

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47004

Date filed: July 9, 1990

Parties: Members of the International Air Transport Association

Subject: TC1 (USA/US Territories) Resolutions R-1 to R-5

Proposed Effective Date: October 1, 1990

Docket Number: 47045

Date filed: July 9, 1990

Parties: Members of the International Air Transport Association

Subject: TC23 (To/From US Territories) Expedited Resolutions R-1 to R-4

Proposed Effective Date: August 1, 1990

Docket Number: 47056

Date filed: July 8, 1990

Parties: Members of the International Air Transport Association

Subject: TC23 Expedited Resolutions Proposed Effective Date: August 1, 1990

Phyllis T. Kaylor, Chief, Documentary Service Division.

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 13, 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: 47049

Date filed: July 9, 1990

Parties: Members of the International Air Transport Association

Subject: TC1 (USA/US Territories) Resolutions R-1 to R-5

Proposed Effective Date: October 1, 1990

Docket Number: 47044

Date filed: July 9, 1990

Parties: Members of the International Air Transport Association

Subject: TC23 (To/From US Territories) Expedited Resolutions R-1 to R-4

Proposed Effective Date: August 1, 1990

Docket Number: 47045

Date filed: July 9, 1990

Parties: Members of the International Air Transport Association

Subject: TC23 Expedited Resolutions Proposed Effective Date: August 1, 1990
transportation between Atlanta, Georgia and Madrid and Barcelona, Spain.

Docket Number: 47050

Date filed: July 9, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 1990.
Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to permit Delta to provide air transportation between Orlando, Florida and Mexico City, Mexico.

Docket Number: 47051

Date filed: July 9, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 1990.
Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to permit Delta to provide air transportation between Atlanta, Georgia and Manchester, England.

Docket Number: 47059

Date filed: July 12, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 9, 1990.
Description: Application of Transportes Aereos Bolivianos pursuant to section 402 of the Act and subpart Q of the Regulations, requests renewal of its foreign air carrier permit authorizing non-scheduled cargo service between a point or points in Bolivia; the intermediate points Lima, Peru; Caracas, Venezuela; Panama City, Panama; and the co-terminal points Miami, Florida and Houston, Texas.

Docket Number: 47062

Date filed: July 13, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 10, 1990.
Description: Application of Tower Air, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity for Route 401, authorizing it to engage in scheduled foreign air transportation of passengers, property and mail between New York, New York and Miami, Florida, on the one hand, and Gothenburg, Sweden, on the other hand, and to integrate this service with its other operations on Route 401.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 90-17170 Filed 7-23-90; 8:45 am]
BILLING CODE 4910-42-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.).

On April 11, 1990, Mr. Leonard T. Skreba petitioned the National Highway Traffic Safety Administration (NHTSA) requesting that a Manufacturer's Defect Investigation be conducted of alleged rear window hinge failures and resultant “falling off” of the attached windows form 1988 to 1991 General Motors (GM) S-10 Blazers and S-15 Jimmys. The petitioner alleges that one or both of the hinges that secure the rear liftgate glass to the body can separate during vehicle operation. This is allegedly caused by the hinge-pin working its way out of the hinge and allowing the hinge to come apart. The petitioner further alleges that this allows the glass to fall from the vehicle and into the path of any oncoming traffic causing a safety hazard to these drivers, as well as distracting the driver of the vehicle subject to the failure.

The subject vehicles can be opened in the rear to afford entry into the rear cargo area to carry large items. To accomplish this, the vehicles have tailgates like a pick-up truck that opens downward. This opens the lower half of the rear opening of the enclosed cargo bed. To cover the upper half of this rear opening, the vehicles are equipped with a glass door (liftgate) that is secured by two hinges located along the top edge. This glass liftgate opens upward and two support tubes hold it in this position for loading and unloading.

The only failure report received by NHTSA is the complaint from the petitioner. GM reported three additional owner complaints and two field service reports involving nine additional vehicles for a total of six complaints involving 13 vehicles for a total of six complaints involving 13 vehicles. GM also reports that since this hinge has been used since the subject models were introduced in 1983, they also searched no complaints were located.

The GM owner's manual advises the owner not to drive with the rear glass liftgate open. GM points out that even if the liftgate is open it is unlikely to fall off, as the rear liftgate is attached with two hinges, two tube supports, and the latch assembly. There are no reports, including that of the petitioner, where the rear liftgate totally separated from the vehicle. In all reported cases, the window was retained to the vehicle either by the remaining hinge or the tube supports.

Based on the extremely low number of reports and the lack of any reported accidents or injuries, there does not appear to be a reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to the alleged rear liftgate hinge failures would be issued at the conclusion of an investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is denied.

Issued on July 18, 1990.
George L. Reagle,
Associate Administrator for Enforcement.
[FR Doc. 90-17171 Filed 7-23-90; 8:45 am]
BILLING CODE 4910-55-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 18, 1990.

The Department of the Treasury has submitted 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.

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Issued on July 18, 1990.
George L. Reagle,
Associate Administrator for Enforcement.
[FR Doc. 90-17171 Filed 7-23-90; 8:45 am]
BILLING CODE 4910-55-M

DEPARTMENT OF THE TREASURY
Employment Taxes and Income Tax Withholding.

**Description:** This form is used by employers and workers to furnish information to IRS in order to obtain a determination as to whether a worker is an employee for purposes of Federal Employment taxes and income tax withholding. IRS uses the information on Form SS-8 to make the determination.

**Respondents:** Individuals or households, State or local governments, Farms, Washington, DC 20224.

**Type of Review:** Revision.

**Title:** Information Return of U.S. Persons With Respect to Certain Foreign Corporations.

**Estimated Number of Respondents:** 8,000.

<table>
<thead>
<tr>
<th>Form</th>
<th>Recordkeeping</th>
<th>Learning about the law or the form</th>
<th>Preparing and sending the form to IRS</th>
</tr>
</thead>
<tbody>
<tr>
<td>5471</td>
<td>76 hrs., 17 mins</td>
<td>23 hrs., 43 mins</td>
<td>30 hrs., 48 mins</td>
</tr>
<tr>
<td>Sch. M</td>
<td>23 hrs., 55 mins</td>
<td>16 mins</td>
<td>42 mins</td>
</tr>
<tr>
<td>Sch. N</td>
<td>9 hrs., 8 mins</td>
<td>9 hrs., 63 mins</td>
<td>4 hrs., 11 mins</td>
</tr>
<tr>
<td>Sch. O</td>
<td>10 hrs., 31 mins</td>
<td>12 mins</td>
<td>23 mins</td>
</tr>
</tbody>
</table>

**Estimated Total Recordkeeping:** 6,838,695 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) 385-6680, Office of Management and Budget, room 5001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland, Departmental Reports, Management Officer.

[FR Doc. 90-17179 Filed 7-23-90; 8:45 am] BILLING CODE 4830-01-M

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**Public Information Collection Requirements Submitted to OMB for Review**

**Date:** July 18, 1990.

The Department of Treasury has submitted 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 3171 Treasury Annex, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

**Comptroller of the Currency**

OMB Number: New.

**Description:** Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of sections 6035, 6038, and 6046 and the regulations thereunder pertaining to the involvement of U.S. persons with certain foreign corporations.

**Respondents:** Individuals or households, Businesses or other for-profit, Small businesses or organizations.

**Estimated Number of Respondents:** 80,000.

**Estimated Burden Hours Per Response:** 51 minutes.

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**Employee Business Expenses.**

**Type of Review:** Revision.

**Title:** Registered Banks Survey.

**Description:** The survey will be used to assist the OCC in evaluating whether changes should be made in the present regulations and/or the types of changes which may be appropriate.

**Respondents:** Businesses or other for-profit.

**Estimated Number of Respondents:** 60.

**Estimated Burden Hours Per Response:** 1 hour.

<table>
<thead>
<tr>
<th>Form Number</th>
<th>Description</th>
<th>Frequency of Response</th>
<th>Estimated Total Reporting Burden:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sch. O</td>
<td>Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of sections 6035, 6038, and 6046 and the regulations thereunder pertaining to the involvement of U.S. persons with certain foreign corporations.</td>
<td>One time involved in the extent of 50% of the expense. Form 2106 is used to figure these expenses.</td>
<td>60 hours</td>
</tr>
<tr>
<td>5471</td>
<td>Internal Revenue Code section 62 allows employees to deduct the extent of reimbursement in computing Adjusted Gross Income. Expenses in excess of reimbursements are allowed as an itemized deduction. Unreimbursed meals and entertainment are allowed to the extent of 60% of the expense.</td>
<td>Revision.</td>
<td>60 hours</td>
</tr>
<tr>
<td>Sch. M</td>
<td>Form 2106 is used to figure these expenses.</td>
<td>Revision.</td>
<td>60 hours</td>
</tr>
<tr>
<td>Sch. N</td>
<td>Employee Business Expenses.</td>
<td>Revision.</td>
<td>60 hours</td>
</tr>
<tr>
<td>Sch. O</td>
<td>Description:** Employee Business Expenses.** The survey will be used to assist the OCC in evaluating whether changes should be made in the present regulations and/or the types of changes which may be appropriate.</td>
<td>Revision.</td>
<td>60 hours</td>
</tr>
</tbody>
</table>

**BILILLING CODE 4810-01-M**
Departmental Offices

Privacy Act of 1974; New System of Records

AGENCY: Departmental Offices, Treasury.


SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a new proposed system of records, the FinCEN Data Base, Treasury/DO 200. The purpose of this system of records is to implement a law enforcement data base containing records with identifying and other relevant information on individuals in subject files and investigative/investigation reports used by the Financial Crimes Enforcement Network ("FinCEN").

DATES: Comments must be received no later than August 23, 1990. The proposed system of records will be effective on or before September 24, 1990, unless the Department of the Treasury receives comments on the system of records which would result in a contrary determination.

ADDRESSES: Please submit comments to Department of the Treasury, Office of the Deputy Assistant Secretary (Law Enforcement), Room 4330, 1500 Pennsylvania Avenue NW, Washington, DC 20220. Persons wishing to review the comments should make an appointment with the Office of the Deputy Assistant Secretary (Law Enforcement) at 505-6054.


SUPPLEMENTARY INFORMATION: By Treasury Department Order No. 105-08, issued on April 25, 1990, the Secretary of the Treasury established the Office of the Director, Financial Crimes Enforcement Network ("FinCEN"). In the Office of the Assistant Secretary (Enforcement), FinCEN's mission is to provide a governmentwide, multisource intelligence and analytical network in support of the detection, investigation, and prosecution of domestic and international money laundering and other financial crimes by Federal, State, local, and foreign law enforcement agencies.

Among FinCEN's principal responsibilities are (1) to maintain a governmentwide data-access service, with access, in accordance with legal requirements, to (A) information collected by Treasury, including report information filed under the Bank Secrecy Act and section 6050 of the Internal Revenue Code; (B) information regarding national and international currency flows; (C) other records and data maintained by other Federal, State, local and foreign agencies, including financial and other records developed in specific cases; and (D) other privately and publicly available information; and (2) to analyze and disseminate the available data to (A) identify possible criminal targets to appropriate Federal, State, local and foreign law enforcement agencies; (B) support ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax forfeiture proceedings; (C) identify possible instances of non-compliance with the Bank Secrecy Act to Federal agencies with delegated responsibility for Bank Secrecy Act compliance; (D) evaluate and recommend possible uses of special currency reporting under 31 U.S.C. 5328; and (E) determine emerging trends and methods in money laundering and other financial crimes.

FinCEN seeks to establish and maintain the proposed new system of records as the sole feasible means to perform these responsibilities. FinCEN will maintain these records to further the Government's investigative intelligence, interdiction, enforcement, and prosecution efforts through the collation, analysis and dissemination of investigative, intelligence, and enforcement data. Since the system of records will include subject files and investigative/intelligence reports, which will necessarily be retrieved by personal identifier, the Privacy Act of 1974, as amended, 5 U.S.C. 552a, requires the Department of the Treasury to give general notice and seek public comments.

In a separate publication, the Department of the Treasury is also giving public notice of a proposed rule to exempt this system of records from certain provisions of 5 U.S.C. 552a pursuant to subsections (f)(2), (k)(1), and (k)(2) of the same section.

Treasury/DO .200

SYSTEM NAME: FinCEN Data Base.
prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where FinCEN becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;
(3) Furnish information to the Department of Defense, to support its role in the detection and monitoring of aerial and maritime transit of illegal drugs into the United States and any other role in support of law enforcement that the law may mandate;
(4) Respond to queries from INTERPOL in accordance with agreed coordination procedures between FinCEN and INTERPOL:
(5) Furnish information to individuals and organizations, in the course of efforts to elicit information pertinent to financial law enforcement;
(6) Furnish information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation or settlement negotiations, in response to a subpoena, or in connection with civil or criminal law proceedings;
(7) Furnish information to the news media in accordance with the guidelines contained in 28 CFR 50.2, which relate to civil and criminal proceedings; and
(8) Furnish information to the Department of State and the Intelligence Community to further those agencies’ efforts with respect to national security and the foreign aspects of international narcotics trafficking.
POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:
STORAGE:
Magnetic media and hard copy.
RETRIEVABILITY:
By name, address, or unique identifying number.
SAFEGUARDS:
All FinCEN personnel accessing the system will have successfully passed a background investigation. FinCEN will furnish information from the system of records to approved personnel only on a “need to know” basis using passwords and access control. Procedural and physical safeguards to be utilized include, the logging of all queries and periodic review of such query logs; compartmentalization of information to restrict access to authorized personnel; physical protection of sensitive hard copy information; encryption of electronic communications; intruder alarms; and 24-hour building guards.
RETENTION AND DISPOSAL:
FinCEN personnel will review records each time a record is retrieved and on a periodic basis to see whether it should be retained or modified. FinCEN will dispose of all records after six years and will never retain any record for more than seven years. Records will be disposed of by erasure of magnetic media and by shredding and/or burning of hard copy documents.

SYSTEM LOCATION:
The Financial Crimes Enforcement Network, 3833 North Fairfax Drive, Arlington, Virginia 22203.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
1. Individuals who relate in any manner to official FinCEN efforts in support of the enforcement of the Bank Secrecy Act and money-laundering and other financial crimes. Such individuals may include, but are not limited to, subjects of investigations and prosecutions; suspects in investigations; victims of such crimes; witnesses in such investigations and prosecutions; and close relatives and associates of any of these individuals who may be relevant to an investigation.
2. Current and former FinCEN personnel whom FinCEN considers relevant to an investigation or inquiry.
3. Individuals who are the subject of unsolicited information possibly relevant to violations of law or regulations, who offer unsolicited information relating to such violations, who request assistance from FinCEN, and who make inquiries of FinCEN.

CATEGORIES OF RECORDS IN THE SYSTEM:
Every possible type of information that contributes to effective law enforcement may be maintained in this system of records, including, but not limited to, subject files on individuals, corporations, and other legal entities; information provided pursuant to the Bank Secrecy Act; information gathered pursuant to search warrants; statements of witnesses; information relating to past queries of the FinCEN Data Base; criminal referral information; complaint information; identifying information regarding witnesses, relatives, and associates; investigative reports; and intelligence reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Records in this system may be used to:
(1) Provide responses to queries from Federal, State, territorial, and local law enforcement and regulatory agencies, both foreign and domestic, regarding Bank Secrecy Act and other financial crime enforcement;
(2) Furnish information to other Federal, State, local, territorial, and foreign law enforcement and regulatory agencies responsible for investigating or
be payable at the rate of 8 1/2 percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 90-17299 Filed 7-23-90; 8:45 am]
BILLING CODE 4160-45-M

Customs Service
(T.D. 90-63)

Revocation of Hermann Runne To Gauge Imported Petroleum and Petroleum Products; Hermann Runne

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

ACTION: Notice of revocation of approval of a commercial gauger.

SUMMARY: Pursuant to § 151.43(b), Customs Regulations (19 CFR 151.43(b)), the approval to gauge imported petroleum and petroleum products granted to Mr. Hermann Runne, now located at 804 Belton Drive, (P.O. Box 50638), Nashville, Tennessee 37205, has been revoked with prejudice for failure to meet bonding requirements and provisions contained in the Commercial Gauger Agreement.

Accordingly, the approval of Hermann Runne to gauge imported petroleum and petroleum products in all Customs districts is revoked.

EFFECTIVE DATE: June 28, 1990.

FOR FURTHER INFORMATION CONTACT:
Donald A. Cousins, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.


John B. O’Loughlin,
Director, Office of Laboratories and Scientific Services.

[FR Doc. 90-17299 Filed 7-23-90; 8:45 am]
BILLING CODE 4160-45-M

Office of Thrift Supervision
[No: 90-1385]

Approval of Application for Unlisted Trading Privileges; Information Collection Request; Midwest Stock Exchange, Inc.

Date: July 12, 1990.

AGENCY: Office of Thrift Supervision, Department of the Treasury.

ACTION: Notice of approval of application.

SUMMARY: The Midwest Stock Exchange, Inc. filed with the Office of Thrift Supervision ("Office") an application ("Application") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 (17 CFR 240.12f-1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchanges: American Savings Bank, FSB, New York, New York (OTS No. 7776), $1.625 Cumulative Convertible Exchangeable, Preferred Stock, No Par Value.

Notice of the Application and opportunity for hearing was published in the Federal Register on June 27, 1990 and interested persons were invited to submit written data, views and arguments within 15 days. See Office Order No. 90-1160, dated June 15, 1990.

55 FR 26329, June 27, 1990. The Office received no comments with respect to the Application. Notice is hereby given that, pursuant to the authority delegated to the Chief Counsel or his designee, the Application for unlisted trading privileges in these securities was approved, on July 12, 1990.

SUPPLEMENTARY INFORMATION: The Office finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Midwest Stock Exchange, Inc. is subject to the provisions of paragraph (b) of that section, and to the Commission’s inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act. 17 CFR 240Aa3-1. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Midwest Stock Exchange, Inc. are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Office received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. Accordingly, pursuant to section 12(f)(1)(B) of the Act and pursuant to the authority delegated to the Chief Counsel of his designee, the Application for unlisted trading privileges in the above named securities was approved, on July 12, 1990.

By the Office of Thrift Supervision.

Debra J. Ahearn,
Program Analyst.

[FR Doc. 90-17173 Filed 7-23-90; 8:45 am]
BILLING CODE 6720-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of formation of working groups to study specific issues related to implementation of the sentencing guidelines. Request for public comment on issues to address in 1991 amendment cycle.

SUMMARY: The Commission is continuing its ongoing study of the implementation of the sentencing guidelines and has formed working groups to study specific issues related to guideline implementation. Comment is requested on these issues. Additionally, in preparation for the 1991 amendment cycle that culminates in the submission
to Congress of proposed guideline amendments no later than May 1, 1991, the Commission solicits comment on: (1) Additional areas of Commission study; (2) specific problems in guideline application; and (3) the adequacy of current training programs and informational materials.

DATES: Public comment for this information-gathering phase of the 1991 amendment cycle should be received by the Commission no later than September 10, 1990, in order for it to be considered by the Commission in setting priorities and allocating staff resources.

ADDRESSES: Comment should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue NW, Suite 1400, Washington, DC 20004. Attn: Communications Director.

FOR FURTHER INFORMATION CONTACT: Paul K. Martiru, Communications Director, Telephone: (202) 628-8500.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the U.S. Government. The Commission is empowered by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal sentencing courts. The statute further directs the Commission to periodically review and revise guidelines promulgated and authorizes it to submit guideline amendments to the Congress no later than the first day of May each year. See 28 U.S.C. 994(e), (p).

In response to suggestions, the Commission is expanding its amendment process by soliciting formal and informal comment on guideline issues and potential amendments earlier in the amendment cycle. This solicitation is in addition to the traditional formal publication of proposed amendments and amendment issues in the Federal Register after January 1st of each year. In addition to this notice, the Commission plans to solicit input on amendment issues from judges, defense attorneys, prosecutors, probation officers, and legal commentators.

To assist in setting priorities and allocating resources, the Commission requests comment on the following matters: (1) Problem areas in guideline application; (2) issues identified by the Commission for staff working groups; (3) additional issues for Commission study; (4) specific suggestions for amendments to the guidelines; and (5) adequacy of current training programs and informational materials.

As in past amendment cycles, the Commission intends to utilize interdisciplinary staff working groups to comprehensively analyze designated priority issues using legal, research, monitoring, and training resources. The working groups will seek to present the Commission with recommendations that may include improved training, amendments, statutory changes, and areas for further research and study. Because of the nature and scope of the issues under review, not every working group is designed to complete its work in time for action during the 1991 amendment cycle.

Currently, the Commission has working groups studying organizational sanctions, penalties review, ASSYST, and revocation of probation and supervised release. All four groups are well along in their assignments. The Commission expects to act on guidelines for sanctioning organizations during the 1991 amendment cycle. The next report of the penalties review project is scheduled for submission to Congress in late fall. The Commission's guideline application computer software program, ASSYST, is in the process of being improved and updated for a fall distribution. And the Commission intends to promulgate policy statements for revocations of probation and supervised release this fall.

The Commission has instructed the Staff Director to organize working groups to begin work immediately in the following priority areas: (1) Acceptance of responsibility; (2) bank robbery; (3) criminal history; and (4) departures. Additionally, the Staff Director will organize a second set of working groups designed for more gradual development. This set includes study of drug offenses (especially violent drug offenses), fines, hate crimes, offenses involving firearms and explosives, prison capacity, role in the offense, and aliens.

Finally, the Commission has designated several topics for future working group consideration, including assimilative crimes, computer crime, environmental offenses, juvenile offenses, national security, pornography, obscenity, and sex offenses, regulatory and other infrequently prosecuted offenses, and other violent offenses.

The Commission solicits comment on the priorities chosen as well as the substance of working group projects.

William W. Wilkins, Jr., Chairman.

[FR Doc. 90-17199 Filed 7-23-90; 8:45 am]
CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, July 25, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: FY 91-92 Kane

The Commission will consider issues related to the FY 91-92 Kane/Budget.

INFORMATION:

The staff will brief the Commission on the status of various compliance matters.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301-492-6800.

[FR Doc. 90-17396 Filed 7-24-90; 3:34 pm]
BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, July 26, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

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.

INFORMATION:

The staff will brief the Commission on the status of various compliance matters.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Ms. Jennifer J. Johnson, Assistant to the Board; (202) 452-3204.

[FR Doc. 90-17397 Filed 7-20-90; 3:34 pm]
BILLING CODE 7600-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, July 30, 1990.


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.

INFORMATION:

The staff will brief the Commission on the status of various compliance matters.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3204, 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.

[FR Doc. 90-17398 Filed 7-20-90; 2:10 pm]
BILLING CODE 6555-01-M

NUCLEAR REGULATORY COMMISSION


PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and 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.

INFORMATION:

The staff will brief the Commission on the status of various compliance matters.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3204, 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.

[FR Doc. 90-17399 Filed 7-20-90; 2:10 pm]
BILLING CODE 7600-01-M

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 11:00 a.m., Thursday, July 26, 1990.

PLACE: 1120 Vermont Avenue, NW., Washington, DC.

STATUS: Open [A portion of the meeting may be closed subject to the recorded vote of a majority of the Board to discuss matters exempt from the provisions of the Government in the Sunshine Act under 5 U.S.C. 552b(c)(10)].

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.

INFORMATION:

The staff will brief the Commission on the status of various compliance matters.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mr. Michael S. Fagen, Clerk of the Board; (202) 452-3204.

[FR Doc. 90-17398 Filed 7-20-90; 2:10 pm]
BILLING CODE 6210-01-M

Federal Register
Vol. 55, No. 142
Tuesday, July 24, 1990
Week of August 13—Tentative

Thursday, August 16

8:30 a.m.
Collegial Discussion of Items of Commissioner Interest (Public Meeting)

10:00 a.m.
Briefing on Continuity of Government Program (Closed—Ex.1)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION:
By a vote of 4-0 on July 18, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission’s rules that Commission business required the “Affirmation of Interim Final Rule to Amend 10 CFR Parts 30 and 35” (Public Meeting), scheduled for July 18 be held on less than one week’s notice.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492-0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 402-1661.

Andrew L. Bates,
Office of the Secretary.

STATUS: Open—under “Government in the Sunshine Act” (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:
8:00 a.m. Meeting—Board of Regents
(1) Approval of Minutes—July 9, 1990; (2) Faculty Matters; (3) Report—Admissions; (4) Report—Associate Dean for Operations; (5) Report—Dean, Military Medicine Education Institute; (6) Report—Nursing School Task Force; (7) Report—President, USUHS; (8) Comments—Members, Board of Regents; (9) Comments—Chairman, Board of Regents
New Business


CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 202/295-3028.

Patricia H. Means,
OSD Federal Register Liaison Officer, Department of Defense.
Part II

Environmental Protection Agency

40 CFR Parts 122 and 403
General Pretreatment and National Pollutant Discharge Elimination System Regulations; Final Rule
ENFORCEMENT OF JUDICIAL REVIEW, DATES:

This regulation shall become effective on August 23, 1990. For purposes of judicial review, this regulation is issued at 1 p.m. on August 7, 1990.

ADDITIONS: Questions on today’s rule of a technical nature should be addressed to: Marilyn Goode, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The record for this rulemaking, including all public comments received on the proposal, is available for inspection and copying at the EPA Public Information Reference Unit, room 2402, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Marilyn Goode, Permits Division (EN-336), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 475-9526.

SUPPLEMENTARY INFORMATION:

I. Background

II. Revisions

A. Specific Discharge Prohibitions
1. Ignitability and Explosivity
2. Reactivity and Fume Toxicity
3. RCRA Toxicity
4. Corrosivity
5. Oil and Grease
6. Solvent Wastes
B. Spills and Batch Discharges (slugs)
C. Trucked and Hauled Wastes
D. Notification Requirements
E. Individual Control Mechanisms for Industrial Users
F. Implementing the General Prohibitions Against Pass Through and Interference
1. Toxicity-Based Permit Limits
2. Sludge Control
3. Control of Indirect Dischargers: Commercial Centralized Waste Treasurers
4. Categorical Standards for Other Industries
G. Enforcement of Categorical Standards
1. Revisions to Local Limits
2. Inspections and Sampling of Significant Industrial Users by POTWs
3. Definition of Significant Industrial User
4. Enforcement Response Plans for POTWs
5. Definition of Significant Violation
6. Reporting Requirements for Significant Industrial Users
H. Miscellaneous Amendments
1. Local Limits Development and Enforcement
2. EPA and State Enforcement Action
3. National Pretreatment Standards: Categorical Standards
4. POTW Pretreatment Program Requirements: Implementation
5. Development and Submission of NPDES State Pretreatment Programs
6. Administrative Penalties Against Industrial Users
7. Provisions Governing Fraud and False Statements

III. Executive Order 12291

IV. Regulatory Flexibility Analysis

V. Paperwork Reduction Act

I. Background

The regulatory changes promulgated today are intended to improve control of hazardous wastes introduced into POTWs under the Domestic Sewage Exclusion. The exclusion, established by Congress in Section 1004(27) of the Resource Conservation and Recovery Act (RCRA), provides that solid or dissolved material in domestic sewage is not solid waste as defined in RCRA. A corollary is that such material cannot be considered a hazardous waste for purposes of RCRA.

The exclusion applies to domestic sewage as well as mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly-owned treatment works (POTW) for treatment (see 40 CFR part 240). The exclusion thus covers industrial wastes discharged to POTW sewers containing domestic sewage, even if these wastes would be considered hazardous if disposed of by other means.

One effect of the exclusion is that industrial facilities which generate hazardous wastes and discharge such wastes to sewers containing domestic sewage are not subject to RCRA manifest requirements for the transport of those excluded wastes. However, depending on the circumstances, such industrial users may be required to comply with certain other RCRA requirements that apply to generators of hazardous wastes. Some of these requirements are: (1) Determining whether a waste is hazardous (40 CFR 262.11); (2) obtaining an EPA identification number for hazardous wastes not discharged to the sewer (40 CFR 262.12); (3) accumulation of hazardous wastes (40 CFR 262.34); (4) recordkeeping (40 CFR 262.40 (c) and (d)); and (5) reporting (40 CFR 262.42). Additional requirements will usually apply if the wastes are treated or stored prior to discharge to a POTW (see 40 CFR part 264).
Exclusion. Industries sending their wastes to POTWs in this manner are not covered by the exclusion, and POTWs receiving these wastes are subject to regulation under the RCRA permit-by-rule (see 40 CFR 270.60(e)).

In 1984, Congress enacted the Hazardous and Solid Waste Amendments to RCRA. Section 246 of the Amendments created a new section 3018(a) of RCRA, requiring EPA to prepare:

* * * a report to the Congress concerning those substances identified or listed under section 3001 which are not regulated under this subtitle by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size, and number of generators which dispose of substances in this manner, types and quantities disposed of in this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner to meaningfully protect human health and the environment.

EPA submitted its report (the Study) to Congress on February 7, 1986. In performing the Study, the Agency reviewed information on 160,000 waste disposers from 47 industrial categories and the residential sector. Because of the nature of the available data sources, the Study provided estimates for the discharge of the specific constituents of hazardous wastes (e.g., benzene, acetone, etc.) rather than estimates for hazardous wastes as they are more generally defined under RCRA (i.e., "characteristic" wastes such as ignitable or reactive wastes, or "listed" wastes such as spent solvents, electroplating baths, etc.). The Study also provided more extensive estimates for those hazardous constituents which are also CWA priority pollutants. The CWA priority pollutant list was originally developed as part of a settlement agreement between the Natural Resources Defense Council (NRDC) and EPA (NRDC v. Train, Nrs. 2163-73, 75-172, 75-1698, 75-1287 (D.D.C. June 8, 1970)). This agreement required the Agency to promulgate technology-based standards for 65 compounds or classes of compounds. Congress then incorporated this list of toxic pollutants as part of the 1977 amendments to the CWA. From the list of compounds or classes of compounds, EPA later developed a list of 126 individual priority pollutants (see Appendix A to 40 CFR part 423).

EPA was able to give estimates in the Study on the types, sources, and quantities of many hazardous constituents discharged to POTWs. The Study provided information on industrial categories ranging from large hazardous waste generators (such as the organic chemicals industry) to the smaller generators (such as laundries and motor vehicle services). The Study also examined the fate of hazardous constituents once they are discharged to POTW collection and treatment systems and discussed the potential for environmental effects resulting from the discharge of these constituents after treatment by POTWs. The Study then discussed the effectiveness of existing government controls in dealing with these discharges, particularly federal and local pretreatment programs and categorical pretreatment standards applicable to industrial users of POTWs.

After considering all the pertinent data, EPA concluded that the Domestic Sewage Exclusion should be retained at the present time. The Study found that CWA authorities are generally the best way to control hazardous waste discharges to POTWs. However, the Study also recommended that these authorities should be employed more broadly and effectively to regulate hazardous waste discharges. The Study identified for Agency consideration a number of possible initiatives with a potential for enhancing CWA controls on hazardous wastes entering POTWs.

The legislative history of section 3018 of RCRA displays Congress’ understanding that the appropriateness of the Domestic Sewage Exclusion depends largely on an effective pretreatment program under the CWA. The pretreatment program (mandated by sections 307(b) and 402(b)(8) of the CWA) provides that industrial users must pretreat pollutants discharged to POTWs to prevent the discharge of pollutants that would interfere with or pass through the treatment works, or that would be otherwise incompatible with the POTWs.

As a follow-up to the Domestic Sewage Study, section 3018(b) of RCRA requires the Administrator to revise existing regulations and to promulgate such additional regulations as are necessary to assure that hazardous waste discharges to POTWs are adequately controlled to protect human health and the environment. These regulations are to be promulgated pursuant to subtitile C of RCRA or any other authority of the Administrator, including section 307 of the CWA.

As a first step toward promulgating the regulations called for by section 3018(b), the Agency published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register on August 22, 1986 (51 FR 30166). In the ANPR, EPA made preliminary suggestions for regulatory changes, which, if promulgated, would improve the control of hazardous wastes discharged to POTWs. The Agency also held three public meetings in Washington, DC, Chicago, and San Francisco to solicit additional comments on the ANPR.

The comments received on the ANPR were summarized and discussed in a Federal Register notice published on June 22, 1987 (52 FR 33477). That notice also described many of the activities which EPA is carrying out to address the recommendations of the Study. Most commenters suggested ways to make the pretreatment program more effective in controlling hazardous wastes discharged to municipal wastewater treatment plants. On November 23, 1988 (53 FR 47632), the Agency proposed regulatory changes in response to the recommendations of the Study and the comments received on the ANPR.

EPA believes that today's rules will satisfy the Congressional directive in section 3018(b) of RCRA that EPA revise existing regulations and promulgate such additional regulations "as are necessary to assure that [hazardous wastes] which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment". These rules are designed to assure POTW compliance with water quality standards, including narrative water quality standards preventing the discharge of toxic materials in toxic amounts, and to provide necessary information and regulatory tools to POTWs to address problems that are identified.

States and EPA have invested a great deal of time and resources in developing water quality standards that provide a benchmark for determining whether harmful concentrations of pollutants exist in the nation's waters. Today's rules include important new information collection requirements that will inform POTWs and NPDES permit writers of the likelihood that POTW discharges will violate water quality standards, and also provides new information and regulatory tools with respect to industrial user discharges that may be causing water quality violations through the POTW effluent.

Of particular importance to controlling hazardous waste discharges to POTWs are the following provisions of today’s rule. First, under revisions to 40 CFR part 122, POTWs meeting specified criteria will be required to test their effluent for toxicity which may be caused by industrial user discharges of hazardous wastes or other toxic
substances. The results of this testing may indicate that POTWs are violating water quality standards, thereby endangering human health and the environment. Depending on the results of this testing, POTWs may receive new or more stringent permit limits regarding discharge of toxic pollutants. In order to comply with the revised permit limits, POTWs may either alter their operations or impose more stringent local limits on industrial user discharges of hazardous wastes. Imposition of such new or more stringent local limits will be facilitated by another requirement of today's rule: the requirement in 40 CFR 403.12(p) that industrial users notify POTWs, States and EPA of the nature and mass of RCRA hazardous wastes that they introduce into the sewers. In addition, under today's revisions to 40 CFR 122.21(j)(2), POTWs must evaluate in writing, at the same time as they submit the data from toxicity testing to their permit-issuing authority, the need to revise local limits. This new provision will allow the NPDES permit writer to review the POTW's rationale for not imposing more stringent local limits when the results of toxicity testing indicate that such new limits may be necessary to assure attainment of water quality standards. Today's rule also will ban the introduction to POTWs of wastes which exhibit the RCRA characteristic of ignitability. This ban is necessary to prevent explosions in sewer systems that could disrupt POTW operations and lead to releases of hazardous wastes and other toxic or hazardous substances in the sewers. “Midnight dumping” of hazardous wastes to sewers should be substantially curtailed through the ban in 40 CFR 403.5(b)(8) on the introduction of trucked or hauled wastes to POTWs except at discharge points identified for such use by the POTW. Finally, through general improvements in the pretreatment program provided by today's rule, such as industrial user slug control plans, permits for significant industrial users, and POTW enforcement response plans, EPA expects a significant enhancement over the control of hazardous wastes and other toxic and hazardous substances introduced to POTWs. The Agency notes that all pretreatment program changes required by today's rule must be incorporated in POTWs' NPDES permits upon reissuance.

While EPA believes that today's rule satisfies the requirements of section 3018(b), EPA intends to carefully review the effect of today's rule and promulgate in the future any additional regulations that experience reveals are necessary to improve control over hazardous waste and other industrial user discharges to POTWs. In addition, EPA has always recognized that additional categorical pretreatment standards will form an important component of effective controls over pollutants discharged to POTWs. On January 2, 1989, EPA recently issued a plan under section 304(m) of the Clean Water Act under which it will develop regulations for four new technology-based categorical pretreatment standards and will revise three existing standards (55 FR 80). The categories of dischargers selected for the development of new and revised pretreatment standards discharge large amounts of toxic and nonconventional pollutants to POTWs. The Domestic Sewage Study was an important source of data for the section 304(m) plan. While EPA is not obligated to base development of such technology-based categorical standards on findings relating to protection of human health or the environment, EPA believes that pollutant discharge reductions achieved through implementation of new categorical standards will advance the protection of human health and the environment.

It should be noted that today's rule does not directly address potential air emissions from the wastewater collection system or POTWs. EPA's Office of Air and Radiation is evaluating potential air emissions from the collection and treatment of wastewater discharged to POTWs and plans to address these air emissions under the Clean Air Act.

II. Revisions

The Agency received comments in response to its proposal from approximately one hundred and sixty individuals and groups. All significant comments and the Agency's responses to these comments are discussed below. The Agency's responses to minor comments are part of the record to this rulemaking and are available for inspection at the EPA Public Information Reference Unit, Room 2402, 401 M Street SW., Washington, DC 20460.

A. Specific Discharge Prohibitions

1. Ignitability and Explosivity

a. Proposed change. The specific prohibitions of the general pretreatment regulations (40 CFR 403.5(b)) forbid the discharge of certain types of materials which may harm POTW systems by creating fire or explosion hazards, causing corrosive structural damage, obstructing flow, or creating heat in a POTW influent which inhibits biological activity. The August 22, 1989 ANPR discussed expanding these prohibitions to forbid the discharge of characteristic wastes under RCRA (i.e., wastes that are defined as hazardous under 40 CFR part 261, subpart C if they possess the characteristics of ignitability, corrosivity, reactivity, or toxicity). This would provide greater specificity to the generally narrative structure of the existing prohibitions in the pretreatment program.

With respect to ignitability, the indirect discharge of ignitable materials has caused many documented cases of explosions and fires in POTW collection systems. These fires and explosions often happen near the point of indirect discharge, when the temperatures (normally above ambient) promote evaporation of ignitable wastes into a relatively fixed volume of air forming vapors which are not dispersed into the atmosphere. These vapors can be ignited by various sources, including electric sparks, frictional heat, hot surfaces such as manhole covers heated by the sun, or chemical heat generated by reactions.

The specific discharge prohibitions (40 CFR 403.5(b)(1)) already prohibit the discharge to sewers of materials creating a fire or explosion hazard. However, this narrative provision lacks specificity. As a result, the prohibition has limited effectiveness as a preventive requirement. The standard is clearly violated if there was an actual fire or explosion in the sewer or if an industrial user violated a local limit designed to implement the prohibition.

To provide for better implementation of these provisions, EPA proposed to revise 40 CFR 403.5(b) to prohibit the introduction into sewer systems of pollutants which create a fire or explosion hazard in POTWs, including but not limited to pollutants with a closed cup flashpoint of less than 140 degrees Fahrenheit (sixty degrees Centigrade), as determined by a Pensky-Martens Closed Cup Tester using the test method specified in ASTM standard D-93—79 or D—93—80, or a Setaflash Closed Cup Tester using the test method specified in ASTM Standard D—3278—78. The Agency also proposed to revise 40 CFR 403.5(b) to prohibit the discharge of pollutants which cause an exceedence of 16% of the lower explosive limit (LEL) at any point within the POTW.

A flashpoint is the minimum temperature at which vapor combustion will spread away from its source of ignition. Below the flashpoint, temperature, combustion of the vapor immediately above the liquid will either not occur at all, or will occur only at the point of ignition. A 140 degree Fahrenheit
flashpoint standard has been used for several years under RCRA to identify liquid wastes that pose a fire hazard. EPA proposed a similar standard for use in a new prohibited discharge standard in the pretreatment program.

The lower explosive limit was proposed to deal with the problems of mixing and dilution in the sewer. The LEL of an organic vapor is the minimum concentration required to form a flammable or explosive vapor to air mixture. The LEL is measured with an explosimeter, an instrument that is commonly used by POTW technicians to protect against combustible vapors in sewers.

In the preamble of the proposed rule, the Agency solicited comments on: (1) Whether or not the flashpoint prohibition would be reasonable, unduly stringent or insufficiently protective of POTWs under worst case conditions and whether it would sufficiently take into account the effects of efficient mixing or dilution in a POTW system; (2) whether another technically feasible and effective alternative exists; (3) whether the regulation should exempt aqueous solutions with less than 24% alcohol by volume from the proposed flashpoint prohibition; (4) whether the LEL prohibition is practical, either alone or in combination with the flashpoint prohibition; (5) whether it is too difficult to link an LEL exceedance to specific discharges; (6) whether vapor phase monitoring (sometimes needed to determine the cause of any exceedence) is too difficult or too expensive; and (7) whether the flashpoint approach or the LEL approach would be sufficient alone to prevent fires and explosions at POTWs.

b. Response to comments. Most commenters supported the proposal to adopt limits that would add specificity to the existing narrative prohibition on ignitable and explosive discharges. However, other commenters believed that existing local ordinances and the existing specific prohibition were sufficient and that the proposed regulatory requirements would impose excessive burdens and costs on both municipalities and industrial users.

A majority of the commenters supported the flashpoint prohibition, either alone or in conjunction with the LEL approach. These commenters stated that the flashpoint prohibitions would provide Control Authorities with a quantifiable standard against which to measure compliance. Other commenters believed that because the flashpoint limit is used under RCRA to define which wastes exhibit the characteristic of ignitability, it would have greater credibility and enforceability than other approaches. Many commenters stated that the proposed flashpoint test would be inexpensive and easy to implement.

EPA agrees with those commenters who supported the proposed flashpoint prohibition. The Agency believes that the established flashpoint method is a good measure of fire and explosion hazard and will thus be effective in preventing interference with POTW operations. The flashpoint prohibition will also add specificity to the existing narrative prohibitions, thus facilitating effective prevention and enforcement. The closed cup flashpoint test methods are also relatively simple and inexpensive. For these reasons, EPA is today revising 40 CFR 403.5(b)(1) to prohibit the introduction to POTWs of pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (sixty degrees Centigrade).

Many commenters pointed out that the language used in the proposed regulation was not consistent with that used in the preamble. The proposed regulation stated that the flashpoint prohibition applies to "pollutants," which could be interpreted to apply both to specific constituents of the waste and to the entire waste mixture generated by indirect discharges. The preamble discussion, however, clearly indicated EPA's intent that the flashpoint prohibition would apply to "wastewater discharge" and not wastewater constituents of the entire discharge or combined wastestream. To clarify the regulatory language, today's final rule has been modified to read, "* * * Pollutants which create a fire or explosion hazard in the POTW, including but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit (sixty degrees Centigrade) * * *

Some commenters expressed confusion as to the exact point where the flashpoint should be measured. The modification made to the final rule (discussed above) resolves any possible ambiguity regarding the location where the flashpoint should be measured. Because the flashpoint prohibition applies to the industrial user's wastestream, the measurement should be taken at the point of indirect discharge.

Although most commenters approved of the flashpoint prohibition, some expressed concerns about its limitations. One commenter stated that a majority of POTWs do not have industrial users that would warrant closed cup testing. Another commenter said that flashpoint was not a good indication of fire and explosion hazard because wastewater should not contain enough hazardous constituents to be flammable. In response, the Agency believes that the flashpoint prohibition is relevant because most POTWs do have at least a few industrial users and even one industrial user may sometimes have the potential to cause fire or explosion hazards in a POTW. Also the Study found that hazardous constituents are found in many different types of wastestreams. EPA believes that the flashpoint is an accurate indicator of fire and explosion hazard caused by the presence of toxic and hazardous pollutants in wastestreams.

Several commenters argued that the discussion on the use of existing literature flashpoint values in the preamble was not applicable to the vast majority of wastes. These literature values are only available for discharges of "pure" substances, which are not common.

The Agency suggested the use of available literature values for those "pure" substances believed present in a wastestream. EPA believes that if the flashpoint of a pure substance, or the flashpoint of each known substance in a mixture, is above 140 degrees F, then the discharger would be faced with the entire discharge until a flashpoint determination could be made. At this point if the waste did not pass the test, it would then have to be disposed of under RCRA, although it could be sufficiently treated through the POTW. A few commenters had concerns about sampling methodologies, and one commenter said that sampling methodologies should be specified in addition to test methods. Another commenter said that the reliability of the closed cup test for wastewater was not good.

EPA does not believe that most wastestreams are sufficiently variable to require continuous monitoring. However, if an industrial user's wastestream is determined to be
The Agency sees no reason why the wastestreams discharged to POTWs. In problems brought to EPA's attention. With respect to reliability of the closed cup method, this method has long been in use under RCRA to measure the ignitability of liquid wastes, with few problems brought to EPA's attention. Although it is true that most wastewaters are eventually diluted with wastewater in the sewer, wastewater temperatures ranging from 120 to 212 degrees F (e.g., industrial and commercial laundries, oil refineries, food processors, textile manufacturers, power generating facilities, and any facility discharging boiler blowdown). Temperatures of wastewater in the sewer may therefore reach or exceed 140 degrees F for brief periods of time near the point of a very hot discharge. In addition, some sewer use ordinances prohibit the discharge of wastewater hotter than 150 degrees F, which indicates that wastewaters may reach that temperature. Although such discharges are eventually diluted with cooler water in the sewer, combustion could be sustained near the point of discharge if the sewer wastewater reached or exceeded 140 degrees F, a wastewater with a flashpoint below 140 degrees F were discharged, and a source of ignition (such as a friction spark or a lighted cigarette) were present. For this reason, EPA does not agree that in-sewer dilution always eliminates hazardous conditions, or that a flashpoint of 140 degrees F is unnecessary. With respect to case-by-case variances from the flashpoint prohibition, the Agency believes that the largest determinant of sewer temperature at the point of industrial discharge is the temperature of the industrial wastewaters discharged, rather than the temperatures prevailing outside of the sewer. EPA has decided not to allow case-by-case variances based on ability of the waste to be neutralized after mixture in the sewer because such variances would not protect against explosions that may occur prior to such mixing. POTWs may establish more stringent limits than those promulgated today at their discretion. With respect to the current exclusion under RCRA (40 CFR 261.21(a)(1)) from the ignitability characteristic for aqueous solutions containing less than 24 percent alcohol by volume, some commenters supported extending the exemption to the proposed flashpoint prohibition, indicating that such solutions are quite soluble, readily diluted, effectively treated by POTWs, and pose little threat to POTWs. One commenter stated that such solutions could flash but would not sustain combustion, but acknowledged that the ability to flash is connected to explosiveness. This commenter believed that deficiencies in operating practices and equipment often accounted for explosions. Other commenters did not support such an exemption. One commenter stated that even though such solutions may not be able to sustain combustion because of their high water content, the more critical issue for subtraction of the flashpoint prohibition is the ability of the vapors above the aqueous solution to sustain combustion. After evaluating this issue, EPA has concluded that an exemption from the flashpoint prohibition for aqueous solutions containing less than 24 percent alcohol by volume is not appropriate.

POTW collection systems are an ideal environment for generation of flammable/ignitable atmospheres; minimal air interchange within collection systems ensures that ignitable vapors once formed cannot easily be dispersed. Promulgation of the exemption would allow the discharge to POTWs of wastewaters otherwise failing the flashpoint test. For example, a flashpoint of 140 degrees F corresponds to an aqueous solution containing only 6 percent ethyl alcohol by volume; an aqueous solution containing 24 percent ethanol alcohol by volume would have a flashpoint of 90 degrees, well below the flashpoint specified in today's rule. Other allowed discharges would include potentially flammable mixtures containing methyl alcohol and isopropyl alcohol. The Agency agrees that deficiencies in operating practices and equipment may often be responsible for explosions, and encourages industrial users to employ the best methods available to ensure compliance with today's prohibition.

One commenter noted that many POTWs use a closed-cup Tagliabue test to determine flammability, and suggested that EPA should consider adding it to its list of closed cup testers. The Agency agrees and notes that 40 CFR 261.21(a)(1), which specifies test
The most common criticisms were: (1) regulation. Unless continuously monitored, the LEL approach in measuring explosivity of mixtures under actual sewer conditions would present a problem because the temperature in the collection system near the point of discharge, and the difficulty of enforcing the LEL approach in no way diminishes the need for this prohibition, because it is a much more sensitive indicator of fire or explosion hazard. Some of the commenters who supported both prohibitions wanted to have the freedom to choose one or the other or both on a case-by-case basis, and one commenter suggested that the flashpoint and LEL approach are better suited to be placed in guidance documents rather than in a regulation.

Few commenters supported use of the LEL approach alone and many pointed out limitations to the LEL methodology. The most common criticisms were: (1) Calibration of instruments is difficult since wastestreams are a mixture of substances; (2) tracing any sort of exceedance in the collection system would be almost impossible, since the LEL reading cannot distinguish which chemicals are causing the exceedence although some commenters believed that LEL exceedences could be traced by such means as tracking alarms to certain points in the sewer system; (3) unless continuously monitored, the LEL would be an instantaneous measurement and therefore subject to too much variability to accurately represent industrial users' wastestreams; (4) the LEL of a substance is difficult to measure with portable instruments and depends on many variables that will affect the accuracy of the measurement, such as ambient temperature, VOC, air exchange, wastestream oxygen concentration, humidity; (5) industrial users would have difficulty ascertaining whether their discharges would cause a violation, due to the uncertainty of conditions that may exist "downstream" in the sewer system from their facilities, and (6) the 10 percent LEL is too stringent, since higher percentages of the LEL are routinely reached. One commenter, however, favored use of the LEL approach, arguing that it was more effective than the flashpoint technique in measuring explosivity of mixtures.

EPA is persuaded by some comments' arguments against specifying a national prohibition based on the LEL approach. Although the approach has proved very valuable for many POTWs, EPA recognizes that there are certain technical difficulties associated with this approach which make it more suitable for use on a case-by-case basis at the discretion of the particular POTW than as a nationally applicable standard. The principal difficulty is associated with calibration of the instruments. Although one commenter stated that the indicated LEL is accurately represented for the common solvents and does not require knowledge of the substance monitored, other commenters who addressed this issue stated that unless the LEL meter is calibrated using the exact gas that is to be measured, it may not give an accurate reading of the vapors present. As an example, one commenter included a table showing that great variation can occur in LEL readings due to the presence of different chemicals. This would present a problem because the proposed rule would have established an LEL for any point in a POTW's collection system, and the air space in such systems generally contains many different kinds of gases derived from the complex mixtures of substances in the sewerage. EPA has therefore modified proposed section 40 CFR 403.5(1) to delete the prohibition on discharges which result in an exceedance of 10 percent of the LEL at any point within the POTW.

In response to the commenters who suggested that EPA allow POTWs to choose either the LEL or the flashpoint approach, the Agency acknowledges that the flashpoint prohibition in today's rule will still account for the ignitability of mixtures of industrial user discharges when combined in sewers. However, owing to the effect of dilution within the sewer system, the Agency believes that it is generally reasonable to assume that the concentrations of combustible constituents in sewer wastewaters will be well below the concentrations required for the flashpoint, and that such monitoring is unnecessary to include both types of prohibitions, and favored retention of limitations to the LEL methodology. One commenter stated that the indicated LEL is accurately represented for the common solvents and does not require knowledge of the substance monitored, other commenters who addressed this issue stated that unless the LEL meter is calibrated using the exact gas that is to be measured, it may not give an accurate reading of the vapors present. As an example, one commenter included a table showing that great variation can occur in LEL readings due to the presence of different chemicals. This would present a problem because the proposed rule would have established an LEL for any point in a POTW's collection system, and the air space in such systems generally contains many different kinds of gases derived from the complex mixtures of substances in the sewerage. EPA has therefore modified proposed section 40 CFR 403.5(1) to delete the prohibition on discharges which result in an exceedance of 10 percent of the LEL at any point within the POTW.

In response to the commenters who suggested that EPA allow POTWs to choose either the LEL or the flashpoint approach, the Agency acknowledges that the flashpoint prohibition in today's rule is not balanced against the need for vapor phase monitoring, but it is not balanced against the need for vapor phase monitoring, but it is not necessary to help prevent fires and explosions at sewers, and is not adopting the suggestions that POTWs be allowed to choose between that approach and the LEL or that explosivity problems should be addressed in guidance only.

However, the Agency recognizes that many POTWs have made effective use of the LEL approach in preventing fires and explosions, and encourages POTWs to develop programs which employ this approach, if they deem it appropriate.

Many commenters who addressed vapor phase monitoring used to trace the source of an LEL exceedance stated that such monitoring is too expensive. Some commenters were opposed to a requirement for vapor phase monitoring, stating that most POTWs do not have access to the necessary methodologies, and that POTWs could already track sources without this methodology. One commenter suggested that vapor phase monitoring be done at site-specific points within the POTW. Some commenters argued that the regulation should not require the POTW to identify the compounds responsible for the exceedences, but another commenter stated that the details of a collections system, the location of the LEL exceedance, and the location of the industrial users will make elimination of facilities not causing the problem possible without the specific identification of each industrial user's wastestream.

EPA did not propose, and is not finalizing, requirements that vapor phase monitoring be performed, nor that the identity of the compounds causing the exceedences be revealed through such monitoring. However, many POTWs which adopt the LEL approach may choose to adopt such monitoring on an as-needed basis. In many cases the source of an exceedance can be discovered by other means.

c. Today's rule. Today's final rule prohibits the discharge of pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Farenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21.
2. Reactivity and Fume Toxicity

Wastes exhibiting the reactivity characteristic are regulated under RCRA because their extreme instability and tendency to react violently or explode make them a hazard to human health and the environment during waste management. A solid waste exhibits the RCRA characteristic of reactivity if it is normally unstable and readily undergoes violent change without detonating; reacts violently with water; forms potentially explosive mixtures with water; generates potentially harmful quantities of toxic gases, vapors or fumes when mixed with water; is capable of detonation; reacts violently with water; generates potentially explosive mixtures with water; or is a forbidden, Class A, or Class B explosive pursuant to 40 CFR part 173 (see 40,CFR 261.23(a)).

The health and safety of POTW workers has long been a serious concern of the Agency. There is no question that the generation of toxic gases and vapors can sometimes be dangerous to the health and safety of these workers, thus interfering with operations at the POTW and even endangering human life. In addition, the general population could also suffer if sufficient quantities of toxic gases and vapors are released from sewer vents or aeration or containment basins. Gases and vapors may be caused by chemical reactions between constituents of the industrial discharges, the resulting sewage, or microbial metabolism. Some toxic gases can be generated as the result of sudden drops in pH. Besides generating toxic gases and vapors when mixed with sewage, industrial discharges may have sufficiently high concentrations of toxic gases and volatile liquids to cause toxic levels of gas or vapor to form above the wastewater even if the discharge is diluted by the sewage. There have been numerous instances of sewer maintenance workers who have been injured or killed from toxic gases formed in sewers. While most accidents have been caused by the formation of hydrogen sulfide gases, more recent incidents have been linked to certain organic pollutants that either volatilized or reacted with hydrogen sulfide within the POTW collection system.

a. Proposed rule. The prohibition against the discharge of pollutants which create a fire or explosion hazard, as modified by today's rule to include a prohibition on the discharge of materials with a flashpoint of less than 140 degrees F., will help prevent harm to POTW workers, as will the requirement promulgated today that POTWs evaluate significant industrial users to determine the need for plans to control slug discharges (see part B below). To augment these prohibitions and provide further protection, the Agency proposed on November 23, 1988 to revise 40 CFR 403.5(b) to add a new subsection (6) providing that no discharge to a POTW should result in toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems. EPA also proposed to revise 40 CFR 403.5(c) to require POTWs to implement the proposed narrative prohibition in 40 CFR 403.5(b)(6) by establishing numerical discharge limits or other controls where necessary based on existing human toxicity criteria or other information. Industrial users would then be liable for any violations of these limits or controls.

As possible implementation mechanisms, EPA suggested approaches used by the American Conference of Government Industrial Hygienists (ACGIH) or the Metropolitan Sewer District of Cincinnati. The ACGIH publishes an annual list of threshold limit values (TLVs) for numerous toxic inorganic and organic chemicals. The threshold limit values represent estimated chemical concentrations in air below which harmful health effects in exposed populations are believed to be unlikely to occur. The Metropolitan Sewer District of Cincinnati approach features the use of a vapor headspace gas chromatographic analysis of equilibrated industrial wastewater discharge (one volume of wastewater to one volume of air head space) at room temperature (24 degrees C). The analysis measures the total vapor space organic concentration by calculating the total peak area of the chromatogram expressed as parts per million (ppm) of equivalent hexane.

The Agency solicited comments on the addition of this prohibition to the general pretreatment regulations and on the feasibility of developing local limits from human toxicity criteria or other information such as those discussed above. The Agency requested comments on the practicality of such a prohibition, or alternative regulatory ways to protect worker health and safety, and on whether worker health and safety is adequately protected by the present general and specific discharge prohibitions.

b. Response to comments. The Agency received many comments on the proposed rule. Comments were received from States, environmental groups, POTWs and industries. The majority of the commenters supported the narrative prohibition (proposed 40 CFR 403.5(b)(6)) but were against requiring implementation of numerical limits (proposed 40 CFR 403.5(c)). These commenters generally believed that such numerical limits would be too difficult and expensive for POTWs to develop. In general, the commenters believed that the approaches used by ACGIH and the Metropolitan Sewer District of Cincinnati would be useful as guidance or as a screening tool, but that the actual criteria are so imprecise that it would be better not to require POTWs to implement them.

Some commenters pointed out that the Metropolitan Sewer District of Cincinnati approach contained potentially serious flaws in that the 300 ppm equivalent hexane limit might not provide adequate protection against more toxic compounds. These commenters said that the Cincinnati approach could thus provide workers with a false sense of safety. Other commenters stated that the approach would only be valid if the wastewater in the sewer was at equilibrium with the air above the wastewater and the wastewater acts as an ideal liquid mixture.

Some commenters also expressed concern about the ACGIH list of chemical threshold limit values, stating that the list includes skin and dust hazards as well as vapor hazards. The commenters stated that the list of TLV compounds appears to be very large, but many of the compounds on the list are not applicable to the Agency's purpose. Only 136 compounds on the TLV list are for short term exposure (exposures of less than 8 hours duration within the POTW). The 136 compounds can then be further reduced by the removal of simple asphyxiants (inert gases, vapors asf and solids [dusts]). Thus, commenters believed that the number of ACGIH listed chemicals that could realistically be limited by POTWs is very small.

These commenters also said that ACGIH specifically disclaims its TLV list for setting environmental standards. ACGIH's basis for this disclaimer is that the averaging process involved in determining the TLVs is inappropriate for establishing such standards.

Some commenters stated that even though EPA has never explicitly required POTWs to develop local limits to prevent pass through or interference due to reactive chemicals and fume
toxicity, almost all POTWs have ordinance prohibitions or local limits to handle common pollutants such as sulfide that have been associated with worker health and safety problems. After evaluating this issue, the Agency has concluded that the actual methods discussed in the November 23, 1988 proposal (as well as other methods) are not sufficiently precise at the present time to require POTWs to base enforceable local limits upon these methods. None of the approaches currently in use are necessarily suitable for required use at all POTWs, although they may fit the needs of many POTWs after certain modifications. For this reason, EPA is not promulgating a requirement to develop numerical limits to protect worker health and safety based upon specified procedures. The Agency believes that a narrative prohibition coupled with guidance on developing limits would allow POTWs more flexibility to adopt implementation procedures to meet their particular needs while providing adequate protection of worker health and safety. EPA is therefore promulgating the narrative prohibition on reactivity and fume toxicity and plans to issue guidance on developing numerical limits.

One commenter suggested that EPA should require POTWs to use proper confined space entry procedures or to monitor their systems with portable gas chromatographs (GCs) to protect worker health and safety. The commenter also suggested that industrial users causing worker health problems should be required to install activated carbon treatment systems or to perform continuous monitoring using GCs. Another commenter said that POTWs should conduct an extensive investigation of the effects organic compounds have on their system, after which limits could be developed for contributors of organic pollutants. Other commenters suggested requiring POTWs to develop an intensive safety training program for POTW employees, or allowing POTWs to substitute such measures as exposure surveys, engineering controls, or personal safety equipment for numeric limits.

One commenter suggested that EPA should require tests to be used by industrial users to prevent the discharge of wastewaters with high levels of toxic compounds, based on the test used by the Metropolitan Sewer District of Cincinnati. The commenter also suggested forbidding the discharge of any wastewaters containing hazardous constituents at concentrations which could give rise to chronic worker exposures higher than the relevant OSHA Time-Weighted Average Occupational Standard (TWA).

According to the commenter, a simple algorithm could be devised relating TWAs to the concentration of hazardous constituents in the discharge. Industrial users would be prohibited from discharging a wastewater which the algorithm predicted would give rise to vapor concentrations higher than the TWA. As another alternative, the commenter suggested that EPA adopt particular tests for certain types of wastes that can react in low or high pH environments and give off toxic gases. EPA should particularly consider adapting to POTWs the simple scenario it used to quantify the narrative characteristic test used in RCRA for cyanide and sulfide bearing wastes.

EPA encourages POTWs to use any or all of the above approaches (or modifications thereof) which they find necessary to protect worker health and safety at their facilities. However, because the numbers and types of industrial users vary so widely among POTWs, the Agency does not believe that any single test, training program, treatment technology, monitoring approach, or combination thereof is currently suitable for a nationally applicable rule to protect worker health and safety. Today's rule allows POTWs to impose controls on particular industrial users based on numeric limits on specific pollutants or through other measures that address their own particular site-specific concerns. Pursuant to 40 CFR 403.5(d), the approach selected by the POTW will be federally enforceable. With respect to the OSHA TWA approach suggested above, the Agency notes that this approach is similar to one suggested by EPA in its Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program. This approach involves using ACGIH threshold limit value-time weighted averages (TLV-TWAs) which serve as a measure of fume toxicity from which screening levels for all industrial user discharges can be calculated. However, the Agency notes that the TWA levels are the vapor phase concentrations of compounds to which workers may be exposed over long periods of time without adverse effect. In general, POTW workers are not exposed to extended periods of time to sewer atmospheres. The Agency also notes that the algorithm suggested by the commenter did not appear to take into account the effect of possible dilution or mixture with other substances in the sewer. For these reasons, the Agency recommends the use of such approaches as a way to screen industrial users' discharges, but recommends POTW reliance upon site-specific data in developing actual controls for industrial users. In some cases, the use of improved chemical handling or management practices may eliminate any problems. Similarly, regarding the narrative characterization test under RCRA for cyanide and sulfide bearing wastes, the Agency believes that this test is best adapted by POTWs on a case-by-case basis to address their particular circumstances with respect to acidity or corrosivity which could result in fume toxicity.

One commenter urged that EPA clarify that a specific discharge constituent must itself be a significant source of actual toxic gas, vapor, or fume problems in order to fall within the scope of the prohibition. This commenter said that the proposed regulatory language could prohibit the discharge of biochemical oxygen demand (BOD), which contributes to anaerobic conditions, and otherwise innocuous sulfate (toxic hydrogen sulfide levels can be generated in POTW sewers through the reduction of sulfates by anaerobic bacteria according to this commenter). Another commenter urged the Agency to limit the applicability of the proposed prohibition to those situations where a POTW interprets the prohibition through adoption of specific numerical discharge limits. In this way, industrial users would not be subject to the prohibition in the absence of numerical limits developed by the POTW. Another suggested that EPA prohibit only those substances discharged in a quantity known to cause worker health and safety problems. This commenter pointed out that the only instance cited in the November 23, 1988 preamble of actual injury to workers involved hydrogen sulfide, and stated that regulation of other substances was unjustified because the existing prohibitions already protect worker health and safety.

In response, the Agency notes that all of the specific discharge prohibitions apply even in the absence of numeric limits developed by the POTW to implement such prohibitions. In addition, EPA does not agree that regulation of other substances besides hydrogen sulfide is unjustified to protect worker health and safety. The Domestic Sewage Study found that adverse health effects on POTW workers have been caused by a variety of pollutants (including toluene, benzene, hexane,
phenol, hexavalent chromium, and 
chloroform).

However, the Agency agrees that there are certain situations in which industrial users should not be held responsible for a violation of the general pretreatment regulations (including today's prohibition against fume toxicity) because they did not possess the information necessary for them to prevent the causative discharge. To address this concern, EPA is today amending 40 CFR 403.5(a)(2) to provide that an industrial user, in any action brought against it alleging a violation of 40 CFR 403.5(b)(7), shall have an affirmative defense where that user can demonstrate that it did not know or have reason to know that its discharge, alone or in conjunction with a discharge or discharges from other sources, caused pass through or interference. Pursuant to 40 CFR 403.5(a)(2), the affirmative defense would also be available if the industrial user were in compliance with local limits developed to prevent pass through and interference, or (where no such limits for the pollutants in question had been developed) if the industrial user's discharge had not changed substantially in nature or constituents from the user's prior discharge activity when the POTW was in compliance with the POTW's NPDES permit or applicable requirements for sewage sludge use or disposal.

c. Today's rule: Today's rule adds a new requirement (40 CFR 403.5(b)(7)) that no discharge to the POTW shall result in toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems. Today's rule also amends 40 CFR 403.5(a)(2) to provide that an industrial user shall have an affirmative defense in any action brought against it alleging a violation of 40 CFR 403.5(b)(7), if it can make the appropriate demonstrations pursuant to 40 CFR 403.5(a)(2)(i) and (ii).

3. CRCA Toxicity

The Study discussed the possibility of developing a specific prohibition to forbid the discharge of waste exhibiting the characteristic of toxicity, as measured by the Extraction Procedure (EP) or Toxicity Characteristic Leaching Procedure (TCLP). This prohibition was not proposed in the November 23, 1988 rule, but was discussed in the ANPR published in the Federal Register on August 22, 1986 (51 FR 30166).

The EP toxicity test and the TCLP are designed to simulate the propensity of metals and organic contaminants to leach from a landfilled or land-applied waste into ground water. The EP test was used under RCRA to determine which wastes are hazardous by virtue of exhibiting the characteristic of toxicity. On March 29, 1990 (55 FR 11798) the Agency published a final rulemaking which, when effective, will replace the EP with the TCLP, which EPA believes provides a better measure of the propensity of pollutants to leach from a land-disposed waste.

EPA solicited comments in the ANPR on whether the EP toxicity test or the TCLP would be appropriate for determining whether particular pollutants are likely to cause pass through and interference. EPA noted that materials may be subsequently diluted when mixed with large amounts of domestic sewage, and that POTWs are capable of removing many such materials even in small amounts.

Comments in response to the ANPR were overwhelmingly opposed to adding specific prohibitions to the pretreatment regulations, including the EP or the TCLP tests. Commenters generally asserted that since the tests model the tendency for metals and organic constituents to leach from a landfilled or land-applied waste into ground water, the tests were inappropriate for assessing whether an industrial wastewater discharge would cause pass through or interference at a POTW.

The Agency believes that requiring industrial wastestreams discharged to POTWs to pass either of the CRCA toxicity tests may result in both under-regulation and over-regulation of various pollutants with little technical justification, since application of the tests to industrial effluents does not take into account POTW removal efficiencies nor the potential for adverse impact on POTW collection and treatment systems. The Agency believes that current controls on toxic discharges from industrial users (the interference and pass through prohibition, categorical standards, and local limits) and from POTWs (permit limits, including controls on toxicity) are currently the best way to regulate materials that would warrant special consideration under RCRA due to leachability characteristics. For these reasons, EPA did not propose to change the current specific discharge prohibitions to add a prohibition based on any CRCA toxicity characteristic, nor is the Agency finalizing such a prohibition in today's rule.

One commenter on the ANPR, while agreeing that the CRCA toxicity tests were not necessarily suitable for industrial wastewater discharges, suggested that the Agency develop a leaching test applicable to such discharges because of the likelihood that they would leak from sewers and cause contamination of ground water. EPA believes that such a test would be premature at the present time because of the lack of available information about the extent of ground water contamination caused by leaky sewers. When more data is available, the Agency may consider developing such a test if appropriate.

4. Corrosivity (403.5(b)(2))

Section 403.5(b)(2) of the general pretreatment regulations currently prohibits the discharge of "pollutants which will cause corrosive structural damage to the POTW, (including) discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges." This prohibition provides a numeric limit on the discharge of acidic wastes, but does not contain a corresponding pH limitation for caustic wastes. The Study reviewed local ordinances and found that many provided numeric limits on the discharge of caustic wastes.

The CRCA corrosivity characteristic is designed to address wastes which could endanger human health or the environment due to their ability to destroy human or animal tissue in the event of inadvertent contact; corrode handling, storage, transportation, and management equipment; or mobilize toxic metals in a landfill environment. Under 40 CFR 261.22, an aqueous waste exhibits the hazardous characteristic of corrosivity if its pH is less than or equal to 2 or greater than or equal to 12.5, or if it is liquid and capable of corroding steel at a rate greater than 0.250 inches per year at a test temperature of 130 degrees F. EPA solicited comments in the ANPR (51 FR 30166) on whether the discharge of such wastes to POTWs should be prohibited.

Almost no comments were received on this issue. One commenter believed that the current specific discharge prohibitions were inadequate to control hazardous wastes which exhibit the corrosivity characteristic as defined under RCRA. The commenter suggested that the prohibition be amended to include a maximum pH, because the Study had found that some local ordinances were setting maximum pH limitations in the range of 9.0 to 11.0.

Virtually all of the reported pH related incidents at POTWs involve corrosion caused by the discharge of acidic wastes, which are already prohibited by the current specific discharge prohibitions. The Agency has no evidence that high pH wastes are a problem for most POTW collection systems. For this reason, the Agency is
not amending 40 CFR 403.5(b)(2) to add a prohibition on high pH wastes at the present time. However, EPA encourages POTWs to address any problems with caustic wastes through their local limits.

5. Oil and Grease

a. Proposed rule. There are currently no specific nation-wide prohibitions against disposing of oil and grease in sewers, although the existing prohibitions forbid the discharge of pollutants which cause pass through or interference which obstruct flow at the POTW.

The Agency is concerned about the possibility that the volume of used oil discharged to sewers is increasing to the point of causing interference or pass through. The likely increase in volume of used oil disposed of in this way is due to several factors, among them lower prices for crude oil, which make it less profitable to recycle used oil. In addition, the Agency is developing a regulatory program under RCRA to control the treatment of used oil, including used oil that is recycled. Such regulations could lead to increased discharges of used oil to sewers if there are no controls imposed under the Clean Water Act.

To address these concerns and to strengthen the current prohibitions against pass through and interference, on November 23, 1988, the Agency solicited comment on revising 40 CFR 403.5(b) to add a new provision prohibiting the discharge of used oil to POTWs. "Used oil" was generally described as any oil that has been refined from crude oil, used, and, as a result of such use, contaminated by physical or chemical impurities. The proposal would have covered automotive lubricating oils, transmission and brake fluid, spent industrial oils such as compressor, turbine, and bearing oils, hydraulic oils, metalworking, gear, electrical, and refrigeration oils, railroad drainings, and spent industrial process oils. EPA solicited comment on the possible advantages and disadvantages of such a prohibition, and on which particular kinds of used oil should be covered by the prohibition.

b. Response to comments. The majority of commenters who addressed this issue believed that a complete prohibition of the discharge of used oil would not be practical, but many commenters indicated support for a numerical limitation. Most of these commenters suggested that any prohibition should contain a de minimis exception for small quantities of used oil, since discharges from many industrial users contain small amounts of oil from washdown or cleaning waters that may not be completely removed by a grease trap or oil separator. These commenters generally believed that used oil in such small quantities presented little danger of pass through or interference, and that any prohibition should apply only to bulk dumping of large quantities. Three commenters suggested a limitation of 100 milligrams per liter of fats, oils, and grease as being reasonable and consistent with local limits established by many POTWs. Other commenters were opposed to any kind of prohibition, stating that problems with used oil were already adequately addressed by the general and specific prohibitions against pass through and interference and local limits for oil and grease.

Several commenters pointed out that certain used oils (i.e., animal and vegetable oils and certain used oils in machine cutting and metalworking) are highly biodegradable. These commenters stated that biological digestion in the POTW treatment system is the most appropriate treatment for these substances, and that a complete prohibition would lead to other methods of disposal which would ultimately be less protective of the environment. However, some of these commenters acknowledged that such oils could interfere with POTW operations if discharged in very large quantities. One commenter suggested that the proposed prohibition should include restaurant grease because it has been known to cause interference, and is easily rendered.

Several commenters stated that the discharge of used oil to POTWs should not be completely prohibited until sufficient methods were available for other kinds of disposal. Some of these commenters recommended that EPA encourage alternative mechanisms for the safe, legal, and inexpensive recovery of oil and disposal of the residue, along with incentives for collecting and recycling used oil. One commenter suggested a national educational campaign directed towards do-it-yourself oil changers.

Another commenter who supported a complete prohibition stated that allowing the discharge of used oil would contradict EPA's pollution prevention policy, which seeks to avoid cross-media transfer of pollutants. This commenter stated that a prohibition would provide the incentive for generators to reduce the amount of used oil they generate as well as to recycle what they produce. A prohibition would also stimulate development of a recycling market that would reduce costs and promote the institutionalization of recycling habits and ethics.

EPA agrees with those commenters who said that a complete prohibition on the discharge of oil is unnecessary. Trace amounts of such oil are very difficult to eliminate from the wastewaters of industrial users. Complete elimination could necessitate costly process or treatment changes which would be difficult to justify given the Agency's assessment that the danger of pass through or interference from small amounts of used oils is slight. Although used oil is an energy resource that might be better collected and recycled than discharged to POTWs, today's rule would go some distance towards accomplishing this goal (as well as the aim of pollution prevention), without incurring the disadvantages of a complete prohibition.

EPA agrees with those commenters who stated that oils of animal or vegetable origin (such as restaurant greases) can be more easily accepted by wastewater treatment systems. These oils (as well as certain synthetic oils such as machine cutting or metalworking oils) can be metabolized by microorganisms in secondary waste treatment facilities and are readily reduced in concentration in aerobic and anaerobic biological treatment systems. For this reason, the Agency believes that a prohibition or a national limitation on such oils would not be appropriate.

However, the Agency believes that the discharge to POTWs of oils of petroleum or mineral origin is of potential concern, since these oils are less biodegradable in secondary treatment plants. Release of such oil thus has more potential to interfere with operations at POTWs, particularly in the case of smaller plants. In addition, these oils can contain a variety of toxic or hazardous constituents such as PCBs, benzene, chromium, arsenic, cadmium, and lead. EPA has analyzed the potential for pass through of these pollutants to surface waters and to sludge. Results showed that when large volumes of used oil are discharged,
there is a potential for pass through and violations of water quality criteria. Some of the constituents in contaminated used oil, such as trichloroethane, are very water soluble and thus are characterized by a high mobility potential. Metals such as cadmium, chromium, and lead are very persistent in the environment when released from the POTW in sludge or in wastewater effluent.

For these reasons, the Agency agrees with those commenters who urged limitations on petroleum and mineral-based oil discharged to POTWs. In light of comments received, EPA considered a complete ban on the discharge of such materials, a nation-wide numeric limit, or a new narrative prohibition. As described above, EPA determined that a complete ban was not necessary because small amounts of such oils are not expected to cause pass through or interference. With respect to the option of promulgating a national numeric limitation on the discharge of such oils to POTWs, EPA does not currently have sufficient information upon which to base a limit of general applicability. For this reason, EPA is not promulgating a numeric limit of national applicability.

EPA is therefore revising the specific discharge prohibitions to add a new provision (40 CFR 403.5(b)(6)) to prohibit the discharge of petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through. Under existing 40 CFR 403.5(c)(1) and (2), POTWs with approved pretreatment programs would then be required to implement this prohibition by developing specific limits for such substances, and other POTWs would be required to develop such limits in cases where pass through or interference had occurred and was likely to recur. Today's rule thus provides more specificity than is provided by the existing general prohibitions against pass through and interference by including a specific prohibition addressing petroleum and mineral-based oils and nonbiodegradable cutting oils.

As preliminary guidance to POTWs in establishing local limits, EPA reiterates that some commenters mentioned 100 milligrams per liter as an oil and grease limit frequently used by POTWs. Some standard manuals of sewer use practice and some studies have recommended limitations of 25 to 75 milligrams per liter of petroleum oils, nonbiodegradable cutting oils, or products of mineral oil origin. One commenter submitted a list of eight municipalities in which the commenter operated. Of the eight, five had limits of 100 milligrams per liter on oil and grease and two had more stringent limits. Only one had limits which were less stringent. POTWs should adopt limits as stringent as necessary to protect against pass through or interference at their particular facilities.

As discussed earlier in today's notice, some commenters on EPA's proposed toxic point of discharge prohibition expressed concern about possible liability for violation of the prohibition when they did not possess the information necessary for them to prevent the causative discharge. The Agency believes that this is also a valid concern for potential violators of today's prohibition against the discharge of certain types of oil in amounts that cause pass through or interference. To address this concern, the Agency is today amending 40 CFR 403.5(a)(2) to provide that an industrial user, in any action brought against it alleging a violation of 40 CFR 403.5(b)(6), shall have an affirmative defense where that user can demonstrate that it did not know or have reason to know that its discharge, alone or in conjunction with a discharge from other sources, caused pass through or interference. Pursuant to 40 CFR 403.5(a)(2), the defense would also be available if the industrial user were in compliance with local limits developed to prevent pass through and interference, or where no such limits for the pollutants in question had been developed.

In addition, analysis of pollutant fate within POTW systems has shown that significant quantities of solvents pass through to receiving waters where biological treatment systems are not well acclimated to the pollutant in question. For these reasons, the Agency solicited comment on revising the specific discharge prohibitions concerning ignitability and/or toxicity, and the proposed solvent management component of industrial user spill and batch control plans would address most of the concerns discussed above, possibly making a ban on solvents redundant. The Agency stated that a possible advantage of these proposed revisions is that they would address the discharge of organic compounds not used as solvents. The Agency solicited comment on whether the possible impacts of solvents on receiving waters would justify prohibiting these wastes from being discharged to POTWs, and whether such a prohibition would be appropriate for those highly water-soluble solvent wastes which are more

encourages voluntary efforts in this regard.

As preliminary guidance to POTWs in establishing local limits, EPA reiterates that some commenters mentioned 100 milligrams per liter as an oil and grease limit frequently used by POTWs. Some standard manuals of sewer use practice and some studies have recommended limitations of 25 to 75 milligrams per liter of petroleum oils, nonbiodegradable cutting oils, or products of mineral oil origin. One commenter submitted a list of eight municipalities in which the commenter operated. Of the eight, five had limits of 100 milligrams per liter on oil and grease and two had more stringent limits. Only one had limits which were less stringent. POTWs should adopt limits as stringent as necessary to protect against pass through or interference at their particular facilities.

As discussed earlier in today's notice, some commenters on EPA's proposed toxic point of discharge prohibition expressed concern about possible liability for violation of the prohibition when they did not possess the information necessary for them to prevent the causative discharge. The Agency believes that this is also a valid concern for potential violators of today's prohibition against the discharge of certain types of oil in amounts that cause pass through or interference. To address this concern, the Agency is today amending 40 CFR 403.5(a)(2) to provide that an industrial user, in any action brought against it alleging a violation of 40 CFR 403.5(b)(6), shall have an affirmative defense where that user can demonstrate that it did not know or have reason to know that its discharge, alone or in conjunction with a discharge from other sources, caused pass through or interference. Pursuant to 40 CFR 403.5(a)(2), the defense would also be available if the industrial user were in compliance with local limits developed to prevent pass through and interference, or where no such limits for the pollutants in question had been developed.

In addition, analysis of pollutant fate within POTW systems has shown that significant quantities of solvents pass through to receiving waters where biological treatment systems are not well acclimated to the pollutant in question. For these reasons, the Agency solicited comment on revising the specific discharge prohibitions concerning ignitability and/or toxicity, and the proposed solvent management component of industrial user spill and batch control plans would address most of the concerns discussed above, possibly making a ban on solvents redundant. The Agency stated that a possible advantage of these proposed revisions is that they would address the discharge of organic compounds not used as solvents. The Agency solicited comment on whether the possible impacts of solvents on receiving waters would justify prohibiting these wastes from being discharged to POTWs, and whether such a prohibition would be appropriate for those highly water-soluble solvent wastes which are more
appropriately treated by biological degradation processes such as those used at POTWs.

b. Response to comments. In general, commenters did not support a ban on the discharge of listed solvents. Many commenters pointed out that a complete ban would not be practical because most industries cannot completely eliminate detectable levels of solvents from their discharges. Solvent recovery systems reduce the total amount of hazardous waste present in a wastestream but there is still a need to dispose of the "F" listed still bottoms.

Commenters pointed out that some solvent wastes (e.g., acetone, ethyl acetate, and methanol) can be effectively treated at POTWs using secondary treatment. Some commenters stated that the presence of certain organic solvent wastes can be beneficial to a biological treatment system.

Many commenters believed that existing or proposed regulations concerning ignitability, fume toxicity, solvent management plans, categorical standards and sludge control were sufficient (along with local limits) to prevent the discharge of listed solvent wastes from causing interference or pass through at POTWs. These commenters stated that a proposed ban on the discharge of listed solvent wastes would therefore be redundant.

However, several commenters did support a ban on listed solvents. One commenter urged the Agency to make the prohibition constituent-specific so that constituents of concern from the RCRA "K" and "U" lists could also be included. This commenter also urged the prohibition of alcohol and ketone wastes; stating that these wastes pose significant health problems. Other commenters stated that numerical limits should be established, or that an aggregate limit similar to the Total Toxic Organics standard for the electropainting and metal finishing industries be promulgated. One commenter suggested that each significant industrial user be required to institute a Toxics Organics Management Plan.

After reviewing the comments and evaluating this issue, the Agency has decided not to prohibit the discharge of RCRA listed solvents F001-F005 at this time. EPA believes that such a prohibition would not be justified in light of all the existing controls (including those promulgated today) designed to address the problems caused by solvents. For example, the prohibition on the discharge of wastestreams with a flashpoint below 140 degrees Fahrenheit (the RCRA standard for ignitable liquid waste) should effectively prevent the discharge of substances (including solvents) that could cause fires at POTWs. Similarly, the prohibition of discharges resulting in toxic gases, vapors, or fumes in a quantity that may cause acute worker health and safety problems should go very far towards eliminating any problems occasioned by the volatilization of solvent discharges in POTW collection and treatment systems. As discussed earlier, EPA is preparing guidance for POTWs on how to implement this prohibition through numeric limits.

Today's final rule also contains a requirement that all POTWs with approved pretreatment programs evaluate their significant industrial users to determine if these users need plans for the control and prevention of slug discharges. Such plans must contain any necessary measures for controlling toxic organics (including solvents). EPA believes that this provision will be an effective vehicle for extending solvent management plans to noncategorical significant industrial users. Many categorical users are already covered by Total Toxic Organic and solvent management plan requirements. In light of these requirements, the Agency does not believe that it is necessary to promulgate a total toxics organic management plan requirement as part of the general pretreatment standards.

With respect to establishing numerical, constituent-specific, or aggregate limits for specific solvents or waste constituents of concern, the Agency believes that such limits would not be appropriate at the national level. Such limits could not, of necessity, address the concerns of particular municipalities with their unique combinations of industrial users and site-specific problems. For this reason, the Agency prefers at this time to leave the development of such limits to POTWs.

c. Today's Rule. For the reasons discussed above, today's rule does not contain a prohibition against the discharge of listed solvent hazardous wastes to POTWs.

D. Spills and Batch Discharges (Slugs)

(40 CFR 403.8(f)(2)(v))

a. Proposed Change

The principal pretreatment regulation addressed specifically to slugs is the existing requirement in 40 CFR 403.12(f) that all industrial users notify POTWs of discharges that could cause problems at their POTW, including any slug loadings that would violate any of the specific prohibitions of 40 CFR 403.5(b).

Spills and batch discharges present special challenges to POTWs. As documented by data on incidents at POTWs, these discharges can cause many problems at the treatment plant, including worker illness, actual or threatened explosion, biological upset or inhibition, toxic fumes, corrosion, and contamination of sludge and receiving waters. A survey undertaken by the Association of Metropolitan Sewerage Agencies (AMSA) indicated that spills to sewer systems were the most common source of hazardous wastes at the respondents' treatment plants.

The current general pretreatment regulations do not address these problems comprehensively. To address this concern and to strengthen the existing prohibitions against pass through and interference, EPA proposed on November 23, 1988, to revise 40 CFR 403.8(f)(2)(v) to provide that POTWs must evaluate each of their significant industrial users to determine whether such users need a plan to prevent and control slug loadings. This evaluation was proposed to be required at the same time that the POTW conducts inspection or sampling of a significant industrial user. POTWs would use the opportunity of an inspection or sampling to examine the operational practices and physical premises of a significant industrial user to determine whether these warranted the development of a plan to handle and prevent accidental spills or non-routine batch discharges.

The proposal would also have revised 40 CFR 403.8(f)(2)(v) to provide that if the POTW decides that such a plan is warranted for a particular significant industrial user, the plan must contain, at a minimum, the following elements:

1. Description of discharge practices, including nonroutine batch discharges;
2. Description of stored chemicals;
3. Procedures for promptly notifying the POTW of slug discharges as defined under 40 CFR 403.5(b), with procedures for follow-up written notification within five days;
4. Any necessary procedures to prevent accidental spills, including maintenance of storage areas, handling and transfer of materials, loading and unloading operations, and control of plant site run-off;
5. Any necessary measures for building any containment structures or equipment;
6. Any necessary measures for controlling toxic organics (including solvents);
7. Any necessary procedures and equipment for emergency response; and
8. Any necessary follow-up practices to limit the damage suffered by the treatment plant or the environment.
EPA solicited comments on all aspects of the proposed revisions. Specifically, the Agency requested comments on the following issues: Whether EPA should impose specific spill or batch control requirements directly on industrial users; whether the control plans proposed to be required should be limited to significant industrial users or expanded to cover all industrial users, or limited to other categories such as industrial users who submit notification of the discharge of hazardous wastes under proposed 49 CFR 403.12(p); whether the requirements of 40 CFR 403.12(f), section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and section 304(b) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) are duplicative and unduly burdensome and if so, on how such duplication could be avoided; whether it would be appropriate to establish certain administrative exemptions from the section 103 CERCLA notification requirements for indirect dischargers; and whether industrial users should be exempted from having to notify the POTW of those slug discharges for which they have submitted CERCLA notification.

b. Response to Comments

The Agency received many comments on this aspect of the proposed rule from POTWs, States, private industry, trade associations and environmental groups. In general, commenters supported the proposal because it would increase control of slugs while still retaining POTW flexibility. These commenters indicated that many POTWs have already successfully reduced slugs using similar control plans. A number of commenters stressed such benefits of slug control plans as facilitation of early response and better control and cleanup of accidental discharges. Some supporters offered suggested clarifications or modifications, as described below.

Only a few commenters opposed the proposed rule. Some commenters believed that some POTWs already have procedures and rules even more restrictive than those proposed by the Agency, and that slugs are already adequately regulated under existing pretreatment, CERCLA, SARA, and RCRA requirements. Because of the many different types of industrial users within the regulated community, some commenters indicated concern that general slug control regulations would either be too general or too specific, and thus would be unworkable for most industrial users. Other commenters also expressed concerns about paperwork burdens, available POTW resources, and the technical ability of POTWs to conduct the initial evaluations and subsequent inspections. One commenter said that some POTW systems are so large that they would not be affected by slug discharges, and suggested that slug plan requirements should be optional. Because of the importance of slug control and prevention in controlling interference and pass through of toxic and hazardous pollutants, EPA is today requiring POTWs to evaluate significant industrial users to determine the need for such plans. EPA believes that the proposed evaluation and minimum plan requirements will provide significant environmental benefits. The Agency also believes that slug loads have the potential to adversely affect even the largest POTWs. Specific comments, and EPA’s responses, are set forth below.

Several commenters expressed confusion regarding the definition of slug loading and submitted suggestions for clarifying the definitions and distinctions between slugs and batches. The primary concern expressed by commenters was that batch discharges are not necessarily harmful, that effluent limitations apply to such discharges, and that batch discharges do not always need to be prevented. To clarify the Agency’s intent in specifying the type of discharges which should be covered in slug control plans, EPA is modifying the language of proposed 40 CFR 403.8(f)(2)(v) to provide that, for purposes of that subsection, a slug discharge is a discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. EPA notes that, when evaluating SIUs to determine whether they need to be subject to slug control plans, POTWs may wish to examine the SIUs’ batch discharge practices, because batches are not always subject to effluent limitations: Batches may include discharges from industries not covered by categorical standards or local limits, and certain non-routine batch discharges may cause problems for the POTW.

Most commenters stressed the need to retain complete POTW flexibility in determining which industrial users should have plans, and in approving the adequacy of these plans. A number of commenters supported slug discharge controls only as long as POTWs had the discretion to make the needs assessment and significant industrial user determination, and remain the sole arbiter of what is necessary and adequate. Commenters also generally supported the proposed plan elements. They believed that the elements are comprehensive enough to ensure that all the essentials of slug prevention are covered. However, a few commenters were opposed to the listed plan elements. One commenter said that imposing specific requirements for a control plan would be excessive and should not be necessary. Another commenter said that the detail involved in the list of elements would restrict POTW flexibility in implementing slug controls and would discourage POTWs from identifying appropriate industries.

EPA recognizes the need for POTW flexibility in determining which industrial users need to have plans for the control and prevention of slug discharges, and in determining the appropriate elements of slug control and prevention plans. Today’s rule leaves much discretion to the POTW. The areas in which POTWs have considerable discretion include POTW designation and designation of significant industrial users and POTW evaluation of each significant industrial user to determine the need for a slug control plan. However, the Agency does not agree that requiring minimal elements for such plans is unnecessary or undesirable. In particular, the first three elements of the plan (the description of discharge practices, the description of stored chemicals, and notification procedures) are essential for the POTW to be aware of actual or potential slug loads from a particular significant industrial user. The remaining plan elements refer to “necessary” measures, procedures, or practices, thus allowing considerable POTW flexibility in deciding which measures are appropriate for a particular industrial user with respect to prevention, containment, emergency response, and follow-up.

On the other hand, some commenters who supported the proposed rule indicated that it did not go far enough in stating which industrial users should be evaluated, and which criteria should be used in the evaluation. A few commenters objected to the lack of regulatory criteria for determining whether a significant industrial user needs a control plan, one commenter fearing that this lack would increase the potential for arbitrary decisionmaking, another fearing that POTWs would not make determinations that such plans are needed in all appropriate cases. Regulatory criteria suggested by one commenter included certain quantities of stored chemicals, potential for slug loadings, and history of slug discharges. These criteria would increase uniformity and reasonableness of decisionmaking.
according to the commenter. Still another commenter suggested that industrial users who needed storage areas or an absence of floor drains be exempted. One commenter stated that the proposed language would not exempt non-significant industrial users from slug control and prevention requirements. Another commenter expressed concern about industrial users who needed slug control plans because of storage of hazardous chemicals, but who had little industrial discharge to sewers.

EPA's "Guidance Manual for Control of Slug Loadings to POTWs" (September 1988), provides guidance on evaluating industrial users for slug potential, criteria for determining whether an industrial user needs a control plan, and guidance in developing slug control requirements. The manual is divided into three parts: (1) Evaluating the need for a POTW slug control program, (2) developing an industrial user control program, and (3) developing a POTW slug response program. Information is provided on identifying potential industrial user slug sources and their risk categories, evaluating or improving the legal authority to regulate slugs, requiring selected industrial users to develop slug control plans or measures, inspecting and monitoring industrial users, and developing emergency response procedures and resources. EPA believes that this guidance will be useful to POTWs in determining which industrial users need slug control plans, and in developing such plans, thereby reducing the potential for arbitrary decisionmaking. However, EPA does not believe that it should develop rigid criteria in its regulation establishing when slug control plans should be required, because of the best position to make such determinations and, since such requirements will help ensure continued compliance with its NPDES permit, it is in the interest of the POTW to do so. With respect to exempting certain industrial users from slug control requirements, the Agency notes that today's rule requires that POTWs evaluate significant industrial users to determine whether such users need slug control plans. EPA believes that exemptions are best granted by POTWs during the course of such evaluations to allow them to take into account the particular circumstances present at the significant industrial user's facility. Today's rule does not specifically exempt non-significant industrial users from slug control requirements because POTWs may wish to require such users to develop plans on a case-by-case basis to address the potential for adverse impact caused by slug discharges from those facilities.

Another commenter, although with little industrial discharge, the Agency notes that non-domestic users which typically introduce only sanitary, as opposed to industrial, waste to POTWs are nevertheless subject to the general pretreatment regulations and may be designated as significant industrial users by POTWs for such reasons as the potential of stored chemicals to enter the sewer in an accident. They may also be required to have slug control plans pursuant to POTWs' local authorities.

One commenter suggested including among the elements a timetable for implementation. Still another said plans should contain language requiring the industrial user to immediately take measures to cease the discharge and remedy the damage. Several wanted to see a requirement for plan certification by professional engineers, and one commenter suggested an equalization system requirement for industrial users with a history of slug discharges. Although these elements may sometimes be needed on an individual basis, EPA does not believe that they are necessary elements for all slug control plans issued to significant industrial users and is therefore not promulgating such requirements as part of today's rule. For example, today's rule already specifies that control plans must contain any follow-up measures necessary to limit the damage suffered by the treatment plan or the environment. POTWs may wish to require many industrial users to immediately take measures to cease the discharge as a follow-up measure, but such a requirement may be superfluous for some industrial users because of the nature of their effluent or their discharge practice. POTWs may wish to require certain facilities to have their plans certified by professional engineers, certification may not be needed for smaller, less complex facilities. With respect to equalization systems for facilities with a history of slug discharges, EPA believes that in many cases other measures may be equally as or more appropriate to address the problem. Concerning timeframes for implementation, EPA believes that it is preferable for POTWs to decide on a case-by-case basis whether such a timetable is needed in order to address the potential for adverse impact presented by a particular significant industrial user. Today's rule allows POTWs the flexibility to require such timeframes, orders to cease discharge, or engineer plan certification as POTWs deem appropriate or necessary. However, the Agency has modified today's rule slightly from the proposal to require that slug control plans must contain any necessary measures for inspection as well as maintenance of storage areas and for any necessary worker training. Inspection and maintenance of storage areas is essential to see that stored materials are not leaking or improperly placed, and worker training is necessary to instruct employees in the most practicable methods to prevent, detect, and respond to spills at the particular facility.

Another commenter suggested that the rule be modified to require that any significant industrial user which discharges a slug loading should not only notify the POTW but also specifically report (within thirty days) what happened and what action would be taken to minimize the possibility of recurrence. However, EPA believes that the commenter's concern will be adequately addressed by the requirement in today's rule that slug control plans contain procedures for prompt notification to the POTW of slug discharges and follow-up written notification within five days. Today's rule also requires follow-up practices to limit damage to the treatment plant or the environment.

Several commenters asked for clarification on how often the need for slug plans should be evaluated by the POTW; i.e., whether the evaluation of significant industrial users is to be a one-time requirement or whether it must be updated at the time of each sampling or inspection. Also, some commenters stated that POTWs need the flexibility to perform frequent inspections without having to evaluate the need for slug plans every time. Another commenter suggested that POTWs be required to evaluate the need for slug plans only when individual significant industrial user permits are reviewed. One commenter suggested implementation of plans over a three-year period by approved pretreatment POTWs.

Another commenter suggested that POTWs should be allowed up to two years to complete all of the initial evaluations, even if sampling or inspection is more often than once every two years. The commenter believed that a two-year interval provides adequate time for the POTW to require, review, and evaluate each slug loading control plan.

EPA believes that evaluation of significant industrial users to determine the need for slug prevention and control plans should be more than a one-time requirement. Today's rule therefore requires POTWs to conduct such
evaluations of significant industrial users for purposes of determining the need for a slug prevention and control plan at least once every two years. However, the Agency notes that at least one commenter apparently misconstrued the language of the proposal to require that POTWs review slug control plans every two years. EPA reiterates that under today's rule, POTWs would evaluate significant industrial users to determine the need for a slug control and prevention plan. Actual evaluations of already submitted plans would take place according to a schedule of POTWs' own choosing.

The November 23, 1988 proposal would have required POTWs to evaluate significant industrial users to determine the need for slug control and prevention plans every two years, and would have also required that the evaluation be conducted at the same time that the POTW conducted inspections and sampling of significant industrial users. Under today's rule, POTWs must inspect and sample significant industrial users at least once a year, instead of once every two years as was proposed on November 23, 1988 (see Part G.2 of today's notice). The Agency believes that determining the need for slug control plans need not take place that often, and therefore is maintaining in the final rule the proposed requirement that POTWs make the determination a minimum of once every two years. Under today's rule, the determination need not necessarily be made at the same time as inspections and sampling of the particular significant industrial user, since EPA believes that POTWs should have the flexibility to conduct this evaluation separately if they deem it appropriate. Nevertheless, EPA believes that inspections and sampling of industrial users will generally provide the POTW with the best opportunity for determination of the necessity for slug prevention and control plans, and encourages POTWs to conduct such evaluations at the same time as inspections and sampling are carried out. Although EPA believes that where slug control plans are developed, compliance with the plans should be made a requirement in the significant industrial users' individual control mechanisms, no schedule for implementation of plans is required in today's rule. This will allow POTWs the flexibility to set priorities with respect to their own significant industrial users.

EPA also solicited comments on whether spill or batch control requirements should be imposed directly on industrial users by EPA. In response, some commenters indicated that it would be appropriate for the industrial users to bear the burden of preventing harm to the POTW and its workers. However, the majority of commenters did not support imposing the slug control requirements directly on all industrial users, on the basis that slug control plans must be specific to each industrial user in order to be effective (although one commenter believed that slug control requirements should be uniform for all industrial users who handle hazardous waste). Commenters generally indicated that due to the facility-specific nature of most control plans, the POTW is in the best position to determine whether a control plan contains appropriate measures. One commenter said that the requirements should be imposed directly on only significant industrial users or those industrial users with slug potential for both hazardous and nonhazardous discharges.

EPA agrees that slug control plans should not be imposed directly by EPA because there are almost no requirements that would be uniformly appropriate for all industrial users or all significant industrial users. POTWs will be in the best position to develop slug prevention and control requirements for industrial users because, by fulfilling inspection and sampling requirements, they will be familiar with the operations of their individual industrial users, and they will also know best what types of discharges must be prevented to avoid causing pass-through and interference. Accordingly, today's rule provides that the POTW will develop individual slug control requirements as necessary.

With respect to expanding the evaluation requirement to other categories or all industrial users, commenters generally preferred requiring POTWs to evaluate only significant industrial users as a way to conserve POTW resources, especially since POTWs may classify any user as significant. A number of commenters made their approval of the limitation to significant industrial users contingent upon adoption of an appropriate significant industrial user definition. One commenter stated that if POTWs appropriately designate as significant those facilities that have a "reasonable potential to adversely affect the POTW's operation," the significant industrial user limitation would be appropriate. However, one commenter stated that by implication the proposed rule would make any facility that a POTW believes should have a control plan a significant industrial user, and that this should not necessarily be the case. Other commenters opposed to expanding the requirement beyond significant industrial users generally indicated that evaluating all industrial users for slug control plans could result in development of unnecessary plans. Several commenters expressed concern that EPA had not considered the costs of expanding the proposed rule to include all industrial users, especially small facilities.

However, a number of commenters stated that all industrial users should be evaluated for slug control plans. One commenter stated that all dischargers should be covered by slug control requirements to limit incentives for industries to relocate to areas without an approved pretreatment program. Another commenter suggested that the requirement for slug plan evaluations be expanded to include industrial users who submit notification of the discharge of hazardous waste (as proposed in 40 CFR 403.12(p)) and any incidental user of the POTW who submits notification of the discharge of hazardous waste pursuant to CERCLA, RCRA or SARA requirements.

Under today's rule, POTWs must, at a minimum, evaluate significant industrial users to determine the need for slug control plans. However, POTWs are free to inspect and require slug control plans of other industrial users. Today's rule affords considerable POTW flexibility in designating significant industrial users, and in selecting other appropriate industrial users for slug plan development. However, today's rule also does not require or imply that every industrial user determined by the POTW to need a slug control plan is a significant industrial user, because such users may not fit the criteria for significance found in the definition of significant industrial user promulgated today. For example, they may have the potential for adversely affecting POTW operations only in the event of a spill, in which case the POTW may not wish to designate them as significant for other purposes. Industries that are not significant industrial users, including some that store or discharge hazardous wastes, may sometimes need a slug control plan, but EPA believes it is preferable for POTWs to ascertain whether this is necessary on a case-by-case basis.

With respect to duplication of CERCLA, SARA and/or RCRA requirements, all commenters expressed an interest in administrative efficiency. A number of commenters asked that the rule recognize the potential existence of industrial user plans already prepared for other permit or regulatory
requirements, and partially exempt such industrial users or incorporate their RCRA or other permit elements by reference. Several commenters asked for clarification about whether an industrial user can submit a copy of a document prepared for another agency or to the POTW in lieu of preparing a separate slug control plan. Several commenters stated that the Spill Prevention Control and Countermeasure (SPCC) Plan requirements should suffice for slug control. One commenter requested clarification about whether a facility would be required to have a RCRA management plan which could serve as a slug control plan if the facility generated a sufficient quantity of waste to be subject to the formal reporting requirements (the Agency assumes that the commenter was referring to today’s hazardous waste notification requirements).

EPA recognizes that a number of existing requirements under other statutes and regulations could serve as components of slug control plans. If a significant industrial user is covered by such a plan, the POTW may accept such plans in partial or complete fulfillment of the requirements in today’s rule, as long as each element set forth in today’s rule is addressed in an acceptable manner in some document or collection of documents. POTWs may also impose more rigorous requirements in circumstances warrant. With respect to today’s hazardous waste notification requirements for dischargers of hazardous wastes to POTWs, EPA notes that some, but not all, of such dischargers are also subject to RCRA management requirements because they treat, store, or dispose of hazardous waste pursuant to 4 CFR part 294.

With respect to exemptions from slug notification requirements for industrial users who submit CERCLA and SARA notifications, almost no commenters approved of this proposal. Although SARA and CERCLA have notification requirements that may overlap with slug notification, most commenters believed prompt and direct notification of the POTW by the industrial user was essential. These commenters pointed out that prompt POTW response to slugs would be delayed by a second-hand notification from SARA or CERCLA personnel. Another commenter pointed out that the SARA list of Extremely Hazardous Substances does not address many potential POTW hazards. Comments on requirements for other common flammable and explosive chemicals are not included, while certain unusual chemicals and medicines that may not be of concern to POTWs are on the list.

One commenter expressed concern that such an exemption would lead industrial users to believe that spills below a CERCLA reportable quantity (RQ) are of no consequence to the POTW, when this is often not the case.

EPA believes that slug loading notification requirements serve different purposes from SARA/CERCLA requirements and are not duplicative. Direct notification to the POTW affected by the slug is critically important because time is essential in formulating an appropriate response. Similarly, the reportable quantities established under CERCLA are not necessarily related to the potential for pass through or interference at the POTW, nor are the hazardous substances required to be reported under SARA necessarily the substances of most concern to POTWs.

In the proposal, EPA requested comment on whether an administrative exemption from CERCLA section 103(a) notification requirements would be appropriate for releases into sewers which pose little or no hazard to the POTW. The Agency received no data indicating that such an exemption would be appropriate. For this reason, EPA is not addressing the issue of administrative exemptions under CERCLA in today’s rulemaking.

c. Today’s Rule

Today’s rule revises 40 CFR 403.8(f) to provide that POTWs with approved pretreatment programs must evaluate, at least once every two years, whether each significant industrial user needs a plan to control slug discharges as defined under 40 CFR 403.5(b). If the POTW decides that such a plan is needed, the plan shall contain at least the following elements:

- Description of discharge practices, including nonroutine batch discharges;
- Description of stored chemicals;
- Procedures for promptly notifying the POTW of slug discharges, including any discharge that would violate a specific prohibition under 40 CFR 403.5(b), with procedures for follow-up written notification within five days;
- If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response; and
- If necessary, follow-up practices to limit the damage suffered by the treatment plant or the environment.

C. Trucked and Hauled Waste (40 CFR 403.5(b)(6))

a. Proposed Change

Many POTWs have expressed concern about discharges from liquid waste haulers. The Study identified the strengthening of controls on these dischargers as potentially deserving of the Agency’s attention. In June 1987 the Agency issued guidance to help POTWs control the discharge of hazardous wastes from liquid waste haulers to their systems (Guidance Manual for the Identification of Hazardous Wastes Delivered to Publicly Owned Treatment Works by Truck, Rail, or Dedicated Pipe). As a further response to the Study and to further the prevention of pass through and interference, the Agency proposed on November 23, 1988 to add a provision to 40 CFR 403.5(b) prohibiting the introduction to POTWs of any trucked or hauled pollutants except at discharge points designated by the POTW. The Agency requested comments on the proposal and on the following issues: whether to revise 40 CFR 403.8 to require POTWs to specify particular discharge sites; whether the proposed specific discharge prohibition is too extensive and should be limited to non-septic wastes only; and whether to require POTWs to develop and obtain approval of additional procedures to deal with trucked wastes, such as requiring POTWs to monitor and sample such wastes.

b. Response to Comments

The Agency received many comments on the proposed rule from POTWs, States, private industry, trade associations, and environmental groups. Commenters generally favored the rule although many suggested modifications.

The majority of commenters indicated that specific discharge sites would provide better control of trucked and hauled waste, as well as improved accountability for this type of discharger. Commenters generally indicated that the rule would increase POTWs’ control without adding burdensome requirements. Additionally, one commenter indicated that the requirement for designation of discharge points gives notice to all waste haulers that the POTW’s control authority is backed by federal controls and guidelines. One commenter stated that as the land disposal of untreated hazardous wastes is currently prohibited under RCRA, surreptitious disposal of unwanted hazardous wastes might become more commonplace, and therefore better controls on trucked or hauled discharges will be necessary.
However, some commenters stated that there is no need for additional federal requirements for liquid waste haulers. Some commenters said that current requirements established by POTWs with approved pretreatment programs for sampling, testing, and manifesting are adequate to control the discharge of non-septic trucked wastes. Some commenters opposed to the rule stated that RCRA is the appropriate primary vehicle for control of trucked or hauled hazardous waste in order to avoid confusion, duplicative requirements, and uncertainty. These commenters stated that it would not be productive to require duplicative requirements under the pretreatment program, since liquid waste haulers are not covered by the domestic sewage exclusion and are therefore subject to RCRA transporter requirements.

The Agency does not agree with the assertions that the proposed requirement is redundant with existing RCRA or pretreatment requirements or that trucked or hauled wastes should not be subject to specific regulation. Because hazardous waste haulers must comply with RCRA manifest requirements (including transport of the waste to a designated RCRA facility), the principal new legal effect of today's requirement will be to prohibit the discharge of trucked non-hazardous wastes to POTWs except at designated discharge points. Practically, however, this requirement will give POTWs better control of all wastes entering their systems (including hazardous wastes) by requiring POTWs to designate certain discharge points that they can monitor to prevent the introduction of undesirable wastes into the sewer system.

EPA believes that designation of discharge points is an essential tool to improve POTW control of trucked or hauled wastes. Therefore, EPA is revising 40 CFR 403.5(b) to add paragraph (8) which prohibits the introduction to POTWs of any trucked or hauled pollutants except at discharge points designated by the POTW. The rule allows POTW flexibility in implementing this prohibition.

Commenters were generally opposed to requiring POTWs to specify particular discharge sites. One commenter noted that only POTWs accepting such waste should designate discharge points. The commenter concluded that requiring POTWs to designate discharge points would cause confusion because many POTWs do not accept hauled waste. EPA agrees that requiring all POTWs to designate discharge points would not be appropriate; not all POTWs are equipped to handle additional loads and/or types of pollutants which may be introduced to their facilities by liquid waste haulers. It is not EPA's intent to require the designation of discharge points by POTWs. Rather, EPA intends that today's rule be interpreted as prohibiting the discharge of hauled waste to a POTW except to the extent that the POTW allows such discharges and they occur at locations designated for such purposes by the POTW.

A number of commenters suggested specific modifications to the rule. One commenter stated that POTWs should have explicit authority to refuse to accept such wastes in order to protect the plant, including a rejection because proper analyses and certification were not met. This commenter indicated that POTWs should also be able to specify location of disposal, time and other conditions deemed necessary, including local limits. The commenter favored adding statements defining conditions POTWs can impose prior to accepting such wastes, including the use of local limits. Two commenters suggested POTW performance standards for establishing discharge points, stating that POTWs with a wide distribution of industrial users should provide multiple locations to minimize transportation expenses and the risks inherent in all transportation for industrial users who haul their wastes to the POTW. One commenter suggested requiring that designated discharge points be supervised by POTW personnel at all times when discharging is permitted.

EPA believes that the conditions and restrictions suggested by these commenters are sometimes necessary on an individual basis, but would necessarily vary from POTW to POTW and their circumstances and therefore are not appropriate for inclusion in a uniform national rule. The Agency notes that today's rule provides POTWs with the flexibility to adopt specific conditions or restrictions such as those suggested by the above commenters. For example, POTWs may designate multiple discharge points for non-hazardous waste at any sites they deem appropriate for particular types of industrial users and they may provide supervision at some or all of these sites as appropriate. Similarly, POTWs may refuse to accept any trucked or hauled waste if proper procedures have not been followed, or they may set specific limits for such wastes. EPA's "Guidance Manual for the Identification of Hazardous Wastes Delivered to Publicly Owned Treatment Works by Truck, Rail, or Dedicated Pipe" (Office of Water Enforcement and Permits, June 1987), suggests numerous specific means to ensure that hazardous wastes are not being discharged to POTWs, including permits, waste tracking systems, inspection and sampling analysis, surveillance and investigative techniques, and restricted discharge permits. Because the need for such measures will vary, today's rule leaves it up to the POTW to adopt them when necessary.

A few commenters requested guidance on what specific tests to perform on trucked waste, or suggested the use of simple tests to determine the hazardousness of wastes. EPA's above-cited "Guidance Manual for the Identification of Hazardous Wastes Delivered to Publicly Owned Treatment Works by Truck, Rail, or Dedicated Pipe" contains detailed guidance on such testing, including how to determine if a waste is hazardous and how to establish a waste monitoring program tailored to the POTW's needs.

One commenter stated that the regulations should prohibit acceptance of trucked or hauled materials which may result in interference or pass through of pollutants. Another commenter stated that categorical limits should not apply to trucked wastes, since this would unduly complicate the process. Still another commenter stated that establishment of dump sites away from the treatment facility could create a control problem for the POTW, and that the most effective control method would allow discharge only at the POTW headworks.

In response, EPA notes that trucked and hauled wastes are already subject to both EPA's general pretreatment regulations (including the general prohibition against pass through and interference) and to any categorical pretreatment standards applicable to the wastes. EPA agrees that in many instances the most effective control method may be to allow discharges of trucked or hauled wastes only at POTW headworks, and encourages POTWs to adopt this method if they deem it appropriate. In designating discharge points, and establishing procedures to ensure that wastes introduced to the POTW comply with all applicable federal requirements, EPA suggests that POTWs keep two critical issues in mind. First, facilities generating wastes covered by categorical pretreatment standards may not avoid pretreatment requirements simply by arranging for waste removal by liquid waste haulers. Accordingly, wastes generated by such facilities may not be introduced to a POTW by a liquid waste hauler unless they have been pretreated in accordance
with the categorical pretreatment standard(s) applicable to the waste. Second, POTWs may not designate discharge points outside of the POTW facility boundary for the introduction of hazardous wastes to the sewer system. Under the RCRA regulations, hazardous wastes may only be transported to designated facilities permitted to handle the waste described in the manifest (see 40 CFR 262.20, 262.21). For POTWs operating under a RCRA permit-by-rule, the area outside the POTW property boundary, including most of the sewer collection system, is not part of the permitted facility, so cannot be used as a location for accepting hazardous waste. See EPA’s 1987 “Guidance for Implementing RCRA Permit-by-Rule Requirements at POTWs,” p. 11. For POTWs operating under or considering applying for a RCRA permit, EPA has stated that “manifested wastes may only be delivered to an approved (hazardous waste management facility), and sewer systems will not be approved for that purpose,” 45 FR 33320 (May 19, 1990).

Many commenters supported limiting the prohibited discharge standard to non-septic wastes, stating that designating discharge points for all trucked or hauled wastes would potentially put an undue burden on small POTWs because of supervising discharges at these points, and that limiting the prohibition to non-septic wastes would not prevent a POTW from specifying specific discharge points for septic waste if deemed appropriate by the POTW.

However, other commenters believed that both septic and non-septic wastes should be included in the prohibition. These commenters indicated that the prohibition would be difficult to enforce if septic wastes were excluded, since it is sometimes difficult to ascertain without sampling whether a truck is carrying septic or non-septic wastes.

EPA agrees with those commenters who expressed concerns about the potential presence of toxic and hazardous pollutants from non-domestic sources in septic wastes. For this reason, the Agency is today prohibiting the discharge of all trucked and hauled wastes except at designated discharge points. This will give POTWs better control of all such wastes potentially containing toxic and hazardous pollutants.

One commenter stated that the prohibition does not distinguish between a liquid waste hauler’s off-site discharge to a POTW and an on-site discharge from a truck which is used to transport waste from one industrial plant building to another, then rinsed out and the residue discharged to the sewer at the industrial user’s site. In response, EPA notes that the intent of today’s rule was to regulate the discharge of wastes trucked or hauled off-site to the POTW from an industrial facility. Wastes discharged from a truck to the collection system at an industrial user’s facility are not covered by today’s prohibition, since such wastes which normally differ from that discharged by the facility during its usual operations. The purpose of today’s prohibition, on the other hand, is to give POTWs better control of potentially harmful wastes which may be difficult to identify or which may have no easily ascertainable origin.

Most commenters did not support requiring other procedures for trucked and hauled wastes, although a few commenters recommended requiring additional sampling and monitoring procedures. However, most commenters generally indicated that while monitoring and sampling of truck loads are important, specific procedures should be developed by each POTW on a case-by-case basis to address its own particular situation. A number of POTWs discussed their own procedures for controlling trucked and hauled wastes, such as a certification or manifest requirement to track wastes entering the treatment plant, continuous supervision of designated discharge points, inspection of wastes (visual or through chemical and/or physical analysis) prior to acceptance by the POTW, requiring that trucked wastes be subjected to a minimum annual characterization and compatibility testing, and individual truck load sampling. Commenters believed that the extent of discharge and pretreatment control exercised by the POTW should be tailored to facility-specific conditions, such as volume of specific material which the treatment process can accommodate over a period of time without loss of treatment effectiveness.

EPA believes that requiring uniform POTW procedures for handling trucked and hauled waste is not appropriate at the present time, since such procedures are very dependent on site-specific situations which POTWs are generally best equipped to address on their own. For this reason, EPA is not requiring POTWs to develop any particular measures to deal with trucked or hauled wastes, other than the prohibition on discharges except at locations designated by the POTW.

c. Today’s Rule

Today’s rule adds a new provision (40 CFR 403.13(p)) prohibiting the discharge of trucked or hauled pollutants except at discharge points designated by the POTW.

D. Notification Requirements (40 CFR 403.13(p))

a. Proposed Change

Section 3010 of RCRA requires that any person who generates or transports hazardous waste, or who owns or operates a facility for the treatment, storage, or disposal of hazardous waste must file a notification with EPA or with a State with an authorized hazardous waste management program. Pursuant to the Domestic Sewage Exclusion in 40 CFR 261.4(a)(4), any material mixed with domestic sewage that passes through a sewer system to a publicly-owned treatment works for treatment is not a solid waste, and therefore cannot be a hazardous waste. However, section 3018(d) of RCRA (enacted as part of the Hazardous and Solid Waste Amendments in 1984) provides that the notification requirements of RCRA section 3010 “shall apply to solid or dissolved materials in domestic sewage to the same extent and in the same manner as such provisions apply to hazardous waste.” There is currently no regulatory requirement that industrial users report the discharge of all hazardous wastes to sewers. The Agency therefore identified the implementation of section 3018(d) as a potentially useful component of an improved pretreatment program. The Agency believes that the information provided by such notification is needed for the ultimate development by POTWs of controls to prevent pass through and interference.

On November 29, 1988, EPA proposed to revise 40 CFR 403.12 to add a new paragraph (p) that would require all industrial users to notify EPA Regional Waste Management Division Directors, State Hazardous Waste authorities, and their POTW of any discharge into a POTW of a substance which is a listed or characteristic hazardous waste under section 3001 of RCRA. Such notification would include a description of any such wastes discharged, specifying the volume and concentrations of the wastes, the type of discharge (continuous, batch, or other) and identifying the hazardous constituents contained in the listed wastes. The notification would also include an estimate of the volume of hazardous wastes expected to be discharged during the following twelve months. The notification would take place within six months of the effective date of the final rules.

To further ensure control of hazardous wastes discharged to sewers, the
proposed rule would require all industrial users who submit notification of the discharge of hazardous wastes to certify that they have a program in place to reduce the volume and toxicity of wastes generated to the degree they have determined to be economically practicable, and that they have selected the practicable methods of treatment, storage, and/or disposal currently available to them which minimize the present and future threat to human health and the environment. A similar certification requirement already applies to all generators of hazardous wastes (other than those that discharge their wastes to sewers) under section 3002(b) of RCRA.

In the October 17, 1988 revisions to the general pretreatment regulations (53 FR 40562, 40614) EPA added a requirement at 40 CFR 403.12(j) that all industrial users promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge. To clarify that 40 CFR 403.12(j) also applies to the discharge of hazardous wastes, the Agency also proposed to require that all industrial users promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including changes in the volume or character of any listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 CFR 403.12(p).

Under proposed 40 CFR 403.12(p) generators would have been exempt from notification requirements during any calendar month in which they generated not more than 100 kilograms of hazardous waste, except for those wastes identified under 40 CFR 261.5(e), (f), (g) and (j). Generators of more than 100 kilograms of hazardous wastes in any given month would be required to file the one-time notification. In the proposed rule, the Agency solicited comments on the small quantity generator exemption and on whether any of the existing RCRA forms might be suitable for submission of the proposed notification requirements. EPA also requested comment on whether those industrial users required to submit Form R (a Toxic Release Inventory form required under section 313 of SARA) to be submitted annually by industrial users with over ten employees who discharge certain listed toxic chemicals) should send a copy of Form R to the POTW, in lieu of the proposed hazardous waste notification requirements, if the toxic chemicals reported by the industrial user on Form R include those RCRA hazardous wastes for which notification would be required. The Agency also requested comments on whether additional (or more specific) management requirements should be imposed to control wastes for which notification would be submitted under the proposal.

b. Response to Comments

The majority of the commenters expressed strong support for notifying at least the POTW of hazardous waste discharged into its system. Supporting comments were that such notification would augment existing controls on spills and accidental discharges and give the POTW more knowledge of and control over previously unreported discharges.

Other commenters opposed any additional notification requirements, stating they would be duplicative and burdensome for all parties concerned. Several commenters stated that the requirement was not necessary because the discharge of hazardous waste was already prohibited in their sewer ordinances and therefore did not occur unless it was an uncontrolled spill. Still other commenters believed that the information needed by the POTW should be available through the State and Federal RCRA or SARA databases for them to obtain as necessary.

Because the proposal would impose only a one-time notification requirement which can frequently be fulfilled with available information, EPA does not believe it to be burdensome for industrial users. The information will also be useful to POTWs in developing programs to better control the introduction of hazardous wastes into treatment and collection systems. Sewer ordinances do not generally contain a provision against the discharge of hazardous waste, and these wastes are frequently present in part because of the Domestic Sewage Exemption provided under RCRA. Although some of the information in the proposed notifications is accessible through State and Federal databases, much of it is not. For example, hazardous substances for which notification is required under SARA are not necessarily the same as the listed and characteristic hazardous wastes for which notification would be provided under today's rule.

Most of the POTWs and States who commented believed that POTWs, State authorities, and EPA should receive the notification. But many commenters (mostly industries) supported notification of the POTW only. They stated that notifying the State hazardous waste management authorities, as well as EPA, would be redundant.

Section 3018(d) of RCRA makes the requirements of section 3010 applicable to solid or dissolved materials in domestic sewage “to the same extent and in the same manner as such provisions apply to hazardous waste.” Section 3010(a) states that “any person generating or transporting [hazardous waste] or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 3008) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person” (emphasis added). The statute thus mandates that, at the least, State or EPA hazardous waste personnel be notified. However, EPA does not interpret section 3018(d) as limiting the recipients of notification provided for under that section to the recipients specified under 3010(a). EPA’s authority to tailor notification requirements to meet the needs of the pretreatment programs is based in section 307(b) of the Act, authorizing EPA to promulgate such standards as are necessary to prevent pass through and interference. Also, RCRA section 3018(b) directs EPA to revise existing regulations “to assure that substances identified or listed under (RCRA section 3001) which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment.” As described below, EPA believes that proper control of materials identified or listed under RCRA will be facilitated by a requirement that notifications required by today’s rule be submitted to POTWs, State authorities and EPA.

EPA agrees with the commenters who support notification of the POTW because it is directly affected by the discharge of such wastes. POTWs need to fully understand the nature of influent wastes to their plants to ensure proper treatment at the plant, establish appropriate local limits, and meet permit requirements. EPA believes that it is important for States to receive the notification so that they may use it in issuing NPDES permits, implementing State pretreatment programs, and protecting public health and welfare. In addition, submission of the notification requirements to EPA may assist the Agency in issuing NPDES permits to POTWs where it is the permitting authority and in establishing pretreatment requirements where it is the Control Authority. Notification of EPA will make possible the
development of a national data base or tracking system that would organize the information into a useful format for all interested parties.

Several commenters suggested that the information received could be summarized by States and EPA and be made available to POTWs. One commenter suggested that only the POTWs be notified and that the State and EPA could get the information from the POTW. However, other commenters suggested that other parties be notified, such as EPA Headquarters, State pretreatment program personnel, State water quality (NPDES) personnel and Regional as well as State Water Division Directors.

Summarization of the information received by the States and EPA and subsequent distribution to the appropriate POTW would, in most cases, be a cumbersome notification method. The Agency believes that the required information should be made available to the POTW as soon as possible. Although the suggestion of notifying EPA Headquarters, pretreatment personnel, water quality personnel and Water Division Directors is reasonable, EPA believes that today's rule, in providing for receipt of the notification by the most important representatives of local, State and Federal governments, will allow other personnel from these respective branches of government to easily obtain copies of the information. As mentioned above, the Agency is considering the development of a data base or tracking system that would organize the information into a useable format.

Several commenters pointed out that much of the required information was already submitted to regulatory agencies in indirect discharge permit applications, notices of process changes, through local ordinances, or is already reported under 40 CFR 403.12 and SARA section 313.

Although some information may be submitted pursuant to these authorities, EPA emphasizes that none of these provisions specifically requires submittal of information to POTWs, States, and EPA about all RCRA hazardous wastes discharged to sewers. Several commenters, while agreeing with the need for a notification requirement, believed that the POTW should have the flexibility to determine the appropriate reporting. This would eliminate some of the redundancy, since POTWs have different programs and ordinances and could then choose that information which would best suit their needs.

Today's rule requires a minimum amount of information that is to be reported by all industrial users discharging hazardous wastes to sewers, except for dischargers of less than fifteen kilograms per month of non-acute hazardous wastes. EPA believes that these minimum requirements will be very useful to POTWs, States and EPA. POTWs have the flexibility to request additional information to suit the needs of their specific programs.

Several commenters expressed concern about the requirement to estimate the volumes of hazardous waste that would be discharged over a 12 month period. Commenters believed that the estimates would be unreliable and would result in possible liabilities (possibly from failure to report accurately). They questioned how to account for dramatic variation in discharges over the twelve-month estimation period and also questioned the purpose of the requirement. One commenter stated that although this kind of information might be useful, POTWs could not enforce a failure to report accurately. Another commenter suggested that an estimation over 30 days might be more useful.

The Agency believes that the information received through this requirement will be useful for POTW planning purposes. The information requested from industrial users is only an estimate of what they know or have reason to believe will be discharged over the next 12 month period, taking any variability into account. The estimation is not intended to constitute an enforceable limit. Industrial users are reminded that under 40 CFR 403.12(j) of today's rule, POTWs must be notified in advance of any substantial change in the volume of the pollutants in their discharge. POTWs may choose to develop enforceable local limits based on the information submitted.

One commenter mentioned that the last line of 40 CFR 403.12(p)(1) allows an exemption from the notification requirement for pollutants already listed under the self-monitoring requirements. The commenter stated that self-monitoring information alone would not be sufficient to prevent pass through or interference.

The purpose of this proposed exemption is to avoid duplicative requirements, since in some instances information required under the hazardous waste notification provisions will have already been submitted under 40 CFR 403.12. The Agency notes that neither the self-monitoring requirements nor the hazardous waste notification requirements are intended primarily to prevent immediate pass through or interference. The purpose of the 40 CFR 403.12 requirements is to monitor compliance with categorical standards. The primary purpose of the hazardous waste notification requirements is to gather as much information as is needed to baseline the potential effects of hazardous and toxic waste discharged to POTWs. It should be noted that the exemption for pollutants reported under the 40 CFR 403.12 self-monitoring requirements applies even though such reporting may not necessarily include all elements submitted under today's notification requirements, such as an estimate of the wastes expected to be discharged over the next twelve months. Since the 40 CFR 403.12 provisions require the submission of actual sampling results and periodic reporting every six months, the Agency believes that such reports are an adequate substitute for the section 3018(d) requirements. Although self-monitoring reports under 40 CFR 403.12 are submitted only to the Control Authority and not to EPA and the States as are today's section 3018(d) notifications, EPA believes that the existence of an already established, easily accessible data base for 40 CFR 403.12 self-monitoring requirements obviates the need to notify additional parties, as is required for one-time notifications of hazardous waste discharges under section 3018(d).

One commenter stated that notification should extend to all pollutants of concern in addition to hazardous wastes. This commenter supported notification of the discharge of hazardous constituents listed in 40 CFR part 261, appendix VIII. The commenter stated that this would keep the focus of the notification on the chemistry of the discharge rather than the legal status of the wastewater, and would also assure more equitable treatment of different types of dischargers. Some commenters also indicated that the notification requirements should be oriented toward volumes and types of waste based on their chemistry after treatment, rather than using the RCRA codes to describe the waste. The rationale was that the RCRA "derived from" and "mixture" rules fail to provide information about the waste after treatment, other than to define the status of the waste as hazardous up until the point of discharge into a domestic sewage system.

The Agency believes that notification of the discharge of all appendix VIII constituents is not routinely necessary. EPA believes it is preferable for the POTW to require such information on a case-by-case basis when appropriate to protect against potential pass through or
interference. The Agency also notes that today's rule requires the industrial user to report hazardous constituents discharged, if known. If an industrial user is not aware of the hazardous constituents contained in its hazardous waste discharge, EPA believes that POTWs, after receipt of notifications received under today's rule, will be in the best position to institute requirements for follow-up information on an as-needed basis based on the data already acquired about the industrial user's hazardous waste. Such additional information may provide more detail on the chemistry of the discharge, and thus fill in any data gaps that may result from use of RCRA waste codes and RCRA definitional constructs such as the mixture and derived from rules.

Some commenters objected to the requirement that industrial users notify the POTW of "any discharge into the POTW" and questioned whether the presence of a section 3001 RCRA waste in levels below the detection limits would require notification. One commenter opposed requiring that constituents be identified in the notification, stating that it would be burdensome to identify all constituents and calculate their volumes. Another commenter believed that such a requirement would be redundant because the constituents are already reported under section 313 of SARA. Some commenters also stated that the presence of a hazardous waste does not mean that certain constituents are always present, nor does the presence of constituents indicate that a waste is hazardous.

EPA notes that under 40 CFR 261.11, any person generating a solid waste is responsible for determining whether that waste is a listed or characteristic hazardous waste. Thus, industrial users who are generators of hazardous wastes are already required to have knowledge of such wastes. Today's rule requires all parties discharging hazardous wastes to POTWs to file a one-time notification. The notification must include a description of any such wastes discharged. To clarify this requirement and make description easier, today's rule requires that industrial users include the name of the hazardous waste and the EPA hazardous waste number for each hazardous waste discharged (these numbers are found in 40 CFR part 261, subpart D). Today's rule also requires an identification of the constituents discharged, along with their mass and concentration in the wastestream, but only to the extent that these constituents and their mass and concentrations are known and readily available to the user. The Agency is requiring notification of mass rather than volume (as was proposed) because mass is a more useful measure of the quantity of chemicals discharged.

Where a discharger has knowledge that such constituents are present in its discharge, the discharger should identify such constituents in its required section 3018(d) notification, notwithstanding its inability to detect the exact levels of such constituents in its discharge (e.g., because constituent levels are below analytical detection limits).

In response to concerns expressed by commenters, the Agency has clarified in the language of today's rule that identification of the constituents of hazardous waste and their mass and concentration need only be made if these are known by the industrial user (unlike the notification of the discharge of the hazardous waste and its description by name and EPA hazardous waste number). Monitoring for the presence of these constituents is not specifically required. It is not correct that all of these constituents are reported under SARA section 313, since the list of toxic chemicals required to be reported under that provision does not include all hazardous constituents under RCRA. The Agency believes that many industrial users will already have information about the constituents of their waste and that this information is often useful to POTWs. If the information is not available, the POTW may request additional monitoring on an as-needed basis.

Under the proposed rule, generators would have been exempt from the notification requirements during any calendar month in which they generate no more than 100 kilograms of hazardous waste, except for certain acute hazardous wastes. Many commenters supported this exemption. The commenters suggested that by retaining the exclusion, EPA would provide regulatory relief for small industries while not jeopardizing the protection of human health and the environment.

A few commenters who supported the small quantity generator exemption stated that the Agency's proposal to exempt such generators from notification was not supported by the evidence cited in the preamble. These commenters also pointed out that EPA acknowledged that a 100 kilogram discharge of some RCRA hazardous wastes could be problematic for a POTW (particularly small and/or unacclimated ones). Another commenter pointed out that any exemption should be tied to the discharge, rather than the generation, of a hazardous waste.

After evaluation of these comments, EPA believes that a complete exemption from the notification requirements for many dischargers of less than 100 kilograms per month would not be environmentally justifiable. The Agency also agrees that any exemptions should be tied to the discharge rather than the generation of hazardous wastes, since only wastes actually discharged will usually be of concern to the POTW.

The Agency believes that a discharge of less than 100 kilograms of certain types of hazardous wastes may cause problems for POTWs (particularly small and unacclimated ones) if discharged at once or over a short period of time (e.g., spent electropolishing baths, certain spent solvents such as benzene, or discarded unused formulations containing tri-, tetra-, or pentaclorophenol). Although one or two dischargers of approximately one hundred kilograms per month may have little potential for adverse impact on a POTW (depending on the wastes discharged) many POTWs have a
As a general rule, the Agency believes that dischargers of less than fifteen kilograms per month (the equivalent of about one pound per day) of hazardous waste to POTWs present little danger of adverse impact to such POTWs. For this reason, today's rule provides an exemption for such dischargers, unless the hazardous wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Today's rule also provides that all non-exempt dischargers of hazardous wastes must submit the name of the hazardous waste discharged, the EPA hazardous waste number, and the type of discharge (whether batch or continuous). The Agency believes that this is the essential information which is needed to enable POTWs to be aware of which hazardous wastes are entering their systems and to enable them to decide whether to request further data from a particular discharger. Today's rule also requires those industrial users discharging more than 100 kilograms per month of a hazardous waste to a POTW to submit additional information, to the extent such information is known and readily available to the user. The additional information consists of an identification of the hazardous constituents contained in the listed wastes, an estimation of the mass and concentration of such constituents in the wastewater discharged during that month, and an estimation of the mass of such constituents in the wastewater expected to be discharged during the following twelve months. POTWs may decide to require more detailed information from any discharger on a case-by-case basis in the exercise of authorities granted under local law. POTWs may also decide, in the exercise of local authorities, not to provide any of the above exemptions or reduced reporting requirements if they do not deem them appropriate for their particular systems.

Two commenters stated that because of the application of the "mixture rule" in 40 CFR 261.3(a)(2)(iii), facilities discharging wastewater containing any amount of hazardous waste would be subject to the proposed notification requirements, regardless of the proposed exemption for small quantity generators. The regulation cited by the commenters provides that waste mixtures that include a hazardous waste that is classified as hazardous solely by virtue of exhibiting a hazardous characteristic identified in 40 CFR 261.30-261.32 are hazardous only if the mixtures themselves exhibit a hazardous characteristic. A companion rule, 40 CFR 261.3(a)(2)(iv), provides that mixtures that include a hazardous waste listed in 40 CFR 261.30-261.33 (other than one which is hazardous solely because it exhibits a characteristic identified in 40 CFR 261.30-261.32) are hazardous unless the resultant mixture is "delisted" pursuant to 40 CFR 260.20, 260.22, or one of the exceptions in 40 CFR 261.3(a)(2)(iv)(A)-(E) applies. The result of these rules is that mixtures of small quantities of certain hazardous wastes with large quantities of process or other solid wastes render the entire mixture a hazardous waste. These rules apply to industrial users covered by today's rule; accordingly, for purposes of ascertaining whether an industrial user discharges between 0 and 15 kilograms per month, 15 to 100 kilograms per month, or 100 kilograms per month of hazardous waste, the industrial user must apply the RAC mixture rules to calculate the volume of hazardous waste being introduced to the sewer.

Two commenters stated that the Agency should limit the notification requirement to significant industrial users as defined in proposed 40 CFR 403.3(j) who have never before notified EPA of their hazardous waste activities. This commenter stated that less than one percent of the listed hazardous wastes is generated by non-significant industrial users. The Agency believes that limiting the notification requirement to significant industrial users would not be adequate to fulfill the statutory requirement of section 3018(d), since the definition of significant industrial user does not necessarily include the dischargers of hazardous wastes covered under RCRRA section 3010. In addition, EPA believes that notification by all hazardous waste dischargers will assist POTWs in ascertaining whether the cumulative effect of many small discharges of hazardous waste may cause pass through or interference. Prior notification to POTWs of hazardous waste activities under RCRA does not constitute compliance with today's rule, since the notification would not necessarily include all the items of information specified in today's rule.

Some commenters suggested that EPA provide an exemption for the discharges described in 40 CFR 261.3(a)(2)(A)-(E) and an exemption from notification requirements for acute hazardous wastes. They recommended that the exclusion should specify a level for each characteristic waste as well as for total listed wastes.

The Agency notes that 40 CFR 261.3(a)(2)(iv)(A)-(E) describes certain wastes that are not classified as hazardous waste. Discharge of such materials to a POTW would not, therefore, trigger today's notification requirements. In addition, the Agency believes that such discharges present little potential danger of pass through or interference at POTWs. However, POTWs may require notification of these discharges on a case-by-case basis pursuant to local authorities.

Today's rule does not grant an exemption for acute hazardous wastes. Such wastes have been identified under the RCRA program as meritings controls more stringent than for other types of hazardous waste (e.g., there is a less extensive small quantity generator exemption), and EPA believes that information on the discharge of any quantities of such wastes to a POTW is important for POTW planning to prevent pass through or interference.

Some commenters questioned the requirement that industrial users provide notification to the POTW of any substantial change in the volume or character of hazardous wastes discharged. Notification of substantial changes in pollutants discharged is already required pursuant to 40 CFR 403.12(j), and will be modified by today's rule to specifically provide for notification with regard to substantial changes in hazardous waste discharges. These commenters requested clarification about the definition of "substantial change in the volume or character of pollutants" as well as the means of notification. Another commenter felt that the language should be deleted because it implied continuous monitoring.

The possibility of providing a regulatory definition for "substantial change" in the volume or character of pollutants in an industrial user discharge was specifically addressed in the preamble to the final PIRT rule (53 FR 40662), which was promulgated on October 17, 1988. The preamble discussion of 40 CFR 403.12(j) stated that EPA has determined that a regulatory definition of "substantial change" in the volume or character of
permitting authority) to have need of the POTW (and NPDES has determined that any incidental result in notifications about changed Although the approach taken today may not on the anticipated effect of the volume or character of pollutants discharged, the Agency stated that these should include a substantial change in any characteristic of the industrial user’s wastewater discharge, including volume, flow, the amount or concentration of pollutants, and the discharge of new pollutants not previously reported to the POTW. Only changes which the industrial user expects to occur on a regular basis over an extended period of time (three months or more) need to be reported. Sporadic or episodic changes in the volume or character of a discharge are not ordinarily covered by the changed discharge notification. However, depending on the circumstances, the industrial user may have to report these changes in accordance with other pretreatment requirements, e.g., the “slug load” notification requirements (40 CFR 403.12(f)), the upset provision (40 CFR 403.16), or bypass provision (40 CFR 403.17). In most cases, a substantial change in the volume or character of a user’s discharge will result from a deliberate or planned change to the user’s facility or operation. “Substantial” should be based on the magnitude of change to the industrial user’s existing discharge and not on the anticipated effect of the changed discharge on the POTW. Therefore, a regulation specifying absolute numbers, such as an increase or decrease of X gallons of flow discharged, would not be appropriate. Although the approach taken today may result in notifications about changed discharges which will not have a demonstrable effect on the POTW’s influent, effluent or sludge quality, EPA has determined that any incidental “over notification” is justified by the need of the POTW (and NPDES permitting authority) to have information on a timely basis to determine whether, considering other changes to the POTW’s system or pollutant control requirements, new limits on pollutant discharges are necessary, or should be further evaluated to prevent pass through or interference (see 53 FR 40690).

One commenter inquired about the mechanism that would be used to ensure that all industrial users were made aware of the one-time notification requirement. Another commenter suggested that the regulations should require POTWs to develop procedures for notification of changes in a user’s discharge. The principal mechanism used to ensure that industrial users are made aware of the notification requirement is through the publication of this notice in the Federal Register. In addition, POTWs may wish to send notices to their industrial users on the procedures that they wish them to follow. With respect to requiring POTWs to develop procedures for notification of discharge changes, EPA prefers to leave this question to the discretion of the specific POTW.

Some commenters stated that the certification requirements seemed inappropriate for nonwastewater discharges. EPA disagrees with these commenters. The Agency believes that a certification requirement is appropriate for industrial users because waste minimization will improve the quality of the effluent which enters the POTW and, eventually, the discharge that enters navigable waters through the POTW. The certification requirement will also further EPA’s stated goal of pollution prevention by helping to reduce loadings of hazardous wastes to sewers.

However, the Agency has modified the language of the certification requirement somewhat from the November 23, 1988 proposal in order to make the requirement more appropriate to discharges of hazardous wastes to POTWs. Today’s language clarifies that the requirements apply only to hazardous wastes for which notification was submitted under 40 CFR 403.12(p). In addition, the language now requires the industrial user to certify that it has a program in place to reduce the volume and toxicity of wastes generated to the degree that it has determined to be economically practical. The Agency has substituted the phrase “economically practical” for “economically practical” because it believes the former phrase more accurately conveys that generators should choose these means of reducing the volume and toxicity of their wastes that are feasible and cost-effective.

EPA has also deleted the proposed language requiring notifiers to certify that they have selected the treatment, storage, and/or disposal methods currently available to the user which minimize the present and future threat to human health and the environment.

By recommending retention of the Domestic Sewage Exclusion, the Agency has made a determination that disposal of hazardous wastes to sewers in compliance with pretreatment requirements is an environmentally acceptable disposal method. In addition, many industrial users discharging hazardous waste to sewers also treat, store, or dispose of hazardous waste by other means and are already subject to the waste minimization certification requirements of 40 CFR 264.73. This deletion will therefore eliminate duplicative paperwork requirements for those facilities while still protecting POTWs and fulfilling Congressional intent to encourage the selection of optimal waste management techniques to reduce or eliminate the generation of hazardous waste.

One commenter suggested that the waste minimization certification requirement should allow POTWs or industrial users to use innovative control mechanisms such as source control and best management practices.

In response, the Agency notes that the requirement that industrial users certify that a program is in place to reduce the volume and toxicity of wastes to the degree that the user has determined to be economically practical allows complete flexibility to the industrial user, including the use of source controls and best management practices to minimize the generation of hazardous wastes.

One commenter suggested that the regulations include a requirement that all industrial users be placed on a 5-year schedule to eliminate hazardous wastes discharged under the Domestic Sewage Exclusion. However, the Study demonstrated that in general, POTWs are capable of accepting a certain amount of hazardous waste without threatening the POTW, human health or the environment. The Agency therefore believes that with proper controls, such as those in today’s rule, elimination of all hazardous waste discharges from industrial users is unnecessary at the present time.

With respect to the use of supplemental EPA Form R or RCRA Forms to fulfill the proposed notification requirement, the majority of the commenters who addressed this issue supported the use of such forms. The commenters believed that the use of these forms would lessen duplicative and burdensome paperwork requirements. Other commenters opposed the use of these forms, stating that the use of such forms would lead to extraneous or misleading information that would create an administrative
burden for POTWs. They stated that Form R might simplify the reporting requirement for some industrial users, but would not simplify POTWs’ task of evaluating the form and sorting out unnecessary information.

In response to these comments, the Agency is clarifying today that EPA Form R and existing RCRA forms may be used to fulfill the notification requirement as long as the industrial user submits all information required in today’s rule. However, POTWs may require industrial users to use other forms if they wish. Industrial users may also submit the required information by other means, such as a letter.

Two commenters stated that the information on Form R would be based on pure estimates on the part of the discharger. In response, EPA points out that today’s notification requirement also requires estimates for the mass and concentration of hazardous waste constituents, as well as the mass of constituents discharged over the following twelve months. These estimates should be based on the best available data.

A commenter stated that Form R would not cover a sufficient range of pollutants and that the list of SARA compounds was very different from the list of hazardous wastes under section 3001 of RCRA. In the case of substances which are listed or characteristic wastes under section 3001 of RCRA which do not appear on Form R, the industrial user must submit the required information on those wastes to EPA, the States, and the POTW. In addition, although section 313 of SARA only requires notification for industrial users with more than ten employees, today’s rule does not include any exemptions based on the number of employees at the facility.

A commenter suggested that the reporting requirements under 40 CFR 403.12 be used to fulfill the notification requirement. In response, the Agency notes that pollutants reported under 40 CFR 403.12 (b), (d), or (e) need not be reported under today’s notification requirement. However, the reporting requirements under the above-mentioned provisions of 40 CFR 403.12 apply to pollutants regulated under applicable categorical pretreatment standards. Thus the reporting requirements under 40 CFR 403.12 may not apply to all nonacutely hazardous wastes and would fulfill today’s requirements only if such wastes had been reported under 40 CFR 403.12 (b), (d), or (e).

To clarify that today’s rule applies to new industrial users or to existing industrial users which will discharge hazardous waste only in the future, EPA has added a provision requiring industrial users who commence discharging after the effective date of today’s rule to provide the notification no later than 180 days after the discharge of the hazardous waste.

c. Today’s Rule

Today’s rule provides that the industrial user shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12 (b), (d), and (e).

Industrial users are exempt from the above requirements during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the industrial user discharges additional quantities of such hazardous waste do not require additional notification.

In the case of new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

In the case of any notification made under today’s rule, the industrial user shall certify that it has a program in place to reduce the volume or toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

E. Individual Control Mechanisms for Industrial Users (40 CFR 403.8ff(f)(1)(iii))

a. Proposed Change

The existing pretreatment regulations require POTWs with approved pretreatment programs to have the legal authority to control, through permit, order, or similar means, the contribution to the POTW by each industrial user to ensure compliance with pretreatment standards and requirements. EPA’s experience in developing and overseeing the pretreatment program has led it to believe that individual control mechanisms are the best way to ensure compliance with applicable pretreatment standards and requirements. Such a system gives the industrial user individual notice of all of the pretreatment requirements to which it is subject, thus making it easier for such users to understand their obligations before a violation occurs and ensuring more effective prevention of pass through and interference.

For these reasons, the Agency proposed on November 23, 1988 to revise 40 CFR 403.8(f) to require that POTWs with approved pretreatment programs issue discharge permits or equivalent individual control mechanisms to industrial users identified as significant under proposed 40 CFR 403.3(u). Under the proposal, such control mechanisms would contain, at a minimum, the following elements:

(1) Statement of duration (in no case more than five years);

(2) Statement of non-transferability without prior POTW approval;

(3) Applicable effluent limits based on categorical pretreatment standards and local limits;

(4) Applicable monitoring, sampling, and reporting requirements;
Audits conducted of local pretreatment regulations to develop adequate with such standards and requirements. The Agency solicited comment on the merits of the proposed revision. Specifically, the Agency requested comment on: (1) The appropriateness of limiting the requirement to industrial users defined as significant under proposed 40 CFR 403.2(a), or the appropriateness of additional or alternative targets, such as categorical users or notifiers of hazardous waste discharges under proposed 40 CFR 403.12(p); (2) whether the requirement should apply only to POTWs with more than a specified number of industrial users (and, if so, what number would be appropriate as a cut-off point); and (2) whether the list of conditions proposed should be reduced, expanded, or modified.

b. Response to Comments

The Agency received many comments on this issue. Commenters included States, POTWs, trade associations, industries and environmental groups. Of these, most supported the proposal in some form and many supported it as proposed. Several commenters suggested that some instruments other than permits, such as contracts or administrative orders, might serve as equivalent control mechanisms. Most of those opposing the requirement stated that the POTW should have the flexibility to choose whether or not to implement a system of individual control mechanisms. One commenter stated that the requirement was redundant, because every POTW with an approved program is already required to notify users of pretreatment requirements and to have the authority to prohibit harmful pollutants from entering the POTW. POTWs are required under the existing pretreatment regulations to have and exercise the authority to control through permit, order, or similar means, the contribution of individual industrial users to the POTW (40 CFR 403.8(j)(iii)). It is also true that, under the existing regulations, POTWs are required to notify users of applicable pretreatment standards and requirements and to ensure compliance with such standards and requirements. The Agency does not believe, however, that POTWs have consistently exercised their discretion under the existing regulations to develop adequate industrial user control mechanisms. Audits conducted of local pretreatment programs have led the Agency to conclude that many existing control mechanisms are inadequate to ensure compliance with pretreatment requirements and that industrial users should often be provided with better notice of pretreatment requirements. The Agency continues to believe that individual control mechanisms are the best way to accomplish these objectives. For this reason, EPA proposed to require POTWs to issue permits or other individual control mechanisms to significant industrial users.

Today’s rule will provide substantial benefits to the POTW, to the industrial user, and to the pretreatment program as a whole. For instance, a user subject to both categorical standards and local limits would receive individual notice of which limits are applicable (i.e., the most stringent of the two) for each regulated pollutant in its discharge. Similarly, a user with equivalent mass- or concentration-based limits or alternative limits derived by the combined wastestream formula would be informed of such limits in its permit or other individual control mechanism. Users would also be individually notified of sampling and reporting requirements. Individual control mechanisms are the best way to accomplish these objectives. For this reason, EPA proposed to require POTWs to issue permits or other individual control mechanisms to significant industrial users.

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pretreatment requirements under federal must comply with all applicable NPDES permits because most POTWs between pretreatment permits and proposed rule, the Agency will require expects that the POTW will do federal pretreatment requirements not compliance by the industrial user with control mechanism. As a corollary, in the permit or equivalent individual authorities). Second, industrial users must comply with all applicable pretreatment requirements under federal law, whether or not they are contained in the permit or equivalent individual control mechanism. As a corollary, compliance by the industrial user with the terms of the permit does not shield it from liability for failure to comply with federal pretreatment requirements not set forth in the permit. However, EPA expects that the POTW will do everything possible to ensure that the limits and other requirements in the permit are as accurate and complete as possible, and will notify the user of any changes in applicable pretreatment requirements which become effective subsequent to the issuance of the permit.

As stated in the preamble to the proposed rule, the Agency will require issuance of "individual discharge permits or equivalent control mechanisms." An adequate equivalent control mechanism is one which ensures the same degree of specificity and control as a permit. To clarify that the conditions of the individual control mechanism must be enforceable against the significant industrial user through the usual remedies for noncompliance (set forth in 40 CFR 403.8(f)(i)(vi)(A)). EPA has amended the language of 40 CFR 403.8(f)(i)(vi)(B) to provide that pretreatment requirements enforced through the remedies of 40 CFR 403.8(f)(i)(vi)(A) shall include the requirements set forth in individual control mechanisms. In addition, the Agency has added to proposed 40 CFR 403.8(f)(i)(iii) a statement that individual control mechanisms must be enforceable.

EPA notes that the most effective control mechanisms should also be "strictly enforceable" under local law. Generally, for an individual control mechanism to be strictly enforceable, the local ordinance must specify that the terms and conditions of the control mechanism can be challenged (administratively and/or in court) only within a very limited time period after the control mechanism becomes effective. If the control mechanism is not challenged within the allotted time period, it cannot later be challenged in an enforcement proceeding (for guidance on this and other issues concerning individual control mechanisms, see EPA's Industrial User Permitting Guidance Manual, (September 1989)).

Commenters suggested several alternatives to the use of permits as individual control mechanisms. These included ordinances, administrative orders, and contracts. Although only two commenters discussed the use of an ordinance as a control mechanism, some POTWs rely on ordinances as their principal control mechanism. An ordinance may offer fairness and consistency in its application, but it does not provide specificity and individual notice to significant industrial users. One POTW stated that its ordinance, together with notice by mail to individual users, was sufficient. In response, the Agency emphasizes that, although a letter provides notice to the individual user of applicable limits and other requirements, an ordinance system contains the same limits for all industrial users and does not provide for POTW evaluation of significant industrial users to determine whether individual requirements are necessary for that user. Accordingly, an ordinance will not be considered an equivalent control mechanism under today's rule.

Two commenters discussed the use of administrative orders as an alternative control mechanism. One commenter stated that administrative orders are an effective method of imposing pretreatment and reporting requirements on industrial users and are less paperwork-intensive than permits. One POTW commented that it modified its administrative orders to attempt to comply with EPA's oversight requests, but did not succeed in meeting all requirements. This commenter also stated that it is necessary for the Agency to clearly specify the requirements for individual control mechanisms.

The Agency agrees that detailed administrative orders may be an equivalent individual control mechanism. In order to completely satisfy today's requirement with an administrative order system, the POTW must issue administrative orders to its significant industrial users whether or not they are complying with all applicable pretreatment standards and requirements. In addition, such orders must contain all of the minimum elements of an individual control mechanism specified in today's rule. The use of administrative orders therefore may not be necessarily less paperwork-intensive than other individual control mechanisms. Finally, administrative orders that are typically issued only in the context of an enforcement action may not meet one or more of the criteria for an adequate control mechanism described above and thus would not satisfy today's requirements. POTWs may, of course, use a mix of appropriate administrative orders, permits, and other equivalent individual control mechanisms to satisfy today's rule.

Several commenters mentioned the use of contracts as a control mechanism. One stated that the successful use of contracts precluded the need for permits, and two others equated the use of contracts with the use of permits.

Two commenters stated that the permit should be signed by the permittee and "act [as a] legal contract between the POTW and the permittee." The use of contracts as a control mechanism was addressed in a previous rulemaking (53 FR 40562, October 17, 1988). In that rulemaking EPA stated that contracts do not provide a POTW with the requisite penalty authority for an approved program and are not an adequate control mechanism for POTWs with an approved pretreatment program. As a result, all references to the use of contracts as a control mechanism were deleted from the general pretreatment regulations (for a discussion of this issue, see the above-mentioned Federal Register notice at 53 FR 40574 et seq.). A "permit" signed by the permittee (i.e., the industrial user) may be deemed a contract and thus lose its effectiveness as a control mechanism. POTWs that currently use contracts as control mechanisms may incorporate most of the terms of such contracts into their newly issued non-contractual individual control mechanisms if such terms are current, reflect applicable pretreatment standards and requirements, and otherwise meet the requirements of today's rule.

Several commenters appeared to be confused about the meaning of the statement in the preamble to the proposed rulemaking that the Agency was proposing to require POTWs with approved programs to have "the legal authority to issue individual discharge permits or equivalent control mechanisms." Several POTWs commented that they supported the proposal, as some of them already had the authority to issue permits. One State commented that the proposal was not adequate unless the POTW is also required to actually issue the control mechanism. One POTW supported a requirement that POTWs have permit authority, but not a requirement to issue
permits. Finally, one trade association commented that the Agency should remove the word “permits” from the requirement if permit issuance was not intended to be a mandatory requirement.

EPA intended that the proposed rule be interpreted consistently with the Agency's interpretation of other requirements of 40 CFR 403.8(f)(1), i.e., the requirement that the POTW have the authority to undertake various activities means that the POTW must, in fact, engage in those activities. EPA is revising the language of 40 CFR 403.8(f) to clarify that POTW pretreatment programs must be implemented to exercise the authorities in 40 CFR 403.8(f)(1).

In the proposed rulemaking, the Agency also requested comments on (1) the appropriateness of limiting the requirement to industrial users defined as significant under proposed 40 CFR 403.3(u), or the appropriateness of additional or alternative targets, such as categorical users or notifiers of hazardous waste discharges under proposed 40 CFR 403.12(p); (2) whether the requirement should apply only to POTWs with more than a specified number of industrial users (and, if so, what number would be appropriate as a cut-off point); and (3) whether the list of proposed conditions should be contracted, expanded, or modified. The Agency received a number of comments in response to these questions.

Roughly half of the commenters on the proposal responded to the question of which industrial users should be required to have individual control mechanisms. Several commenters stated that the POTW should have the flexibility to decide which users should be covered. However, most commenters who supported the proposal agreed that EPA should specify certain classes of industrial users for which POTWs would be required to issue individual control mechanisms. Most of these supported the proposal to require the use of individual control mechanisms for significant industrial users. With respect to dischargers other than significant users, including dischargers of hazardous wastes, most commenters stated that the use of control mechanisms for such users should be at the discretion of the Control Authority. However, other commenters suggested that the Agency extend the requirement to include dischargers of hazardous wastes or to include all industrial users. Finally, a few commenters wanted the requirement limited to categorical users.

None of these comments provided a compelling reason for the Agency to change the proposed requirement that permits or equivalent individual control mechanisms be issued to all significant industrial users. The Agency agrees with those commenters who supported limiting the requirement to significant users, including categorical users. The Agency also agrees with those commenters who believed that the definition of significant industrial user is sufficiently inclusive and flexible to ensure that the necessary users are regulated by individual control mechanisms. The definition of significant industrial user, as promulgated in today's rulemaking, includes all categorical dischargers and all noncategorical dischargers meeting certain criteria, except to the extent that the Control Authority, with the approval of the Approval Authority, modifies the list of significant industrial users in accordance with criteria specified in 40 CFR 403.3(u)(1)(ii). EPA believes that issuing individual control mechanisms to non-significant users should be at the discretion of the POTW because this class of users does not typically have sufficient potential to cause use passes through or interference to warrant a requirement for individual control mechanisms. For this reason, today's rule does not require that POTWs issue individual control mechanisms to all industrial users. A POTW may, however, require non-significant users to have permits or other individual control mechanisms. One POTW commented that there should be two classes of industrial user permits. In response, EPA points out that POTWs are free to implement this approach if they wish, although the Agency does not believe that a two-class approach would be appropriate for all POTWs in every situation.

EPA disagrees with those commenters who stated that the requirement for individual control mechanisms should be limited to categorical users. Such a requirement would fail to include many users whose discharges significantly affect POTWs. One commenter stated that the Agency should not require permits for small dischargers, but supported requiring permits for categoricals. However, the Agency believes that even small dischargers should be required to obtain individual control mechanisms if they qualify as significant industrial users because they may have a significant effect on a POTW. On the other hand, if a non-categorical user is not classified as a significant industrial user, it would not be required to obtain an individual control mechanism under today's rule.

A few commenters addressed the question of whether the requirement should apply only to POTWs with more than a specified number of industrial users. Several commenters stated that the requirement should apply to all POTWs with approved programs.

One stated that even a small POTW may need to issue individual control mechanisms to significant dischargers. Another commenter stated that small POTWs (less than 5 million gallons per day) with a small number of significant users (less than ten) should not be required to issue such control mechanisms to their significant users. However, one large POTW commented that this requirement should only apply to smaller POTWs (under 20 mgd).

In response to the commenter who wanted to limit the applicability of the requirement to smaller POTWs, the Agency believes that the larger the POTW (and the greater the number of industrial users), the greater the benefit to be derived from individual control mechanisms. On the other hand, the Agency does not believe that POTWs with a small number of significant users should be categorically exempted from this requirement. Even a small number of significant users may have a substantial impact on a POTW, particularly where their discharges represent a large percentage of the flow. In addition, industrial users will benefit from individualized notification of the limits and monitoring requirements that apply to them, regardless of the size of the POTW.

Several commenters addressed the minimum elements to be included in an individual control mechanism. A POTW opposed to the proposal commented that there should be no minimum elements if permits were to be required because the POTW is in the best position to determine the necessary contents of a permit, and none of the elements would be appropriate under all circumstances. Another commenter recommended that the Agency allow incorporation by reference as an alternative to listing conditions in the permit or alternative individual control mechanism. Most commenters, however, appeared to be satisfied with the list of conditions in the proposal. One POTW commented that the requirements concerning non-transferability, slug load notification, and penalties be dropped from the list, because they had already been set forth in its local requirements.

The Agency believes that there should be minimum requirements for individual control mechanisms. Otherwise, the requirement that POTWs issue such mechanisms would be ineffective. The Agency believes that incorporation by reference is generally not appropriate because of the importance of effective
notice to the significant industrial user of all pretreatment requirements contained in the individual control mechanism.

Several commenters stated that the list of minimum requirements for individual control mechanisms should be expanded. Two commenters said that the list should include (any required) compliance schedules. One commenter suggested that the list should include a statement of severity. One POTW described its own additional requirements, which included: A regularly updated spill prevention program; a water and wasteload balance calculation; a wastewater characterization data base; a schematic flow diagram; a building layout diagram, including all drains to the collection system; and a description of the pretreatment system.

The requirements listed in the proposed rule were intended to be minimum requirements. This leaves the POTW much flexibility in adding other elements. Elements such as water and wasteload calculations, flow diagrams, building layouts, etc., are more suitable for inclusion on a case-by-case basis rather than through a national rule. POTWs may also include a statement of severability, but the Agency is not requiring such a statement because even if a control mechanism is found to be invalid under local law because of a single provision, the user is nonetheless required to comply with all applicable pretreatment standards and requirements.

The Agency has issued detailed guidance on the development of industrial user permits (see the EPA Industrial User Permitting Guidance Manual, September 1989). The information in this manual should be of use to POTWs in utilizing individual control mechanisms to implement pretreatment requirements.

The Agency agrees that where a compliance schedule is required it should be included in the individual control mechanism. For this reason, today's rule includes such a requirement. The Agency points out that such compliance schedules cannot relieve an industrial user of its federal obligation to comply with categorical pretreatment standards or any other federal pretreatment requirements in a timely manner, and language to this effect has also been added to today's rule. Compliance schedules placed in individual control mechanisms are those necessary for the attainment of new or revised categorical pretreatment standards or more stringent local limits, rather than those which are the result of enforcement actions against the significant industrial user.

Several commenters opposed the proposal that individual control mechanisms have a duration of no more than five years. One POTW commented that locking a user into a set of standards based on the combined wastestream formula would result in annual changes to the control mechanism as flow conditions change. Two other POTWs commented that a five-year limit would be unduly burdensome for POTWs. One stated that permits should only need to be renewed or amended when there are changes in the quality or quantity of the user's discharge. The other stated that there is no need to modify the user's control mechanism as long as the user is in compliance.

In the first instance, the Agency does not believe that a user is "locked" into a particular set of standards with any individual control mechanism. The municipality may structure its permit program to allow the use of reopener clauses which would allow the individual control mechanisms to be modified and when the POTW revises its local limits. In addition, where production rates or flow rates are highly variable, effluent limits can be written to reflect such variability. The Agency has provided some guidance on how this may be accomplished (see the above-mentioned Industrial User Permitting Guidance Manual). The Agency believes that a five-year maximum period is reasonable, due to the inevitability of changes to the POTW's program and changes in the characteristics of wastewater discharged to the POTW.

This is consistent with the requirement promulgated in today's rulemaking that all POTWs must evaluate the need to change their local limits every five years to ensure that it is up to date. The Agency also proposed to require a statement prohibiting transferability to a new owner or operator without prior POTW approval. POTWs may have authority to enforce permits that have been transferred. However, the individual control mechanism is based upon information provided to the POTW by a particular owner or operator. The POTW must, at a minimum, know of the change in ownership or operation to be able to learn of any forthcoming major changes to the industrial user's operations. Similarly, the new owner or operator should have a copy of the existing control mechanism in order to have adequate notice of applicable pretreatment requirements. To ensure that this occurs, the Agency believes that prior notification of the POTW and of the new owner or operator is needed and is therefore promulgating 40 CFR 403.8(f)(ii)(iii)(B) to provide that each individual control mechanism must include a statement of nontransferability without, at a minimum, prior notification to the POTW of the change in ownership or operation and without, at a minimum, provision of a copy of the existing individual control mechanism to the new owner or operator. Today's rule does not, however, require prior approval by the POTW. POTWs may decide to require such prior approval in the permits they issue.

The Agency also received several comments on the proposed requirement that individual control mechanisms should include applicable effluent limits based upon categorical standards and local limits. Two POTWs sought to limit this requirement. One of these commenters stated that, due to the inherent variability of certain effluent limits, incorporation of such limits by reference is preferred. The other commented that permit limits should only include end-of-process limits and incorporated by reference those limits in the combined wastestream formula. It is unclear to the Agency why this commenter believed that only end-of-process limits should be included in individual control mechanisms, but the Agency assumes that this commenter was also concerned about variability of certain effluent limits. As discussed above, EPA does not believe that variability of flow and production should prevent the inclusion of appropriate limits in individual control mechanisms. EPA's policy is that POTWs should develop, and place in individual control mechanisms, case-by-case individual end-of-pipe limits for significant industrial users pursuant either to 40 CFR 403.5(c) and/or limits reflecting the application of categorical standards to the permittee's specific operations.

The Agency has issued detailed guidance on the development of industrial user permits (see the EPA Industrial User Permitting Guidance Manual, September 1989). The information in this manual should be of use to POTWs in utilizing individual control mechanisms to implement pretreatment requirements.

The Agency agrees that where a compliance schedule is required it should be included in the individual control mechanism. For this reason, today's rule includes such a requirement. The Agency points out that such compliance schedules cannot relieve an industrial user of its federal obligation to comply with categorical pretreatment standards or any other federal pretreatment requirements in a timely manner, and language to this effect has also been added to today's rule. Compliance schedules placed in individual control mechanisms are those necessary for the attainment of new or revised categorical pretreatment standards or more stringent local limits, rather than those which are the result of enforcement actions against the significant industrial user.

Several commenters opposed the proposal that individual control mechanisms have a duration of no more than five years. One POTW commented that locking a user into a set of standards based on the combined wastestream formula would result in annual changes to the control mechanism as flow conditions change. Two other POTWs commented that a five-year limit would be unduly burdensome for POTWs. One stated that permits should only need to be renewed or amended when there are changes in the quality or quantity of the user's discharge. The other stated that there is no need to modify the user's control mechanism as long as the user is in compliance.

In the first instance, the Agency does not believe that a user is "locked" into a particular set of standards with any individual control mechanism. The municipality may structure its permit program to allow the use of reopener clauses which would allow the individual control mechanisms to be modified and when the POTW revises its local limits. In addition, where production rates or flow rates are highly variable, effluent limits can be written to reflect such variability. The Agency has provided some guidance on how this may be accomplished (see the above-mentioned Industrial User Permitting Guidance Manual). The Agency believes that a five-year maximum period is reasonable, due to the inevitability of changes to the POTW's program and changes in the characteristics of wastewater discharged to the POTW.

This is consistent with the requirement promulgated in today's rulemaking that all POTWs must evaluate the need to change their local limits every five years to ensure that it is up to date. The Agency also proposed to require a statement prohibiting transferability to a new owner or operator without prior POTW approval. POTWs may have authority to enforce permits that have been transferred. However, the individual control mechanism is based upon information provided to the POTW by a particular owner or operator. The POTW must, at a minimum, know of the change in ownership or operation to be able to learn of any forthcoming major changes to the industrial user's operations. Similarly, the new owner or operator should have a copy of the existing control mechanism in order to have adequate notice of applicable pretreatment requirements. To ensure that this occurs, the Agency believes that prior notification of the POTW and of the new owner or operator is needed and is therefore promulgating 40 CFR 403.8(f)(ii)(iii)(B) to provide that each individual control mechanism must include a statement of nontransferability without, at a minimum, prior notification to the POTW of the change in ownership or operation and without, at a minimum, provision of a copy of the existing individual control mechanism to the new owner or operator. Today's rule does not, however, require prior approval by the POTW. POTWs may decide to require such prior approval in the permits they issue.

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A State suggested that "applicable State standards" be added to the category. The Agency agrees that where these standards apply, they should be included as elements in permits or equivalent control mechanisms. Early calculation of all end-of-pipe limits, including those based on state law, will result in better compliance with applicable standards. Today's rule therefore includes a requirement in 40 CFR 403.8(f)(1)(iii) to include in the individual control mechanism effluent limits based on any applicable State or local law. The Agency has also added a requirement that the individual control mechanism include effluent limits based on applicable pretreatment standards in part 403.

Finally, the Agency received two comments on the requirement that applicable monitoring, sampling, and reporting requirements be included in individual control mechanisms. A State commented that control mechanisms should also include sampling location(s) to ensure that compliance is assessed at the point where the limits are applied. A POTW suggested that the requirement be modified in order to clarify that the requirement refers to self-monitoring instead of the POTW's own compliance monitoring activities.

The Agency agrees with both of these commenters. Sampling requirements should normally specify sampling location(s), and the location(s) should be point(s) at which the limitations set forth in the individual control mechanism apply. Moreover, the Agency intended in the proposal to require that individual control mechanisms contain self-monitoring requirements. The final rule requires that individual control mechanisms identify an identification of the pollutants to be monitored, sampling location and self-monitoring requirements, as well as sampling frequency and sample type. The Agency is also adding a requirement that the control mechanism contain recordkeeping requirements where applicable, since recordkeeping may be very useful in tracking compliance and in otherwise enabling the POTW to obtain needed information about significant industrial users. In addition, EPA has deleted from the proposed rule a separate requirement for notification of slug discharges, since such a requirement might imply that other types of notification should not be included in individual control mechanisms. Instead, the Agency is requiring that such mechanisms contain "applicable" notification requirements, which should include, as well as slug discharges, other notification requirements contained in part 403 such as non-compliance reporting and notification of changed discharge.

c. Today's Rule

Today's rule requires POTWs with approved pretreatment programs to issue permits or equivalent individual control mechanisms to each significant industrial user. The mechanisms shall be enforceable and shall contain, at a minimum, the following elements:

- Statement of duration (no case more than five years);
- Statement of non-transferability of the individual control mechanism without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;
- Effluent limits based on applicable general pretreatment standards in part 403 of this title, categorical pretreatment standards, local limits, and State and local law;
- Self-monitoring, sampling, reporting, notification, and recordkeeping requirements, including an identification of the pollutants to be monitored, sampling location, sampling frequency, and sample type, based on applicable general pretreatment standards in part 403 of this title, categorical pretreatment standards, local limits, and State and local law; and
- Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and, where required, any applicable compliance schedules. Such schedules may not extend the compliance date beyond applicable federal deadlines.

F. Implementing the General Prohibitions Against Pass Through and Interference

1. Toxicity-Based Permit Limits (40 CFR 122.21(j)(1)(2) and (3))

a. Proposed rule. To supplement numerical NPDES permit limits for specific chemicals, EPA has strongly encouraged NPDES permitting authorities to establish toxicity testing requirements in municipal permits and to develop whole effluent toxicity-based permit limits to control toxicity to aquatic life. Expanded use of toxicity testing and water quality-based permitting for POTWs was also one of the principal recommendations of the Domestic Sewage Study. EPA has encouraged this approach to controlling toxic effluents because it allows POTWs and permit writers to better control pass through by identifying certain toxic effects (such as lethality and effects on growth and reproduction) of a complex mixture with one measurement.

Toxicity-based permit limits can also be useful where national categorical pretreatment standards do not adequately address pollutants that cause local toxicity or where there are no current numerical water quality criteria for individual chemicals, as is the case for many toxic and hazardous constituents. In such cases, toxicity-based permit limits provide a numeric measure of the narrative water quality "no toxics in toxic amounts" standard. When such a toxicity-based limit is violated, a toxicity reduction evaluation (TRE) can be used to investigate the causes, sources, and methods to control the toxicity. A TRE is a procedure used to find control methods to reduce or eliminate toxicity. A TRE provides systematic methods for locating sources of POTW whole effluent toxicity and/or assessing the treatability of the toxicity, whether through pretreatment (source control) or through improved treatment at the POTW. A toxicity identification evaluation (TIE) is part of a TRE which uses toxicity tests to characterize, identify, and confirm the specific causative agents of effluent toxicity.

EPA recently enacted regulations requiring that whole effluent toxicity limits be placed in NPDES permits in appropriate circumstances. See 40 CFR 122.44(d). On November 23, 1988, EPA proposed to revise 40 CFR 122.21(j) to require that all existing POTW's conduct whole effluent toxicity testing and submit the results of such testing in their NPDES permit applications. The information would be used by permit writers to justify permit limitations and toxicity reduction evaluations (TREs) when the testing reveals a potential for violations of water quality standards. The toxicity testing information could also form the basis for monitoring requirements and other permit conditions when needed to ensure ongoing compliance with water quality standards.

In encouraging the use of toxicity testing, EPA has recommended that testing requirements be based on the technical recommendations and principles found in the Technical Support Document for Water Quality-based Toxics Control (TSD) (EPA/440/4-05-032, September 1985, revised edition to be published in 1990), and EPA's toxicity testing protocols, or equivalent procedures designated by the Director (i.e., the EPA Regional Administrator or the NPDES permitting authority in a State that is federally approved to administer the NPDES program). The TSD describes the rationale for whole effluent toxicity
controls and the assessment of receiving water effects.

b. Response to comments. EPA received approximately 80 comments on the topic of toxicity testing. Most of the comments focused on the need for toxicity testing at all POTWs and the test procedures outlined in the proposal. The majority of the commenters asserted that toxicity testing at all existing POTWs was unnecessary and in some cases redundant. In addition, a majority of commenters objected to the testing procedures and the frequency of testing required on the basis of cost and the possibility that they may conflict with state toxic control strategies already in place. The various comments are discussed in more detail below.

Several commenters stated that EPA or the permitting authority should demonstrate that toxicity is a problem before requiring whole effluent toxicity testing.

Section 101(a) of the Clean Water Act establishes a national policy of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. In addition, section 101(a)(3) clearly states the national policy that the discharge of toxic pollutants in toxic amounts is prohibited. Dischargers with NPDES permits must meet all of the technology-based requirements of the CWA as well as any more stringent requirements necessary to achieve water quality standards established under section 303. Section 301(b)(1)(C) and section 402(a)(1) of the CWA require that NPDES permittees achieve the effluent limitations necessary to attain and maintain the numeric and narrative water quality standards set by the states or, in appropriate instances, by EPA. EPA also has authority under sections 308 and 402(a) (1)–(2) to require such monitoring as is necessary to develop effluent limitations consistent with the Act.

Many POTWs have been found to discharge toxic substances in toxic amounts. Effluent toxicity testing allows permitting authorities to assess whether a discharger is complying with state water quality standards and provides a justification for establishment, where necessary, of permit limitations to achieve those standards. EPA's surface water toxics control program uses both chemical and biological methods to assess and protect water quality. Whole effluent toxicity testing is especially appropriate where, as for POTWs, complex chemical interactions may occur and where a chemical specific evaluation alone cannot fully assess the toxic effects of the effluent or attainment or nonattainment of the narrative water quality standard for toxicity.

One commenter stated that those regulations should require that water quality modeling and comprehensive water quality studies be completed before toxicity testing is required. The toxicity testing required by today's rule is designed to reveal if a POTW is causing or contributing to instream toxicity. Toxicity tests are necessary in assessing the toxicity of an effluent. The results of such tests in conjunction with any applicable water quality modeling information can lead to decisions concerning appropriate water quality-based limits on whole effluent toxicity. However, EPA does not believe that water quality modeling should be a precondition for toxicity testing.

Many commenters stated that it would be more appropriate to use toxicity testing as an optional monitoring tool rather than as the basis for an enforceable limit.

EPA emphasizes that today's rule does not explicitly require the establishment of permit limits based on the results of toxicity tests. Instead, it requires certain POTWs to submit the results of toxicity tests with their permit applications. EPA's regulations at 40 CFR 122.44(d)(1)(iv), however, already require whole effluent toxicity limits where a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a numeric criterion for whole effluent toxicity. A similar requirement exists regarding excursions above narrative criteria, except that limits on whole effluent toxicity may not be necessary if the permitting authority demonstrates that chemical-specific limits for the effluent are sufficient to attain and maintain the applicable state standard. EPA will continue to use the results of effluent toxicity testing and other data to establish permitting priorities, to assess whether a discharger is in compliance with state water quality standards, and to develop permit limitations to achieve those standards.

Several commenters said that toxicity tests cannot distinguish between toxicity caused by "common materials," such as ammonia and chlorine, and toxicity caused by section 307(a) priority pollutants and therefore such tests are of limited use in controlling priority pollutants.

In response, the Agency points out that state narrative standards prohibiting the discharge of toxics in toxic amounts are not limited to section 307(a) priority pollutants. Toxicity tests will account for toxicity caused by any pollutant, whether priority, conventional or nonconventional. Any effluent that causes unacceptable toxicity in the receiving waters would violate general prohibitions on the discharge of toxic pollutants in toxic amounts and controls must be established accordingly.

In addition, a few commenters stated that state disinfection requirements would often cause failure of a toxicity test due to the presence of chlorine, and therefore toxicity testing should be conducted before disinfection.

Residual chlorine and other byproducts of chlorination (i.e., monochloroamines) can be highly toxic to aquatic life. Therefore, EPA recommends that any use of chlorine for disinfection be carefully evaluated. If unacceptable effluent toxicity is found to be caused by excessive chlorine, either a reduction in the amount of chlorine used for disinfection, dechlorination after disinfection, or use of alternative disinfection technologies may be necessary. Whole effluent toxicity tests are an appropriate means to identify whether excessive toxic chlorine discharges are occurring.

Several commenters suggested the use of only acute tests to verify the need for further testing and toxicity reduction. In response, the Agency notes that today's rule does not specifically require either acute or chronic tests for any particular POTW. However, after reviewing a permit application containing the results of any testing conducted, the Director may choose to require additional testing (acute, chronic, or both) as he deems necessary to assess the toxicity of the discharge pursuant to his authority under sections 402(e) (1)–(2) of the Clean Water Act. The characteristics of instream dilution, effluent variability, and species sensitivity differ from one POTW to the next, as do the types of pollutants discharged. Sometimes chronic tests are more appropriate, sometimes acute tests are sufficient, and at other times a combination of both acute and chronic tests are necessary to accurately assess the toxicity of an effluent to aquatic life.

One commenter stated that the industrial pretreatment program has adequately screened and identified toxicity problems so that in smaller systems (where the pretreatment program does not indicate a potential for toxic discharges) it is unnecessary for POTWs to conduct toxicity testing.

EPA has found that POTWs with pretreatment programs receive the majority of indirect industrial discharges and therefore have a significant potential for effluent toxicity. Even in smaller POTWs with pretreatment
programs, all the toxics in a complex effluent cannot, as a practical matter, be measured or limited singly and, as stated previously, chemical-specific testing methods may not address the interactive effects of the mixture. Toxicity testing provides a way to characterize and ultimately to limit, if necessary, whole effluent toxicity where necessary to meet water quality standards. It may also help identify the presence of particular pollutants of concern so that chemical-specific local limits or other controls can be developed.

One commenter suggested using a priority pollutant scan in lieu of toxicity testing to screen a POTW’s influent for the presence of toxic wastes in concentrations which would cause damage to the POTW. EPA agrees that POTWs should generally test their influent for the presence of individual toxic pollutants. However, a POTW’s effluent may be toxic due to non-priority pollutants, complex mixtures of pollutants, or chemicals added or created during the treatment process at the POTW. The revisions to 40 CFR 122.21(j) require POTWs to conduct whole effluent toxicity testing to determine the impact of the effluent on water quality.

Several commenters suggested that toxicity testing should not be required for wastewater discharged to dry creek beds, ephemeral drainages, sloughs, ditches, etc. because these places have no aquatic life to protect and do not affect waterways. One commenter recommended the use of only chemical-specific controls in such circumstances. In response, EPA notes that narrative water quality criteria apply to all designated uses at all flows unless otherwise specified in state water quality standards. It is EPA’s policy that no acutely toxic conditions may exist in any state waters, regardless of designated use. Likewise, criteria for protection against chronic effects must be met at the edge of the mixing zone, where the state water quality standard allows a mixing zone. Dry creek beds, ephemeral drainage areas, intermittent streams, sloughs, or ditches may act as reservoirs for pollutants which can be flushed into larger permanent waters, causing toxic impact.

Many commenters stated that the requirements for toxicity testing in the proposed rule conflict with existing state toxic control strategies. Some commenters wanted EPA to be more specific in setting toxicity testing procedures, while others wanted states to have more flexibility. EPA intended in the proposed rule to provide flexibility for the states by allowing the use of testing procedures equivalent to EPA’s protocols if they are accepted by the Director. This provision was apparently misunderstood by many of the commenters. The proposal, at 40 FR 47653 (proposed 40 CFR 122.21(j)(1)) provided that the Director may require alternative test procedures and may require the submission of definitive testing data generated according to procedures specified by the Director to replace or supplement the test data specified in the proposal. Today’s rule also provides much flexibility to the Director in specifying test methods. For example, paragraph 122.21(j)(3) allows the use of EPA’s methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. To clarify this requirement, the Agency has deleted the provisions in the proposed rule which referred to the use of specific protocols.

A number of commenters stated that biomonitoring has already been completed or will be completed for their facilities as part of the toxic control programs required under section 304(1) of the CWA. In response, EPA points out that if a POTW has submitted the results of toxicity tests with their permit application to meet water quality-based permitting requirements established by the CWA section 304(1) regulations (40 CFR 122.44(d)), then the POTW has met the toxicity testing requirements in today’s rule. Whenever that POTW’s permit is up for renewal, the POTW will again be required to submit the results of toxicity tests with its permit application pursuant to today’s rule. The tests must be conducted since the last NPDES permit reissuance or permit modification under 40 CFR 122.62(a), whichever occurred last. For more detail on the relationship between the regulations at 40 CFR 122.44(d)(1)(i) and the testing required by today’s rule, see the discussion on the requirements of 40 CFR 122.44(d) below.

Some commenters suggested that any proposal affecting application requirements for municipalities should be included in the new municipal NPDES application form currently being developed by EPA.

EPA plans to propose new application requirements for POTWs in the near future, along with a form to be used in submitting the application. The final application forms, when promulgated, will reflect the requirements of today’s rule.

Two commenters suggested that EPA should formally promulgate whole effluent toxicity testing procedures pursuant to section 304(h) of the CWA. Although toxicity test procedures have not yet been promulgated under section 304(h) of the CWA, EPA has proposed new biological measurements and test procedures for the analysis of pollutants under section 304(h) (64 FR 30216, December 4, 1999). The proposal would amend 40 CFR part 138 by adding methods to measure the toxicity of pollutants in effluents and receiving waters, by adding methods to measure mutagenicity and to monitor viruses, and by updating citations to microbiological methods. In addition, EPA and States have routinely used certain other test methods. EPA’s published guidance documents on acute and chronic toxicity test methods have undergone extensive public comment and peer review prior to their publication, following the standard Office of Research and Development public comment and peer review process. In 1984, the Agency concluded that “** toxicity testing is sufficiently refined to be used in setting effluent limitations **” (49 FR 38009 (1984)). EPA’s studies since 1984 reinforce this conclusion. The absence of promulgated guidelines under section 304(h) does not affect EPA’s authority to require toxicity testing, nor does it affect the reliability of the Agency’s toxicity testing protocols.

A number of commenters objected to a perceived objective of the proposal to “codify elements of the TSD” because that document is intended only as technical guidance and is currently being revised. These commenters apparently misunderstood EPA’s intent. EPA recommends the use of the technical methods and principles presented in the TSD because this document is in wide use and has proven to be a useful tool for conducting toxicity protocols. However, in the proposed and final rules, EPA has provided a considerable degree of flexibility to states desiring to use other testing procedures.

Some commenters stated that toxicity test procedures are still in the developmental stage and are not reliable or precise enough for purposes of enforcement. EPA studies indicate that toxicity test methods are comparable in accuracy and precision to chemical analytical measurements in common use. The TSD discusses the precision of toxicity test methods and cites various studies that have led EPA to conclude that toxicity test methods, where properly followed, exhibit an acceptable range of variability. EPA recently conducted two interlaboratory studies of chronic toxicity testing using Ceriodaphnia. Although toxicity test procedures have not yet been promulgated under section 304(h) of the CWA, EPA has proposed new biological measurements and test procedures for the analysis of pollutants under section 304(h) (64 FR 30216, December 4, 1999). The proposal would amend 40 CFR part 138 by adding methods to measure the toxicity of pollutants in effluents and receiving waters, by adding methods to measure mutagenicity and to monitor viruses, and by updating citations to microbiological methods. In addition, EPA and States have routinely used certain other test methods. EPA’s published guidance documents on acute and chronic toxicity test methods have undergone extensive public comment and peer review prior to their publication, following the standard Office of Research and Development public comment and peer review process. In 1984, the Agency concluded that “** toxicity testing is sufficiently refined to be used in setting effluent limitations **” (49 FR 38009 (1984)). EPA’s studies since 1984 reinforce this conclusion. The absence of promulgated guidelines under section 304(h) does not affect EPA’s authority to require toxicity testing, nor does it affect the reliability of the Agency’s toxicity testing protocols.

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These studies showed that a high percentage of the 21 participating laboratories met the survival and reproduction criteria for acceptability of test results. Furthermore, EPA has demonstrated a direct correlation between effluent toxicity (where exposure is adequately assessed) and actual instream impact. The Agency began a series of eight studies in 1981 to determine whether effluent toxicity correlates to an impact on receiving waters. At eight water quality impacted sites around the country, EPA conducted extensive biosurveys, calculated actual instream waste concentrations, and compared the results to measured effluent toxicities. Final reports for these studies are presently available from EPA. These reports reveal that if an effluent is found to be toxic at a certain concentration using standard toxicity tests, a toxic effect can be expected in the receiving water if that concentration is met or exceeded instream.

Several commenters stated that POTWs are not equipped to handle certain chemicals that may cause toxicity. One commenter also stated that the proposed rule does not address how to develop local limits for toxics control when specific chemicals cannot be readily identified as the causative toxicants during a TRE. One commenter stated that POTWs would not be able to identify sources of toxicity and would therefore impose arbitrary local limits on industrial users.

EPA recognizes that many POTWs are not designed to treat certain toxics and that therefore these pollutants tend to pass through or interfere with the treatment system at the POTW. The national pretreatment program and today’s pretreatment standards are intended to identify and control these effects. POTWs with approved local pretreatment programs often require industrial users who are identified as the source of pass through or interference to conduct toxicity monitoring or take other measures to help identify the specific chemicals causing toxicity. Industrial users are often able to easily identify potential toxics used in or created by their processes. The POTW can then derive local limits, if necessary, from those results. The Agency anticipates that in most cases POTWs will be able to determine the source of any toxicity and will be able to develop appropriate local limits if needed to address the problem.


Several commenters were concerned about the reliability of TREs because they are allegedly in the developmental stage and because TREs do not identify specific causes of toxicity or chemical constituents causing acute or chronic toxicity. EPA has found the TRE and TIE methods currently available to be useful in helping dischargers to achieve their NPDES permit limits and comply with State water quality standards. TRE’s often do identify specific chemical causes of toxicity. EPA will continue to develop and refine TRE methods and provide technical assistance to permittees. EPA anticipates that there may be a few cases where a POTW will be unable to attain or maintain compliance with toxicity-based limits despite implementing an exhaustive TRE, applying appropriate influent and effluent controls, vigorously enforcing existing pretreatment requirements against industrial users, and maintaining continuous effluent compliance with all other permit limits and requirements. In such cases, EPA will work with the permittee to resolve the problem and will exercise its enforcement discretion when considering unusual problems faced by certain POTWs in complying with toxicity-based limits.

A majority of the commenters strongly opposed the requirement that all existing POTWs conduct toxicity testing. Most of these wanted to see testing procedures applied on a case-by-case basis, after considering a number of different factors.

EPA was persuaded by these comments to reconsider the requirement that all existing POTWs be required to conduct toxicity testing as part of their NPDES permit applications. The Agency agrees that not all POTWs can be anticipated to exhibit toxicity and that toxicity testing for such POTWs could create an unnecessary burden. However, EPA expects that with few exceptions, all POTWs with design influent flows greater than one million gallons per day and POTWs with pretreatment programs will need to be evaluated to determine whether they have a reasonable potential to cause instream excursions that violate a State water quality standard. As stated above, POTWs with pretreatment programs receive the majority of indirect industrial discharges and therefore have a significant potential for effluent toxicity. In addition, one million gallons per day is the point at which the flow of the wastewater usually begins to reach critical instream waste concentrations that are more likely to result in impacts caused by effluent toxicity. The Agency believes that design influent flow is a more appropriate criterion than actual effluent flow because of the possibility that POTWs with a design influent flow of one million gallons per day will reach that capacity during a five-year permit term due to the addition of new industrial users. For these reasons, in lieu of the requirement that all POTWs submit the results of toxicity tests with their permit applications, EPA is today requiring valid toxicity testing results to be submitted as part of the permit application requirements for: (1) Any POTW with a design influent flow exceeding one million gallons per day, or, (2) any POTW with an approved pretreatment program or that is required to develop a pretreatment program.

Today’s regulations also provide that the Director has the discretion to require additional POTWs to submit the results of toxicity tests with their permit applications based on consideration of one or more of the following factors: i) POTWs found at 40 CFR 122.44(i)(2); ii) Existing controls on point and nonpoint source pollution (including total maximum daily load calculations for the waterbody segment and relative contribution of the POTW), the variability of pollutants or pollutant parameters in the effluent (including existing chemical-specific information and type of treatment facility), the dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow), receiving stream characteristics, and other considerations. Any tests submitted under today’s rule must have been conducted since the last NPDES permit reissuance or permit modification under § 122.62(a), whichever occurred later.

If toxicity tests follow established protocols and quality assurance requirements are followed, the validity of the test will be assured. An invalid test will not meet the requirements of today’s rule. Testing protocols that
adhere to the principles presented in the TSD and EPA’s test methods will meet the requirements of today’s rule; however, other valid procedures may also be used. While today’s rule requires larger POTWs to conduct toxicity testing, it also provides the Director the flexibility to require small POTWs located on small stream segments where available dilution is minimal to conduct toxicity tests, or to require POTWs discharging to near coastal waters to conduct such tests.

In making the determination that the categories of POTWs listed in 40 CFR 122.21(j)(1) shall conduct toxicity tests as part of the permit application process, EPA was influenced by the findings of the Domestic Sewage Study and the conclusions in that Study that EPA should consider expanding the use of biomonitoring techniques and water quality-based permitting to improve controls over hazardous waste discharged to POTWs. To strengthen its water quality-based permitting program, EPA was influenced by the permit limits on whole effluent toxicity discharged to POTWs. To strengthen its controls over hazardous waste discharging to near coastal waters to POTWs. To strengthen its water quality-based permitting program, EPA was influenced by the permit limits on whole effluent toxicity discharged to POTWs.

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paragraph (j)(2). Furthermore, under 40 CFR 122.44(d)(iv) and (v), the Director must use this data in determining whether limits on whole effluent toxicity are required in the POTW’s permit.

Paragraph (j)(2) provides the Director with the flexibility to require additional POTWs to submit toxicity data with their applications. In exercising this option, the Director is to consider the factors listed in paragraphs (j)(2)(i)-(v). These factors are general principles which EPA has consistently recommended that permitting authorities consider when assessing a discharger’s potential to cause or contribute to instream toxicity. These principles are compatible with EPA’s “Policy on Development of Water Quality-Based Permit Limitations for Toxic Pollutants” (49 FR 9016, March 1984), The Technical Support Document for Water Quality-Based Toxicities Controls, and EPA’s revisions to 40 CFR 122.44(d) to implement CWA section 304(j).

Once the Director has determined that a POTW meets any of the criteria in paragraph (j)(1) or has designated a POTW under paragraph (j)(2), and that POTW must therefore submit the results of toxicity testing as part of the permit application process, paragraph (j)(3) provides that POTWs shall use a toxicity testing protocol that is scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Approved State NPDES programs that do not presently allow permitting authorities to require POTWs in the categories described in paragraphs (j)(1) and (2) to submit toxicity test results with their permit applications will need to revise their applicable law to conform to today’s requirements. Under 40 CFR 123.52(e), regulatory revisions must occur within one year of the effective date of today’s rule, unless statutory changes are necessary, in which case such revisions must take place within two years.

One commenter stated that permit limits on toxicity should be required in the permit when the results of testing indicate that there is or may be a problem with toxicity in the discharge. As a general rule, EPA agrees with this statement. For further details on appropriate measures to be taken, see EPA’s section 304(1) regulations (54 FR 23868, June 2, 1989) at 40 CFR 122.44(d).

The regulations at 40 CFR 122.44(d) describe the procedures that permitting authorities must use when determining whether a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above a narrative or numeric toxicity criterion within a State water quality standard.

Many commenters expressed concern over the cost of toxicity testing and the lack of qualified laboratory facilities available to perform the tests. EPA has found that costs for toxicity testing range from a few hundred dollars for a simple one time screening analysis to one or two thousand dollars per month for a monthly chronic toxicity analysis. Typical monthly or quarterly testing costs are comparable to many other types of chemical monitoring costs. EPA has also found that there are many competent labs around the country capable of performing these tests. The Agency recently contracted with several labs to perform toxicity tests in support of its Region’s toxic control program. It is the responsibility of the permittee to find an appropriate facility and have its samples shipped, if necessary, and
analyzed. EPA's Environmental Monitoring and Support Lab in Cincinnati is currently developing guidance for lab certification which States can use to certify competent labs and to provide permittees with lists of labs capable of conducting toxicity tests.

One commenter stated that the regulations should allow time for the solicitation and subsequent awarding of contracts to conduct toxicity tests and that the proposed deadline for submission of test results would be unnecessarily burdensome.

In response, the Agency points out that the regulations do not require POTWs to solicit contracts for the performance of toxicity tests. Since toxicity testing is only required every five years as part of certain POTWs' NPDES permit applications, these POTWs should have ample time to find suitable laboratories.

One commenter noted that the added workload to permitting authorities for reviewing the screening data has not been addressed. EPA has estimated these and other costs associated with implementing the proposed requirements and they are available as part of the public record of this rulemaking. The Agency believes that improved control of toxic and hazardous pollutants occasioned by today's toxicity testing requirements justifies the added workload to permitting authorities.

c. Today's Rule

Today's rule provides that any POTW with a design influent flow equal to or greater than one million gallons per day and any POTW with an approved pretreatment program or which is required to have such a program must provide the results of whole effluent biological toxicity testing to the Director as part of their NPDES permit applications. Tests submitted under today's rule must be conducted since the last NPDES permit reissuance or permit modification under § 122.62(a) which occurred later. The Director may also require other POTWs to submit the results of toxicity tests with their applications, based on consideration of the variability of pollutants in the effluent, the dilution of the effluent in the receiving water, existing controls on point and nonpoint sources, receiving stream characteristics and other considerations. In conducting the testing, POTWs must use EPA's methods or other protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity.

2. Sludge Control

The provisions of the amended CWA dealing with the regulation of sewage sludge have far-reaching implications for the pretreatment program. The amendments mandate the promulgation of specific numeric limits for toxic pollutants in sewage sludge and/or the specification of acceptable sludge management practices, and require that these standards be implemented through permits. To carry out these requirements, EPA has proposed technical standards for an initial group of toxic pollutants for the five major sludge use and disposal methods: agricultural and non-agricultural land application, distribution and marketing, incineration, sludge-only landfills, and surface disposal sites. These standards were proposed on February 6, 1989 [54 FR 57460]. EPA earlier proposed regulations governing sludge disposal in municipal solid waste landfills (MSWLFs) on August 30, 1989 (53 FR 33314).

In addition to calling for the promulgation of technical criteria for the use and disposal of sewage sludge, the 1987 amendments to section 405 also contain a significant departure from previous statutory provisions regarding implementation. The amendment prohibits the use or disposal of sludge except in compliance with EPA's regulations and requires the implementation of the standards through permits issued to treatment works treating domestic sewage. When the sludge standards are promulgated, NPDES permits issued to POTWs or other treatment works treating domestic sewage must include these requirements unless they are included in another permit under listed federal permit programs or an approved state sludge management program. On May 2, 1988, EPA promulgated final regulations for implementing sludge standards into NPDES permits and for developing approvable State sludge permitting programs.

Section 405(f)(4) as amended also requires that, before promulgation of the criteria, the Administrator shall include sludge conditions in permits issued to POTWs under section 402 or take such other measures as the Administrator deems appropriate to protect public health and the environment from adverse effects which may occur from toxic pollutants in sewage sludge. To incorporate sludge conditions into permits before promulgation of the standards, such conditions will have to be developed on a case-by-case basis.

To implement this requirement, the Agency has developed a "Sewage Sludge Interim Permitting Strategy" which explains EPA's strategy in implementing this CWA provision. EPA has also completed guidance (signed in December 1988) which will be distributed in early 1990 to EPA Regions, States, and interested parties. This Guidance for Writing Case-by-Case Permit Requirements for Municipal Sewage Sludge is designed to assist permit writers in developing "best professional judgment" permit conditions prior to promulgation of the technical standards. In September 1989, EPA also issued the "POTW Sludge Sampling and Analysis Document" for use in sewage sludge monitoring. In addition, the Agency conducts workshops several times a year on writing sludge permit conditions.

This improved regulation of sewage sludge quality will drive the development of local limits to keep pollutants that could contaminate the sludge and interfere with its proper use and disposal from entering the treatment plant. Thus, this effort will further the development of effective pretreatment programs and will help to identify and control the discharge of hazardous wastes and hazardous constituents to POTWs.

3. Control of Indirect Dischargers: Commercial Centralized Waste Treaters (40 CFR 403.3(e) and (o), 403.5(e), 403.6(e), 403.8)

a. Proposed change. Commercial centralized waste treaters (referred to herein as CWTs) are facilities that treat wastes received from on-site generators of those wastes. The Agency first proposed to specifically address CWTs that discharge to POTWs as part of the proposal, published on June 12, 1988 (51 FR 21456), to implement the recommendations of the Pretreatment Implementation Review Taskforce ("PIRT"). The preamble to that proposal clarified that under the current requirements, categorical pretreatment standards apply to the wastewaters generated by certain industrial processes and discharged to a POTW, regardless of whether they are finally discharged by an industrial generator or some intermediate entity such as a CWT. For those CWTs that mix process categorical wastewater with other wastes prior to pretreatment, the preamble indicated that the combined wastestream formula (CWF) in 40 CFR 403.6(e) should be used to calculate alternate discharge limits. The proposed rule would have codified this
requirement and would have required generators of wastes to supply the information necessary for calculating the limits. Three other alternatives were discussed in the June 12, 1988 proposal: (1) Promulgating national categorical standards for CWTs, (2) relying solely on POTW-developed local limits, and (3) limiting each pollutant discharged from the CWT by applying the most stringent parameter for that pollutant taken from all the categorical standards applicable to the wastes received by the CWT. EPA did not amend its regulations, or current requirements applicable to CWTs, in the final PIRT rule. Instead the issue was deferred and again addressed in the proposal to today’s rule (November 23, 1988, 53 FR 47632). That proposal solicited comment on the same alternatives, but proposed an additional one: POTWs would be required to obtain and implement authority to regulate CWTs by developing local limits based on the best available technology economically achievable (BAT), which would be determined by each POTW for its CWTs using best professional judgment (BP). If the POTW determined that the combined removal by the CWT and the POTW was less than the removal that would be achieved by BAT, the POTW would set a limit equal to the BAT limits, but adjusted for removal by the POTW.

b. Response to comments. The Agency received numerous comments in support of and opposing each alternative and recommending additional alternatives. These comments raised technical, legal and economic concerns. The Agency has decided to collect additional data before deciding whether to finalize any of the alternatives. Data that would assist in the decision include more information on the types, variability, environmental effects, and treatability of wastes received and discharged by CWTs. Such data would also assist the Agency in providing guidance on how to implement its decision. Once the data are obtained, the Agency may determine that it is necessary to consider options not within the current proposals, and to make additional proposals. Otherwise it will base its decision on the proposals currently outstanding and the comments received thereon.

The Agency reiterates its previously stated position (see 51 FR 21456) that any national categorical standard that would apply to a waste if discharged by its generator continues to apply if the waste is shipped off-site to a CWT that is an industrial user of a POTW. Where such wastes are mixed with other process wastestreams prior to discharge, the combined wastestream formula may be used to determine the applicable limit. The Agency recognizes the practical difficulties in applying the CWF faced by CWTs that receive categorical wastes in substantial or highly variable quantities. CWTs experiencing difficulties in applying the CWF may wish to either: (1) Segregate categorical wastes and provide batch treatment to the levels required by applicable categorical standards, or (2) treat a mixture of categorical and other wastes such that each pollutant discharged is in compliance (after correction for dilution flows) with the most stringent numerical limit prescribed for that pollutant in any of the categorical standards applicable to the wastes being treated. EPA believes that either of these options has the potential for substantially reducing the paperwork of CWTs that would otherwise be required to use the CWF, while still assuring treatment of categorical wastes in accordance with categorical standards.

As discussed in section H.1 below, today’s rule requires POTWs to determine the necessity of developing local limits to prevent pass through and interference. The Agency encourages POTWs to pay particular attention to the effluent from CWTs in developing those limits.

c. Today’s rule. The Agency is postponing promulgation of any additional regulations pursuant to the proposals regarding CWTs.

4. Categorical Standards for Other Industries

Section 304(m) of the Clean Water Act, added by the Water Quality Act of 1987, requires the Agency to establish a schedule for the annual review and revision of promulgated effluent guidelines, and to establish a schedule for promulgation of new BAT guidelines and new source performance standards for industries discharging toxic or nonconventional pollutants. On August 25, 1988 (53 FR 32504), the Agency published a notice of its proposed plan to implement section 304(m). That notice contained a discussion of the Agency’s proposed decision-making process to set priorities for the development of new or revised effluent guidelines. Although not required by section 304(m), that notice said that EPA would develop categorical pretreatment standards whenever appropriate when developing guidelines for categories of dischargers. Some of the categories which the Agency said it would consider as candidates for new or revised guidelines were identified in the Study as significant contributors of hazardous constituents to POTWs.

One commenter on the November 23, 1988 proposal criticized EPA for not moving swiftly enough to promulgate new or revised categorical pretreatment standards in accordance with the recommendations of the Study and the mandate of section 304(m). This commenter stated that existing categorical standards cover an insufficient number of toxic and hazardous pollutants, and that many industries discharging large amounts of such pollutants are not covered by categorical standards at all.

On January 2, 1990, the Agency published a final notice announcing the Agency’s initial plan for reviewing existing guidelines and promulgation of new effluent guidelines to implement section 304(m). This notice established a schedule for reviewing existing regulations and for selecting categories of dischargers of toxic or nonconventional pollutants for which guidelines have not previously been published. Many of the industries for which the Agency has established schedules were recommended by the Study as potential candidates for new or revised categorical pretreatment standards.

G. Enforcement Issues

1. Revision to Local Limits (40 CFR 122.24(j)(2))

a. Proposed change. The existing pretreatment regulations provide that the development of local limits (or a demonstration that they are not necessary) is a prerequisite to approval of a POTW pretreatment program and the continuing legal acceptability of an approved program. Although the existing regulatory language does not explicitly require POTWs to update local limits, EPA has previously stated that local limits must be updated as necessary to reflect changing conditions at the POTW (51 FR 21459, June 12, 1986). Because of the importance of up-to-date local limits in controlling pass through and interference from toxic and hazardous pollutants, EPA proposed on November 23, 1988 to revise 40 CFR 122.24(j)(2) to require POTWs to evaluate in writing the need to update their local limits as part of their NPDES permit application (i.e., once every five years at a minimum). If the Director determines that a particular POTW should evaluate the need for revision more often, it may so specify in the NPDES permit or approved pretreatment program (as incorporated by reference in the permit).

This provision would not require POTWs to update their local limits.
when such revision is not needed. Instead, EPA is establishing a minimum frequency for formal evaluation of the need for revised limits. Examples of events that might indicate the need for such a revision include changes in the POTW’s NPDES permit, changes in sludge disposal standards or POTW sludge disposal methods, modifications to the treatment plant, addition or deletion of significant industrial users, and changes in industrial users’ processes or pretreatment operations. These events could affect the likelihood of interference with POTW operations or possible lack of compliance with the POTW’s NPDES permit. The minimum frequency for formal evaluations will give the POTWs more precise notice of their legal responsibilities and should facilitate EPA enforcement actions in some situations where POTWs are not fulfilling their obligations to develop and update local limits. Regular evaluation of the need for revised limits should also lead to more effective limits on the discharge of toxic and hazardous wastes, thereby preventing pass through and interference.

The Agency solicited comments on whether POTWs should be required to conduct the evaluation more often. For example, POTWs might be required to conduct the evaluation whenever multiple instances of pass through or interference had occurred (such as two or more violations in a quarter), in order to determine if existing local limits were adequate to prevent these occurrences. POTWs could also be required to submit such evaluations annually as part of the annual reports required under 40 CFR 403.8(i).

b. Response to comments. The Agency received many comments on the proposed rule from States, POTWs, environmental groups, and industry. The vast majority of the commenters favored the rule as proposed. A small minority of commenters expressed concern over the proposed provision. One area of concern involved the level of POTW discretion in the timing and performance of local limits evaluations. One commenter stated that the frequency for evaluation of local limits should be left entirely to the POTW since the POTW is in the best position to know the nature and effect of the discharges into its system. Another commenter observed that development of local limits should already have taken into account changes in a POTW’s system (e.g., projected increase in the number of industrial users, etc.). Therefore, it was believed that the POTW should determine when changes to local limits should be made.

EPA is not persuaded by the argument that no minimum frequency for evaluating the need for revision is necessary. The Agency believes that the evaluation of local limits at least every five years is necessary to address any changes in the POTW’s NPDES permit, any problems in compliance with the permit, changes in sludge disposal methods, or changes to the treatment plant. However, actual changes to local limits would be made only when the evaluation indicates the need for updating the local limit, or when otherwise required by applicable provisions in POTW’s approved programs or NPDES permits. One commenter inquired as to what was meant by a “formal evaluation” of local limits. The Agency intends the formal evaluation to be a written technical evaluation by the Control Authority determining whether or not there is a need to revise the existing local limits at the time of permit application, and the reasons for this determination. To clarify this requirement, today’s rule requires a written technical evaluation of the need to revise local limits, rather than a “formal” evaluation.

There was almost universal opposition to the suggestion that local limits should be evaluated annually. The Agency agrees that annual evaluation of local limits is not routinely necessary and therefore is not promoting that requirement as part of today’s final rule. c. Today’s rule. Today’s rule provides that all POTWs must provide a written technical evaluation of the need to revise local limits as part of their NPDES permit applications.

2. Inspections and Sampling (40 CFR 403.8(f)(2)(v))

a. Proposed change. The existing regulations (40 CFR 403.8(f)(2)(v)) require that POTWs with approved pretreatment programs must be able to randomly sample and analyze the effluent from their industrial users and conduct surveillance and inspections to identify noncompliance with pretreatment requirements. However, these regulations do not specify how often such POTWs must perform the sampling analysis and surveillance.

In the 1986 “Pretreatment Compliance Monitoring and Enforcement Guidance,” the Agency recommended that POTWs conduct at least one inspection and/or sampling visit annually to all “significant industrial users.” EPA emphasized in the Guidance that more frequent monitoring should probably be conducted in certain cases: e.g., where an industrial facility has exhibited a marked inability to achieve and maintain compliance with pretreatment standards.

In order to facilitate implementation of existing requirements by specifying a standard for how often POTWs must inspect and sample the effluent of their significant industrial users, EPA proposed on November 23, 1988 to modify 40 CFR 403.8(f)(2)(v) to require POTWs with approved pretreatment programs to inspect and sample all “significant industrial users” at least once every two years. EPA believes that inspection and sampling of these users at least this often should help POTWs avoid pass through and interference by keeping better track of the more significant industrial dischargers into their treatment and collection systems (especially dischargers of toxic and hazardous pollutants). The proposed revisions should also provide a uniform program requirement. EPA can readily enforce if necessary.

The Agency solicited comments on whether the biennial inspections and sampling requirement was sufficient or if annual inspections and sampling should be required. EPA also requested comment on whether the proposed regulation represented a redundant requirement in the face of existing reporting and monitoring requirements and whether to require POTWs to target certain compounds (such as RCRA appendix VIII hazardous constituents) in their sampling of significant industrial user discharges.

b. Response to comments. The Agency received many comments on the proposed rule. Comments were submitted by States, POTWs, environmental groups, and private industry. The commenters were evenly split with regard to favoring or opposing the proposed rule. Many commenters stated that the rule should specify annual inspections and sampling while others stated that a minimum of biennial inspections and sampling was adequate. A few of the commenters believed that the frequency of inspections and sampling should be left entirely to the POTW’s discretion. Some of the commenters stated that the proposed rule was redundant in light of existing requirements for self-monitoring and reporting by categorical industrial users and proposed requirements for significant non-categorical industrial users.

The Agency does not agree with the assertion that these requirements are redundant. One of the principal purposes and benefits of an annual compliance monitoring program is the...
independent verification of the compliance status of the industrial user by the Control Authority. This annual presence provides a means to determine whether the information the POTW receives is adequate in terms of sampling techniques and lab procedures. It also provides a way to evaluate the recordkeeping procedures of the industrial user as well as the operation and maintenance of the pretreatment facility. This annual presence also provides a deterrent value by encouraging the industrial user to maintain appropriate operation and maintenance procedures as well as helping to ensure proper recordkeeping and lab procedures. These benefits are not possible through the review of self-monitoring reports alone. Therefore, the Agency disagrees with the claim that this is a redundant requirement, because the purpose of the provision is not simply to receive data but also to provide effective oversight of industrial user operations.

One commenter stated that any specification of inspection and monitoring frequency would limit the ability of the POTW to make rational determinations based on local considerations. It was felt that any more stringent frequency would excessively limit the needed flexibility of the POTW in planning for inspections and sampling of its industrial users. Another commenter was of the opinion that more frequent than biennial inspections and sampling might become so demanding as to prevent a POTW from focusing its attention on actual cases of effluent violations.

However, other commenters did not believe that a minimum frequency of biennial inspections and sampling was sufficient to ensure industrial user compliance. One POTW stated that it supported a minimum frequency, but it believed that it would be difficult to maintain, in the face of competing programs, its current level of two to eight visits per year in the face of regulations which allow for a significantly reduced effort. Many commenters pointed out that the proposed rule was inconsistent with existing EPA guidance regarding inspections and sampling of significant industrial users. These commenters stated that previous instructions from EPA during audits and inspections as well as in workshops directed Control Authorities to establish annual monitoring frequencies for their significant industrial users. Another commenter expressed concern over allowing biennial monitoring and stated its belief that annual oversight provided greater credibility to the reported self-monitoring information. A final commenter said that this proposal ran counter to the recommendations found in the Domestic Sewage Study and that the intent of these recommendations was to provide a stronger effort in pollution control.

EPA is persuaded by these arguments in favor of a requirement for annual inspections and sampling of significant industrial users. The purpose of the rule is to ensure consistent tracking of industrial users with the potential to adversely affect the operation of the treatment works. Requiring annual inspections and sampling will provide for more effective oversight of industrial user compliance, consistent with EPA Guidance. For these reasons, EPA is today requiring that POTWs with approved pretreatment programs sample and inspect all significant industrial users at least once a year.

The Agency does not agree with those commenters who said that specifying a minimum inspections and sampling frequency would excessively limit the POTW in planning for inspections and sampling of industrial users. The Agency, in its 1986 "Pretreatment Compliance Monitoring and Enforcement Guidance" recommended that Control Authorities conduct at least one inspection and/or sampling visit annually for all significant industrial users. This recommendation has also been made during pretreatment inspections and program audits. By specifying a minimum compliance monitoring frequency, the Agency is establishing uniform program requirements to assist in program oversight and which can be readily enforced if necessary. In addition, the Agency believes that this requirement applies only to significant industrial users. EPA has allowed considerable flexibility and discretion for non-significant industrial users with regard to effluent sampling and other regulatory requirements. EPA does not believe that implementation of today's rule will prevent POTWs from dealing with actual cases of effluent violations or from adequately implementing other requirements of their approved programs. Many POTWs are already implementing an inspections and sampling scheme with frequencies far greater than required by today's rule, and there have been no observed difficulties in addressing violations or maintaining compliance with other requirements of approved programs. Finally, the Agency solicited comments on whether to require that POTWs target certain compounds in their sampling, such as RCRA appendix VIII hazardous constituents. There was universal opposition to this proposal and many commenters indicated that it would be excessively burdensome without producing environmental benefits. Upon evaluation of the comments submitted, EPA has determined that routine monitoring for RCRA appendix VIII hazardous constituents is not nationally necessary for preventing interference or pass through or for preventing sludge contamination. The POTW has the flexibility to require monitoring of these substances if they pose potential problems for the operation of the POTW. The POTW should, however, sample for all regulated pollutants discharged to the treatment works.

c. Today's rule. Today's rule requires POTWs with approved pretreatment programs to conduct at least one inspection and sampling visit annually for each significant industrial user.

3. Definition of Significant Industrial User (40 CFR 403.3(a))

a. Proposed change. All industrial users which discharge wastes to POTWs are required to comply with the general pretreatment regulations found in 40 CFR part 403. While the general pretreatment regulations include very specific requirements for categorical industries, the regulations are less clear about certain obligations for noncategorical industries. In the 1996 "Pretreatment Compliance Monitoring and Enforcement Guidance", the Agency established a definition for what would constitute a significant industrial user. This definition was in part designed to identify those non-categorical industrial users which are likely to have the most significant impact on the POTW, and for which additional pretreatment requirements might be justified.

In order to provide national consistency in the application of pretreatment requirements and to enhance program enforceability, the Agency proposed on November 23, 1998 to amend 40 CFR 403.3 to add a new definition of "Significant Industrial User" which was generally consistent with the 1996 Guidance. Under the proposal, a "significant industrial user" was defined as: (1) All dischargers subject to categorical pretreatment standards; (2) all noncategorical dischargers that, in the opinion of the Control Authority, have a reasonable potential to adversely affect the POTW's operation; (3) all noncategorical dischargers that contribute a process wastestream which makes up 5 percent or more of the
average dry weather capacity of the POTW treatment plant, or that discharge an average of 25,000 gallons per day or more of process wastewater to the POTW. Under the proposal, the Control Authority need not designate as significant any noncategorical industrial user in category (3) above that, in the opinion of the Control Authority and with the agreement of the Approval Authority, had no potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement. The agreement of the Approval Authority would not be necessary in cases where the noncategorical discharger would have been designated as significant only because of an average discharge of 25,000 gallons per day or more of process wastewater. The proposal would have allowed any noncategorical industrial user designated as significant to petition the Control Authority to be deleted from the list of significant industrial users on the grounds that it had no potential for adversely affecting the POTW's operation or violating any pretreatment standard or requirement.

The Agency intended to provide with this definition a means for POTWs to set priorities for monitoring and enforcement activities, including self-monitoring by the industrial user. In addition, the definition would provide a basis for establishing reporting requirements for non-categorical industrial users and for Control Authority reporting to the Approval Authority regarding industrial user compliance. The definition would also provide national consistency in the implementation and reporting of pretreatment requirements and would assist Control Authorities in identifying the effective use of permitting, monitoring, and enforcement resources. In addition to these benefits, the proposed regulatory definition would provide better notice to POTWs of what constitutes a well-structured pretreatment program. One basic goal was to require that similar industrial facilities be treated consistently with regard to reporting and monitoring requirements.

EPA solicited comments on the November 23, 1988 proposal, and also invited comments and suggestions on the following issues: whether to allow POTWs to delete categorical users from the significant industrial user list; the appropriateness of the 25,000 gallons per day criterion; the role of the Approval Authority in designating significant industrial users; expanding the definition of significant industrial user to include notifiers of hazardous waste dischargers; and requiring POTWs to estimate in annual reports whether the amount of hazardous waste received at the POTW has increased significantly and whether any change has affected operations at the POTW.

b. Response to comments. The Agency received many comments on the proposed rule which were submitted by States, local POTWs, environmental groups, and private industry. The majority of the commenters generally favored the rule, although many suggested modifications. Some commenters were of the opinion that there should not be any regulatory definition for significant industrial user. As explained above and in the preamble to the proposed rule, the purpose behind the proposed definition is to provide national consistency in program enforceability, as well as to provide notice of what constitutes a well-structured pretreatment program and to ensure equity in program implementation. It is EPA's belief that this definition is necessary since several parts of today's rule impose requirements applicable only to significant industrial users.

i. Role of the approval authority in identifying significant industrial users. The largest number of comments received on the proposed definition addressed the procedures for listing or delisting industrial users and the role which the Approval Authority would play in this process. All commenters seemed to agree that the POTW should be allowed to add or delete certain industrial users from the significant industrial user list, but there was disagreement on whether and under what circumstances to require the agreement of the Approval Authority in this process. Two comments from POTWs stated that there should not be a requirement to seek prior consent from the Approval Authority to delete or add an industrial user from the list of significant industrial users because the Approval Authority can review these changes in the POTW's annual pretreatment report and during other oversight functions. Another commenter stated that the Approval Authority is not in a position to evaluate a discharger's potential to adversely affect a POTW's operation. It was stated that the Approval Authority must rely on the recommendation and data supplied by the Control Authority in designating significant industrial users and that requiring the agreement of the Approval Authority would create an unnecessary bureaucratic step which would lead to delays. It was recommended that the Control Authority be allowed to simply notify the Approval Authority of its intent not to include, or remove, an industrial user from the list and to have that decision stand unless the Control Authority was in violation of its NPDES permit requirements.

Some of the commenters, on the other hand, favored a strong role for the Approval Authority in designating the universe of significant industrial users. One commenter believed that the political influence often exercised by significant industrial users was sufficient to require a strong monitoring presence by the Approval Authority. It was stated that the independent evaluation of the Approval Authority was necessary as an important check on the POTW's exercise of its discretion, especially in cases where there might be pressure exerted by the industry to be removed from the list of significant industrial users (and the subsequent regulatory requirements for such industrial users). In addition, it was stated that if the Control Authority fails to place a significant industrial user on the list, the Approval Authority should have the power to require the listing of that industrial user.

The Agency does not agree that adequate oversight can be achieved through a simple review of the POTW's annual pretreatment report or through other routine compliance monitoring activities on the part of the Approval Authority. The Agency believes that notification should be required to make the Approval Authority aware of any changes to the approved program. Prompt notification is necessary for proper oversight of approved programs and to ensure proper enforcement of program requirements. The Approval Authority has the obligation to evaluate compliance, and therefore needs to be made aware of any changes to the scope of the program as soon as possible, rather than in an annual report. For example, the Approval Authority needs to know if the numbers of industrial users subject to permitting, monitoring, and reporting are undergoing a significant change. If the Approval Authority is not made aware of these changes, tracking program implementation would become extremely difficult. In addition, if the Approval Authority does not have the opportunity to object to unjustified designations or de-designations of significant industrial users, then the Control Authority might be subsequently liable to enforcement action from the Approval Authority.
There was also some stated confusion regarding at what point Approval Authority consent would be necessary, including whether the POTW should use the procedures for non-substantial program modifications promulgated in 40 CFR 403.10(b)(1)(ii). One commenter believed that the rule should explicitly state that listing and delisting of SIUs constitutes a minor program modification.

To address these concerns and avoid possible confusion, the Agency has modified the language of the proposal concerning consent of the Approval Authority. Today's rule adds a new provision, 40 CFR 403.8(f)(6), which requires the POTW to prepare a list of its significant industrial users. The list shall indicate that criteria for significance applicable to each industrial user. For non-categorical users meeting the criteria for significance, the list shall indicate whether the POTW has made a determination that such industrial user has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement. This list, and any subsequent modifications thereto, shall be submitted to the Approval Authority as a minor program modification pursuant to 40 CFR 403.10(b)(2). EPA believes that this language gives clearer notice to POTWs of their responsibilities and of the role of the Approval Authority in approving significant industrial user lists and subsequent modifications. 40 CFR 403.8(f)(6) replaces the proposed revisions to 40 CFR 403.12(i)(1) that would have required updating lists of significant industrial users in POTW annual reports and an explanation of why certain noncategorical users were not designated as significant. Today's rule requires that any modifications to the list of significant industrial users be submitted to the Approval Authority as a minor program modification. Since modifications to the list will normally take place at a minimum of once a year in most pretreatment cities, the Agency believes that requiring an update of significant industrial users in the annual report is not necessary. EPA notes that 40 CFR 12(i)(i)(v) provides that the annual reports shall contain "any other relevant information requested by the Approval Authority". Approval Authorities may therefore request additional information or more frequent updating of a particular POTW's significant industrial user list if they believe it appropriate.

Today's rule also makes a conforming change to proposed 40 CFR 403.8(f)(2)(iii) to provide that, within 30 days of approval pursuant to 40 CFR 403.8(f)(2)(iii) to provide that, within 30 days of approval pursuant to 40 CFR 403.8(f)(6) of a list of significant industrial users, the POTW must notify each significant industrial user of its status and of all pretreatment requirements applicable to it as a result of such status.

ii. Use of flow in determining significance. The use of the 25,000 gallon per day flow criterion received considerable comment from States, POTWs, environmental groups, and private industry. In general, the commenters were of the opinion that the 25,000 gallon per day criterion was either too low or that no flow criterion should be included in the definition at all. One commenter believed that the flow criterion served no purpose because the proposed definition allows the Control Authority to fail to designate or to delete these industrial users without the consent of the Approval Authority. Another commenter stated that relative, not absolute size is important in determining significance and that size is adequately covered in the 5 percent criterion in the existing definition. One POTW suggested that a two-tiered approach be used with POTWs with less than 5 million gallons per day design flow using 25,000 gallons per day and POTWs with a design flow greater than 5 million gallons per day using 50,000 gallons per day.

The major purpose of defining significant industrial user is to provide a means by which EPA can set priorities in its general pretreatment standards and Control Authorities can set priorities for permitting, monitoring and enforcement. The Agency believes that the flow criterion can be used as a screen by the POTW to set priorities for permit applications in their initial evaluation of industrial users, and for updating the significant industrial user list annually. A flow measure will provide a general cutoff point for consideration in determining whether a facility should be targeted for compliance monitoring and enforcement activities. Under 40 CFR 403.8(a), the Regional Administrator or Director may, at his discretion, require that a POTW with a design flow of 5 million gallons per day or less develop a pretreatment program in order to prevent pass through or interference. The smallest POTWs generally required by the Regional Administrator or Director to have a pretreatment program under the discretionary authority of 40 CFR 403.8(a) have a design flow of 500,000 gallons per day. EPA chose 25,000 gallons per day as a flow criterion for significant industrial users in part because that figure represents five percent of the flow of the smallest POTWs required to have a pretreatment program. The Agency believes that a 25,000 gallons per day criterion would not capture many non-categorical significant industrial users with a potential to adversely affect smaller POTWs. POTWs may, in their discretion, and subject only to review by the Approval Authority as a minor modification, delete any or all of the facilities which were placed on the significant industrial user list based solely on flow. EPA does not wish to overrule POTWs on a routine basis when it comes to the designation of industrial users as significant. The purpose of the notification requirement is to provide the Approval Authority with information necessary to prevent the deletion of significant industrial users by POTWs without justification. It is EPA's position that this notification is necessary for proper and appropriate oversight of program implementation.

One commenter believed that the new regulatory definition would impose an increased paperwork and administrative burden on the POTW. The proposed definition of significant industrial user is closely related to the recommended definition provided in the 1986 "Pretreatment Compliance Monitoring and Enforcement Guidance," and as such, has been available to POTWs for over three years. Many Control Authorities have already adopted the definition found in the Guidance. EPA believes that most Control Authorities are familiar with the definition and have already incorporated it in their implementation activities.

iii. Other. The Agency also solicited comment on whether to allow deletion of non-categorical users from the list of significant industrial users. A majority of the commenters favored a procedure for deleting non-categorical industrial users from the lists, but one Approval Authority stated its strong objection to any procedure for deregulating non-categorical industrial users. There was a suggestion that a de minimis limit of 1000 gallons per day could be used for deleting non-categorical industrial users from the list of SIUs. Another commenter suggested that only the Approval Authority should be allowed to delete a non-categorical industrial user from the list of SIUs.

After reviewing these comments, EPA is not persuaded that a POTW should be able to delete non-categorical industrial users which, in the opinion of the POTW, have no reasonable potential to adversely affect the operation of the POTW. In the development of categorical standards, EPA made a determination that these standards were
necessary in the case of certain industries to prevent pass through and interference. Based on this determination, the Agency promulgated standards which restrict the discharge of pollutants by these industries. It is therefore important that the compliance of these industries with categorical standards be assured. Therefore, today's rule does not allow categorical industrial users to be deleted from the list of significant industrial users.

Some commenters expressed concern over the burden required to prove that an industrial user had "no potential" to adversely affect the operation of the POTW. It was suggested that EPA provide guidance regarding this issue if the current language is maintained in the final rule. In the 1986 "Pretreatment Compliance Monitors' Guide" the Agency stated that the Control Authority may remove any noncategorical industrial user from the SIU list if it has "no reasonable potential" to violate any pretreatment standards. Under today's rule, the Control Authority may remove an industrial user (subject to the consent of the Approval Authority) based on whether it has a reasonable potential to adversely affect the operation of the POTW or to violate any pretreatment standard or requirement. The determination of reasonable potential should be based on the best professional judgment of the POTW and should take into account the compliance history of the facility, the nature and character of the effluent, and the flow of the facility.

One commenter from a State Approval Authority suggested that the proposed definition lacks sufficient objective criteria for determining significance. It was suggested that objective criteria are needed regarding potential impact of an industrial user in terms of the design capacity of the treatment works. In relation to this, another commenter noted that the 1986 Guidance provides that a facility "contribut[ing] a process wastewater which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the treatment plant" would be considered significant. This commenter suggested that the final rule should conform to the Guidance definition. EPA agrees that facilities contributing 5 percent or more of the average organic capacity of the treatment plant may have significant potential to adversely affect the POTW, since large concentrations of Biochemical Oxygen Demand (BOD) or Total Suspended Solids (TSS) could impair the biological capacity of the plant to treat all incoming wastes. The final rule will therefore incorporate organic capacity as part of the regulatory definition.

One industry commenter objected to the proposed definition of significant industrial user on the grounds that it created additional reporting and monitoring requirements for categorical industrial users. However, today's rule places no additional reporting or monitoring requirements on categorical significant industrial users.

A final issue raised by the proposed rule was whether to expand the definition of significant industrial user to include notifiers of hazardous waste discharges under proposed 40 CFR 403.12(p). There was almost unanimous opposition to this proposal from the commenters. In light of this opposition and upon reviewing this issue, it is EPA's position that discharges of hazardous waste should not be automatically considered significant industrial users for purposes of pretreatment, since the discharge of small amounts of hazardous waste do not necessarily have the potential to adversely affect the POTW. The POTW, of course, may designate such facilities as significant if a particular facility has the potential to cause interference, pass-through, or sludge contamination at the POTW, or pursuant to state or local law.

c. Today's rule. Under today's rule, a significant industrial user is: (1) Any discharger subject to categorical pretreatment standards; (2) any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater (excluding sanitary, noncontact cooling and boiler blowdown wastewaters) to the POTW or that contributes a process wastewater which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW; (3) that is designated as such by the Control Authority based on its judgement of the POTW's operation or for violating any pretreatment standard or requirement. Upon finding that a noncategorical user has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority may at any time, upon its own initiative or in response to a petition received from a noncategorical industrial user or POTW and with the consent of the Approval Authority, determine that such industrial user is not a significant industrial user. Today's rule also requires POTWs to prepare a list of their significant industrial users, identify the criteria applicable to such users, and indicate whether the POTW has made a determination that any noncategorical user meeting the criteria in 40 CFR 403.3(i)(1)(ii) should be a significant industrial user. This list, and any subsequent modifications thereof, shall be submitted to the Approval Authority as a minor program modification pursuant to 40 CFR 403.18[b][2]. Within 30 days of approval of the list, the POTW shall notify each significant industrial user of its status as such and of all pretreatment requirements applicable to it as a result of such status.

4. Enforcement Response Plans for POTWs (40 CFR 403.8[f][5])

a. Proposed change. The existing general pretreatment regulations do not specify an enforcement plan for noncategorical industries. EPA proposed on November 23, 1988 to add 40 CFR 403.8[f][5] to require all POTWs with approved pretreatment programs to develop and enforce an enforcement response plan for noncategorical industrial user violations and which corrective or enforcement actions the POTW will take to respond to such violations (the Guidance suggested certain procedures). In order to ensure that POTWs develop and implement specific enforcement procedures, EPA proposed on November 23, 1988 to add 40 CFR 403.8[f][5] to require all POTWs with approved pretreatment programs to develop and implement an enforcement response plan describing how the POTW will investigate and respond to instances of significant industrial user noncompliance, including time frames within which the responses will take place. The Agency believes that the process of developing these plans will be very valuable in helping POTWs decide what
resources are needed to enforce their pretreatment standards and how they will actually deal with industrial user violations. Such plans will also make it easier for EPA to determine whether a POTW is complying with its pretreatment implementation requirements for enforcement. The rule will not interfere with the ability of the POTW to carry out their programs in a manner suited to their needs, nor should such a plan be difficult to develop. The POTW should use the 1986 Guidance, EPA's recently issued Guidance for Developing Control Authority Response Plans (September 1989) and its own expertise to develop a reasonable plan to address and remedy noncompliance. The Agency solicited comments on whether to include more specific elements in the regulation.

b. Response to comments. EPA received many comments on the proposed rule. Comments were submitted by States, POTWs, private industry and environmental groups. The commenters were generally evenly divided with regard to favoring or opposing the proposed rule. Several commenters were of the opinion that there should not be any regulatory requirement to develop enforcement response plans and that any such provision should be developed as guidance only.

EPA believes that enforcement response plans will help POTWs decide what resources are needed to enforce their pretreatment standards and assist in dealing with industrial user violations. In addition, a clearly defined enforcement response plan will provide notice to industrial users of what to expect if they violate any pretreatment requirements. Alerting industrial users to the possible response they may face in the event of noncompliance, the Control Authority will demonstrate that it is serious about its compliance expectations and is ready to respond to violations with firm measures. This heightened awareness by industrial users should improve their compliance status. Therefore, the Agency is of the opinion that it is appropriate to define these enforcement response plans in the regulation. For this reason, the Agency is today requiring all POTWs with pretreatment programs to develop and implement enforcement response plans.

The majority of the comments against the rule claimed that the procedures outlined in the proposed rule would prevent the POTW from exercising its enforcement discretion by locking the POTW into a cookbook approach to addressing violations. One commenter from private industry believed that the rule would force the POTW to address all instances of noncompliance with equal vigor, regardless of the magnitude of the violation. A POTW commented that rigid enforcement response plan requirements could result in less vigorous POTW pretreatment program implementation. Another POTW stated that establishing standardized national elements for the enforcement response plans would remove necessary flexibility in program implementation. A third commenter believed that the current rule would inhibit innovative means of enforcement. In general, these commenters believed that the rule would hinder rather than help the POTW in its efforts to promote industrial user compliance.

An effective enforcement response plan should provide that similar violations will be dealt with in a similar manner, and that more serious violations will be addressed with more stringent enforcement responses. Therefore, it is incorrect to think that the enforcement response plans will address all instances of noncompliance with equal vigor. With regard to the issue of flexibility, the Agency understands that enforcement strategies will be different from jurisdiction to jurisdiction and that the responses selected by each Control Authority will depend on their legal authority and local circumstances. EPA is defining the principles for enforcement in the regulation, but it is up to the local Control Authority to decide how to incorporate these principles into a functional enforcement strategy, taking into account local circumstances. The Agency does not believe that the use of such plans precludes innovative enforcement strategies.

Even those commenters who favored the rule were concerned that EPA provide enough flexibility to the POTW to decide the details of response procedures appropriate for a particular situation. One commenter believed that the rule as written provided enough flexibility to accommodate the differences in the enforcement process for each community. Most commenters, however, felt that requiring the specification of time frames within the rule itself would place an unreasonable restraint on the POTW's enforcement discretion. Another commenter stated that time frames necessarily vary from case to case.

Enforcement is the necessary driving force that makes environmental laws work. One of the foundations of effective enforcement is the timely response upon discovery of a violation. The Agency is not persuaded by the argument that requiring the development of time frames in the regulation will place an unreasonable restraint on the POTW's enforcement discretion. The actual time frames to be incorporated into the enforcement response plan are being left to the discretion of the POTW (with the agreement of the Approval Authority). EPA understands and appreciates the need for local flexibility in determining appropriate responses, but the Agency believes that requiring the establishment of time frames is an appropriate condition for effective enforcement. The Agency emphasizes that both the proposal and today's rule would not require the same time frames for different types of industrial user noncompliance.

Many of the POTWs that commented stated concern that this rule would make them easier targets for EPA enforcement action. One POTW asserted that the rule was an attempt by EPA to fit local programs into the federal mold and to improve EPA's enforcement capabilities against POTWs. It was thought that a more appropriate requirement would be to make these enforcement response plans a permit requirement for POTWs with interference or pass through problems due to inadequate enforcement.

One of the legitimate purposes of this requirement is to provide EPA with a means to evaluate program implementation by the Control Authority. The present general pretreatment regulations already require POTWs to ensure compliance by industrial users with all pretreatment standards and requirements. Today's revision to the regulations serves to make this requirement more explicit. One of the difficulties in implementing and enforcing pretreatment programs for POTWs has stemmed from a lack of clearly defined policies and procedures. The process of developing enforcement response plans will compel the POTW to lay out its enforcement rationale and will therefore serve to minimize or eliminate the uncertainties concerning enforcement. The Agency is requiring that POTWs lay out a clearly defined strategy to be used in addressing violations. One of the benefits of such an approach is that when the Control Authority discovers that its local enforcement authority has been insufficient to return a recalcitrant industrial user to compliance, the Control Authority may wish to report that situation to the Approval Authority as a possible candidate for joint enforcement action. This partnership between the local Control Authority and the Approval Authority is an anticipated
consequence of this requirement. To provide the Approval Authority with knowledge of who is responsible for the various levels of response, the Agency is today adding a new provision (40 CFR 403.8(f)(5)(iii)), requiring the POTW to identify in enforcement response plans the official(s) responsible for implementing each type of enforcement response.

One commenter was uncertain whether the requirement for the development of enforcement response plans would apply to POTWs that already have approved programs. It is the Agency's intent that all Control Authorities, including those with existing approved programs, develop and implement the requirement of this rule. Therefore, all POTWs with approved programs and those POTWs required to develop a program under 40 CFR 403.8(a) will be required to develop an enforcement response plan. This commenter also suggested that a compliance date be established for the development of these plans. Although the Agency does not agree that a uniform compliance date need be specified in the regulation, EPA points out that all enforcement response plans (as well as other program changes required by today's rule) must be included in the POTW's NPDES permit upon reissuance.

c. Today's rule. Today's rule provides that POTWs with approved programs must develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance and shall, at a minimum:

(1) Describe how the POTW will investigate instances of noncompliance;

(2) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

(3) Identify by title the official(s) responsible for implementing each type of enforcement response; and

(4) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as provided in 40 CFR 403.8(1) and (2).

5. Definition of Significant Noncompliance (40 CFR 403.8(f)(2)(vii))

a. Proposed change. The existing regulations (40 CFR 403.8(f)(2)(vii)) require Control Authorities to publish, in the daily newspaper with the largest circulation in the service community, a list of industrial users which had significant violations of applicable pretreatment standards and requirements during the previous twelve months. This list must be published at least once per year. "Significant violation" is defined as a violation which remains uncorrected 45 days after notification of noncompliance; which is part of a pattern of noncompliance over a twelve month period; which involves a failure to accurately report noncompliance; or which resulted in the POTW exercising its emergency authority under 40 CFR 403.8(f)(1)(vi)(B).

This definition includes criteria similar to those previously used by Quarterly Noncompliance Reports (QNCRs) for direct dischargers. The Agency uses QNCRs to track the progress and measure the effectiveness of NPDES compliance and authorized state enforcement against direct dischargers. However, in 1985 EPA revised the criteria for the types of violations to be reported in QNCRs (see 40 CFR Part 123.45). The revisions established more precise criteria, known as technical review criteria (TRC), to be used for reporting certain permit violations. The TRC are based on the magnitude and/or duration of the violations and provide a means to quantify severity of violations for reporting of direct discharger noncompliance.

In the 1986 Pretreatment Compliance Monitoring and Enforcement Guidance, the Agency included a detailed recommended definition of significant noncompliance by industrial users which incorporated the essence of the new criteria used in determining the violations required to be reported in the QNCR. In the Guidance, EPA recommended the national use of this definition to identify the most serious violations by industrial users and to set priorities for enforcement actions. Experience with the current regulatory definition of significant violation has shown that POTWs vary considerably in their application of this definition when selecting which names of violators to publish in the local newspaper. This is particularly true in deciding what constitutes a "pattern of noncompliance" under 40 CFR 403.8(f)(2)(vii). To eliminate these inconsistencies and to establish more parity in tracking violations committed by direct and indirect dischargers, the Agency proposed on November 23, 1988 to revise 40 CFR 403.8(f)(2)(vii) to replace the definition of significant violation with a new definition which essentially incorporates the criteria used in determining direct discharge violations to be reported on the QNCR. Under the proposal, an industrial user would be in significant violation if its violations met one or more of the following criteria:

- Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
- Technical review criteria (TRC) violations, defined as those in which thirty-three percent or more of all of the measurements taken during a six-month period equal or exceed the product of the daily average maximum limit or the average limit times the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);
- Any violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority believes has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment and has resulted in the POTW's exercise of its emergency authority under paragraph (f)(1)(vi)(B) of this section to halt or prevent such a discharge;
- Violation, by ninety days or more after the schedule date, of a compliance schedule milestone contained in a local control mechanism or enforcement order, for starting construction, completing construction, or attaining final compliance;
- Failure to provide required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules within thirty days of the due date;
- Failure to accurately report noncompliance or
- Any other violation or group of violations which the Control Authority considers to be significant.

The Agency believes that this new definition will provide POTWs with more precise instructions regarding which industrial users in violation of pretreatment standards should have their names published in local newspapers.

EPA solicited comments on the appropriateness of the definition criteria, but emphasized that industrial users would continue to be liable for
any violation of applicable pretreatment requirements.

b. Response to comments. EPA received many comments on the proposed rule from States, POTWs, environmental groups, and private industry. The commenters were generally evenly divided with regard to favoring or opposing the proposed rule. By far the greatest number of comments addressed the fact that under the proposed definition of significant violation, an industrial user could be considered a significant violator based on a single sampling event. This means that if the industrial user performs the minimally acceptable level of monitoring (generally twice per year) and detects a violation, then that industrial user, by definition, would be considered a significant violator. There was a recommendation from several commenters to lengthen the evaluation period for the criteria for chronic violations of wastewater discharge limits and technical review criteria violations from six months to twelve months to allow for the accumulation of more data. Alternatively, one commenter suggested that EPA should specify a minimum number of samples for the determination of what is a significant violation.

In response, EPA points out that the general pretreatment regulations specify only the minimum monitoring and reporting requirements for implementing the pretreatment program. Although it is true that an industrial user can be classified as a significant violator based on data from a single sampling event, an industrial user may increase its sampling frequency to lessen the chance that, for chronic or TRC violations, significant noncompliance will be based on only one sampling event. In addition, it should be noted that 40 CFR 403.12(g)(2) provides that if sampling performed by a categorical industrial user indicates a violation, the user shall repeat the sampling and analysis and submit the results of the repeat analysis to the Control Authority within 30 days after becoming aware of the violation.

Three commenters were of the opinion that the technical review criteria (TRC) were too low and that a more realistic and appropriate level for the TRC would be 2.0 for conventional pollutants and 1.5 for all other pollutants. One commenter suggested eliminating this component of the definition altogether. Another commenter suggested that the TRC be separately calculated for each pollutant by incorporating the removal efficiencies at the treatment works. A POTW commented that the TRC criteria should have language which specifies that the TRC applies for "each pollutant parameter."

One of the reasons for the development of the significant violator criteria was to promote parity between the tracking of violations for direct and indirect dischargers. 40 CFR 123.45(a)(2) establishes criteria for determining significant violations for direct dischargers. In the 1986 guidance, the Agency recommended adopting these same criteria for evaluating significant noncompliance for indirect dischargers. The reportability criteria for the Quarterly Noncompliance Report (QNCR) uses TRC values of 1.2 and 1.4. Therefore, EPA proposed to adopt these same criteria in the regulatory definition of significant violation in the pretreatment program. The Agency does not believe that basing TRC values on the removal efficiencies at the POTW is a viable means to define significant violations, since it would involve calculations by each POTW on its removal efficiencies for many pollutants. EPA does agree, however, that the language in the TRC would be clearer if it specified for "each pollutant parameter," and has accordingly included such language in today's final rule.

Three commenters believed that criterion "C" of the proposed definition would promote arbitrary and inconsistent implementation of the definition and should be eliminated. A separate commenter stated that this criterion was inappropriate because the determination of a significant violation should be based on actual fact and not a "belief" that a discharge has caused interference or pass-through. This commenter recommended that we change the wording of this criterion to "has reason to believe." There was a related concern from private industry that the definition, as proposed, would allow for arbitrary or indiscriminate enforcement without providing for adequate or meaningful legal recourse on the part of the industrial user deemed to be in significant violation of pretreatment requirements. It was stated that certain of the criteria were sufficiently vague as to penalize dischargers without adequate warning and without any opportunity for appeal. EPA recognizes the need to base allegations of violation on information and not on EPA's belief. Today's final definition therefore incorporates the phrase "which the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through * * *" instead of the language in the proposed definition. For the same reason, the Agency has also incorporated the phrase "which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program" in the last criterion for significant violation, instead of "which the Control Authority considers to be significant," as was proposed. The Control Authority's determination may include a technical analysis documenting interference or pass through or other appropriate evidence which it deems sufficient. EPA believes that the above changes decrease the chance of arbitrary judgments by Control Authorities.

One commenter stated that an affirmative defense should be explicitly included in the definition of significant noncompliance. However, EPA does not believe that POTWs should be burdened with ascertaining which industrial users may be eligible for an affirmative defense under 40 CFR 403.5(a)(2) before satisfying the publication requirement in 40 CFR 403.8(f)(3). Incorporating the commenter's suggestion into the rule could lead to protracted and counterproductive efforts by POTWs if they had to investigate the eligibility of an industrial user for an affirmative defense prior to publication. In addition, where the eligibility for an affirmative defense is unclear, this requirement would leave POTWs uncertain about their obligations under 40 CFR 403.8(f)(3). Since the listing of an industrial user in the newspaper does not involve an administrative penalty or judicial action, eligibility for an affirmative defense is unaffected by such a listing, and such eligibility will be determined during administrative penalty or judicial enforcement proceedings. Accordingly, today's rule does not provide for the consideration of eligibility for an affirmative defense in determining whether an industrial user is in significant noncompliance.

In response to the comment that the industrial user is not provided with adequate or meaningful legal recourse, EPA believes that Control Authorities will not arbitrarily list industrial users as being in significant violation of pretreatment requirements. The Control Authority is most likely to base this decision on a reasoned professional judgment in cases where there is discretion provided to the POTW. Three commenters stated that the POTW should develop its own criteria for what is considered significant because it was believed that the POTW is in the best position to determine what violations cause the greatest damage to the treatment works. These commenters suggested that EPA provide support by
maintaining its current criteria in guidance. One commenter was concerned that the Agency be very careful not foster activities which might inhibit relations between the POTW and its industrial users. If the POTW then fails to follow its criteria, it would be liable to enforce action by the Approval Authority. In response, EPA points out that both the proposal and today’s rule allow POTWs discretion to list any violations they consider significant. Today’s rule establishes only minimum requirements, and should not affect relations between POTWs and their industrial users.

One commenter requested clarification regarding whether proposed criterion C, “failure to accurately report noncompliance”, included only willful failures or any failures to report. Current rule pretreatment regulations specify the signatory requirements for reports submitted by industrial users to the Control Authority. This requirement is designed to provide accountability on the part of the industrial user for the contents of any report, including required reports of noncompliance. In signing the report, the person so signing has confirmed that the report is complete and accurate in all respects. Any failure to report accurately is sufficient justification to list the industrial user as a significant violator.

As noted above, the Agency’s 1986 guidance on this subject referred to “significant noncompliance” rather than “significant violation” (the term used in the November 23, 1988 proposal). Since that time EPA has directed Control Authorities and Approval Authorities to use the “significant noncompliance” criteria in determining appropriate responses to industrial user pretreatment violations. This term has been employed in EPA workshops and seminars and it is also used as a basis for tracking industrial user noncompliance in the Pretreatment Permits Enforcement Tracking Systems (PPETs), a computer system which assists the Agency in overseeing pretreatment program implementation. For the sake of program consistency, today’s regulation therefore refers to “significant noncompliance”.

c. Today’s rule. Today’s rule provides that an industrial user is in significant noncompliance if its violations meet one or more of the following criteria:

• Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;

• Technical review criteria (TRC) violations, defined as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily average maximum limit or the average limit times the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

• Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

• Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW’s exercise of its emergency authority under paragraph ([jj](i)[vi](B)] of this section to halt or prevent such a discharge;

• Failure to meet, within 90 days after the scheduled date, a compliance schedule milestone contained in a local control mechanism or enforcement order, for starting construction, completing construction, or attaining final compliance;

• Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

• Failure to accurately report noncompliance; or

• Any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

6. Reporting Requirements for Significant Industrial Users (40 CFR 403.12(h))

a. Proposed rule. 40 CFR 403.12 describes the reports that industrial users must submit to their Control Authorities. To demonstrate continued compliance with pretreatment standards, industrial users subject to categorical standards must submit semiannual reports that include effluent monitoring data taken during the period covered by the report. 40 CFR 403.12(e). The existing regulations provide that Control Authorities must require appropriate reporting from those industrial users with discharges not subject to categorical standards. However, the regulations do not specify a minimum frequency for reporting by noncategorical industrial users to the Control Authority regarding their compliance with applicable pretreatment requirements.

To provide for an effective implementation of the existing requirements and to ensure that this reporting is carried out regularly, EPA proposed on November 23, 1988 to revise 40 CFR 403.12(h) to require that all significant industrial users (as defined under proposed 40 CFR 403.3(u)) submit to their Control Authorities, at least twice a year, a description of the nature, concentration, and flow of pollutants selected for such reporting by the Control Authority. In addition, the proposal would require all significant industrial users to base their reports on data obtained through appropriate sampling and analysis performed during the period covered by the report. Control Authorities may require more frequent monitoring as appropriate.

The Agency solicited comments on the proposed twice-yearly reporting frequency, on limiting the reporting requirements to significant industrial users, and on whether to require significant industrial users to sample for certain compounds, such as the RCRA appendix VIII hazardous constituents.

b. Response to comments. The Agency received many comments on the proposed rule from States, POTWs, environmental groups, and Industry. A majority of the commenters favored the proposal to require significant industrial users to report with the same frequency as categorical industrial users.

A few of the commenters expressed concern that the rule would require duplicative reporting for categorical industrial users. The assumption was that this provision would require categorical industrial users to report more often than is currently required. This was not EPA’s intent in the proposal, as indicated by the title of proposed 40 CFR 403.12(h)—“Reporting Requirements for Industrial Users Not Subject to Categorical Standards”. Today’s rule clarifies this intent by referring in 40 CFR 403.12(h) to “significant noncategorical industrial users.”

A few other commenters stated that the current reporting requirements under 40 CFR 403.12(h) were sufficient and allowed for necessary flexibility in establishing reporting requirements for non-categorical industrial users. There was a concern that the current proposal would restrict that flexibility. These commenters believed that the current regulation is more suitable in dealing with the highly variable group of noncategorical discharges.
The Agency believes that the reporting requirements for all significant industrial users, including categorical and non-categorical users, should generally be the same. Since non-categorical significant industrial users are also likely contributors of toxic and hazardous pollutants to POTWs, EPA sees no reason for less frequent reporting for this group of dischargers. With respect to POTW flexibility, the Agency emphasizes that today's rule establishes only what it believes to be the minimum acceptable frequency for sampling and reporting. POTWs are free to require additional sampling and reporting as frequently as is necessary for a particular discharger. EPA believes that these requirements will give POTWs much more accurate knowledge of non-categorical wastes entering their treatment and collection systems. This knowledge is particularly important because many toxic and hazardous pollutants are not covered by categorical standards. EPA also believes that establishing minimum monitoring frequencies is the only way to ensure that the samples submitted to the POTW are representative and up to date. In order to help ensure that sampling is conducted only every six months instead of twice in one month (as the proposed rule would technically have allowed), the Agency is today requiring sampling reports to be submitted "at least once every six months on dates specified by the Control Authority", instead of "at least twice a year" as was proposed.

Two commenters stated a belief that POTW monitoring should be specified as an acceptable alternative in lieu of industrial user monitoring. As is currently stated in 40 CFR 403.12(g), the regulation is to provide parity between categorical and significant non-categorical dischargers. EPA has amended 40 CFR 403.12(h) to specify that POTW monitoring is acceptable in lieu of industrial user self-monitoring.

With respect to requiring significant industrial users to sample for certain compounds or classes of compounds (such as RCRA Appendix VIII hazardous constituents), there was almost universal opposition to this suggestion from the commenters. EPA does not believe that monitoring for these constituents is necessary on a routine basis to prevent pass through or interference. POTWs may require an industrial user to monitor for any or all of these constituents if appropriate on an individual basis. Therefore, this requirement is not part of today's rule. However, EPA has added a requirement to 40 CFR 403.8(j)(1)(iii) that any pollutants required to be monitored must be identified in the individual control mechanism issued to the significant industrial user.

a. Today's rule. Today's rule requires non-categorical significant industrial users to submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. The reports shall be based on sampling and analysis performed in the period covered by the report, and, where possible, performed in accordance with the techniques described in 40 CFR part 136. The sampling and analysis may be performed by the Control Authority in lieu of the significant non-categorical industrial user.

H. Miscellaneous Amendments

In addition to the substantive regulatory changes proposed on November 23, 1988, EPA also proposed to clarify certain of the general pretreatment regulations. These proposed non-substantive revisions are discussed below.

1. Local Limits Development and Enforcement

   a. Proposed change. 40 CFR 403.5(e) provides that POTWs "developing" pretreatment programs must develop and enforce specific limits to implement the general and specific discharge prohibitions. In order to clarify that POTWs with already approved pretreatment programs must also develop and enforce local limits, EPA proposed to revise 40 CFR 403.5(e) to provide that POTWs shall continue to develop and enforce appropriate local limits after developing an approved pretreatment program.

   b. Response to comments. No significant comments were received on this proposed revision.

   c. Today's rule. Today's rule revises 40 CFR 403.5(e)(1) to provide that POTWs with approved pretreatment programs shall continue after pretreatment program submission and approval to develop local limits as necessary and effectively enforce such limits.

2. EPA Enforcement Action

   a. Proposed change. 40 CFR 403.5(e) summarizes procedures that EPA follows to bring certain enforcement actions against an industrial user that has caused interference or pass through at a POTW, i.e., give the POTW 30 days notice to initiate its own enforcement action. However, 40 CFR 403.5(e) may be misleading in not stating that this notice requirement only applies to federal enforcement under section 309(f) of the Act and not to State or other federal enforcement actions. In order to avoid misunderstanding, the Agency proposed to revise the title of 40 CFR 403.5(e) to indicate that these notice procedures only apply to actions brought under section 309(f) of the Act.

   b. Response to comments. No significant comments were received on this proposed revision. EPA notes that in addition to the above-mentioned title, the text of 40 CFR 403.5(e) is also misleading in that it refers to NPDES States in the context of enforcement actions. Since this provision is intended to apply only to actions brought under section 309(f) of the Act, EPA has deleted all references to NPDES States from 40 CFR 403.5(e).

   c. Today's rule. The title of 40 CFR 403.5(e) has been changed to read "EPA enforcement actions under section 309(f) of the Clean Water Act", and the text of 40 CFR 403.5(e) has been revised to delete all references to NPDES States.

3. National Pretreatment Standards: Categorical Standards

   a. Proposed change. 40 CFR 403.6 provides that categorical pretreatment standards, unless specifically noted otherwise, shall be in addition to the general prohibitions established in 40 CFR 403.5. There was an unintentional omission from this provision of a reference to the specific discharge prohibitions. In order to rectify this omission, the Agency proposed to revise 40 CFR 403.6 to add that national pretreatment standards, unless specifically noted otherwise, shall be in addition to all prohibitions and limits established under 40 CFR 403.5(e).

   b. Response to comments. No significant comments were received on this proposed revision. The Agency has noted, however, that the proposed modification could be interpreted as being in conflict with requirements in part 403, other than the general and specific prohibitions, that apply to categorical dischargers. Since this was not the Agency's intent, EPA is today clarifying in 40 CFR 403.6 that categorical industrial users must comply with all applicable pretreatment standards and requirements set forth in part 403, as well as national categorical pretreatment standards.

   c. Today's rule. Today's rule revises 40 CFR 403.6 to provide that categorical industrial users must comply with all applicable general pretreatment standards and requirements set forth in 40 CFR part 403.

4. POTW Pretreatment Program Requirements: Implementation
   a. Proposed change. 40 CFR 403.8(f) establishes the requirements that a POTW pretreatment program must satisfy. Section 403.8(f)(1) provides that a POTW must have the legal authority which enables it to deny, condition and control pollutant contributions, require compliance by industrial users, conduct inspections of industrial users, and perform other essential attributes of a pretreatment program. The rule does not specifically state that POTWs must implement these procedures, although this has been EPA's consistent interpretation of the rule. To avoid any possible misunderstanding, the Agency proposed to revise the introductory sentence of 40 CFR 403.8(f) to state that “a POTW Pretreatment Program shall be developed and implemented to meet the following requirements”. EPA also proposed to amend the title of 40 CFR 403.8 to read “POTW Pretreatment Programs: Development and Implementation by POTW” (emphasis added).
   b. Response to comments. Several commenters specifically endorsed the proposed changes to 40 CFR 403.8(f) regarding implementation of approved pretreatment programs, stating that the proposed language clarified an important requirement. To further clarify this requirement, the introductory language to 40 CFR 403.8(f) has been changed from the proposal to read: “a POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented”.
   c. Today's rule. Today's rule amends the title of 40 CFR 403.8 to read: “POTW Pretreatment Program Requirements: Development and Implementation by POTW”. The introductory paragraph to 40 CFR 403.8(f) now provides that POTW pretreatment programs must be based on legal authorities and procedures which shall at all times be fully and effectively exercised and implemented.

5. Development and Submission of NPDES State Pretreatment Programs
   a. Proposed change. 40 CFR 403.10(c) states that “the EPA shall * * * apply and enforce Pretreatment Standards and Requirements until the necessary implementing action is taken by the State.” This sentence might give the wrong impression that the Agency will cease to enforce pretreatment requirements when a State has received program approval. Since this is not the case, EPA proposed to delete this sentence from 40 CFR 403.10.
   b. Response to comments. No significant comments were received on this proposed revision.
   c. Today's rule. Today's rule deletes the first sentence of 40 CFR 403.10(c).

6. Administrative Penalties Against Industrial Users
   a. Proposed rule. The second to last sentence in 40 CFR 403.8(f)(1)(vi)(E) states that “the Approval Authority shall have authority to seek judicial relief for noncompliance by Industrial Users when the POTW has acted to seek such relief but has sought a penalty which the Approval Authority finds to be insufficient [emphasis added]”. This provision could arguably be read to preclude the Agency from seeking administrative penalties in such instances. In order to clarify that EPA or a State Approval Authority may use any of their enforcement authorities in instances where a POTW has sought relief for industrial user noncompliance that the Approval Authority finds to be insufficient, the Agency proposed to revise 40 CFR 403.8(f)(1)(vi)(E) to provide that the Approval Authority shall have the authority to seek judicial relief and may also seek administrative relief when the POTW has acted to seek such relief but has sought a monetary penalty which the Approval Authority finds to be insufficient.
   b. Response to comments. Some commenters did not support this proposed revision. These commenters believed that the Control Authority was the only proper entity to establish monetary penalties for discharges under its jurisdiction. One commenter pointed out that state and local ordinances limit most POTWs in the fines that they can levy. This commenter also stated that the proposed change would encourage industrial users to attempt to deal directly with the Approval Authority in cases of violation, bypassing the POTW. The commenters appear to have been confused about the extent of the Approval Authority's existing authority to levy fines against industrial users when the POTW has sought an insufficient monetary penalty. Under the authority of sections 309(b) and 309(d) of the Clean Water Act, EPA has always been able to seek a judicial penalty against noncomplying industrial users when the POTW has sought an insufficient monetary penalty, including instances where the insufficiency was due to State or local limitations on fines that could be levied. The proposed amendments merely clarified that EPA may not use administrative penalties as well, under the authority of section 309(g) of the Water Quality Act of 1987. It is clear that Congress intended to give the Administrator the authority to seek judicial or administrative penalties directly against noncomplying industrial users.
   c. Today's rule. Today's rule revises 40 CFR 403.8(f)(1)(vi)(E) to provide that the Approval Authority shall have the authority to seek judicial relief but also may use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority finds to be insufficient.

7. Provisions Governing Fraud and False Statements
   a. Proposed change. 40 CFR 403.12(n) regarding fraud and false statements incorrectly states that certain reporting requirements are subject to the provisions of section 309(c)(3) of the Clean Water Act. The reference should have been to sections 309(c)(4) and (6) of the Act, as amended. EPA therefore proposed to revise 40 CFR 403.12(n) accordingly.
   b. Response to comments. No significant comments were received on this proposed revision. To further clarify the existing requirement, the language of 40 CFR 403.12(n) has been changed from the proposal to read:

   * * * the reports and other documents required to be submitted or maintained under this section shall be subject to: 1) the provisions of 18 U.S.C. section 1001 relating to fraud and false statements; 2) the provisions of section 309(c)(4) and 309(c)(6) of the Clean Water Act, as amended, governing false statements, representation or certification; and 3) the provisions of section 309(c)(6) regarding responsible corporate officers.
   c. Today's rule. Today's rule revises 40 CFR 403(n) to clarify that reports and other documents submitted under 40 CFR 403.12 are subject to sections 309(c)(4) and 309(c)(6) of the Clean Water Act.

III. Executive Order 12291
Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of Regulatory Impact Analysis. Major rules are those which impose a cost on the economy of $100 million or more annually or have certain other economic impacts. The Agency completed a general estimate of the annual costs to industrial users and POTWs of the revisions proposed on November 23, 1988, which is included in the administrative record for this rulemaking, and which showed compliance costs at well below $100 million. Today's rule contains certain changes from the proposal which
increase costs to POTWs and industrial
users. For example, the cost for the
notification requirements has risen from
approximately $250,000 in the proposed
rule to approximately $800,000 in the
final rule. Similarly, the cost for POTW
inspections and sampling of significant
industrial users has increased from
approximately $1,160,000 in the
proposed rule to $10,000,000 in the final
rule. However, other changes from the
proposals decrease such costs to POTWs
and industrial users. For example, the
cost of toxicity testing by POTWs has
decreased from approximately
$7,500,000 in the proposed rule to
approximately $1,200,000 in the final
rule, and the cost of technology-based
limits for GWTs has decreased from
approximately $21,000,000 in the
proposed rule to no cost in the final rule.
These changes are detailed in the
Information Collection Request (ICR) for
this rule submitted to the Office of
Management and Budget (OMB)
pursuant to the Paperwork Reduction
Act. Since the net effect of these
does not affect the annual
economic impact of today’s rule to
approach $100 million, this rule does not
meet the criteria of a major rule as set
forth in section 1(b) of the Executive
Order. This regulation has been
approved by OMB pursuant to Executive
Order 12291.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act, 5
U.S.C. 601 et seq., requires EPA and
other agencies to prepare an initial
regulatory flexibility analysis for all
proposed regulations that have a
significant impact on a substantial
number of small entities. No regulatory
flexibility analysis is required, however,
where the head of the Agency certifies
that the rule will not have a significant
economic impact on a substantial
number of small entities. Most of the
amendments promulgated today will
affect larger POTWs (those with
approvedpretreatment programs and
design influent flow of more than one
million gallons per day) and significant
industrial users, who are less likely than
the average industrial user to be a small
business. Those requirements which
affect small industrial users do not
impose significant costs. I hereby
certify, pursuant to 5 U.S.C. 605(b) that
this regulation will not have a
significant impact on a substantial
number of small entities.

V. Paperwork Reduction Act

The information collection
requirements contained in this rule were
approved by the Office of Management
and Budget (OMB) under the provisions
of the Paperwork Reduction Act, 44
U.S.C. 3501 et seq.

Public reporting burden for this
collection of information is estimated to
average 40 hours per response for
POTWs and 6 hours per response for
industrial users, including time for
reviewing instructions, searching
different data sources, gathering and
maintaining the data needed, and
completing and reviewing the collection
of information.

Send comments regarding the burden
estimate or any other aspect of this
collection of information, including
suggestions for reducing this burden, to
Chief, Information Policy Branch, PM-
223, U.S. Environmental Protection
Agency, 401 M St., SW., Washington, DC
20460; and to the Office of Information
and Regulatory Affairs, Office of
Management and Budget, Washington,
DC 20503, marked "Attention: Desk
Officer for EPA".

List of Subjects
40 CFR Part 122
Administrative practice and
procedure, Reporting and recordkeeping
requirements, Water pollution control,
Confidential business information.
40 CFR Part 403
Confidential business information,
Reporting and recordkeeping
requirements, Waste treatment and
disposal, Water pollution Control.

William K. Reilly,
Administrator.
40 CFR chapter I is amended as
follows:

PART 122—EPA ADMINISTERED
PERMIT PROGRAMS: THE NATIONAL
POLLUTANT DISCHARGE
ELIMINATION SYSTEM

1. The authority citation for part 122
continues to read as follows:
Authority: Clean Water Act, 33 U.S.C. 1251
et seq.

2. Section 122.21 is amended by
adding paragraphs (j)(1), (j)(2), (j)(3), and
(j)(4) to read as follows:

§ 122.21 Application for a permit,
(application to State programs, see
§ 123.25).

(j) * * * * *

(i) The following POTWs shall
provide the results of valid whole
effluent biological toxicity testing to the
Director:

(I) All POTWs with design influent
flows equal to or greater than one
million gallons per day;

(ii) All POTWs with approved
pretreatment programs or POTWs
required to develop a pretreatment
program;

(2) In addition to the POTWs listed in
paragraph (j)(1) of this section, the
Director may require other POTWs to
submit the results of toxicity testing with
their permit applications, based on
consideration of the following factors:
(i) The variability of the pollutants or
pollutant parameters in the POTW
effluent (based on chemical-specific
information, the type of treatment
facility, and types of industrial
contributors);
(ii) The dilution of the effluent in the
receiving water (ratio of effluent flow to
receiving stream flow);
(iii) Existing controls on point or
nonpoint sources, including total
maximum daily load calculations for the
waterbody segment and the relative
contribution of the POTW;
(iv) Receiving stream characteristics,
including possible or known water
quality impairment, and whether the
POTW discharges to a coastal water,
one of the Great Lakes, or a water
designated as an outstanding natural
resource;

(v) Other considerations (including but
not limited to the history of toxic
impact and compliance problems at the
POTW), which the Director determines
could cause or contribute to adverse
water quality impacts.

3. For POTWs required under
paragraph (j)(1) or (j)(2) of this section to
conduct toxicity testing, POTWs shall
use EPA's methods or other established
protocols which are scientifically
defensible and sufficiently sensitive to
detect aquatic toxicity. Such testing
must have been conducted since the last
NPDES permit reissuance or permit
modification under 40 CFR 122.62(a),
whichever occurred later.

4. All POTWs with approved
pretreatment programs shall provide
the following information to the Director:

(a) A written technical evaluation of the need
to revise local limits under 40 CFR
403.5(c)(1).

PART 403—GENERAL
PRETREATMENT REGULATIONS FOR
EXISTING AND NEW SOURCES

1. The authority citation for part 403
continues to read as follows:
Authority: Sec. 304(c)(2) of the Clean Water
Act of 1977 (Pub. L. 94-558), secs. 204(b)(1)(C),
206(b)(2)(C)(i), 301(b)(1)(A)(ii),
301(b)(2)(A)(ii), 301(b)(2)(C)(iii), 301(b)(3)(C),
301(b)(5), 301(i)(2), 304(e), 307, 308, 309, 402(b),
405 and 501(a) of the Federal Water Pollution
Control Act (Pub. L. 92-500), as amended by
the Clean Water Act of 1977 and the Water
2. Section 403.3 is amended by redesignating existing paragraph (1) as paragraph (a) and adding new paragraph (b) to read as follows:

§ 403.3 Definitions.

(b) * * *

(i) Significant Industrial User. (1) Except as provided in paragraph (h)(2) of this section, the term Significant Industrial User means:

(1) All industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and

(ii) Any other industrial user that:

(a) discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(2) Upon a finding that an industrial user meeting the criteria in paragraph (l)(1)(ii) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in 40 CFR 403.12(a)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.

3. Section 403.5 is amended by revising paragraphs (a)(2) introductory text, (b)(1), and (e), adding text to the end of (c)(1), and adding new paragraphs (b)(8), (b)(7), and (b)(6) to read as follows:

§ 403.5 National Pretreatment Standards: Prohibited Discharges.

(a) * * *

(2) Affirmative Defense. A User shall have an affirmative defense in any action brought against it alleging a violation of the general prohibitions established in paragraph (a)(1) of this section and the specific prohibitions in paragraphs (b)(3), (b)(4), (b)(5), (b)(6), (b)(7), and (b)(8) of this section where the User can demonstrate that:

* * *

(b) * * *

(1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 201.21.

* * *

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

(7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(8) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

(c) * * *

(1) * * * Each POTW with an approved pretreatment program shall continue to develop these limits as necessary and effectively enforce such limits.

* * *

(e) EPA enforcement actions under section 309(f) of the Clean Water Act. If, within 30 days after notice of an Interference or Pass Through violation has been sent by EPA to the POTW, and to persons or groups who have requested such notice, the POTW fails to commence appropriate enforcement action to correct the violation, EPA may take appropriate enforcement action under the authority provided in section 309(f) of the Clean Water Act.

4. Section 403.6 is amended by revising the introductory text to read as follows:

§ 403.6 National Pretreatment Standards: Categorical Standards.

National pretreatment standards specifying quantities or concentrations of pollutants or pollutant properties which may be discharged to a POTW by existing or new industrial users in specific industrial subcategories will be established as separate regulations under the appropriate subpart of 40 CFR chapter I, subchapter N. These standards, unless specifically noted otherwise, shall be in addition to all applicable pretreatment standards and requirements set forth in this part.

5. Section 403.8 is amended by revising the section heading, the introductory text to paragraph (f), paragraphs (f)(1)(iii), (f)(1)(vi)(B), (f)(2)(v), and (f)(2)(vi)(A), adding text to the end of (f)(2)(iii), and adding new paragraphs (f)(2)(v)(B) to read as follows:

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

* * *

(f) POTW pretreatment requirements.

A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

(1) * * *
orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or these regulations. The POTW shall have authority and procedures (after informal notice to the discharger) immediately and effectively to halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the enforcement of the POTW. The Approval Authority shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the Approval Authority believes to be insufficient.

(ii) Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user noncompliance and the time periods within which responses will take place;

(iii) Identify (by title) the official(s) responsible for each type of response;

(iv) Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in 40 CFR 403.8(f)(1) and (f)(2).

The POTW shall prepare a list of its industrial users meeting the criteria in 40 CFR 403.3(l)(1). The list shall identify the criteria in 40 CFR 403.3(l)(1) applicable to each industrial user and, for industrial users meeting the criteria in 40 CFR 403.3(l)(1), shall also indicate whether the POTW has made a determination pursuant to 40 CFR 403.3(l)(2) that such industrial user should not be considered a significant industrial user. This list, and any subsequent modifications thereto, shall be submitted to the Approval Authority as a nonsubstantial program modification pursuant to 40 CFR 403.16(b)(2). Discretionary designations or de-designations by the Control Authority shall be deemed to be approved by the Approval Authority 90 days after submission of the list or modifications thereto, unless the Approval Authority determines that a modification is in fact a substantial modification.
§ 403.10 [Amended]

6. Section 403.10 is amended by removing the first sentence in paragraph (c).

7. Section 403.12 is amended by adding text to the end of paragraph (h), by revising paragraphs (j) and (n), and adding a new paragraph (p) to read as follows:

§ 403.12 Reporting requirements for POTWs and Industrial Users.

(h) Significant Noncategorical Industrial Users shall submit to the Control Authority at least once every six months (on dates specified by the Control Authority) a description of the nature, concentration, and flow of the pollutants required to be reported by the Control Authority. These reports shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the techniques described in 40 CFR part 136 and amendments thereto. Where 40 CFR part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Administrator determines that the part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other persons, approved by the Administrator. This sampling and analysis may be performed by the Control Authority in lieu of the significant noncategorical industrial user. Where the POTW itself collects all the information required for the report, the noncategorical significant industrial user will not be required to submit the report.

(j) Notification of changed discharge.

All Industrial Users shall promptly notify the POTW in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the Industrial User has submitted initial notification under 40 CFR 403.12(p).

(n) Provisions Governing Fraud and False Statements: The reports and other documents required to be submitted or maintained under this section shall be subject to:

(1) The provisions of 18 U.S.C. section 1001 relating to fraud and false statements;

(2) The provisions of sections 309(c)(4) of the Act, as amended, governing false statements, representation of facts, or certification.

(3) The provisions of section 309(c)(6) regarding responsible corporate officers.

(p) [The Industrial User shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the POTW of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial User discharges more than 100 kilograms of hazardous waste or 100 kilograms of industrial waste to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the Industrial User: An identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. All notifications must take place within 180 days of the effective date of this rule. Industrial users who commence discharging after the effective date of this rule shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12(j). The notification requirements in this section do not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12(b), (d), and (e).

(2) Dischargers are exempt from the requirements of paragraph (p)(1) of this section during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the Industrial User discharges more than such quantities of any hazardous waste do not require additional notification.

(3) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the Industrial User must notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(4) In the case of any notification made under paragraph (p) of this section, the Industrial User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

Editorial Note: This appendix will not appear in the Code of Federal Regulations.

Appendix—Hazardous Waste Authorities: Notifications under 40 CFR 403.12(p)

Environmental Protection Agency

Region I
Director, Waste Management Division, Environmental Protection Agency, John F. Kennedy Building, Boston, Massachusetts 02230

Region II
Director, Air & Waste Management Division, Environmental Protection Agency, 25 Federal Plaza, New York, New York 10027

Region III
Director, Hazardous Waste Management Division, Environmental Protection Agency, 814 Chestnut Street, Philadelphia, Pennsylvania 19107

Region IV
Director, Hazardous Waste Management Division, Environmental Protection Agency, 541 Chestnut Street, Philadelphia, Pennsylvania 19107

Region V
Director, Waste Management Division, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604

Region VI
Director, Hazardous Waste Management Division, Environmental Protection Agency, 1445 Rosa Avenue, Suite 1200, Dallas, Texas 75202

Region VII
Director, Waste Management Division, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101

Region VIII
Director, Hazardous Waste Management Division, Environmental Protection Agency, One Denver Place, 999 18th St., Suite 500, Denver, Colorado 80202-3405
Georgia

Chief, Land Protection Branch, Industrial and Hazardous Waste Management Program, Floyd Towers East/Room 1154, 205 Butler Street, SE., Atlanta, Georgia 30334

Hawaii

Manager, Solid and Hazardous Waste Branch, Hawaii Department of Health, Hazardous Waste Program, P.O. Box 3378, Honolulu, Hawaii 96810

Idaho

Chief, Hazardous Materials Bureau, Department of Health and Welfare, Idaho State House, 460 W. State Street, Boise, Idaho 83720

Illinois

Manager, Illinois Environmental Protection Agency, 3200 Churchill Road, P.O. Box 19278, Springfield, Illinois 62794-9278

Indiana

Assistant Director, Indiana Department of Environmental Management, 105 S. Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46225

Iowa

Chief, Air Quality and Solid Waste Protection, Department of Water, Air, and Waste Management, 900 East Grand Avenue, Henry A. Wallace Building, Des Moines, Iowa 50318-0034

Kansas

Director, Bureau of Waste Management, Department of Health and Environment, Forbes Field, Building 323, Topeka, Kansas 66620

Kentucky

Director, Division of Waste Management, Department of Environmental Protection, Cabinet for Natural Resources and Environmental Protection, 18 Reilly Road, Frankfort, Kentucky 40601

Louisiana

Assistant Secretary, Hazardous Waste Division, Office of Solid Waste and Hazardous Waste, Louisiana Department of Environmental Quality, P.O. Box 44307, N. Fourth Street, Baton Rouge, Louisiana 70804

Maine

Director, Bureau of Solid Waste Management, Department of Environmental Protection, State House #172, Augusta, Maine 04332

Maryland

Director, Hazardous and Solid Waste Management Administration, Maryland Department of the Environment, 201 W. Preston Street, room 212, Baltimore, Maryland 21201

Massachusetts

Director, Division of Solid and Hazardous Waste, Massachusetts Department of Environmental Quality Engineering, One Winter Street, 5th Floor, Boston, Massachusetts 02108

Michigan

Chief, Technical Services Section, Waste Management Division, Department of Natural Resources, Box 30038, Lansing, Michigan 48909

Minnesota

Director, Solid and Hazardous Waste Division, Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155

Mississippi

Director, Division of Solid Waste Management, Bureau of Pollution Control, Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209

Missouri

Director, Waste Management Program, Department of Natural Resources, Jefferson Building, 205 Jefferson Street (13th-14th floors), P.O. Box 178, Jefferson City, Missouri 65102

Montana

Chief, Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Room B-201, Helena, Montana 59620

Nebraska

Chief, Hazardous Waste Management Section, Department of Environmental Control, State House Station, P.O. Box 96477, Lincoln, Nebraska 68509

New Hampshire

Chief, Division of Public Health Services, Office of Waste Management, Department of Health and Welfare, Health and Welfare Building, 6 Hazen Drive, Concord, New Hampshire 03301

New Jersey

Assistant Commissioner, Division of HQ Waste Management, Department of Environmental Protection, 401 East State Street, Trenton, New Jersey 08625

New Mexico

Chief, Groundwater and Hazardous Waste Bureau, Environmental Improvement Division, New Mexico Health and Environment Department, P.O. Box 969, Santa Fe, New Mexico 87504-0968

New York

Director, Division of Hazardous Substance Regulation, Department of Environmental Conservation, 69 Wolfe Road, Room 209, Albany, New York 12233

North Carolina

Head, Solid and Hazardous Waste Management Branch, Division of Health Services, Department of Human Resources, P.O. Box 2091, Raleigh, North Carolina 27602

North Dakota

Director, Division of Hazardous Waste Management, Department of Health, 1200

North Dakota
<table>
<thead>
<tr>
<th>State</th>
<th>Contact Person</th>
</tr>
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<tbody>
<tr>
<td>Missouri</td>
<td>Director, Office of Air Quality and Solid Waste, Department of Water and Natural Resources, 533 E. Capitol, Foss Building, Room 416, Pierre, South Dakota 57501</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Director, Division of Solid Waste Management, Oklahoma Environmental Protection Agency, 1600 Watermark Drive, P.O. Box 1049, Columbus, Ohio 43201-0149</td>
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<tr>
<td>Ohio</td>
<td>Chief, Waste Management Service, Oklahoma State Department of Health, P.O. Box 53551, 1000 Northeast 10th Street, Oklahoma, Oklahoma 73152</td>
</tr>
<tr>
<td>Oregon</td>
<td>Director, Hazardous and Solid Waste Division, Department of Environmental Quality, 811 Southwest 6th Avenue, Portland, Oregon 97204</td>
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<tr>
<td>Pennsylvania</td>
<td>Director, Bureau of Waste Management, Pennsylvania Department of Environmental Resources, P.O. Box 3063 / Fulton Building, Harrisburg, Pennsylvania 17105</td>
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<td>Rhode Island</td>
<td>Director, Solid Waste Management Program, Department of Environmental Management, 204 Canon Building, 75 Davis Street, Providence, Rhode Island 02908</td>
</tr>
<tr>
<td>South Carolina</td>
<td>Chief, Bureau of Solid Waste Management, Hazardous Waste Management, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29001</td>
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<tr>
<td>South Dakota</td>
<td>Chief, Waste Management Division, Department of Natural Resources, 1280 Greenbrier Street, Charleston, West Virginia 25311</td>
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<tr>
<td>Tennessee</td>
<td>Director, Division of Solid Waste Management, Tennessee Department of Public Health, 701 Broadway, Customs House, 4th Floor, Nashville, Tennessee</td>
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<td>Texas</td>
<td>Director, Hazardous and Solid Waste Division, Texas Water Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78771-3087</td>
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<tr>
<td>Vermont</td>
<td>Chief, Waste Management Division, Agency of Environmental Conservation, 103 South Main Street, Waterbury, Vermont 05676</td>
</tr>
<tr>
<td>Virginia</td>
<td>Executive Director, Division of Technical Services, Virginia Department of Waste Management, Monroe Building, 11th Floor, 101 North 14th Street, Richmond, Virginia 23219</td>
</tr>
<tr>
<td>Washington</td>
<td>Manager, Solid and Hazardous Waste Management Division Department of Ecology, Mail Stop PV-11 Olympia, Washington 98304</td>
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<tr>
<td>West Virginia</td>
<td>Chief, Waste Management Division, Department of Natural Resources, 1280 Greenbrier Street, Charleston, West Virginia 25311</td>
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<td>Wisconsin</td>
<td>Director, Bureau of Solid Waste, Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707</td>
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<td>Wyoming</td>
<td>Supervisor, Solid Waste Management Program, Department of Environmental Quality, 122 West 25th Street, Herschler Building, Cheyenne, Wyoming 82002</td>
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<td>American Samoa</td>
<td>Director, Solid Waste Division, Environmental Quality Commission, Government of American Samoa, Pago Pago, American Samoa 96799</td>
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<td>Guam</td>
<td>Director, Hazardous Waste Management Program, Guam Environmental Protection Agency, P.O. Box 3966, Agana, Guam 96910</td>
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<tr>
<td>Commonwealth of Northern Mariana Islands</td>
<td>Chief, Division of Environmental Quality, Department of Public Health and Environmental Services, Commonwealth of the Northern Mariana Islands, Office of the Governor, Saipan, Mariana Islands 96950</td>
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<tr>
<td>Puerto Rico</td>
<td>President, Environmental Quality Board, Santa Cruz, Puerto Rico 00910-1468</td>
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<td>Virgin Islands</td>
<td>Director, Department of Conservation and Cultural Affairs, P.O. Box 4999, Charlotte, St. Thomas, Virgin Islands 00801</td>
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[FR Doc. 90-16325 Filed 7-23-90; 8:45 am]
BILLING CODE 8580-50-M
Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

Operating Assistance Funding Under the Flexible Subsidy Program; Notice of Funding Availability
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: This Notice announces that the Department has approximately $128 million available in the Flexible Subsidy Fund in this fiscal year and that this amount will be made available for the Operating Assistance component of the program. The Department expects to be ready to implement it during this fiscal year. Consequently, during this fiscal year, funding will not be made available under the Capital Improvement Loan component, and the Department expects to complete implementing steps in accordance with governing regulations.

DATES: The deadline date for submission of applications in response to this Notice of Fund Availability is September 7, 1990.

FOR FURTHER INFORMATION CONTACT: Questions concerning this Notice should be directed to the Program Support Branch, Office of Multifamily Housing Management, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-9684 (voice) or (202) 708-3638 (TDD for hearing-impaired). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

A. Statutory Background

Section 201 of the Housing and Community Development Act of 1974 (Public Law 93-383) established the Flexible Subsidy Fund, and Community Development Amendments (HCDA) of 1987 (Public Law 99-467) expanded the Flexible Subsidy program to include projects that had been converted from the Rent Supplement program. The 1987 amendments to section 201 of HCDA expanded the Flexible Subsidy program to include projects that had been converted from the Rent Supplement program. The 1987 amendments to section 201 of HCDA expanded the Flexible Subsidy program to include section 8 projects that had been converted from the Rent Supplement or Rental Assistance Payments programs, and clarified that a project need not have an FHA-insured mortgage to be eligible for Flexible Subsidy assistance (e.g., a non-insured section 238 project is eligible).

The 1987 amendments to section 201 of HCDA again expanded the category of eligible projects. Projects assisted under section 23 of the United States Housing Act of 1937 as it existed before January 1, 1975, and projects that received a loan under section 202 of the Housing Act of 1959 more than 15 years before the date of application for assistance, were made eligible for Flexible Subsidy assistance. The principal thrust of the 1987 amendments, however, was to create a new category of assistance to be provided under the Flexible Subsidy program for projects that need capital improvements to achieve physical soundness that cannot be funded from project reserve funds without jeopardizing other major repairs or replacements that are reasonably expected to be required in the near future.

The 1987 amendments to the Flexible Subsidy statute (sections 185 and 186 of the Housing and Community Development Act of 1965) also recognized the need to coordinate assistance under the Flexible Subsidy program with the preservation of low- and moderate-income housing initiative enacted in sections 221 through 235 of that Act. Section 219.330 of the rule governing the Capital Improvement Loan portion of the program contains a set-aside provision to assure maximum support for such preservation activities. This notice assures support by giving top priority for funding of Operating Assistance to projects that are eligible for incentives to extend the low- to moderate-income use of properties under a plan of action approved in accordance with 24 CFR part 248.

In 1988, the Flexible Subsidy statute (section 201(j)(4)) of the Housing and Community Development Act of 1974 (Public Law 93-383) and the Community Development Amendments (HCDA) of 1987 (Public Law 99-467) were amended again, to provide that the Capital Improvement Loan portion of the program be funded at a minimum level of $30 million or 40 percent of the amount in the Flexible Subsidy Fund, whichever was less. Any of that amount not used for loans under that program before the last 60 days of a fiscal year shall become available for Operating Assistance loans.

B. Capital Improvement Loans

In March 1989 (54 FR 9713), the Department rewrote and reorganized the Flexible Subsidy regulations at part 219 to separate the requirements that apply generally to the entire Flexible Subsidy program (subpart A); the requirements that apply only to the Capital Improvement Loan Program (subpart B); and the requirements that apply only to the new Operating Assistance component (subpart C).

Loans to cover capital improvements have been authorized even under the Operating Assistance portion of the Flexible Subsidy program. However, they differ from loans authorized under the Capital Improvement Loan portion of the program in that they are limited in purpose to projects where the repairs are necessary to meet local building codes or to maintain the project in a decent, safe, and sanitary condition (5210.205 of the revised regulations). The loans made under Operating Assistance provisions are also different in that repayment is deferred until occurrence of a triggering event, instead of commencing soon after the loan is made, in accordance with an amortization schedule.

The new program for capital improvement requires a new type of loan document, slightly different processing—including underwriting issues, and a new monitoring mechanism. The Department has been unable to complete implementing steps satisfactory to assure integrity of selection, monitoring and oversight in time to accept applications under the Capital Improvement Loan program for this fiscal year. Consequently, this notice pertains only to funding under the Operating Assistance component, and any loans made to cover capital improvements will be made only where the code enforcement or maintenance purpose is specified in the regulation apply. The Department plans to have the Capital Improvement Loan portion of the Flexible Subsidy program ready by February 1991, and will set aside funds for that component in accordance with the statutory formula then.

C. Funding

The Flexible Subsidy Fund is comprised of excess receipts paid to HUD from owners of Section 238 projects, interest earned on investment of the fund, and repayment of operating assistance loans made by the Department in past fiscal years.

Funds are allocated separately for two types of projects: State agency financed...
non-insured projects; and all others, including projects with FHA-insured and HUD-held mortgages. Section 219.115 of the HUD regulations requires that the State Agency allocation be based on the number of units in potentially eligible non-insured projects as a percentage of the total number of units in all potentially eligible projects. In accordance with that section, the Department has determined that 9.3 percent of the total available operating assistance funding will be earmarked for eligible State Agency projects.

D. Application Procedure

1. The requirements for the Operating Assistance program are found in subparts A and B of 24 CFR part 219. The owner of any project eligible for Operating Assistance, as described in § 219.105, may apply for assistance by submitting an application as described in § 219.210, to the HUD Field Office that has jurisdiction over the project for which assistance is requested, no later than the deadline date specified in this notice. Applications received after that date will be considered for funding in Fiscal Year 1990 only if the Secretary determines that assistance is needed immediately in response to emergency circumstances and only to the extent that sufficient budget authority is available to satisfy the request for assistance.

2. Each applicant shall comply with the governmentwide rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), codified at 49 CFR part 24. That rule supersedes HUD’s rule implementing the URA, which was codified at 24 CFR part 42. Under the new rule, all persons displaced on or after April 2, 1989 as a direct result of privately undertaken rehabilitation, demolition or acquisition for a HUD-assisted project are entitled to relocation payments and other assistance under the URA.

3. The project owner shall include in its application the certification and disclosure required by the regulations at 24 CFR part 67 (published on February 26, 1990 at 55 FR 6750), which implement a statutory prohibition against the use of appropriated funds received from the Federal Government for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant or loan. As indicated in this certification and disclosure, the law provides substantial monetary penalties for failure to file the required certification or disclosure.

4. Acceptance of an Operating Assistance application does not in any way constitute a commitment by the Department to award funding in response to the application. Once the Field Office has determined that the application is complete, recommended the project for funding to Headquarters, and notified the owner that the project is under consideration for Operating Assistance, no further information will be disclosed about the application in terms of the selection process unless and until a funds assignment has been issued awarding the assistance to the project.

5. The Office of Management and Budget has approved the continued use of the Operating Assistance forms under OMB control number 2502-0395 through September 30, 1990, subject to the following conditions. Owners interested in submitting Operating Assistance applications need only provide summary totals on the Form HUD-8853B (Sources and Uses of Funds) for “Repairs” (at Line A1) and “Operating Deficit” (at Line A3). Consequently, applicants for Operating Assistance need not provide the detailed repair and operating deficit information provided on Lines A1a-d and A3a-e, respectively.

E. Owner Contribution Requirements

Consistent with the requirement stated in § 219.305 for owner contribution in the Capital Improvement Loan component, owners of limited-dividend projects requesting Operating Assistance must contribute at least 25 percent of the total estimated cost of the work needed, as specified in the application’s Management Improvement and Operating (MIO) Plan. The 25 percent owner contribution is a minimum requirement for obtaining Operating Assistance funding. This owner contribution may not be taken from project income but may be taken from surplus cash, as defined in the Regulatory Agreement.

Cash that has already been agreed to be contributed as a condition for approval of purchase of the project (TPA) may NOT be considered for this purpose. Cash contributions made by the owner within 24 months before the Operating Assistance application, from sources other than project income, may be considered. Other possible sources for funding MIO Plan action items should be pursued aggressively, including a possible higher contribution percentage and assistance from State or local governments.

F. Selection

Each application for Operating Assistance will be reviewed by the HUD office having jurisdiction over the project in question. Field offices will make recommendations to HUD Headquarters of the applications that should be awarded funding, in accordance with 24 CFR 219.101 through 219.230. As described in § 219.230, funding will be awarded only where the problems addressed in the MIO Plan can be stabilized by the Operating Assistance.

To implement the priorities specified in § 219.230 and to support efforts to preserve housing for low- and moderate-income use, in accordance with section 224 of the Housing and Community Development Act of 1987, within each project type (State Agency financed, non-insured or other), funding will be awarded first to applications in Category 1, and then to applications in Category 2, on a first-come-first-serve basis. After August 15, 1990, HUD Headquarters will determine the amount of remaining funding authority and will fund Category 3 applications with available funds after considering any pending unfunded Category 1 and Category 2 applications.

Category 1

Projects that are eligible for incentives to extend the low- to moderate-income use of properties under a plan of action approved in accordance with 24 CFR part 248.

Category 2

Projects where half or more of the MIO Plan dollar amount is for emergency health and safety problems. This category applies to all projects, including those with insured, non-insured, or HUD-held mortgages, but is limited to those projects with emergency problems that are of such a magnitude that:

(a) They could not be mitigated at a cost that could be in any way absorbed within the project operating budget; or

(b) Their continuance could potentially force tenant displacement.

Accounts payable included in the MIO Plan may be considered “emergency” only to the extent that they directly relate to vital services provided to the project (e.g., utility payables). (Examples of emergency health and safety problems involving possible capital improvements that may be included in this category are broken heating systems, leaking gas stoves and falling balconies.)

Category 3

Insured and non-insured projects with serious financial and physical problems whose sponsors do not have the necessary funds available to cure the immediate problems, and whose income stream cannot be sufficiently improved

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to meet the project's expenses without first correcting its physical problems. Projects with Secretary-held mortgages are not eligible for funding under Category 3. For projects to meet this category, it must be determined that Flexible Subsidy will prevent the default and assignment of the mortgage to the Secretary (for insured projects), or that serious deterioration of the property exists (for insured and non-insured projects).

G. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 101(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410.

The General Counsel, as the Designated Official under Executive Order 12806, the Family, has determined that this Notice of Funding Availability will not have a significant impact on family formation, maintenance or well-being, and therefore, is not subject to review under the order. The NOFA, insofar as it funds emergency repairs to multifamily housing projects, will assist in preserving decent housing stock for families residing there.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this Notice of Funding Availability will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government.

The Catalog of Federal Domestic Assistance Program number is 14.104.

Authority: Sec. 201, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 18, 1990.

C. Austin Fitts,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-17197 Filed 7-23-90; 8:45 am]
Part IV

Department of Commerce

Technology Administration

15 CFR Part 295
Advanced Technology Program; Implementation and Invitation for Proposals; Final Rule and Notice
DEPARTMENT OF COMMERCE
Technology Administration
15 CFR Part 295
[Docket No. 900130-0152]
RIN 0693-AA83
Advanced Technology Program

AGENCY: Technology Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Under Secretary for Technology of the United States Department of Commerce is today issuing a final rule to implement the Advanced Technology Program. The Advanced Technology Program was authorized by section 513 of the Omnibus Trade and Competitiveness Act of 1988 (Pub.L. 100-418) codified at 15 U.S.C. 278n. The Advanced Technology Program will assist United States businesses to carry out research and development on precompetitive generic technologies by entering into grants and cooperative agreements with qualified parties pursuant to this rule.

EFFECTIVE DATE: This rule is effective July 24, 1990.

FOR FURTHER INFORMATION CONTACT: George A. Uriano or Brian C. Belanger, Advanced Technology Program, National Institute of Standards and Technology (NIST), telephone number (301) 975-5187.

SUPPLEMENTARY INFORMATION: The Under Secretary for Technology pursuant to the authority delegated to him by section 2.02 of Department Organization Order 10-17, dated January 6, 1989, is today issuing a final rule to implement the Advanced Technology Program.

The Rationale for the ATP

Both the Congress and the Administration have been concerned that U.S. competitiveness in high-technology fields may be lagging. While the United States is a world leader in basic research, our nation's ability to commercialize new technology quickly and efficiently has increasingly been questioned. Many feel that the Federal Government could and should do more to work with industry to stimulate the commercialization of advanced technology. This Administration believes the Federal Government should avoid "picking winners and losers" but instead should foster an industry-led strategy for competitiveness. The ATP has been designed consistent with these views.

The capability of a nation to capture economic returns from basic scientific and technological innovations is increasingly being recognized as one of the most important determinants of long-term economic growth and international competitiveness. Between basic research and the point in a technology's development when it becomes substantially product-specific, several research stages occur in which the probability of technical success and also the scope and magnitude of potential market applications are highly uncertain. These two factors create substantial risk for individual firms and even collectively for several firms working together.

There are two distinct kinds of risks involved in commercializing products based on new technology—risks associated with technical barriers and commercial or marketplace risks. One example of a technical barrier would be industry's inability to manufacture in a reproducible way some class of advanced materials (e.g., superconductors, ceramics, diamond films, or composites), with sufficiently high performance to make possible new products based on these materials. Commercial or marketplace risks involve questions such as "If we invest in a new factory to build devices exploiting these new materials, can we make an acceptable return on investment?" The Advanced Technology Program will not address these marketplace risks which must be left to industry.

But marketplace issues cannot be addressed by industry while technical barriers remain. As long as no one in industry knows how to manufacture type-X materials reproducibly with high performance, decisions on commercialization cannot even be considered. Accordingly, the ATP will focus on technical barriers to commercialization and will terminate Federal funding when those technical hurdles are sufficiently reduced to enable industry to begin to assess commercial risk. In particular, the ATP will seek to focus on technical "choke points," that is, technical barriers that are currently holding up progress in a broad segment of a technical field. ATP-funded proposals will, to the greatest extent possible, be for "generic" technology which fits that description. During the phase of R&D when technical barriers are being overcome, the work can be "precompetitive" because all companies working in the field face the same technical barriers. (The terms "generic" and "precompetitive" are defined and discussed in the next section.) Overcoming these barriers by means of a joint R&D venture would not in any way reduce future competition in products based on the technology.

Under conditions of both high technical and market risk, industry is frequently unable to project sufficiently high risk-adjusted rates of return to stimulate adequate levels of investment. General incentives (such as a tax credit) help increase investment—once the economic potential of specific market applications of the technology becomes clear. However, such general incentives are not effective until technical and market uncertainties are reduced. The ATP will help reduce technical uncertainties.

Program Description

The Advanced Technology Program will assist United States businesses to carry out research and development on pre-competitive generic technologies. The program will focus on improving the competitive position of the United States and its businesses by accelerating the early to mid-stage development of pre-competitive generic technologies that have significant potential to accelerate economic growth and raise productivity. The 1988 Act granted new legislative authority to the Secretary including support for the private sector for the purposes stated above. The authority is to be used to (1) aid United States joint research and development ventures; (2) enter into contracts and cooperative agreements with United States businesses, especially small businesses, and independent research organizations; (3) involve the Federal laboratories in the Program, where appropriate, using among other authorities the cooperative research and development agreements provided for under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980; and (4) carry out, in a manner consistent with the provisions of the law, such other cooperative research activities with joint ventures as may be authorized by law or assigned to the Program by the Secretary.

Such authority permits the Advanced Technology Program to support a broad range of activities including scientific experiments, experimental production and testing of models, prototypes, equipment, materials, and processes. The Advanced Technology Program intends to place a major emphasis on coordinating its program with other technology development programs. Major emphasis will be placed on establishing and maintaining strong program and operational ties to important technology sources (e.g., universities and other Federal agencies).
The program is authorized to fund either individual firms or joint R&D ventures. The provisions of the rule differ somewhat with respect to types of assistance and limitations on assistance for these two categories of awardees, as noted in Subpart B (Joint Ventures) and Subpart C (Individual Firms).

The Technology Administration intends to focus on supporting private sector development of pre-competitive generic technologies and to participate in a variety of industry initiatives. However, the program will avoid participation in development of specific products and processes by the private sector.

A general definition of the terms “generic technology” and “pre-competitive technology” are embodied in §295.3 of the rule, as follows:

“Generic technology” means a concept, component, or process, or the further investigation of scientific phenomena, that has the potential to be applied to a broad range of products or processes. Note: A generic technology may require subsequent investigation of scientific phenomena, that is, a scientific research and development activity up to the stage where technical uncertainties are sufficiently reduced to permit preliminary assessment of commercial potential and prior to development of application-specific commercial prototypes. Note: At the stage of pre-competitive research and development, for example, results can be shared within a consortium that can include potential competitors without reducing the incentives for individual firms to develop and market commercial products and processes based upon the results.

The Technology Administration will seek to augment its efforts under ATP by encouraging other Federal agencies and State and local governments to cooperate wherever feasible with ATP funding recipients. However, the ATP will not directly provide funding to any other governmental entity or directly to academic institutions.

Awards will be made from among those proposals scoring highest on the basis of the following selection criteria:

1. Scientific and Technical Merit of the Proposal
2. Potential Broad-Based Benefits of the Proposal
3. Technology Transfer Benefits of the Proposal
4. Experience and Qualifications of the Proposing Organization
5. Proposer's Level of Commitment and Organizational Structure

Detailed descriptions of these five criteria are contained in §295.3. The Department of Commerce will ensure that awards are made so as to achieve an appropriate long-term balance in the program with respect to areas of technology.

More extensive descriptions of funding available, estimated number of awards, award amount limitations, priorities, and any requirements, will be published separately at the time of solicitation.

Analysis of Comments on the Proposed Advanced Technology Program Rule

On April 4, 1990, the Technology Administration published a notice of proposed rulemaking in the Federal Register (55 FR 12504). In response to this notice, 53 letters were received: 29 from businesses, 4 from universities, 4 from Federal agencies, 2 from state agencies and 14 from other organizations. The 14 responses from “other” organizations included 9 from representatives of public interest groups, 2 from individual citizens, and one each from professional societies, trade associations, and labor unions. Table 1 summarizes the number of comments received on each of the major provisions of the proposed rule (most respondents commented on several different provisions).

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Many respondents also submitted general comments on topics not specific to the proposed rule such as other measures that might be taken by the Federal government in enhancing U.S. economic growth and the competitiveness of U.S. industry (e.g., reduction in the capital gains tax) and also the importance of a variety of specific technologies to the long-term economic security of the United States. More than 50% of the respondents (29) explicitly indicated general support for the Advanced Technology Program and its objectives.

While many of these general comments were of interest, they were not deemed to be relevant to the issue of whether changes needed to be made in the proposed rule. The remainder of this section deals with those comments that were directly relevant to one or more provisions of the rule and that might be cause for changes or clarifications to the rule. It should also be noted that many of the comments suggested that changes be made to provisions of the rule that were mandated by the ATP legislation or are required by Federal regulations or policies. Proposed changes that fell into those categories could not be made.

Section 295.1 Purpose—Comment Summary (13 Comments)

The eighteen public comments on this section fell into two categories:

1. The limitation on the scope of the program to the support of pre-competitive technology was too restrictive (e.g., the program doesn't adequately address the perceived weakness of the U.S. in commercializing technology) and the emphasis on early stage research appeared to contradict the requirements for participants to commit substantial resources. Several of the respondents did indicate support for the rule as currently defined with regard to this point.

2. The requirement that emphasis be placed on technology areas where NIST has expertise was viewed as being unnecessarily limiting.
In response to the first item, the Technology Administration has determined that the scope of the program as defined is sufficiently broad to cover technology development activities through the laboratory prototype stage. Any Federal support beyond the laboratory prototype stage is not appropriate. Minor modifications were made to the definition of pre-competitive in § 295.2 to clarify the intent (see the analysis of the comments on § 295.2).

In response to the second item, the provision that emphasis be placed on technology areas where NIST has expertise has been deleted.

Section 295.2 Definitions—Comment Summary (28 Comments)

Most of the comments centered on the definitions of “generic technology,” “pre-competitive technology,” and “joint research and development venture.

Concerns were raised by four respondents on the definition of joint research and development ventures. Recommendations for changes to the definition included suggestions such as: (1) Exclude the funding of basic research, establishment and operation of facilities, experimental production of prototypes, and foreign firms; (2) place greater emphasis on manufacturing technologies; and (3) extend to include joint production and marketing.

Two members of Congress commented that in their view, it was the intent of Congress to authorize the ATP to assist joint ventures that met the requirements of the National Cooperative Research and Development Act of 1984 (NCRA).

One respondent expressed concern about the restriction on licensing found in section (2)(iii)(A) of the definition of joint research and development venture (§ 295.2(d)). In clarification, this is an antitrust restriction intended to prevent antitrust agreements outside the normal scope of the joint venture.

Since the Program’s enabling legislation requires that the definition of a joint research and development venture be the same as that used in the NCRA, the Technology Administration has made no changes to the definition. Concerns were also expressed about the definitions of “generic technology” (8 comments) and “pre-competitive technology” (9 comments) although several respondents indicated general agreement with the definitions of the terms, and several of the recommendations are contradictory. Some respondents expressed concern that the definition of “pre-competitive technology” is too restrictive. Respondents pointed out that technical uncertainties are identified even during early stages of basic research, and the ATP should go beyond basic research. Accordingly, a minor change was made to this definition to respond to this concern. The definition now reads, "... up to the stage where technical uncertainties are sufficiently reduced [emphasis added] to permit preliminary assessment [...]." Note that the development of laboratory prototypes, experimental production, testing of models, and development of materials and processes might all be allowed provided the work is generic and pre-competitive in nature.

With regard to the definition of “generic technology,” four respondents urged a clarification of the meaning of the phrase “across many industries”. This phrase was deemed unnecessary and has been deleted.

Because questions were raised regarding the meaning of the terms “indirect costs” and “matching funds,” definitions of these terms have been added to this section.

Section 295.3 Criteria for Selection—Comment Summary (25 Comments)

Generally the respondents did not take issue with the criteria as proposed although a number of suggestions were made for “fine tuning” them. Many of the comments with regard to making the criteria more explicit do not require changes or additions to the criteria. For example, one respondent recommended that the issue of “probability of technical success” be added as a factor under criterion 1. This factor is already covered under technical feasibility. Similarly “potential for advancing the state-of-the-art of the technology” and “potential for enhancing the competitiveness of U.S. industry” were also suggested as additional factors, but are adequately covered by the proposed criteria.

Four respondents commented on the need to achieve a balance between such factors as: Innovations and improvements in current technology vs. radical new technology, distribution of funded proposals across industries and technologies, geographical distribution, and mix of small and large businesses. Because it would be in the best interest of the nation to have a balanced program with respect to technologies over the long term, the final rule makes explicit the Department of Commerce’s intention to achieve such a balance.

Based on the arguments of three respondents, the weights of the criteria have been modified slightly. Additional weight (an increase to 20%) was given to criterion 2 [Potential broad-based benefits] and the weight assigned to scientific and technical merit was reduced. (But as noted in § 295.3, only those proposals with very high scores on scientific and technical merit will be rated for the other criteria.) The weighting of the third criterion (technology transfer benefits) was increased to 20%, hence in the final rule all five criteria are weighted equally. Numerical ratings for all criteria will be assigned only to those proposals that make it to the third round of reviews. At that point all proposals still being considered will have been shown to have high scientific and technical merit. At that point, that criterion will be a less important tool for discriminating among the remaining proposals and hence the lower weight was assigned to criterion 1.

The issue of whether the ATP should fund planning grants was raised by several respondents. Some favored such grants, others opposed them. After consideration, the Technology Administration has deleted provision for planning grants. However, it should be noted that technology development proposals can include planning activities as part of the first phase of the technology development program. Also, as noted in § 295.3, under certain circumstances, there is now an option for a grant with full funding contingent on the applicant’s successful remedying during a six-month period of organizational deficiencies in an otherwise excellent proposal.

The Technology Administration has made certain other changes to § 295.3, which pertains to the selection process that the Department of Commerce will use in making awards under the Program. These changes are intended to make more explicit the actual process that will be used. They do not represent a substantive change.

Section 295.4 Notice of Availability of Funds—Comment Summary (6 Comments)

The major issue raised by the respondents (especially small businesses) was that the ATP will not fund indirect costs for single business applicants (3 comments). This is a statutory requirement of the ATP enabling legislation, hence the rule must reflect that requirement. The final rule contains a definition of indirect costs. Because of the confusion concerning the funding of “indirect costs,” this section was modified to make explicit that the restriction on funding indirect costs applies only to single firm applicants.

A comment was received regarding the need for other “avenues” to be used to publicize the notice of availability of
funds. A simultaneous announcement of the notice will be made in Commerce Business Daily and direct notification will be made to many hundreds of people who have already indicated an interest in submitting a proposal.

Section 295.5 Intellectual Property Rights; Licensing Fees and Royalty Payments—Comment Summary (22 Comments)

There was substantial confusion and concern expressed by many respondents concerning the intellectual property, licensing, and royalty provisions. An astute comment was made by one respondent who said: "The provisions for intellectual property specified in the Proposed Regulations are governed by Federal law and hence must be taken as given." Many of the points made by the respondents were thoroughly discussed during the review of the proposed rule.

The resulting provisions in § 295.5 are a result of the need to be compatible with existing Federal laws and policies and at the same time to assure that business participants in the program have adequate incentives for commercialization or further research and development.

It was clear from the comments that the deletion of "shall" to clarify the intent and some potentially confusing language was deleted.

Two concerns were expressed about the statement "In general, the Program will encourage the publication of research results by funding recipients in a timely fashion." It appears that this statement was misinterpreted. Decisions on whether to publish or not will be made by the awardees, not by the Technology Administration. Where it is appropriate to publish, such publication should be made only after suitable protection for intellectual property has been secured through patents and copyrights. The Technology Administration wants to foster widespread use within the U.S. of new technological approaches developed with ATP funds. "Publication" in this context is not intended to disclose proprietary information, but rather is intended to make other companies aware of the possibilities of the new technology so that they might license it from the developer and incorporate it into the widest possible range of new products. The issue of appropriate publication of research results is clarified in § 295.3(d).

Confusion was also evident about the allocation of ownership rights to inventions made in the course of ATP funded research. In clarification, ATP funding recipients will normally be granted the right to take ownership to those inventions, under the authority of the Bayh-Dole Act and related Presidential policy statements.

Finally, the comments reflected confusion about the collection of royalties from inventions made in the course of research funded by ATP. To clarify, the Government will be entitled only to a share of royalties earned by the funding recipient as a result of the granting of patent licenses by the funding recipient to third parties. In addition, a factor was added to criterion 5 to reflect the intent of the Government to recover its share of royalties.

Section 295.6 Confidential Information (No Comments on This Section)

Section 295.7 Unspent Balances of Federal Funds (No Comments on This Section)

Section 295.8 Coordination/ Cooperation With Other Federal Agencies—Comment Summary (3 Comments)

The three comments received urged NIST to draw upon the expertise of State and Federal agencies as well as outside organizations where appropriate and urged NIST to take into account expressions of interest on the part of State and Federal agencies.

No changes to this section of the draft rule were required to respond to those comments. Section 295.8 makes it clear that NIST will coordinate with other agencies as appropriate. Expressions of support from State or Federal agencies can be included as appendices to proposals and such expressions of support will be taken into account in scoring proposals to the extent that such expressions of support address the criteria in the rule. NIST intends to use outside reviewers as required and will call upon organizations such as those noted in the comments for assistance if proposals are received for which such organizations have expertise not possessed by NIST that can be utilized in the review process, provided that no conflicts of interest are present and that outside reviewers are willing to adhere to nondisclosure requirements.

Section 295.9 Special Financial Reporting Requirements—Comment Summary (3 Comments)

One respondent expressed concern about potentially burdensome accounting/audit provisions. Two expressed concerns about the wording of this section with respect to requiring that NIST not fund existing or planned research programs that would not be conducted in the same time period without ATP funds.

The language in this section was taken directly from the ATP legislation, and therefore, it would be inappropriate to make changes from the draft rule. Audits conducted as a result of awards would be no more extensive than normal Federal audits designed to ensure that Federal funds have been spent appropriately. Most companies or joint ventures would not find such audits burdensome. In some cases, audits can be performed by independent certified public accountants. Auditors would focus on simple compliance issues, such as verifying that ATP funds were used for direct costs rather than indirect costs as required by the ATP legislation.

The language of section 9 with respect to not funding R&D that would have been conducted in the same time period without ATP funds is also taken directly from the legislation and thus cannot be changed. The intent of the legislation was to avoid funding projects that would have been completed in the same time period whether or not Federal funds were available. This constraint should not be a deterrent for most potential ATP proposers.

Section 295.10 NIST Technical Assistance to Recipients of Awards—Comment Summary (1 Comment)

One individual's concern over possible constraints on NIST was the only comment on the language of this section. No change in the draft rule was deemed necessary. NIST is not precluded from organizing consortia to support NIST programs so long as such consortia do not request ATP funds to support NIST. Proposals to the ATP for joint ventures that involve collaboration with NIST (but not funding for NIST) are entirely consistent with the intent of the ATP, and in fact, such collaboration is encouraged. To ensure objectivity, NIST will rely primarily on outside reviewers to judge the merit of proposals that involve collaboration with NIST.

Subpart B—Assistance to U.S. Joint Research and Development Ventures

Section 295.20 Types of Assistance Available—Comment Summary (3 Comments)

Concerns were expressed by one large company that the program is not sufficiently targeted at small businesses. Concerns were also expressed by one small company that the program is not sufficiently targeted at small
businesses. The Technology Administration believes that the burden of proof in this regard is appropriate and that no changes are required.

One respondent commented to the effect that matching funds requirements would be much more difficult to meet for small businesses than for large businesses. The requirement that the ATP provide no more than a minority share to joint ventures is explicit in the legislation and thus cannot be changed. But each member of a joint venture need not provide matching funds whatsoever if that is agreeable to other members of the consortium. Also, the matching funds requirement does not apply to small (or large) businesses that apply for individual grants or cooperative agreements under subpart C of the rule. Two respondents commented on the inappropriateness of emphasizing areas where NIST has expertise. This provision of the rule has been deleted.

One respondent urged NIST to target the service sector. Proposals for R&D in service industries will be reviewed using the same criteria as those for other industries. If service industry proposers can show that their proposed work will have a larger impact on U.S. economic growth and productivity than R&D proposed by other industries, their proposals will be funded.

A letter from two members of the Congress suggested that the rule include explicit criteria for the participation of foreign-owned companies, such as the criteria included in legislation now being considered by the Congress. While the Department of Commerce is sensitive to these concerns, after careful consideration of this suggestion the Technology Administration has concluded that it would be inappropriate to write into the rule criteria for foreign participation contained in draft legislation.

The Technology Administration believes it is not necessary to have explicit criteria regarding the participation of foreign owned or controlled firms included in the rule in order to protect U.S. competitiveness, which is the focus of the ATP. The rationale for this assertion is as follows: Companies or joint ventures will not score highly unless they show unambiguously that their proposals will enhance U.S. competitiveness. The burden of proof will be on those submitting proposals which include the participation of foreign owned or controlled firms to convince the reviewers that the proposed work would enhance U.S. competitiveness more than that of other proposals that do not include the participation of foreign owned or controlled firms. The Technology Administration will seek to ensure that the benefits of ATP funded research will flow to the U.S. economy through the judicious use of the authority noted in §295.23 to withhold from funding recipients ownership of patents resulting from ATP funded research.

Section 295.21 Qualification of Applicants—Comment Summary (14 Comments)

No changes were made to the wording of this section, but the explanatory material which follows sheds additional light on the interpretation of this section and should alleviate some of the concerns.

The respondents who commented on this section generally agreed that need to clarify how this section will actually be interpreted by NIST with respect to the definition of and eligibility of “United States joint research and development ventures” and “independent research centers.” There are a large number of technology R&D centers, technology transfer centers, and economic development organizations that have been established by universities, by state and local government agencies, by industrial consortia, and by combinations of these. There are considerable variations among them regarding charters, management arrangements, and funding. Questions of eligibility tend to arise for centers that are quasi-government or quasi-university.

While universities cannot be funded directly and cannot apply independently, universities can receive funding as part of a joint venture team. In such cases, the proposal would have to make it clear that the venture was industry-led and not a subterfuge to funnel ATP funds to a university through a cooperating business or businesses. Research or technology transfer centers established by universities and/or government agencies would be eligible for direct funding if they are independent research organizations if such centers are genuinely independent of the university or government agency in terms of both financial and management control. For example, a center located on a university campus and utilizing support services from the university would be eligible if: (1) its purpose was research and development oriented towards industrial needs, (2) its management were independent of the normal academic management hierarchy of the university, and (3) the center had a budget of its own such that its funds were not co-mingled with normal university academic funds. In such a center, most of the technical staff would be expected to be engaged full-time in R&D activities rather than in teaching. There will undoubtedly be some institutions that fall into gray areas, and in such cases we suggest that the institution contact NIST to seek a determination of eligibility.

Universities or government agencies can serve as catalysts to organize joint ventures, but the proposal from the joint venture must meet the criteria of the rule.

It should be noted that some respondents endorsed the policy of not providing funding to government agencies or directly to universities.

The issue of the participation of foreign owned or controlled businesses in joint ventures was raised by more than one respondent. (See the comment summary for section 20 for a discussion of this point.)

One respondent urged that the rule include a set-aside for minority-owned businesses. Because the Congress did not authorize via the ATP enabling legislation a set-aside for minority businesses, no set-aside was included in the rule. But minority businesses are strongly encouraged to participate in this program.

Section 295.22 Limitations on Assistance—Comment Summary (2 Comments)

This section stated that no awards are to be made unless Federal aid is needed to form a joint venture quickly. Both of the organizations that commented on this section questioned whether existing consortia are eligible. This section reproduces the actual language of the legislation, accordingly it was not changed. This provision will be interpreted such that existing joint ventures can submit proposals only if the proposed area of work is not one already being pursued by the joint venture. Accordingly, proposers from existing joint ventures must verify in the proposal that the program being proposed strikes out in a new direction and is not merely to increase support for a program already being carried out by the joint venture.

Section 295.23 Dissolution of Joint Ventures—Comment Summary (1 Comment)

The only concern expressed over this section involved the feasibility of the Federal government being entitled to a
Section 295.31 Qualifications of Applicants—Comment Summary (13 Comments)

The comments in this section closely parallel those in section 21. The discussion for section 21 applies equally well here and no changes to the draft rule were necessary.

Section 295.32 Limitations on Assistance (2 Comments)

Two respondents questioned the appropriateness of the $2 million restriction on funding to individual firms. The language of the rule cannot be changed lest it be inconsistent with the legislation. The $2 million limitation is required by section 5131 of Public Law 100-418.

Because of the confusion concerning the funding of "indirect costs" cited in the comments on § 295.4, this section was modified to make explicit that the restriction on funding indirect costs applies only to single firm applicants.

Effective Date of the Final Rule

This final rule relating to grants, benefits, and contracts is exempt from the delayed effective date requirement, and accordingly, under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553), is therefore being made effective immediately without a 30 day delay in effective date.

Classification

Executive Order 12291

This document is not a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not have an annual impact on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the time this rule was proposed that, if it were adopted as proposed, it would not have a significant economic effect on a substantial number of small entities requiring a flexibility analysis under the Regulatory Flexibility Act. This is because the program is entirely voluntary for the participants that seek funding.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment is not required to be prepared under the National Environmental Policy Act.

Paperwork Reduction Act

This rule contains a collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget under control number 06930009 for use through August 31, 1991.

Executive Order 12372

The Advanced Technology Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, the Technology Administration has determined that Executive Order 12372 is not applicable to this program.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 295

Science and technology, Inventions and patents, Laboratories, Research, Scientists.

Robert M. White,
Under Secretary, Technology Administration.

For reasons set forth in the preamble, 15 CFR chapter II is amended as follows:

CHAPTER II—NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY, DEPARTMENT OF COMMERCE

1. By revising the chapter heading to read as set forth above.

2. By adding subchapter K consisting of part 295 to read as follows:

Subchapter K—Advanced Technology Program Procedures

PART 295—ADVANCED TECHNOLOGY PROGRAM

Subpart A—General

Sec.
295.1 Purpose.
295.2 Definitions.
295.3 Criteria for selection.
295.4 Notice of availability of funds.
295.5 Intellectual property rights; licensing fees and royalty payments.
295.6 Protection of confidential information.
295.7 Unobtrusive balances of federal funds.
295.8 Coordination/Cooperation with other federal agencies.
Subpart B—Assistance to U.S. Joint Research and Development Ventures

§ 295.20 Types of assistance available.

§ 295.21 Qualification of applicants.

§ 295.22 Limitations on assistance.

§ 295.23 Dissolution of joint research and development ventures.

§ 295.24 Registration.

Subpart C—Assistance to U.S. Business

§ 295.30 Types of assistance available.

§ 295.31 Qualification of applicants.

§ 295.32 Limitations on assistance.


Subpart A—General

§ 295.1 Purpose.

(a) The purpose of the Advanced Technology Program is to assist United States businesses to carry out research and development on pre-competitive generic technologies. These technologies are:

(1) Enabling, in that they offer wide breadth of potential application and form an important technical basis for future product-specific applications; and

(ii) High value, in that when applied, they offer significant benefits to the economy.

(b) In the case of joint research and development ventures involving potential competitors funded under the Program, the willingness of firms to commit significant amounts of corporate funds to the venture will be taken as an indication that the proposed research and development is pre-competitive. For joint ventures that involve firms and their customers or suppliers or for single firms not proposing cooperative research and development, their willingness to adequately address technology transfer requirements to assure prompt and widespread use and protection of results by participants and, as appropriate, other U.S. businesses may characterize their research and development as pre-competitive.

(c) These rules prescribe policies and procedures for the award of grants and cooperative agreements under the Advanced Technology Program, in order to ensure the fair, equitable and uniform treatment of all proposals for assistance under this Program. While the Advanced Technology Program is authorized to enter into contracts to carry out its mission, these rules address only the award of grants and cooperative agreements.

§ 295.2 Definitions.

(a) The term “award” includes grants and cooperative agreements.

(b) The term “generic technology” means a concept, component, or process, or the further investigation of scientific phenomena, that has the potential to be applied to a broad range of products or processes. Note: A generic technology may require subsequent research and development for commercial application.

(c) The term “indirect costs” means those costs that are incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Because of the diverse characteristics and accounting practices of nonprofit and for-profit organizations, it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs for many organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting. For example, at educational institutions indirect costs might include the following cost categories:

(i) Depreciation and use allowances, general administration and general expenses, sponsored projects administration expenses, operation and maintenance expenses, library expenses, departmental administration expenses, and student administration and services.

(ii) The term “joint research and development venture” or “joint venture” means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of:

(A) To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture; or

(B) To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.

(c) The term “matching funds” includes the following:

(1) Dollar contributions from state, county, city, company, or other sources;

(2) The applicant’s share of revenue from licensing and royalties as per § 295.5(c);

(3) Fees for services performed;

(4) In-kind contributions of full-time personnel;

(5) In-kind contributions of a pro-rata share of part-time personnel that the Program deems essential to carrying out the proposed experimental work program and who devote at least 50% of their time to the program; and

(6) In-kind value of equipment that the Program deems essential to carrying out the proposed experimental work program, which may include either the purchase cost of new equipment or the depreciated value of previously purchased equipment.
The deprecation method to be used for the matching fund determination shall be the internal depreciation accounting method used by the applicant for that equipment prior to the award. The value of equipment will be further pro-rated according to the share of total use dedicated to carrying out the proposed ATP work program. The total value of equipment expenditures allowable under the match may be applied in the award year expended or pro-rated over the duration of award years. The total in-kind value of equipment expenditures can not exceed 30% of the applicant’s total annual share of matching funds. The total in-kind value of part-time personnel can not exceed 20% of the applicant’s total annual share of matching funds.

(f) The term “person” shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(g) The term “pre-competitive technology” means research and development activities up to the stage where technical uncertainties are sufficiently reduced to permit preliminary assessment of commercial potential and prior to development of application-specific commercial prototypes. Note: At the stage of pre-competitive research and development, for example, results can be shared within a consortium that can include potential competitors without reducing the incentives for individual firms to develop and market commercial products and processes based upon the results.

(h) The term “Program” means the Advanced Technology Program.

(i) The term “Secretary” means the Secretary of Commerce or his designee.

§ 295.3 Criteria for selection.

(a) The selection process for awards under the Program will be a four step process based on the criteria listed in paragraph (b) of this section. In the first step, proposals that do not meet the requirements of this rule or the program announcement will be rejected; thus, for example, proposals will be rejected that do not meet requirements set out in the Notice of Availability of Funds issued pursuant to § 295.4, or in the case of joint ventures, proposals that request more than a minority share of funding. The second step will be a review to determine whether proposals have scientific and technical merit (using the criterion in paragraph (b)(1) of this section). Only those proposals which score very high with respect to scientific and technical merit will be further considered. Proposals will be rated as “not recommended” and “recommended.” Only those proposals in the “recommended” category will be further considered. In the third step, reviewers with expertise in fields such as technology, finance, and technology transfer will be used to supplement reviewers familiar with the technology itself, and a total score reflecting all criteria listed in paragraph (b) of this section will be determined for each proposal. The highest ranking proposals will be designated “finalists.” Finalists will be asked to make oral presentations on their proposals, and in cases where special facilities are involved with which the reviewers are not familiar, site visits may be required. Based on the oral proposal presentations and/or site visits, adjustments may be made to the scores and the highest ranking proposals will be designated as finalists. The fourth step will be to select funding recipients from among the finalists, based upon:

(1) Assuring an appropriate distribution of funds among technologies and their applications,

(2) The rank order of the applications on the basis of all selection criteria (§ 295.3(b)); and

(3) The availability of funds.

If a joint venture is ranked as a finalist in step 3, but the Program determines that the proposing organization contains weaknesses in its structure or cohesiveness that may substantially lessen the probability of the proposed program being successfully completed, the Program may inform the applicant of the deficiencies and enter into negotiations with the applicant in an effort to remedy the deficiencies. If appropriate, funding in the lesser amount of 10 percent of the amount originally requested by the applicant or $50,000 may be awarded by the Program to the applicant to assist in overcoming the organizational deficiencies. If the Program determines within six months of this award that the organizational deficiencies have been corrected, the Program may award the remaining funds requested by the applicant to that applicant.

(b) The evaluation criteria to be used in selecting any proposal for funding under this program, and their respective weights, are:

(1) Scientific and Technical Merit of the Proposal (20 percent)

(i) Quality and innovativeness of the proposed technical program (i.e., uniqueness with respect to current industry practice).

(ii) Appropriateness of the technical risk and feasibility of the project (i.e., is there sufficient knowledge base to justify the level of technical risk involved. Projects should press the state of the art while still demonstrating feasibility).

(iii) Coherency of technical plan and clarity of vision of technical objectives.

(iv) Adequacy of systems-integration and multidisciplinary planning including integration of appropriate downstream or upstream production, manufacturing, quality assurance, and customer service requirements.

(2) Potential Broad-based Benefits of the Proposal (20 percent)

(i) Potential broad impact on U.S. technology and knowledge base.

(ii) Potential to improve U.S. economic growth and the productivity of a broad spectrum of industrial sectors or businesses.

(iii) Timeliness of proposal (i.e., the potential project results will not occur too late to be competitively useful).

(3) Technology Transfer Benefits of the Proposal (20 percent)

(i) Evidence that if the project is successful, the participants will pursue further development of the technology toward commercial application.

(ii) Project plan adequately addresses technology transfer requirements to assure prompt and widespread use and protection of results by participants and, as appropriate, other U.S. businesses.

(4) Experience and Qualifications of the Proposing Organization (20 percent)

(i) Adequacy of proposer’s staffing, facilities, equipment, and other resources to accomplish the proposed program objectives.

(ii) Quality and appropriateness of the full-time technical staff to carry out the proposed work program and to identify and overcome technical barriers to meeting project objectives.

(iii) For proposals involving laboratory prototype development, evidence of availability of adequate design and manufacturing tools appropriate to the prototype.

(5) Proposer’s Level of Commitment and Organizational Structure (20 percent)

(i) Level of commitment of proposer as demonstrated by contribution of personnel, equipment, facilities, and matching funds.

(ii) For joint ventures, appropriateness of the structure of the proposed venture organization in terms of composition of participants (i.e., vertical and/or horizontal integration).

(iii) For joint ventures, appropriate participation by small businesses.

(iv) Evidence of a strong commitment by proposer to complete and, if appropriate, provide support for
continuation of the program beyond the period of federal funding.
(v) Potential return to the U.S. government as provided for in §295.5(c).

Each of the subcriteria within a category shall be weighted equally. However, no project will be funded in the absence of a finding of scientific and technical merit by the reviewers.

§295.4 Notice of availability of funds.
(a) The Program shall periodically publish a notice in the Federal Register inviting interested parties to submit proposals for funding under the Program. Applications will be considered for funding only when submitted in a timely manner in response to a specific notice in the Federal Register inviting applications for funding.

(b) All notices published in the Federal Register in accord with paragraph (a) of this section shall include basic information about the amount of funds available, the approximate number of awards, types of awards, closing dates, the name, address and telephone number of the contact person, a requirement that proposals be submitted with a Standard Form 424, and any other appropriate guidance.

(c) Notices under paragraph (a) of this section shall also state that awards under the Program shall be subject to all Federal and Departmental regulations, policies and procedures applicable to financial assistance awards, and shall require that funds awarded by the Program under subpart C shall be used only for direct costs and not for indirect costs, profits, or management fees of the funding recipients. Notices shall also include the notification that section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A “Certification for Contracts, Grants, Loans, and Cooperative Agreements” and the SF-LLL, “Disclosure of Lobbying Activities” (if applicable), will be required to be submitted with the application. Also, notices shall inform applicants that they are subject to Government-wide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 28, and in accordance with the Drug-Free Workplace Act of 1988, such applicant must make the appropriate certification as a “prior condition” to receiving a grant or cooperative agreement.

§295.5 Intellectual property rights; licensing fees and royalty payments.
(a) Patents. Awards under the Program will follow the policies and procedures on ownership to inventions made under grants and cooperative agreements that are set out in Public Law 96–517 (35 U.S.C. chapter 18), the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies Dated February 18, 1983, and part 401 of title 37 of the Code of Federal Regulations, as appropriate. These policies and procedures generally require the Government to grant to funding recipients the right to elect to obtain title to any invention made in the course of the conduct of research under an award, subject to the reservation of a Government license, if the purpose of the award is the conduct of experimental, developmental or research work. Exceptions to this rule will only be made
(1) When the funding recipient is not located in the United States or does not have a place of business in the United States or is subject to the control of a foreign government;
(2) In exceptional circumstances when the Secretary determines that restriction or elimination of the right to obtain title to any subject invention will better promote the commercialization of the invention by United States industry and labor.

(b) Copyrights. Except as otherwise specifically provided for in an Award, funding recipients under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, distribute copies to potential users in the United States, and perform publicly and display publicly, by or on behalf of the Government.

(c) Royalty/Licensing Payments. For technologies resulting from an award under this program, the Federal Government shall obtain a share of the licensing fees and royalty payments made to and retained by a business or joint research and development venture receiving funds under these procedures in an amount proportional to the Federal share of the costs incurred by the business or joint venture as determined by independent audit.

(d) Publication of Research Results. Although the program will encourage the timely publication of research results by funding recipients, the decision on whether to publish or not will be made by the funding recipient(s). Unpublished intellectual property owned and developed by any business or joint research and development venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program. The licenses granted to the Government under §295.5(b) shall not be considered a waiver of this requirement.

§295.6 Protection of confidential information.
As required by section 276n(d)(5) of title 15 of the United States Code, the following information obtained by the Secretary on a confidential basis in connection with the funding of any business or joint research and development venture receiving funding under the program shall be exempt from disclosure under the Freedom of Information Act—
(1) Information on the business operation of any member of the business or joint venture;
(2) Trade secrets possessed by any business or any member of the joint venture.

§295.7 Unspent balances of Federal funds.
If a business or joint research and development venture receiving funds under these procedures fails before the completion of the period for which an award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds
shall be returned by the recipient to the Program.

§ 295.8 Coordination/Cooperation with other Federal agencies.

So as to avoid any unnecessary duplication of effort and to increase the possibilities of joint funding of projects of common interest with other agencies, the Secretary intends to coordinate with other agencies as appropriate, but particularly where the Secretary determines that the subject is of substantial interest to another agency.

§ 295.9 Special financial reporting requirements.

Each award under the Program shall contain procedures regarding financial reporting and auditing to ensure that awards are used for the purposes specified in these procedures, are in accordance with sound accounting practices, and are not funding existing or planned research programs that would be conducted in the same time period in the absence of financial assistance under the program.

§ 295.10 NIST technical assistance to recipients of awards.

(a) Under the Federal Technology Transfer Act of 1986, the National Institute of Standards and Technology of the Technology Administration has the authority to enter into cooperative research and development agreements with non-Federal parties to provide personnel, services, facilities, equipment, or other resources except funds toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory. In turn, the National Institute of Standards and Technology has the authority to accept funds, personnel, services, facilities, equipment and other resources from the non-Federal party or parties for the joint research effort. Cooperative research and development agreements do not include procurement contracts or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code.

(b) In no event will the National Institute of Standards and Technology enter into a cooperative research and development agreement with a recipient of awards under the Program which provides for the payment of Program funds from the award recipient to the National Institute of Standards and Technology.

Subpart B—Assistance to U.S. Joint Research and Development Ventures

§ 295.20 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(1). Such assistance includes but is not limited to:

(a) Partial start-up funding for joint research and development ventures.

(b) A minority share of the cost of joint research and development ventures for up to five years.

(c) Equipment, facilities and personnel for joint research and development ventures.

§ 295.21 Qualification of applicants.

Assistance under this subpart will be available to United States joint research and development ventures, including those which have as members universities, independent research organizations, and governmental entities. However, the Program will not provide funding directly to any governmental entity.

§ 295.22 Limitations on assistance.

No awards are to be made unless, in the judgment of the Secretary, Federal aid is needed if the industry in question is to form a joint venture quickly.

§ 295.23 Dissolution of joint research and development ventures.

Upon dissolution of any joint research and development venture receiving funds under these procedures or at a time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

§ 295.24 Registration.

Joint research and development ventures selected for funding must provide notification to the Department of Justice or to the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

Subpart C—Assistance to U.S. Businesses

§ 295.30 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(2). Such assistance includes but is not limited to entering into cooperative agreements with United States businesses, especially small businesses, and with independent research organizations.

§ 295.31 Qualification of applicants.

Awards under this subpart will be available to all United States businesses and independent research organizations. However, the Program will not directly provide funding to any governmental entity or academic institution.

§ 295.32 Limitations on assistance.

Awards under this subpart may not exceed $2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session. No funding for indirect costs shall be available for awards made under this subpart.

[PR Doc. 90-17177 Filed 7-23-90; 8:45 am]
DEPARTMENT OF COMMERCE
Technology Administration
[Docket No. 900130-0153]

Invitation for Proposals Under Advanced Technology Program

AGENCY: Technology Administration, Commerce.

ACTION: Notice; invitation for proposals; notice of meeting.

SUMMARY: The Technology Administration invites applications for funding under the Advanced Technology Program (ATP), and announces a public meeting for all parties interested in making such an application. Anyone interested in applying for funding under this Program must contact the Program at the address shown below in order to obtain materials for applications. The Advanced Technology Program is Program Number 11,612 in the Catalog of Federal Domestic Assistance.

CLOSING DATE FOR APPLICATIONS: Proposals must be received no later than 5 p.m. e.d.t. on September 24, 1990.

DATE OF PUBLIC MEETING: The public meeting for parties considering making application for funding under the Advanced Technology Program will be held beginning at 9:30 a.m. on August 22, 1990 in the Red Auditorium, Administration Building, National Institute of Standards and Technology, Quince Orchard and Clopper Roads, Gaithersburg, MD, exit 10 off Interstate 270.

NUMBER OF PROPOSALS: Applicants must submit one signed original plus nine (9) copies of their proposal numbered 1 through 10 along with the Standard Form 424 to The Advanced Technology Program at the address below.

ADDRESSES: Advanced Technology Program, Proposal Solicitation ATP 90-01, room B110, Technology Bldg. (Bldg. 225), National Institute of Standards and Technology, Quince Orchard and Clopper Roads, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: To receive application materials and additional program information, call the Advanced Technology Program Office at (301) 975-5167 or write to the address shown above. The ATP facsimile number is (301) 869-1150.

SUPPLEMENTARY INFORMATION:

Background

The Advanced Technology Program (ATP) is managed by the National Institute of Standards and Technology (NIST), an element of the Technology Administration with the Department of Commerce. ATP was established by section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, 15 U.S.C. 278n), and is operated under program procedures published at part 295 of title 15 of the Code of Federal Regulations. The ATP, which received its initial appropriation in Fiscal Year 1990, will assist U.S. businesses to improve their competitive position and promote U.S. economic growth by accelerating the development of a variety of pre-competitive generic technologies by means of grants and cooperative agreements. NIST intends to select proposals for funding approximately three months after the closing date for applications.

Research and development activities cover a wide spectrum, from basic research at one extreme to the development of specific new products at the other. The Advanced Technology Program is intended to foster the development of technology that is beyond basic research, but not close to the stage of new product development. Thus the ATP will include the development of laboratory prototypes intended to establish technical feasibility but not prototypes of commercial products. The ATP will not fund projects to demonstrate commercial viability or projects involving market testing of specific products.

The purpose of the ATP as stated in Public Law 100-418 is to assist U.S. companies in creating and applying "generic technology" and research results so as to commercialize new technology more quickly and improve manufacturing processes. While it is hoped and intended that new products will ultimately result from work funded by the ATP, the program will not focus on giving participating companies a competitive advantage for specific new products. Rather, the focus will be on supporting work that has great economic potential with multi-sector benefits.

Accordingly, joint ventures are emphasized in the legislation establishing the ATP. This legislation states that the ATP should "avoid providing undue advantage to specific companies."

Invitation for Proposals

The Technology Administration invites applications for funding for two types of proposals: (1) Technology Development Proposals from individual United States businesses or independent research institutes in amounts not to exceed $2 million over three years, and (2) Technology Development Proposals from qualified United States joint research and development ventures where ATP support will serve as a catalyst for the proposed joint venture, and provided however that the ATP share shall be a minority share of the cost of the venture for up to five years, and subject to the availability of ATP funds. Future or continued funding for multi-year projects will be at the discretion of the Technology Administration and will be contingent on such factors as satisfactory performance and the availability of funds.

Funds Available for Grants and Cooperative Agreements

Approximately $91 million will be available for awards in the form of grants and cooperative agreements resulting from this solicitation. The President's FY 1991 budget requests an additional $10 million for the ATP (including funding to administer the program). Depending on the number and quality of proposals received from this solicitation, NIST reserves the right to allocate all or portion of the funds available in the FY 1991 budget to projects selected through this competition. The actual obligation of FY 1991 funds is contingent on their appropriation. The number of awards will depend on the amount of funding requested by the highest ranked proposals, and is likely to be in the 5-20 range.

Applicant Eligibility

ATP funding is available to United States businesses and certain United States joint research and development ventures. Eligible joint research and development ventures are defined in § 235.2(4) of the ATP Procedures. The information package for applicants contains the ATP Procedures.

ATP funds may not flow directly to universities, Federal laboratories, or state agencies, although universities and federal laboratories may participate as members of an industry-led consortium and universities may receive funding via industry members of the consortium. Nonprofit independent research laboratories may also participate and receive funding either directly or indirectly. The participation of universities and Federal laboratories through cooperative research and development agreements in consortia funded by the ATP is encouraged. As a matter of policy, NIST's intramural programs cannot receive funding from a...
Preparation of Proposals and Reporting Requirements

The ATP application package contains detailed guidelines for the preparation of proposals. Also included is information on reporting requirements.

Award Criteria for Technology Development Proposals

Criteria that will be used to evaluate technology development proposals submitted in response to this notice appear in the ATP Procedures which have been published at § 295.3(b) of Title 15 of the Code of Federal Regulations. The information package for applicants contains the ATP Procedures.

The Proposal Review Process

The proposal review process is described in the ATP Procedures at § 295.3(a) of Title 15 of the Code of Federal Regulations. The information package for applicants contains the ATP Procedures. The review process is expected to take approximately three months, although the process might take longer if an unusually large number of proposals is received.

Letters of Intent

NIST requests that potential proposers submit a one page letter of intent approximately 4-6 weeks prior to the solicitation deadline. This letter should provide the name, address, and phone number of the principal point of contact for the anticipated proposal and a brief (one paragraph) abstract of the proposal. Technical areas to be covered by the proposed program should be summarized in the abstract.

This letter of intent is optional and failure to submit such a letter will not adversely affect the proposal's rating if and when a proposal is submitted. The purpose of the letter is to aid in determining the technical areas in which proposals are likely to be submitted so that suitable panels of technical reviewers can be arranged in advance of receipt of proposals. By complying with this request, proposers can help expedite the reviews considerably and advance the date of notification to awardees.

Other Requirements, Requests, and Provisions

Applicants who have outstanding accounts receivable with the Federal Government may not be considered for ATP funding until the debts have been paid or arrangements satisfactory to the Department are made to pay the debt.

Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, cooperative agreement or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" is required to be submitted with any application for funding under ATP. Applicants for funding under ATP are subject to Government-wide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. In accordance with the Drug-Free Workplace Act of 1988, each applicant must make the appropriate certification as a "prior condition" to receiving a grant or cooperative agreement. A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment. Awards under ATP shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

Robert M. White,
Under Secretary for Technology.

[FR Doc. 90-17116 Filed 7-23-90; 8:45 am]
Part V

Department of Defense

48 CFR Part 204 et al
Department of Defense Acquisition Regulations; Miscellaneous Amendments; Interim and Final Rule
DEPARTMENT OF DEFENSE

48 CFR Parts 204, 206, 210, 215, 219, 224, 225, 244, 245, 252, 263, Appendices L and P

[Defense Acquisition Circular (DAC) 88-15]

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments; and final rules.

SUMMARY: Defense Acquisition Circular (DAC) 88-15 amends the DoD FAR Supplement (DFARS) coverage on the contract data requirements list, ordering data item descriptions, the requirement for competition in awards to colleges and universities, small business subcontracting plans, Freedom of Information and Privacy Act programs, balance of payment program exemptions for ready-mixed asphalt and portland cement concrete, restrictions on acquisitions of valves and machine tools, contractor purchasing system reviews, asset use charges, the DOD contract simplification test, and miscellaneous editorial items.

DATES: Effective Date: July 18, 1990 except for Item II, Ordering Data Item Descriptions (210.011[S-70] and 252.210-7001), which was effective June 18, 1990; Item V, Test Program on Small Business Subcontracting Plans (219.702, 219.708(b) (1) and (2), (c)(1)[S-70] and (e)(3), 252.219-7005, and 252.219-7016), which is effective October 1, 1990; and Item XII, Waiver of Asset Use Charges (245.405(f)), which was effective April 30, 1990.

Comment Date: Comments on the interim rule, Item X, valves and machine tools (225.7000, 225.7001, 225.7008, 225.7012, 225.7012-1, 225.7012-2, 225.7012-3, 225.7012-4, 225.7012-5, and 252.225-7023), should be submitted to the address below by August 23, 1990, to be considered in formulating the final rule. Please cite DAR Case 90-529 in all correspondence concerning this rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Ms. Lucille Hughes, DAR Council, OASD(P)/DARS, c/o OASD(PS)(MARS), Room 3D139, Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Ms. Lucille Hughes, telephone (202) 697-7206.

SUPPLEMENTARY INFORMATION:

A. Determination To Issue Interim Rule

A determination has been made under authority of the Secretary of Defense to issue the regulations in Item X of DAC 88-15 as an interim rule. Compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-377 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

B. Background

The DoD FAR Supplement is codified in chapter 1 title 48 of the Code of Federal Regulations. The October 1, 1989 revision of the CFR is the most recent edition of that title. It includes amendments to the 1988 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 88-1 through 88-12.

DAC 88-15, Item X. DFARS 225.7000 is revised to implement restrictions on the use of appropriated funds by the Department of Defense in purchasing machine tools and powered and non-powered valves. These restrictions are imposed by Public Law 99-591 and subsequent DoD Authorization and Appropriations Acts.

C. Public Comments

DAC 88-15, Item X

This item is published as an Interim rule. Public comment is invited.

DAC 88-15, Item III

This item is for informational purposes and does not contain revisions to the DFARS.

DAC 88-15, Items I, II, IV, VII, VIII, X, XII, XIII, and XIV

Public comments were not solicited for these revisions because the revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures.

DAC 88-15, Items V, VI, and IX

These rules were published for public comment. The comments that were received were considered in development of the final rule:

Item V. A proposed rule was published in the Federal Register April 11, 1990 (55 FR 13744).

Item VI. A proposed rule was published in the Federal Register April 25, 1990 (55 FR 17465).

Item IX. A proposed rule was published in the Federal Register March 22, 1990 (55 FR 10637).

D. Regulatory Flexibility Act


The Regulatory Flexibility Act does not apply because these rules are not significant revisions within the meaning of Public Law 98-377. However, comments from small entities concerning the affected DoD FAR Supplement Subparts will be considered in accordance with section 610 of the Act. Such comments must be submitted separately. Please cite DAR Case 90-610 in correspondence.

DAC 88-15, Item V

This final rule will not 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 it merely permits large firms to take credit toward their subcontracting goals on work performed on Indian land or in joint venture with Indian organizations. There were no comments received in response to a notice of proposed rule published April 11, 1990 (55 FR 13744) which addressed the Regulatory Flexibility Act.

DAC 88-15, Item VI

This final rule will not 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 it merely permits large firms to take credit toward their subcontracting goals on work performed on Indian land or in joint venture with Indian organizations. There were no comments received in response to a notice of proposed rule published April 25, 1990 (55 FR 17465) which addressed the Regulatory Flexibility Act.

DAC 88-15, Item IX

This final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it has very limited application. There were no comments received in response to the March 22, 1990 notice (55 FR 10637) which suggested an impact.

DAC 88-15, Item X

This interim rule is not expected to have a significant economic impact upon a substantial number of small entities because it imposes restrictions on the acquisition of foreign products and provides a preference for domestic items. A Regulatory Flexibility Act analysis has not been prepared. However, comments from small entities will be considered in formulating the final rule.
This final rule will not 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 revision merely extends the current rule.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because these rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

DAC 88-15, Item I

The Paperwork Reduction Act applies. This rule is based on the OMB terms of clearance under OMB Control Number 0704-0188.

DAC 88-15, Item V

The information collection requirements in this rule do not require the approval of OMB under 44 U.S.C. 3501 because they are based on a voluntary test program which will affect less than 10 contractors. The test program is based on section 834 of Public Law 101-189. The associated coverage will impact OMB Control Numbers 9000-0006 (SF 294) and 9000-0007 (SF 295). Overall, a decreased burden will result because contractors will no longer be required to submit SF 294 and subcontracting plans on a contract by contract basis. Instead, plans and reporting will be done on a company wide basis. In accordance with section 834 of Public Law 101-189, the results of the test program shall be reported to the Committees on Armed Services and on Small Business of the Senate and the House of Representatives.

List of Subjects in 48 CFR Parts 204, 206, 210, 215, 219, 224, 225, 244, 245, 252, and 253

Government procurement.

Dated: July 16, 1990.

Claudia L. Naugle, Executive Editor, Defense Acquisition Regulatory Council.

All DoD FAR Supplement and other directive material contained in this circular is effective July 16, 1990, unless otherwise specified in the Item summary. Material effective July 16, 1990, is to be used upon receipt.

Solicitations issued before receipt of the circular do not have to be amended to include the new or revised clauses or forms. See the guidance in DoD FAR Supplement 201.301(S-70)[4].

Defense Acquisition Circular (DAC) 15 amends the Defense Federal Acquisition Regulation Supplement (DFARS) 1988 edition, prescribes procedures to be followed, and provides informational interest items. The following summarizes the amendments, procedures, and information.

Item I—Contract Data Requirements List

DFARS 204.7103-1, 204.7105, 204.7108-2, and 215.671-1 are revised to clarify the differences between contract exhibits and contract attachments, and specifically to preclude use of the DD Form 1423, Contract Data Requirements List, as an attachment. DFARS 253.3 is revised to include the most current version of the DD Form 1423 and to add two new forms, DD Form 1423-1 and DD Form 1423-2. These forms are to be used when there are only one or two data items.

Item II—Ordering Data Item Descriptions

Instructions to contractors on ordering data item descriptions which are included in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L, have been moved from the provision in DFARS 252.210-7001 to the provision in FAR 52.210-2, Availability of Specifications and Standards Listed in the DoD Index of Specifications and Standards (DODISS) and Descriptions Listed in DoD 5010.12-L. Departmental Letter 90-10, dated June 18, 1990, announced revision of the FAR coverage. The provision at DFARS 252.210-7001 and the prescription for its use in 210.011(S-70) are deleted.

Item III—Procurement Integrity

Section 507 of the Ethics Reform Act of 1989 suspended the requirements of section 27 of the Office of Federal Procurement Policy Act on procurement integrity for a one-year period, from December 1, 1989 through November 30, 1990. Instructions and guidance on use and application of the affected FAR clauses were provided in FAC 84-54 and in a January 11, 1990 Deputy Assistant Secretary of Defense (Procurement) memorandum.

The clause in DFARS 252.203-7002 is only partially affected by the suspension. The prohibitions and remedies of 10 U.S.C. 2397 b and c are both covered by this clause, but only b was suspended. The clause must continue to be inserted in solicitations and contracts and shall not be deleted from contracts awarded prior to December 1, 1989. Any contracts awarded after December 1, 1989 that do not contain the clause must be modified to include it. However, the provision of the clause which prohibits the offering of compensation to a person, if the compensation would violate 10 U.S.C. 2397b, and the remedies for violating this provision, shall not be applied during the suspension period.

Item IV—Requirement for Competition in Awards to Colleges and Universities

DFARS 206.302-3 is deleted and 206.302-5 is added to clarify the statutory requirement for competition in award of research and development or construction contracts to colleges and universities. The exception to full and open competition set forth in FAR 6.302-5 has additional statutory limitations imposed on its use in awards to colleges or universities for research and development or construction. These limitations are described in 206.302-5.

Item V—Test Program on Small Business Subcontracting Plans

Section 834 of Public Law 101-189 requires the DoD to establish a test program to determine whether plant, division, or company-wide small business subcontracting plans rather than individual contracts subcontracting plans will increase the opportunities for small and small disadvantaged business concerns under DoD contracts. The test program will be conducted over a three year period, beginning October 1, 1990, in accordance with a test plan entitled, "Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans."

Under this test, the Military Departments and Defense Agencies will designate contracting activities to select contractors for participation in the program and to negotiate the plant, division, or company-wide comprehensive subcontracting plans. Beginning October 1, 1990, designated contract administration activities will, through comprehensive change orders, substitute the negotiated and approved comprehensive plans for the individual plans in all active DoD contracts with the participating contractors. All DoD contracting activities will include the negotiated and approved comprehensive plans in contracts, which require a plan, awarded participating contractors on or after October 1, 1990.

DFARS subpart 219.7 is revised and two clauses are added in part 212 for use on or after October 1, 1990, in implementation of the test program.

Item VI—Credit for Subcontracting with Indians

DFARS 252.219-7000 is revised as a result of section 632 of Public Law 101-189, to permit work performed on Indian
lands or in joint venture with an Indian tribe or tribally-owned corporation to be credited toward DoD prime contractors’ small disadvantaged business subcontracting goals.

Item VII—Deletion of DFARS Appendix L, Freedom of Information Act Program

As a result of the Defense Management Review effort, Appendix L, Department of Defense Privacy Program, is deleted. Policies and procedures for conduct of the program are contained in DoD Directive 5400.7, DoD Freedom of Information Act Program, and DoD Regulation 5400.7-R. DFARS subpart 224 is revised to reflect deletion of the Appendix.

Item VIII—Deletion of DFARS Appendix P, Department of Defense Privacy Program

As a result of the Defense Management Review effort, Appendix P, Department of Defense Privacy Program, is deleted. Policies and procedures for conduct of the program are contained in DoD Directives 5400.11, Department of Defense Privacy Program. DFARS subpart 224.1 is revised to reflect deletion of the Appendix.

Item IX—Balance of Payments Program—Exemption for Ready-Mixed Asphalt and Portland Cement Concrete

Currently, offers of foreign ready-mixed asphalt and portland cement concrete, when purchased for use outside the United States and when the foreign cost is $10,000 or less, are exempt from the 50% evaluation differential applied under the Balance of Payments Program. DFARS 225.302-7025 is amended by: (1) (a) to revise the clause to read (a) to revise the clause to read: "In summary, the modifications issued by an activity for a contract shall be numbered in the second through sixth positions as follows:

Item XI—Contractor Purchasing System Reviews

DFARS subpart 244.3 is revised to modify surveillance review requirements associated with contractor purchasing system reviews and to remove the dual listed requirements for conduct of a surveillance program.

Item XII—Waiver of Asset Use Charges

DFARS 245.403(f) is revised to extend the waiver of rental/asset use charges for use of U.S. production and research property on sales to the Government of Canada from April 30, 1990 through April 30, 1995. Notice of this revision was published in Departmental Letter 90-08, April 30, 1990.

Item XIII—DoD Contract Simplification Test

The DoD Contract Simplification Test has been concluded. The goal of the test was to develop simplified procedures to improve contracting efficiency, expand industry participation in Government acquisitions, and reduce costs. As a result of the valuable experience gained during the test, permanent Federal Acquisition Regulation coverage was developed to allow for simplified contract formats on most fixed-price contracts and annual submissions by offerors of representations and certifications. Final FAR coverage was published in Federal Acquisition Circular #4-53, November 28, 1990. The clauses at 252.252-7000 and 252.252-7001 are combined and the provisions at 252.252-7002 and 252.252-7003, which were authorized for use by test sites during the test, are deleted. Test sites should review their local guidance to delete any locally developed clauses or procedures used during the test.

Item XIV—Editorial Revisions

(a) DFARS 204.7004-3 is amended to clarify the intent by revising the last sentence to read: "In summary, the modifications issued by an activity for a contract shall be numbered in the second through sixth positions as follows:

(b) DFARS 219.301-70(b)(2) is amended by correcting the words “Subcontinent Asian” to read “Subcontinent Asian Americans”.

(c) DFARS 219.501(g)(5-72) was inadvertently omitted in DAC #88-14 and is now reinstated without change in its entirety in DAC #88-15.

(d) DFARS 219.904-4 is amended to correct the subsection cite to read “219.904-4” in lieu of “219.904-4”.

(e) Paragraph (b) of the clause at 252.219-7005 is amended by: (1) Correcting the “Subcontinent Asian (Asian Indian)” category to read “Subcontinent Asian (Asian Indian) American” (US Citizen with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, or Nepal), and (2) Correcting the words “Asian-Pacific Americans” to read “Asian-Pacific American”.

(f) DFARS 252.223-7005 is amended to revise the clause date to read “(APR 1990)” in lieu of “(JUL 1989)”.

(g) Paragraph (a)(3)(v) of the clause of DFARS 225.70-7000 is amended by removing “TSUS” and inserting “Harmonized Tariff Schedule”.

(h) DFARS 252.233-7000 is amended to revise the clause date to read “(APR 1990)” in lieu of “(FEB 1990)”.

Adoption of Amendments

Therefore, the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR parts 204, 206, 210, 215, 219, 224, 225, 244, 245, 252, and 253 continues to read as follows:


PART 204—ADMINISTRATIVE MATTERS

204.7004-3 [Amended]

2. Section 204.7004-3(a)(2)(v) is amended by revising the last sentence to read: “In summary, the modifications issued by an activity for a contract shall be numbered in the second through sixth positions as follows:

204.7103-1 [Amended]

3. Section 204.7103-1(b) is amended by removing “when used as an exhibit,”.

4. Sections 204.7105 through 204.7105-3 are revised to read as follows:

204.7105 Contract exhibits and attachments.

204.7105-1 Definitions.

(a) Exhibit. An exhibit is a document, referenced in and appended to a procurement instrument, which establishes a deliverable requirement. (b) Attachment. An attachment is a document, appended to or incorporated by reference in a procurement instrument, which describes, but does not establish, a deliverable requirement.

204.7105-2 Policy.

(a) Exhibit. Exhibits may be used as an alternative to setting forth, in the Schedule, a list of line or subline items. The term “exhibit” shall be used only to identify those appendages to the contract that establish a deliverable requirement, such as Contract Data Requirement List, DD Form 1423, or a spare parts list. The DD Form 1423 shall always be an exhibit.

(b) Attachment. Attachments do not establish deliverable requirements, but may be used to define or describe contractual requirements. Attachments may include statements of work, DD Form 254, or other documents.
204.7105-3 Procedures.

(a) Exhibits. (1) Exhibits are identified by a single or double capital letter. The letters "T" and "O" shall not be used.

(2) Exhibit identifiers need not be assigned consecutively, nor sequentially, but shall not be duplicated in the procurement instrument. They shall appear in the first or first and second positions of all applicable "Exhibit Line Item Numbers" (see 204.7106).

(3) Each page of the exhibit shall cite the procurement instrument identification number and applicable contract line or subline item number.

(4) Each exhibit shall apply to one contract line or subline item only, with the following exceptions: (i) one exhibit may apply to one or more option line items when the data required under the exhibits are identical in all respects other than the period during which the option is to be exercised; and, (ii) an exhibit may apply to more than one contract line if the exhibit is not separately priced and the exhibit deliverable is identical for all applicable contract lines. More than one exhibit may apply to a single contract line item.

(5) When the contract contains a DD Form 1423, the data may be either separately priced or not separately priced (NSP).

(i) For negotiated acquisitions of $100,000 and over, when data are separately priced, the contracting officer shall either insert the negotiated prices in Section B of the contract Schedule, or, adjust the proposed prices on the DD Form 1423. The method used shall be consistent throughout an individual contract. When the prices are put in Section B of the Schedule, blocks 17 and 18 of the DD Form 1423 shall be detached and filed elsewhere in the contract. However, when prices on the DD Form 1423 are adjusted, blocks 17 and 18 shall not be detached from the form. Also, when prices on the DD Form 1423 are adjusted, the total price of all separately priced deliverable data items attributable to a line item, shall be included parenthetically, below the "Supplies Services" for that line item, in Section B of the Schedule. Except for the requirement to parenthetically enclose data prices, mentioned in the preceding sentence, prices shall only be listed one place in the contract.

(ii) For NSP data, prices are included in priced line or subline items in the contract. Blocks 17 and 18 of the DD Form 1423 shall be detached, and may be retained elsewhere as required.

(b) Attachments shall be identified numerically.

204.7106-2 [Amended]

5. Section 204.7106-2(a), the second sentence is amended to revise the reference "(see 204.7105-3)" to read "(see 204.7105-3(a))".

PART 206—COMPETITION REQUIREMENTS

206.302-3 [Removed]

6. Section 206.302-3 is removed.

7. Section 206.302-5 is added to read as follows:

206.302-5 Authorized of required by statute.

(e) Limitations. (1) 10 U.S.C. 2361 precludes use of this exception for awards to colleges or universities for the performance of research and development, or for the construction of any research or other facility, unless—

(i) The statute authorizing or requiring award specifically—

(A) States that the statute modifies or supersedes the provisions of 10 U.S.C. 2361,

(B) Identifies the particular college or university involved, and

(C) States that award is being made in contravention of 10 U.S.C. 2361(a); and

(ii) The Secretary of Defense provides Congress written notice of intent to award. The contract can not be awarded until 180 days have elapsed since the date Congress received the notice of intent to award. Contracting activities must submit a draft notice of intent with supporting documentation through channels to the Deputy Assistant Secretary of Defense (Procurement).

(2) Because subsequently enacted statutes may, by their terms, require different results than provided in the statute, contracting officers should consult legal counsel on a case by case basis.

(3) The limitation in paragraph (e)(1) of this subsection applies only if the statute authorizing or requiring award was enacted after September 30, 1989.

PART 210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

210.011 [Amended]

8. Section 210.011(S-70) is removed and marked reserved.

PART 215—CONTRACTING BY NEGOTIATION

215.871 [Amended]

9. Section 215.871 is amended by removing paragraphs (d) and (e).
contracts with contractors who have comprehensive subcontracting plans approved under the test program authorized by section 834 of Public Law 101–189. (See 219.702(a).)

(2) DoD contracting activities shall use the clause at 252.219–7016, Liquidated Damages—Small Business Subcontracting Plan (Defense FAR Supplement Deviation), in lieu of the clause at FAR 52.219–16, Liquidated Damages—Small Business Subcontracting Plan, in contracts with contractors who have comprehensive subcontracting plans approved under the test program authorized by section 834 of Public Law 101–189. (See 219.702(a).)

[...]

PART 225—FOREIGN ACQUISITION

225.302 [Amended]
15. Section 225.302–(S–72)(1)(vii)(J) is amended by revising the dollar figure “$10,000” to read “$100,000.”
16. Section 225.7000 is revised to read as follows:

225.7000 Scope of subpart.
This subpart implements restrictions applicable to the Department of Defense on the availability of appropriated funds for the acquisition of certain commodities. However, reference should be made to the specific Department of Defense Appropriations and Authorization Acts as a check on the current applicability of these restrictions and on the applicability of these restrictions when obligating prior Fiscal Year funds. Nothing in this subpart affects the applicability of the Buy American Act or the Balance of Payments Program.

225.7001 [Amended]
17. Section 225.7001 is amended by removing the definitions of “Machine Tools” and “Valves”.

225.7008 [Removed and Reserved]
18. Section 225.7008 is removed and the section marked “Reserved”.
19. Section 225.7012 is revised to read as follows:

225.7012 Restriction on acquisition of machine tools and powered and non-powered valves.
Public Law 99–891 (DoD Appropriations Act for FY 1987) and subsequent statutes have imposed restrictions on the acquisition of certain classes of machine tools, and on powered and non-powered valves used in piping for naval surface ships and submarines. Appropriations Act restrictions apply to acquisitions made obligating certain year funds, while Authorization Act restrictions apply to fund obligations made during certain fiscal years regardless of the year in which the funds were appropriated. When both restrictions apply to an acquisition, the Appropriations Act restrictions take precedence and the procedures of 225.7012–3 apply.

20. Sections 225.7012–1 through 225.7012–5 are added to read as follows:

225.7012–1 Applicability.
(a) “Machine tools” restricted under this section are those tools listed in Federal Supply Classes of metalworking machinery in the following categories Federal Supply Classification (FSC) and Name

FSC 3405—Saw and Filing Machinery
FSC 3408—Machining Centers and Way Type Machines
FSC 3410—Electrical and Ultrasonic Erosion Machines
FSC 3411—Boring Machines
FSC 3412—Burring Machines
FSC 3413—Drilling and Tapping Machines
FSC 3414—Gear Cutting and Finishing Machines
FSC 3415—Grinding Machines
FSC 3416—Lathes
FSC 3417—Millling Machines
FSC 3418—Planers and Shapers
FSC 3419—Miscellaneous Machine Tools
FSC 3426—Metal Finishing Equipment
FSC 3428—Gas Welding, Heat Cutting, and Metalizing Equipment
FSC 3436—Miscellaneous Welding Equipment
FSC 3441—Bending and Forming Machines
FSC 3442—Hydraulic and Pneumatic Presses, power driven
FSC 3443—Mechanical Presses, power driven
FSC 3445—Punching and Shearing Machines
FSC 3446—Forging Machinery, and Hammers
FSC 3448—Riveting Machines
FSC 3449—Miscellaneous Secondary Metal Forming and Cutting Machines
FSC 3450—Machine and Tool Accessories
FSC 3451—Accessories for Secondary Metalworking Machinery
* Not subject to the restrictions of 225.7012–3 for FY 87 or FY 88 funds.
(b) “Valves” restricted under this section are those powered and non-powered valves listed in Federal Supply Classes 4810 (valves, powered) and 4820 (valves, non-powered) used in piping for naval surface ships and submarines.

(a) Unless an exception applies under 10 U.S.C. 2507(d), funds appropriated or otherwise made available in DoD may not be used to enter into a contract for the procurement of machine tools or powered and non-powered valves identified in 225.7012–1 unless the tools or valves are of United States or Canadian origin.
(b) Exceptions.
(1) The restriction in paragraph (a) of this subsection is waived for procurements of less than $25,000 when simplified small purchase procedures are used.
(2) The Head of the Agency may waive the restriction in paragraph (a) of this subsection for other procurements on a case-by-case basis if any of the following apply:

(i) The restriction would cause unreasonable costs or delays to be incurred

(ii) United States producers of the item would not be jeopardized by competition from a foreign country and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(iii) Satisfactory quality items manufactured in the United States or Canada are not available.

(iv) The restriction would impede cooperative programs entered into between the Department of Defense and a foreign country and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(v) The restriction would result in the existence of only one United States or Canadian source for the item.


(a) Machine tools listed in 225–7012–1, except for those asterisked, purchased directly as an end item or indirectly on behalf of the Government using funds appropriated for FY 1989 must be of United States or Canadian origin. This restriction also applies to purchases made using FY 1987 and 1988 appropriated funds except for those machine tools asterisked in 225.7012–1.

(b) The restrictions under this subsection may be waived only if there is not an adequate supply of these machine tools of United States or Canadian origin to meet DoD requirements on a timely basis. The Head of the Agency may waive the restriction for procurements of $25,000 or more and the Chief of the Contracting Office may waive for procurements less than $25,000.

225.7012-4 United States or Canadian origin.

A valve or machine tool shall be considered to be of United States or Canadian origin if (a) it is manufactured in the United States or Canada and (b) the cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free certificate may be issued).

225.7012-5 Provisions and clauses.

(a) Unless a waiver has been granted, the contracting officer shall insert—

(1) The clause at 225.225–7023, Restriction on Acquisition of Foreign Machine Tools, in all solicitations and contracts for machine tools which are restricted under 225.7012–2 when the contract will be awarded from October 1, 1999 through September 30, 1991.

(2) The clause at 225.225–7023, Restriction on Acquisition of Foreign Machine Tools, with its Alternate I, for machine tools restricted under 225.7012–3.

(3) The clause at 252.225–7023, Restriction on Acquisition of Foreign Machine Tools, with its Alternate I, for acquisitions covered by both 225.7012–2 and 225.7012–3.

(b) Unless a waiver has been granted, the contracting officer shall insert the clause at 252.225–7024, Restriction on Acquisition of Foreign Valves, in all solicitations and contracts for valves when the contract will be awarded from October 1, 1989 through September 30, 1991.

(c) The clause at 225.225–7023, Restriction on Acquisition of Foreign Machine Tools, with its Alternate I, for acquisitions covered by both 225.7012–2 and 225.7012–3.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

244.302 [Amended]

21. Section 244.302 is amended by removing paragraphs (b)(2)(i) and (j) and by removing in paragraph (b)(2)(j) the words “, or continuing indepth surveillance”.

244.304 [Removed]

22. Section 244.304 is removed.

244.307 [Amended]

23. Section 244.307 is amended by removing the third sentence.

PART 245—GOVERNMENT PROPERTY

245.405 [Amended]

24. Section 245.405(f) is amended by revising the date “30 April 1990” to read “April 30, 1995”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.210–7001 [Removed and Reserved]

25. Section 252.210–7001 is removed and marked reserved.

26. Section 252.219–7000 is amended by revising the clause date to read “[JUL 1999]” in lieu of “[JUN 1989]” and by adding paragraphs (c), (d)(1) and (e)(2) to read as follows:

252.219–7000 Small Business and Small Disadvantaged Business Subcontracting Plan (DoD Contracts).

(c) Work under the contract or its subcontracts shall be certified toward meeting the small disadvantaged business concern goal required by paragraph (d) of the clause of this contract entitled “Small Business and Small Disadvantaged Business Subcontracting Plan” when:

(1) It is performed on Indian lands or in joint venture with an Indian tribe or a tribally-owned corporation and

(2) It meets the requirements of section 832 of the FY 90 DoD Authorization Act, Pub. L. 101–189.

252.219–7005 [Amended]

27. Section 252.219–7005, paragraph (b) of the clause is amended by adding in the first category, between the words “(Asian-Indian)” and the words “(US Citizen)” the word “American”; and by revising the second category, the word “Americans” to read “American”. 28. Sections 252.219–7015 and 252.219–7016 are added to read as follows:

252.219–7015 Small Business and Small Disadvantaged Business Subcontracting Plan (Defense FAR Supplement Deviation).

As prescribed in 219.708(b)(1), insert the following clause:

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (DEFENSE FAR SUPPLEMENT DEVIATION) (JUL 1996)

(a) Definition. “Subcontract”, as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(b) The Offeror’s comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of section 834 of Pub. L. 101–189, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of section 211 of Pub. L. 95–507.

(c) The Contractor shall submit Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the form, except (1) Items 17 and 18 shall not be completed; (2) Item 16, Remarks, shall be completed to include small business and small disadvantaged business goals, actual accomplishments, and percentages and small business and small disadvantaged business goals, actual accomplishments and percentages for each of the two designated industry categories.
(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled “Utilization of Small Business Concerns and Small Disadvantaged Business Concerns,” or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause).

252.219-7016 Liquidated Damages—Small Business Subcontracting Plan (Defense FAR Supplement Deviation).

As prescribed in 219.708(b)(2), insert the following clause:

LIQUIDATED DAMAGES—SMALL BUSINESS SUBCONTRACTING PLAN (DEFENSE FAR SUPPLEMENT DEVIATION) (JUL 1990)

(a) “Failure to make a good faith effort to comply with the comprehensive subcontracting plan”, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the comprehensive subcontracting plan approved under the test program authorized by section 634 of Pub. L. 101-189, or willful or intentional action to frustrate the plan.

(b) If, at the close of the fiscal year for which the plan is applicable or at the close of a subsequent fiscal year for which a successor plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contractor shall pay the Government liquidated damages as provided in paragraph (b) of this clause.

(End of clause).

252.223-7005 [Amended]

29. Section 252.223-7005 is amended by revising the date of the clause to read “[JUL 1989]” in lieu of “[FEB 1980]”.

252.225-7006 [Amended]

30. Section 252.225-7006, paragraph (a)(6) of the clause is amended by removing “TSUS” and inserting “Harmonized Tariff Schedule”.

31. Section 252.225-7023 is amended by revising the reference “225.7006(d)” in the introductory sentence to read “225.7012-5(a)(1)”; by revising the date of the clause to read “[JUL 1989]” in lieu of “[JUL 1990]”; by revising paragraph (a); by revising the first sentence of paragraph (b); by revising the reference in the last sentence of paragraph (c) to read “225.7012-3” in lieu of “225.7008”; and by adding at the end of the section an Alternate I, to read as follows:

252.225-7023 Restriction on Acquisition of Foreign Machine Tools.

(a) Machine tools within the Federal Supply Classifications (FSCs) listed in (c) below, delivered as end items, shall be of United States or Canadian origin.

(b) For purposes of this clause, a machine tool shall be considered to be of United States or Canadian origin if (1) it is manufactured in the United States or Canada and (2) the cost of its components manufactured in the United States or Canada exceeds fifty percent (50%) of the cost of all its components. * * *

Alternate I (JULY 1990)

As prescribed at 225.7012-5(a)(1) and (2), substitute the following paragraph for paragraph (a) of the basic clause:

(a) Machine tools within the Federal Supply Classifications (FSCs) listed in paragraph (c), to be delivered as an end item or acquired by the Contractor on behalf of the Government, and to which title will vest in the Government, shall be of United States or Canadian origin.

252.233-7000 [Amended]

32. Section 252.233-7000 is amended to correct the clause date to read “[APR 1980]” in lieu of “[FEB 1980]”.

252.252-7000 through 252.252-7003 [Removed]

33. Sections 252.252-7000 through 252.252-7003 are removed.

PART 253- FORMS

253.204-70 [Amended]

34. The list of forms following section 253.204-70 is amended by adding the listings “253.303-70-DD-1423: Contract Data Requirements List” and the listing “253.303-70-DD-1425 DD Form 1425: Specifications and Standards Requisition” the listings “253.303-70-DD-1423-1 DD Form 1423-1: Contract Data Requirements List (1 Data Item)” and “253.303-70-DD-1423-2 DD Form 1423-2: Contract Data Requirements List (2 Data Item)”.

Appendix L to Chapter 2 [Removed]

35. Appendix L to Chapter 2 is removed.

Appendix P to Chapter 2 [Removed]

36. Appendix P to Chapter 2 is removed.

[FR Doc. 90-16954 Filed 7-23-90; 8:45 am]
Department of Labor
Employment and Training Administration

Proposed Revised Policy on Use of Validity Generalization-General Aptitude Test Battery for Selection and Referral in Employment and Training Programs; Notice and Request for Comments
DEPARTMENT OF LABOR
Employment and Training Administration

Proposed Revised Policy on Use of Validity Generalization-General Aptitude Test Battery for Selection and Referral in Employment and Training Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: In the early 1980s, a new experimental process for using the General Aptitude Test Battery (GATB) was introduced. The process is called Validity Generalization (VG) and GATB (generalizing the validity of the GATB across all jobs in the U.S. economy). Concurrently, to reduce adverse impact that testing has on economy. The General Aptitude Test Battery (GATB) provides assurance that the Department of Labor has the most scientifically valid occupational success in virtually any of 12,000 jobs described in the "Dictionary of Occupational Titles." Proponents of the new VG research asserted that employment tests were much more generalizable than previously thought. However, the same test was valid for more than one job in more than one location and setting. Most of the previously observed differences in a given test's ability to predict performance from one job setting to another were thought to be merely statistical artifacts caused by small sample sizes.

In 1981, USES began encouraging a few State employment service agencies (SESA's) to pilot the use of the GATB for all job referrals and to rank candidates according to test scores.

To avoid adverse impact when SATB's were used, minority applicants were referred to employers in proportion to their relative numbers or ratio to nonminorities in the local office applicant pool. The same principle was built into the VG selection process through the method of within-group scoring. Within each applicant group (blacks, Hispanics and others), raw job family scores are translated into percentile scores based on that group's score distribution. This results in the same percentage of black and Hispanic applicants receiving the same percentile score as those persons in the "other" category. By combining the percentile scores of individuals in all groups and selecting off the top of the list, applicants are referred in approximate proportion to their relative numbers or ratio within the total applicant pool.

The VG-GATB system is based on the SESA response to the pilot program was positive and the program (still denoted as a "pilot") spread to other States, now numbering approximately 35. In some States it is used in only one office, while in others it is used on a statewide basis. In no office, however, is it being used as a "pilot" but agreed to withhold

If the policy is adopted as proposed, there will be a 60-day period for States now using VG-GATB to restructure their operational procedures.

ETA is soliciting comments from the public on its proposed policy directive prior to its actual issuance. The proposed directive is appended to this notice.

DATE: Comments are invited on the proposed revised policy. Comments must be received by August 23, 1990.

ADDRESS: Comments shall be mailed to: Robert T. Jones, Assistant Secretary of Labor, Employment and Training Administration, U.S. Department of Labor, room N-4470, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Robert A. Schaferl, Director, U.S. Employment Service, Employment and Training Administration, Telephone: (202) 555-0157 (This is not a toll-free number).

Signed at Washington, DC, this 13th day of July, 1990.

Roberts T. Jones, Assistant Secretary of Labor.

Proposed Training and Employment Guidance Letter

Subject: Revised Policy on Use of VG-GATB for Selection and Referral in Employment and Training Programs

1. Purpose. To inform the employment and training system of a Department of Labor (DOL) policy decision to discontinue the use of the General Aptitude Test Battery (GATB) and all State agency or commercial tests which have adopted the GATB in part or in whole for use in the selection and referral of Employment Service (ES) registrants or Job Training Partnership Act (JTPA) program participants to employer job openings.

2. References. None.

3. Background. For several decades, the ES used special adaptations of the GATB called Specific Aptitude Test Batteries (SATB's) for selecting applicants for job referral. Developed for some 450 occupations, each SATB consisted of the two to four occupationally relevant aptitudes with separate qualifying scores that were set at a level such that they would disqualify job applicants with ability levels similar to the lower third of job incumbents.

During the early 1980's, the U.S. Employment Service (USES) pilot tested a new use of the GATB for selecting applicants for job referral. Called Validity Generalization (VG), the new procedure used the GATB to assess an applicant's relative potential for occupational success in virtually any of 12,000 jobs described in the "Dictionary of Occupational Titles." Proponents of the new VG research asserted that employment tests were much more generalizable than previously thought, i.e., the same test was valid and could be used for more than one job in more than one location and setting. Most of the previously observed differences in a given test's ability to predict performance from one job setting to another were thought to be merely statistical artifacts caused by small sample sizes.

In 1981, USES began encouraging a few State employment service agencies (SESA's) to pilot the use of the GATB for all job referrals and rank candidates according to test scores.

To avoid adverse impact when SATB's were used, minority applicants were referred to employers in proportion to their relative numbers or ratio to nonminorities in the local office applicant pool. The same principle was built into the VG selection process through the method of within-group scoring. Within each applicant group (blacks, Hispanics and others), raw job family scores are translated into percentile scores based on that group's score distribution. This results in the same percentage of black and Hispanic applicants receiving the same percentile score as those persons in the "other" category. By combining the percentile scores of individuals in all groups and selecting off the top of the list, applicants are referred in approximate proportion to their relative numbers or ratio within the total applicant pool.

The VG-GATB system is based on the SESA response to the pilot program was positive and the program (still denoted as a "pilot") spread to other States, now numbering approximately 35. In some States it is used in only one office, while in others it is used on a statewide basis. In no office, however, is it being used as a "pilot" but agreed to withhold
legal action pending the outcome of a special review of VG-GATB by the National Research Council of the National Academy of Sciences (NAS). The NAS provided qualified support for VG-GATB; however, it provided little basis for resolving the questions raised by DOJ. The NAS evaluation provided very useful information on the need for operational and technical improvements in VG-GATB.

Eagerness on the part of local ES offices to serve employers with VG-GATB in some instances led to a lack of individual treatment for some of the ES clients, especially older, low-literate, or minority applicants, or persons with disabilities. As a result of VG-GATB’s mass testing requirement, such people on a voluntary basis can develop fear of testing sufficient to cause them to avoid the ES altogether. The NAS reported that in one community, the experiment with VG-GATB was cut short when the applicant population, a largely minority one, simply stopped using the Employment Service. In addition, there are many individuals who possess demonstrated experience and license or other credentials, who the NAS suggests should not be required to take the GATB.

NAS stressed that research was needed to develop more alternate forms of the GATB for retesting purposes and to replace forms that may have been compromised by falling into examinees’ hands. Because the NAS also found the GATB tests to be too “speeded” (i.e., its time limits were thought to be too short relative to the length of its tests), more research is needed to determine whether such short time limits are making it difficult for examinees to demonstrate their true potential and whether such short time limits encourage guessing as a strategy to improve one’s score.

Policy on Use of VG-GATB

After a length review of the findings of the NAS review, ETA has concluded that the use of VG and the GATB shall be discontinued for employment selection and referral of applicants, even on a voluntary basis (but not for counseling of applicants who voluntarily take the test) while making NAS-recommended corrections to the GATB during a vigorous program of research. Also to be discontinued is the use by ES of other test batteries and assessment packages, both public and private, that are derived from VG-GATB. Such instruments, which depend on the validity of VG-GATB for their legitimacy, are prohibited for use in selection and referral of ES registrants or JTPA program participants to employer job openings until further notice.

At the conclusion of the research program, ETA will again review the VG-GATB program to determine whether there is basis for supporting a revised VG-GATB program. The attached GATB Research Plan provides a description of the research needs which will be addressed.

Although the new policy will not permit the GATB (or VG) to be used for selection/referral, this does not preclude the GATB’s continued use as a counseling instrument—under the following conditions:

- Testing will only be done for counseling and assessment.
- Testing will only be done at an individual’s request, and individuals will not be required to take tests.
- Testing will not be done at employer’s requests.
- Test results will be provided to the individual only, not to employers.
- Test information is only for the individual’s confidential use, not employer’s use.

Test information will be provided to the individual in a structured “counseling” session, permitting each individual to make decisions about occupational choice.

Test results will not be used independently; information about an individual’s experience, education, licenses, training, etc., would be used to develop career options with each individual.

The suspension of the use of the GATB for selection and referral does not affect the use of other types of tests commonly used by ES to screen applicants for job referral purposes, including the clerical proficiency tests (typing, shorthand and spelling) which may still be used in the referral process.

4. Public Release Plan. The DOL is taking several steps to inform the public of the need and rationale for this policy decision, including meetings with representatives of the Interstate Conference of Employment Security Agencies (ICESA), major affected employers and employer organizations and State agency personnel. Public comments on this draft Training and Employment Guidance Letter are being solicited for a 30-day period from the date of publication in the Federal Register.

5. Action Required. The effective cut-off date for the use of the GATB for selection and referral purposes is 90 days after the issuance of this directive. This date is designed to afford States sufficient time to restructure local office operations as appropriate and to modify computer programs and procedures to take into account the restrictions on the use of GATB. Prior to the effective date, all SESAs must see to it that affected employers have been informed of the Department’s decisions concerning restrictions on the use of the GATB for selection and referral purposes as of that date. In addition, each SESA shall, prior to the effective date, inform all organizations or parties possessing State release agreements for the use of the GATB of the new policy restrictions on its use.


Appendix—GATB Research Plan

The following projects are planned to respond to the major issues raised regarding the General Aptitude Test Battery (GATB) in the report by the National Academy of Sciences (NAS), Fairness in Employment Testing: Validity Generalization, Minority Issues, and the General Aptitude Test Battery.

1. Improve validation methods and accelerate the validation process. The NAS report noted an unexplained decline in GATB validities in the more recent studies and somewhat lower validities for blacks. It recommended continuing work on measures of job performance, better documentation of recent validity research, and continuing validation research to assure adequate and current occupational coverage, particularly for new and changed occupations. A two year project is proposed to: (1) Provide rigorous, user-friendly documentation of all validation research on the GATB and (2) extend the state-of-the-art in validity research through an exemplary validity study which will address the concerns raised in the NAS report (including concerns regarding persons with disabilities, older workers, illiterate workers, etc.) and develop procedures for future research. In addition, there will be a further examination of optimal methods of clustering jobs and weighting the tests aimed at increasing validity and possibly reducing score differences.

2. Reduce GATB score differences among racial/ethnic groups. Modification of the GATB itself does not hold great promise for reducing score differences, although some modifications will be made and results evaluated. (See 3. below) A more promising approach appears to be developing and evaluating additional job-related assessment methods such as biographical information (e.g., the Individual Achievement Record developed by the Office of Personnel Management).
Management), job knowledge assessment instruments, measurements of work values and attitudes. These assessment methods could conceivably have lower levels of group differences and have potential for increasing the validity of the referral process.

3. Maintain the GATB.

A. Develop additional forms of the GATB. Operational forms of the GATB should be replaced periodically to guard against over-exposure and compromise and to allow for more frequent retesting on a different form of the test. Improvements in the format and appearance of the test booklets and other materials are also needed. Test questions will continue to be screened for fairness to various racial/ethnic, age, and gender groups.

B. Reduce susceptibility to coaching. Changed scoring procedures to include a penalty for wrong answers are needed to reduce or eliminate the advantage of guessing or answering at random. Instructions to examinees will also need to be changed. Care must be taken not to change the meaning (validity) of the test.

C. Reduce speededness of the GATB if possible. "Speededness" is of concern because of the possibility of achieving a spuriously high score by answering at random, the items the person is unable to consider in the time allowed. Changed scoring procedures (see B. above), and computerization of the GATB (see 5. below) address this concern. It seems advisable to also investigate the possibility of reducing the number of test questions or extending the time limits. Care must be taken to avoid operational problems or changing the meaning of the test scores.

D. Develop standards for the physical security of testing material. Currently there are no instructions to GATB users regarding the confidentiality and security of testing material. Physical security of tests is important because widespread compromise could destroy the value of a very expensive test form.

4. Develop New Norms. New norms are needed to: (1) Determine the score levels of different groups; (2) provide information which will allow better estimation of the true validity of the GATB; and (3) provide more accurate information to counselors regarding their standing in relation to other people. To meet these needs, norms on both applicant and employed workers will be required. This will require a considerable amount of new test data.

5. Computerized GATB. Although not a specific recommendation of the NAS report, a computerized version of some or all parts of the GATB could address several of the concerns noted in the report and improve operational efficiency. Potentially, a computerized adaptive GATB could (1) reduce testing time, (2) reduce the cost of testing, (3) reduce or eliminate guessing, (4) reduce or eliminate speededness, (5) reduce or eliminate the test security problem, (6) possibly improve testing accuracy, and (7) open the possibility of different test formats including essay and free response.

6. Provide guidance on proper use of the GATB. The only current guidance on the proper use of tests is the requirement to conform to applicable regulations such as the Uniform Guidelines on Employee Selection Procedures. The NAS report made a number of recommendations regarding test use; other general principles are embodied in professional standards.
Part VII

Environmental Protection Agency

40 CFR Parts 302 and 355
Reporting Continuous Releases of Hazardous Substances; Final Rule
SUMMARY: Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1989 (CERCLA), as amended, authorizes the U.S. Environmental Protection Agency (EPA) to adjust RQs at one pound for releases of hazardous substances, except those substances for which RQs have been established at other levels pursuant to section 311(b)(4) of the Clean Water Act. Section 102(a) of CERCLA authorizes the EPA Administrator to adjust all of these RQs by regulation. The record supporting this rulemaking is available for public inspection at the U.S. Environmental Protection Agency, Superfund Docket—Room 2427, 401 M Street, SW., (OS-140), Washington, DC 20460 (Docket Number 103(f)(CR)). The docket may be inspected between 9 a.m. and 4 p.m. Monday through Friday, excluding Federal holidays. To review docket materials, you may make an appointment by calling 202/382-3046.

FOR FURTHER INFORMATION CONTACT: Mr. Hubert Watters, Project Officer, Response Standards and Criteria Branch, Emergency Response Division (OS-210), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, 202/382-2463; or the RCRA/ Superfund Hotline, 800/424-9346, in Washington, DC 202/382-3000. The Telecommunications Device for the Deaf (TDD) Hotline numbers are toll-free 800/553-7762 or 202/475-9652 in the Washington, DC metropolitan area.

SUPPLEMENTARY INFORMATION: The contents of today’s preamble are listed in the following outline:

I. Introduction
A. Statutory Authority
B. Background of this Rulemaking
C. Organization of the Final Rule
II. Continuous Release Reporting Requirements
A. General Requirements Overview
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3. Reporting Requirements
4. Statistically Significant Increases
C. Relationship to Reporting Under SARA
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D. Multiple Concurrent Releases
E. Administrative Reporting Exemptions
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in accordance with the National Off and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300), which was developed originally under the CWA and which has been revised to reflect the responsibilities and authority created by CERCLA.

Section 104(e)(2)(B) of CERCLA gives the Agency the authority to require persons who have or may have relevant information to furnish information or documents upon reasonable notice relating to the nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a facility or vessel. If consent is not granted regarding any request for information or documents made under section 104(e)(2)(B), the Agency may issue a compliance order under section 104(e)(5).

Section 103(f)(2) of CERCLA modifies the general notification requirements of section 103(a) for certain releases. Releases may be reported less frequently than otherwise would be required, if they are “continuous” and “stable in quantity and rate,” and if notification has been given under section 103(a) “for a period sufficient to establish the continuity, quantity, and regularity” of the release.1 Section 103(f)(2) pertains only to releases that are continuous and stable in quantity and rate, and requires that reports be made “annually, or at such a time as there is any statistically significant increase” in the quantity of the hazardous substance released above that previously reported or occurring.

In addition to reporting requirements established by CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) or Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) requires the owner or operator of certain facilities to report releases of extremely hazardous substances (EHS) and CERCLA hazardous substances to State and local entities. SARA Title III section 304 notification must be given immediately after a release of an EHS or a CERCLA hazardous substance or pollutant or contaminant at or from a facility or vessel.

The notification is to be given to the state emergency response commission (SERC) of any State likely to be affected by the release. SARA Title III section 304 notification requirements apply only to releases of EHSs and CERCLA hazardous substances (defined at 40 CFR part 355 Appendices A and B and § 302.4, respectively) that have the potential for off-site exposure.

Section 109 of CERCLA and section 325 of SARA Title III authorize EPA to assess civil penalties for failure to report releases of hazardous substances that equal or exceed their RQs. Section 109(b) of CERCLA, as amended authorizes EPA to seek criminal penalties for failure to report releases of hazardous substances and for submitting false or misleading information in a notice made pursuant to CERCLA section 103, and establishes penalties and years of imprisonment for violation of the CERCLA section 103 reporting requirements.

B. Background of this Rulemaking

On May 25, 1983, EPA published a Notice of Proposed Rulemaking (NPRM) (48 FR 23552) to clarify procedures for reporting releases and to adjust RQs for 317 CERCLA hazardous substances. In the preamble to the May 25, 1983 NPRM, the Agency discussed the reporting requirements for continuous releases and specifically requested comments on a number of issues, seeking information that would enable EPA to develop a system that imposed a minimal burden on both the regulated community and the government, while achieving the underlying statutory objectives. The reporting requirements for continuous releases were discussed again in the preamble to a final rule adjusting RQs, published on April 4, 1985 (50 FR 13456). EPA noted that due to the complexity of the issues, the Agency would study the continuous release reporting requirements further and would not promulgate, at that time, a regulation related to continuous releases.

On April 19, 1988, EPA published a proposed rule (53 FR 12808) presenting the Agency’s interpretation of section 103(f)(2) and responding to comments made in response to the May 25, 1983 NPRM. The official public comment period for the April 19, 1988 proposed rule ended on June 20, 1988. EPA received a total of 29 comment letters, including three letters received after the close of the official comment period. The comments received together with the Agency’s responses, are contained in the document, “Responses to Comments on the April 19, 1988 Notice of Proposed Rulemaking on Reporting Continuous Releases of Hazardous Substances” (Responses to Comments), which is available for inspection at the U.S. Environmental Protection Agency, Superfund Docket—Room 2427, 401 M Street, SW, Washington, DC 20460 (Docket Number 103(f)CR).

Today, the Agency is promulgating the final rule on reporting of continuous releases. In preparing this rule, EPA considered all of the public comments submitted on the April 19, 1988 proposed rule. These comments are addressed in sections II-IV of this preamble. Section V provides a summary of the analyses supporting today’s rule.

EPA notes that although releases claimed to be continuous may qualify for reduced reporting under section 103(f)(2), such releases are not permitted nor are they necessarily risk-free. (See the Notice of Proposed Rulemaking on Reporting Exemptions for Federally Permitted Releases of Hazardous Substances (53 FR 27288; July 19, 1988)). Also, other provisions of the Act may apply even where CERCLA does not require notification. For example, a party responsible for releasing a CERCLA hazardous substance that is not a federally permitted release is liable for the costs of cleanup up that release and for any natural resource damages, even if the release is not subject to the notification requirements of CERCLA. Similarly, proper reporting of a release in accordance with section 103(a) or section 103(f)(2) does not preclude liability for cleanup costs. The fact that a release of a hazardous substance is reported under the Act or that it is not subject to the notification requirements of CERCLA will not preclude EPA or other government agencies from seeking reimbursement under section 107 for the cost of cleanup from parties responsible for the release, or from pursuing an enforcement action against those parties pursuant to section 106.

This rulemaking, therefore, should not be interpreted as reflecting Agency policy or the applicable law with respect to other provisions of the Act. Furthermore, all releases of CERCLA hazardous substances, including federally permitted releases, are subject to liability provisions of State statutes, common law, and Federal statutes other than CERCLA.2

C. Organization of the Final Rule

Today’s final rule amends 40 CFR by adding § 302.6. Section 302.6(a) provides that no notification is required for

1 Section 103(f)(2) also allows releases to be reported less often if notification has been given under section 103(a), which requires notification to the Federal government of the existence of certain facilities that are or have been used for storage, treatment, or disposal of hazardous substances but do not have Resource Conservation and Recovery Act (RCRA) interim status or a RCRA permit.

2 CERCLA section 114(a); see Senate Report No. 96-446 (1980), p. 60.
releases that qualify as continuous and that are stable in quantity and rate, except as provided in § 302.8(c). Section 302.8(b) provides definitions of terms relevant to continuous release reporting. Section 302.8(c) lists all of the notification requirements for continuous releases. Section 302.8(d) requires the person in charge of a facility or vessel to establish the continuity and stability of the release and to notify the NRC by telephone to alert government authorities that the release will be reported as a continuous release under CERCLA section 103(f)(2). Section 302.8(e) requires the submission of an initial written notification to the appropriate regional EPA office to report baseline release information. Section 302.8(f) requires that a one-time follow-up report be submitted on the first anniversary of the initial written report. Subsequent reports, under § 302.8(g) and (h) are required only when there is a change in the release, and at such times as there is an increase in the release that is statistically significant as defined in § 302.8(b). Initial written notification and the subsequent one-time follow-up notification are to be made under § 302.8(e) and (f) to the appropriate Regional EPA office for the geographical area where the releasing facility or vessel is located.

Section 302.8(e) and (f) also lists the information that must be submitted in the initial written report and the follow-up report, respectively, for each substance that is claimed to qualify for continuous release reduced reporting. Section 302.8(j) provides that a copy of the SARA Title III section 313 Toxic Release Inventory form may be submitted in lieu of an initial written report or follow-up report and lists the additional information that must be included with the form. Section 302.8(g)(1) explains that if there is any change in the source or composition of a release, the release is considered a "new" release for reporting purposes and requires the submission of initial telephone and written notifications. Section 302.8(g)(2) and (3) describes the notification required if there is a change in any of the other information submitted in the initial written notification and/or follow-up notification, other than a change in source or composition. Section 302.8(h) requires that notice of a statistically significant increase be made to the NRC and the release be identified as a statistically significant increase in a continuous release. Section 302.8(k) explains that the person in charge may rely on engineering estimates, the operating history of the facility or vessel, or any currently available release data to support the notifications required in § 302.8(c), and provides that documentation supporting the continuous release determination and all notifications and evaluations shall be kept on file for one year at the facility or, in the case of a vessel, at an office in the United States in a port of call or place of regular berthing. The documentation must be made available to EPA upon request to enforce the requirements of § 302.8. Section 302.8(f) explains the reporting requirements for multiple concurrent releases under today's rule.

Today's rule also amends 40 CFR part 355 to identify the SERC and LEPC as the recipients of the Initial continuous release reports, reports of statistically significant increases, and reports of changes in the source, composition, or normal range of the release, and to indicate that continuous releases are otherwise exempt from SARA Title III section 304 emergency release notification. 40 CFR part 355 also provides reference to today's changes to 40 CFR part 302. (For further explanation of the relationship of SARA Title III section 304 notification to CERCLA section 103 reporting, see section II.C of today's preamble.)

II. Continuous Release Reporting Requirements

A. General Requirements Overview

CERCLA notification provisions create a reporting process that informs government officials of releases that require immediate evaluation to determine the need for response action. The RQ reporting triggers are not in themselves assessments of the risk associated with releases of hazardous substances. The actual hazards will vary with the circumstances of the particular release, and many factors other than the size of the release could influence the government's response. Accordingly, the primary purpose of CERCLA's notification requirements is to alert government officials to releases that may require timely and proper response action in order to prevent or mitigate damage to public health or welfare or the environment. The purpose of section 103(f)(2) is to reduce unnecessary release notifications. Section 103(f)(2) contemplates that, in general, if a release is continuous and

stable in quantity and rate, Federal officials should not have to be notified each time the release occurs to decide whether a response is needed. Thus, instead of reporting every release that equals or exceeds the RQ as it occurs, the person in charge of a vessel or facility is allowed to report less often for continuous and stable releases.

Nevertheless, government response authorities will continue to need some notification of hazardous substance releases that equal or exceed their RQs on a continuous basis. Today's rule, therefore, requires four kinds of notification of a continuous release: (1) Initial telephone and written notifications; (2) a written follow-up report to the appropriate EPA Regional Office on the first anniversary of the initial written notification; (3) notification of changes in the source or composition of the release or other submitted information; and (4) immediate reports of any statistically significant increase (SSI) in the release. Under today's rule, an SSI is defined as a release, within 24-hour period, that exceeds the upper bound of the previously reported normal range of the release. The normal range is defined as the range of releases (in pounds or kilograms) reported or occurring over any 24-hour period under normal operating conditions during the previous year. An SSI in the release must be reported to the NRC, SERC, and LEPC as soon as the person in charge has knowledge that the release has occurred.

An annual evaluation of each hazardous substance release being reported under the provisions of today's final rule must be made within 30 days of the anniversary date of the initial written notification. The annual evaluation must consider and verify the information concerning the release during the period since the submission of the follow-up report or previous annual evaluation. No further reporting is required, however, unless a change has occurred in the composition or source(s) of the release or in other submitted information. The type of notification required when a change in the release occurs varies according to the nature of the change. (Reporting requirements for changed releases under 40 CFR 302.8(h) are described in section IL.B.3 of today's preamble.)

Notification must be made by: (1) The owner or operator of a facility for which the initial notification has been provided under section 103(c), or (2) the current person in charge of the vessel or facility for which the initial notification was made under section
Title III section 304, if the releases have closely tied to reporting under CERCLA section 103(a), releases subject to reduced reporting under CERCLA section 103. All releases of CERCLA hazardous substances, including EHSs that are also CERCLA hazardous substances, that must be reported under CERCLA section 103(a) are stable in quantity and rate and that result from (1) production of a batch of a substance at the same time every week; (2) startup of a machine every workday morning and its shutdown every workday evening; and (3) use of a hazardous substance at a facility every day or at the same time every week. The Agency stated that it believed that per-occurrence reporting of such releases would not enhance the ability of the Oil and Hazardous Substances Coordinator (on-scene coordinator or OSC) to determine whether a field response is necessary. Consequently, EPA indicated in the April 19, 1988 proposed rule that it would allow releases that are predictable and stable with respect to quantity, rate, and time of occurrence. EPA listed as examples releases that are predictable and stable with respect to quantity and rate that are routine, anticipated, and episodic. EPA proposed to define “continuous releases” to subject the reduced reporting requirements under CERCLA section 103(f)(2), are not subject to SARA Title III section 304 reporting.

Owners and operators of facilities subject to the notification requirements of SARA Title III section 304 must qualify releases as continuous and stable under today’s definitions by submitting initial telephone and initial written notifications to SERCs and LEPCs. The CERCLA section 103(f)(2) one-time follow-up report does not apply to facilities subject to the provisions of SARA Title III section 304 and, therefore, the owners and operators of such facilities are not required to submit this follow-up report on continuous releases to SERC or LEPC. EPA however, will make the information in the continuous release follow-up reports available to the SERCs and LEPCs, should they wish to receive it.

B. Key Concepts Included in the Final Rule

1. Continuous Releases

Under today’s final rule, EPA defines “continuous” as a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent during normal operations or treatment processes. In the April 19, 1988 proposed rule, EPA proposed to define “continuous” as a release that is (1) continuous without interruption or abatement; (2) continuous during operating hours; or (3) continuous during regularly-occurring batch processes. The period over which releases were to be evaluated was 24 hours.

EPA indicated in the April 19, 1988 NPRM, however, that it was aware of situations in which certain routine, anticipated, intermittent releases are predictable and stable with respect to quantity, rate, and time of occurrence. EPA listed as examples releases that are predictable and stable with respect to quantity and rate that are routine, anticipated, and episodic as separate parts of the definition of continuous. Accordingly, plant operations and processes are anticipated in the normal course of operations and are predictable in terms of quantity, quality, nature, and frequency of occurrence. Examples provided by commenters include releases associated with: batch processes; shutdowns for scheduled maintenance; catalyst changeouts; loading and unloading; decompression of pressure vessels; drawing off of liquid at regular intervals during a production process; and cyclical operations at production facilities. Most of these commenters urged the Agency to define “continuous” to include such releases rather than creating an administrative exemption.

EPA agrees with the commenters that routine, anticipated, intermittent releases incidental to normal plant operations or treatment processes could have a high degree of regularity and predictability associated with them. Routine, anticipated, intermittent releases that are also stable in quantity and rate do not require per-occurrence reporting to the NRC. Expanding the definition of continuous to include such releases is consistent with the fundamental purpose of CERCLA section 103(a) reporting requirements, which is to alert government response officials to releases that require immediate evaluation to determine whether a field response may be necessary. A release that occurs in the course of normal operations or treatment processes and is predictable and regular in terms of quantity, rate, and time does not require immediate evaluation. The initial notifications and the follow-up report, combined with immediate notification of SSIs will provide response authorities sufficient information to evaluate and respond to the release, if necessary. Moreover, EPA interprets the term “continuous” as used in section 103(f)(2) as distinguishing releases that are routine and regular from releases that are episodic and variable. Thus, the term “continuous” encompasses releases that are routine, anticipated, and intermittent as separate parts of the definition of continuous. Accordingly, EPA believes that releases that are continuous during operating hours or regularly-occurring batch processes are routine, anticipated, and intermittent and therefore, it is not necessary to list these two types of releases as separate parts of the definition of continuous.
the definition in today's final rule does not include the descriptions of these releases.

Episodic releases, such as those associated with accidents, emergency shutdowns, or pipe ruptures, however, are not routine or regular and do not come within the definition of continuous. Such releases in an RQ or more must be reported to the NRC, SERC, and LEPC as soon as the person in charge is aware that they have occurred.

Many commenters objected to what they perceived as a focus in the proposal on the time of the occurrence of an intermittent release rather than the timing of the release. Commenters noted that certain batch processes occur at the same point in a predictable sequence, but do not occur necessarily at the same time of day or on the same day of the week. One commenter cited the example of pharmaceutical manufacturing processes that may occur once every 32 hours, rather than at an exact time within a 24-hour or week-long period. Other batch operations, according to the commenter, vary in duration, depending on the specific characteristics of the product and the size of the order.

Releases from these kinds of processes, the commenters concluded, although predictable in terms of timing rather than time, are the kinds of routine, anticipated releases that should come within the definition of continuous.

EPA agrees with the comment that it is not necessary for a release that otherwise satisfies the definition of continuous to always occur at the same time. Under today's final rule, a release that is predictable with respect to timing is a release that recurs either at a specified time, or at a specific interval, or in association with an anticipated event. In order to qualify a release as "continuous" under today's final rule, therefore, the person in charge must describe in the initial written report and one-time follow-up report the pattern of continuity, including a description of the timing of the release in terms of the frequency of the release and the fraction of the release from each release source and the period during which it occurs. Under today's final rule, for example, a hazardous substance release may be continuous if it occurs during a process that is run infrequently but at anticipated intervals that depend on the market demand for a product. Thus, the final rule is sufficiently flexible to encompass emissions, such as those from batch processes described above, that are predictable in terms of timing, but do not necessarily occur at the same time of week or month.

2. Stable in Quantity and Rate

In order for a release to qualify for reporting under CERCLA section 103(f)(2), the person in charge of a facility or vessel must not only demonstrate that the release comes within the definition of continuous, but also that the release is stable in quantity and rate. In the April 19, 1988 proposed rule, EPA discussed qualitative and quantitative indicators for determining that releases are "stable in quantity and rate." Because of the many different types of releases, and the variation in the types of facilities that may be releasing hazardous substances in a manner that could be defined as continuous, EPA determined that quantitative measures for complying with this statutory requirement, such as a predetermined percentage variation from the mean, would be difficult to establish and insufficiently flexible. Accordingly, in the April 19, 1988 NPRM, the Agency solicited comment on a qualitative measure under which a qualifying release would have a "predictable quantity and rate during normal operations" and would not be "the result of malfunction or upset conditions." The Agency also solicited comments and supporting data on other qualitative and quantitative measures that might be appropriate.

Commenters on the whole, endorsed EPA's qualitative approach to the "stable in quantity and rate" requirement. EPA has maintained a qualitative approach in today's final rule, and is defining "stable" as "predictable and regular." Among other things, today's rule allows the person in charge of a facility or vessel to develop the basis for claiming that a release is continuous and stable in quantity and rate. A brief statement of the basis must be provided in the initial written and follow-up reports, and should include such factors as the pattern of the release (e.g., whether the release is uninterrupted or is an intermittent release, and whether the release results from an operating procedure, a batch process, or other operating activity). The statement should also describe the source of the extreme values of the normal range of releases. For example, during the year, the minimum quantity of a release of a hazardous substance may be the result of one batch process, whereas the maximum quantity of a release results from another process.

A commenter supported EPA's proposal to allow the person in charge to develop the basis for asserting continuity and stability, but stated that if EPA determines that the basis is inadequate, the Agency should mitigate penalties for failure to notify under section 109(a) in consideration of the good faith effort on behalf of the person in charge. The Agency acknowledges that the non-quantitative definitions of continuous and stable in quantity and rate rely on the professional judgment of the person in charge of a facility or vessel to make and support the initial determination that a release is continuous and stable in quantity and rate. Nonetheless, information submitted to the NRC, the EPA Region, SERC, and LEPC is subject to review and verification, and the Agency may require modification, clarification, or additions. Penalties for failure to notify, if appropriate, will be imposed taking into account all factors related to the issue. The Agency agrees, however, that if a good faith effort is made by the person in charge to act in accordance with the definitions of continuous and stable in quantity and rate, and if the person in charge has acted in accordance with the other requirements of the continuous release reporting regulation and other pertinent regulations, that these facts may be considered when determining any potential penalties.

Some commenters urged EPA not to equate stability with uniformity, or a constant rate of release. These commenters stated that predictability should be the primary criterion for determining whether a release is stable in quantity and rate. One commenter noted that there are many predictable releases that follow a decreasing rate of release over time. The commenter cited the example of the rate of release from a pressurized batch reactor where the rate is likely to be greatest at the beginning of the process, when the pressure is highest, and then to decrease as the pressure decreases, until the system is stabilized. This commenter observed that, although the rate of such fugitive emissions is not strictly uniform, it is predictable in the sense that the rate and amount of release vary in basically the same manner each time the decompression occurs or the process is operated.

Another commenter provided the example of fugitive emissions from valves that occur at different rates over the course of a production cycle as the pressure inside the system changes. These emissions can be calculated on a statistically sound basis, the commenter stated, because the owner or operator knows that historically a given number of valves will release a given amount of a hazardous substance over the course of a year.
The Agency agrees that releases need not be uniform in quantity and rate of emission in order to be considered stable. Predictability and regularity are the criteria set forth in 40 CFR 302.2(b) that define the "stable in quantity and rate" requirement. Thus, emissions such as the releases described by the commenters, if they are predictable and regular, may qualify for reporting under CERCLA section 103(f)(2).

Several commenters stated that releases from malfunctions should qualify for reduced reporting under section 103(f)(2) because malfunctions such as leaking valves are continuous during certain processes and occur with a certain statistical regularity. Other commenters disagreed, stating that malfunctions are abnormal releases that are not routine or anticipated under normal operations. The Agency believes that it is not possible to define releases from malfunctions with sufficient precision to determine, by definition alone, whether they qualify for reporting under section 103(f)(2). Some such releases may qualify, whereas others may indicate a problem at the facility or vessel. The determination of whether such releases are both continuous and stable in quantity and rate under the definitions in today's final rule. To ascertain whether the release, including a "malfunction," is "continuous," the person in charge must determine whether, under the regulatory definition, it (1) occurs without interruption or abatement, or (2) is routine, anticipated, intermittent, and incidental to normal plant operations or treatment processes. If the release falls within the regulatory definitions of continuous, the person in charge must make a further determination that the release is stable in quantity and rate, i.e., predictable and regular in amount and rate of emission. For example, fugitive emissions or releases from valves or pump seals may qualify for reporting under section 103(f)(2) if they come within the definitions of continuous, and are regular and predictable in the amount and rate of emissions. Determinations about specific releases must be based on professional judgment and knowledge of the operating history of the facility or vessel.

In the initial written report and the follow-up report, the person in charge must include the frequency of such releases from each release source and the period over which they occur. For example, the reports may include a statement that a release from a valve occurs every 32nd hour, i.e., whenever a certain batch process is run, or that a release occurs four times a year, all during the month of May, or that a release occurs throughout the year on a monthly basis, whenever a certain activity occurs.

Releases that are unanticipated, episodic events, such as spills, pipe ruptures, equipment failures, emergency shutdowns, or accidents would not qualify for the reduced reporting requirements of section 103(f)(2). Although some of these releases may occur with some statistical frequency, episodic events are not incidental to normal operations and, by definition, are not continuous or anticipated, and are not sufficiently predictable or regular to be stable, and therefore do not satisfy the statutory requirements of section 103(f)(2). Such releases, therefore, must be reported on a per-occurrence basis under section 103(a).

One commenter stated that the proposed definition was too narrow and suggested that EPA should define "stable in quantity and rate" solely by reference to the definition of "statistically significant increase." In this commenter's opinion, any release that is not an SSI should be considered "stable in quantity and rate," whether it results from a malfunction or from normal operations.

The Agency does not agree. A release must be established as "continuous" and "stable in quantity and rate" before it may be reported or anticipated under section 103(f)(2). To qualify a hazardous substance release for reduced reporting under today's final rule, the person in charge must establish the stability of the release and must submit initial telephone and written notifications to the NRC, the SERC, or the LEPC. After initial notifications have been made, the person in charge of the facility or vessel can limit reporting to the follow-up report and reports of SSIs.

Within 30 days of the first anniversary date of the initial written notification, the person in charge must evaluate the reported releases and submit a one-time written follow-up report to the appropriate EPA Regional Office for the geographical region in which the facility or vessel is located, and the appropriate SERC and LEPC. The follow-up report must contain information concerning the release that was not reported during the period since the submission of the initial written report. Following the submission of the follow-up report, the person in charge must evaluate each hazardous substance release annually and must document each annual evaluation. The annual evaluation must take into account all information concerning each release during the period since the submission of the follow-up report or prior annual evaluation. EPA need not be notified of the annual evaluation, however, unless there is a change in the information submitted previously.

An SSI in a release must be reported to the NRC, SERC, and LEPC whenever the person in charge knows that a release has exceeded the upper bound.
of the previously reported normal range of the release within a 24-hour period. Under today's final rule, the normal range is defined to include all releases (including or excluding) of a hazardous substance reported or occurring during any 24-hour period under normal operating conditions during the preceding year.

If there is no change in a release after initial or follow-up notifications have been made, no additional reports are required. The notification that must be made when a change in a release occurs varies with the nature of the change.

If there is any change in the composition or source(s) of a release, the release is considered a new release. The new release must be reported to the NRC, SERC, and LEPC as required. The notification that must be made when a change in a release occurs varies with the nature of the change.

If a change in a release results in an increase in quantity of a release above the normal range, the release must be reported to the NRC, SERC, and LEPC as an SSI as soon as the person in charge knows that the release exceeded the upper bound of the reported normal range. If a change results in a number of releases that exceed the reported normal range, the person in charge may continue to report the releases as SSIs, or modify the normal range to reflect the change. To modify the normal range, the person in charge must report at least one release as an SSI by telephone, but may at the same time inform the NRC, SERC, and LEPC that the normal range of the release has changed. Within 30 days from the telephone notification, the person in charge must notify the appropriate EPA Region describing the new normal range, the reason for the change, and the basis for asserting that the release is continuous and stable at the increased quantity. For all other changes in the information submitted in the initial written notification, the person in charge must notify the appropriate EPA Region by letter within 30 days of determining that the information submitted previously is no longer valid. Information used to develop and support the initial written notification and follow-up report, and to document annual evaluations, as well as information relevant to SSIs, establishment of the normal range, and the continuity and stability of previous releases should not be sent to EPA. The information should be sufficient to substantiate the normal range of releases over the year and to support the other information included in the initial written report, the follow-up report, or the most recent annual evaluation. Supporting information should be kept on file at the facility, or in the case of a vessel, at an office within the United States, in either a port of call, a place of regular berthing, or at the headquarters of the business that operates the vessel. EPA may request that the person in charge of a facility or vessel submit such information as is necessary to enforce the reporting requirements under section 103(f)(2).

In summary, the reporting requirements for continuous releases have four basic components: initial telephone and written notifications, a one-time written follow-up report on the first anniversary of the initial written notification, notification of changes, and immediate reporting of SSIs.

Written initial notification reports, follow-up reports, and notification of changes in a release should be submitted to the appropriate EPA Region, SERC, and LEPC.

If a change in a release results in an increase in quantity of a release above the normal range, the release must be reported to the NRC, SERC, and LEPC as an SSI as soon as the person in charge knows that the release exceeded the upper bound of the reported normal range. If a change results in a number of releases that exceed the reported normal range, the person in charge may continue to report the releases as SSIs, or modify the normal range to reflect the change. To modify the normal range, the person in charge must report at least one release as an SSI by telephone, but may at the same time inform the NRC, SERC, and LEPC that the normal range of the release has changed. Within 30 days from the telephone notification, the person in charge of the facility or vessel must submit a letter to the appropriate EPA Region describing the new normal range, the reason for the change, and the basis for asserting that the release is continuous and stable at the increased quantity. For all other changes in the information submitted in the initial written notification, the person in charge must notify the appropriate EPA Region by letter within 30 days of determining that the information submitted previously is no longer valid. Information used to develop and support the initial written notification and follow-up report, and to document annual evaluations, as well as

a. Initial Notification (Establishing the Release Baseline). In addition to requiring that a release be established as continuous and stable in quantity and rate, CERCLA section 103(a)(2) requires that notification of the release be made under CERCLA section 103(a) for a period sufficient to establish the continuity, quantity, and regularity of the release. In the April 19, 1988 NPRM, EPA proposed a flexible approach, allowing the person in charge to determine the period sufficient to establish the continuity, quantity, and regularity of a specific release in order to qualify for reporting under CERCLA section 103(f)(2).

One commenter was concerned that if a number of reports were submitted to the NRC under CERCLA section 103(a) to establish that a release is continuous and stable in quantity and rate, the repeated reports would trigger EPA's Accidental Release Information Program (ARIP) questionnaire. The Agency agrees that notification to qualify for continuous release reporting should not automatically require completion of an ARIP questionnaire. So long as the person in charge has a sufficient basis for establishing the continuity and stability of a release, multiple reports over a period of time are not necessary. The person in charge may rely on release data, engineering estimates, knowledge of the plant's operations and release history, and professional judgment to establish the basis for reporting under section 103(f)(2).

Today's final rule, therefore, requires a minimum of one telephone call to the NRC under CERCLA section 103(a), and to the SERC and LEPC under SARA Title III section 304, and, within 30 days of the telephone notification, an initial written notification to the EPA Region, SERC, and LEPC. The initial telephone notification will alert appropriate authorities to the intent of the person in charge to report the release as a continuous release, will enable the EPA Regional Office to establish a record and file of the release report, and will partially satisfy the statutory requirement that the person in charge report the release under section 103(a) for a period sufficient to establish the continuity and stability of the release.4

4 Reports to the NRC of certain releases, such as repeated releases and releases that cause injury or death, trigger an ARIP questionnaire that requests information pursuant to CERCLA section 104, RCRA section 3007, section 114 of the Clean Air Act, and section 308 of the Clean Water Act. The Agency has determined that one call to the NRC, SERC, and LEPC, in combination with the initial written notification, will satisfy the statutory
the initial written notification will provide information on the profile of the release during the previous year. During the initial telephone notification to the NRC, SERC, and LEPC, the person in charge of the facility must identify the release as “continuous” and must inform the government of the intention to report the release under section 104(f)(2). The continuous release reports will be so marked and will be given a case number. This initial notification, therefore, will not automatically trigger an ARIP questionnaire. The Agency may send an ARIP questionnaire to the person in charge of a facility, however, if it deems it appropriate based on the information in the initial notifications and follow-up report.

If the person in charge of the facility or vessel does not have a sufficient basis for establishing a release as continuous and stable, as defined by today’s rule, and the release equals or exceeds the RQ and is not otherwise exempt from CERCLA notification requirements, the release must be reported on a per-occurrence basis to the NRC, SERC, and LEPC under the provisions of CERCLA section 103(a) and SARA Title III section 304. 

Until such time as the person in charge develops a sufficient basis for establishing the continuity and stability of the release, these release reports may trigger an ARIP questionnaire.

Initial Telephone Notification. To satisfy initial telephone notification requirements, the person in charge must identify the release in the telephone call to the NRC, SERC, and LEPC as a report under section 104(f)(2) of a continuous release above the RQ, and must provide the following information for each release:

1. The name and location of the facility or vessel; and
2. The name(s) and identity of the hazardous substance(s) being released.

Initial Written Report. Initial written notification of a continuous release must be made to the appropriate EPA Regional Office, SERC, and LEPC within 30 days of the initial telephone call to the NRC, SERC, and LEPC, notifying the government of the intention of the person in charge of the facility or vessel to report under the requirements of section 104(f)(2). Under today’s rule, the initial written report must include the following information:

1. The name of the facility or vessel; the location, including the longitude and latitude; the case number assigned by the NRC or EPA; the Dun and Bradstreet number of a facility, if available; the permit of registration of the vessel; the name and telephone number of the person in charge of the facility or vessel.

2. The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0-50 persons, 51-100 persons, 101-500 persons, 501-1,000 persons, more than 1,000 persons.

3. The identity and location of sensitive populations and ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, wetlands).

In addition to the preceding general information, the following substance-specific information must be supplied for each hazardous substance release claimed to qualify for reporting under section 103(f)(2):

4. The name/identity of the hazardous substance; the Chemical Abstracts Service Registry Number for the substance (if available). If the release is a mixture, the components of the mixture and their approximate concentrations and quantities, by weight.

5. The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

6. The source(s) of the release (e.g., valves, pump seals, storage tank vents, stacks). If the source is a stack, the stack height (in feet or meters) must be provided. (If the release is attributable to a malfunction, the source must be identified as such.)

7. The frequency of the release and the fraction of the release from each source and the specific period over which it occurs.

8. A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

9. An estimate of the total annual amount of the hazardous substance released in the previous year (in pounds or kilograms).

10. The environmental medium(s) affected by the release.

11. A signed statement that the hazardous substance release(s) described is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8(b) and that all reported information is accurate and current to the best knowledge of the person in charge.

In today’s final rule, EPA requires, under the authority of section 104(a), that specific information about the source(s) of the release, the medium(s) affected, and certain ecological and population-density information be included in the initial written notification and follow-up reports. If the substance released is a mixture, the person in charge is required to identify and estimate the components of the mixture and their approximate concentrations and quantities. The Agency believes that this information is necessary to determine the need for a government response action.

To ensure that persons in charge can supply the information required in the initial written report and follow-up report without monitoring or measuring releases, the Agency has deleted the proposed provisions requiring information about the dates and numbers of times the release exceeded the RQ in a 24-hour period, the amount of the mean release, and the largest single release. Under today’s rule, persons in charge may estimate the normal range and frequency of the release and the total annual amount released; these estimates, however, must have a sound technical basis. Various factors can be used to arrive at the estimates, including the operating history of the facility or vessel, knowledge of the operating processes and currently available data, and the professional judgment of the person in charge.

A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate must be included as part of the initial written notification to the EPA Region, SERC, and LEPC, however, the substantiating information should not be submitted with the report. The substantiating information must be kept on file at the facility or in the case of a vessel, at an office within the United States in either

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a port of call, a place of regular berthing, or at the headquarters of the business that operates the vessel. EPA, the SERC, or LEPC may request and/or inspect this information, as necessary, to ensure compliance with the requirements of today's rule.

EPA's receipt of the initial written report without comment should not be interpreted to indicate approval of the report or the information it contains. There is no requirement for review of the reports submitted under sections 103(e) and 103(f)(2) of CERCLA, or section 304 of SARA Title III within a time limit. EPA, the SERC, or LEPC may re-evaluate the information submitted in the initial written report upon receipt of the follow-up report from the facility or vessel, receipt of information about an SSI, receipt of notification of changes in the release, or at any other time, and may contact the person in charge of the facility or vessel to review the basis for reporting under section 103(f)(2). EPA may also take other enforcement action, as appropriate.

One commenter asked EPA to allow a 60- to 90-day delay between the date of promulgation and the effective date of today's rule so that facilities could implement activities to establish releases as continuous and stable in quantity and rate. EPA agrees. The effective date of today's final rule is delayed 60 days to better enable persons in charge of facilities and vessels to comply effectively with the continuous release reporting requirements. In particular, the delay in the effective date will allow facilities sufficient time to call the RCRA/Superfund Hotline to request the guidance material that will fully explain today's requirements and to obtain a copy of the computer disk that will facilitate completion and evaluation of the written reports required under today's rule.

Several commenters requested a clarification about whether EPA expects a facility to perform monitoring beyond that which is currently performed to determine the continuity and stability of releases. One commenter stated that if extensive additional monitoring is required, facilities may be unwilling or unable to expend the resources to demonstrate their qualification for reducing reporting. The commenter concluded that only available data should be required to establish the continuity and stability of releases. EPA agrees that, to comply with the requirements of today's rule, persons in charge may use readily available information. EPA does not expect a facility or vessel to perform additional monitoring in order to comply with today's rule. Neither the identification of SSIs nor the other reporting requirements of the rule necessitates monitoring or measuring of releases to acquire empirical data. EPA has limited the information required in the initial and follow-up reports to data that can be calculated or estimated. For example, the Agency has eliminated the proposed requirements that the person in charge report the number of times the amount of the release during any 24-hour period exceeded the RQ, the mean release, and the single largest release.

Although no monitoring or measuring of releases is required, estimates provided in the reports, such as the total annual amount of the release and the normal range, must have a sound technical basis. This basis can be provided by engineering estimates, mass balance analysis, or other estimating techniques used by the person in charge of the facility or vessel, as well as by any data available from monitoring that is being performed currently. For example, in the case of a facility with a coal-fired boiler, the person in charge can estimate the hazardous substance releases from the boiler by considering such factors as the hazardous constituents in the particular type(s) of coal used, the volume of coal used, the efficiency of the boiler, and the amount of energy produced.

One commenter suggested that industry and Federal resources would be used effectively if the baseline determination was documented solely in the annual report rather than established by a series of reports during an initial reporting period. EPA disagrees. The Agency believes a minimum of one telephone call is necessary to alert government authorities to the intent of the person in charge of a facility or vessel to report a release as a continuous release. Accordingly, if there is a sufficient basis to establish the continuity and stability of the release under the definitions in today's rule, the person in charge need only make an initial one-time telephone notification to the NRC, SERC, and LEPC and, within 30 days, submit an initial written report to the EPA Region, SERC, and LEPC to establish the baseline information for a release. The initial written report must cover a period of time sufficient to satisfy the requirement of section 103(f)(2)(B) that notification establish the continuity, quantity, and regularity of the release. If, however, the person in charge of a facility or vessel does not have a basis for qualifying a release for reporting under section 103(f)(2), the release must be reported on a per-occurrence basis for a period sufficient to establish its continuity and stability. When the basis is established, the person in charge can begin reporting releases under section 103(f)(2) by notifying the NRC, SERC, and LEPC and then, within 30 days, submitting the initial written notification. The initial written notification to the EPA Region, SERC, and LEPC will allow response officials to assess potential threats to public health and welfare and the environment from the release at question.

b. Follow-up Report. The April 19, 1990 NPRM required the submission of annual reports on continuous releases. Under section 103(f)(2)(B) that authorizes annual reports of continuous releases, the final rule requires that, within 30 days of the first anniversary date of the initial written notification, the person in charge must evaluate the reported releases and submit a one-time follow-up report to the EPA Region for the geographical area where the releasing facility or vessel is located. The purpose of the one-time follow-up report is to verify or update the information submitted in the initial written report. Although follow-up reports need not be submitted to SERCs or LEPCs, EPA will make the submitted information available to them.

After the submission of the follow-up report, the person in charge must annually reevaluate each reported hazardous substance release within 30 days of the anniversary date of the initial written notification to determine whether there have been changes in the release that require modification of the information previously submitted. Each annual evaluation must be documented, but no annual report or notification of the annual evaluation is required. Notification subsequent to the follow-up report must be made only if there is a change in any of the information submitted previously. Nevertheless, if EPA determines that annual evaluation is not occurring or submitted information is not being properly updated, the Agency may reconsider requiring more frequent reporting. In addition, under the authority of CERCLA section 104(e)(4), the Agency intends to make periodic inspections and targeted audits of facilities reporting under section 103(f)(2) to ensure that the hazardous substances released do not pose a hazard to public health or welfare or the environment and that proper reporting and recordkeeping has occurred.

One commenter stated that although the requirement to submit annual reports to the EPA Region is not practical, it contradicted the language of the statute which, in section 103(f)(2)(B),
LEPC because such releases are episodic releases that must be reported under CERCLA section 103(a) and SARA Title III section 304(b). Under today's rule, SSIs are defined as releases that exceed the upper bound of the reported normal range, where the normal range is defined (to include all releases (in pounds or kilogram) of a hazardous substance reported or occurring over any 24-hour period under normal operating conditions during the previous year. The initial written report and follow-up reports are the vehicles for establishing and confirming the normal range of a release and will provide the baseline against which to evaluate SSI reports.

As noted above, SSIs are episodic releases that must be reported under CERCLA section 103(a) and SARA Title III section 304(b). Other episodic releases are episodic releases that exceed the upper bound of the reported normal range of releases. Because, by definition, an SSI is a release above the reported normal range, it has not been previously reported or evaluated and may pose a substantial threat to human health or the environment. Such occurrences are not part of the continuous release reporting regime. They must be reported if released in an RQ or more as soon as the person in charge knows they have occurred, whether or not they exceed the upper bound of the reported normal range of releases. Because, by definition, an SSI is a release above the reported normal range, it has not been previously reported or evaluated and may pose a substantial threat to human health or the environment. Such occurrences should be evaluated on the basis of reasonably current and accurate information. The Agency has concluded, therefore, that requiring SSI reports, initial written and follow-up reports, and reports of changes in previously submitted information best fulfills the intent of the statute and its underlying purpose.

The requirements for the information that must be submitted in the follow-up report are the same as those for the initial written report. If the information submitted in the initial or follow-up reports raises concern about the potential threat posed by the release, EPA has broad authority under CERCLA section 104(e) to procure additional information and under section 104(a) to take any action necessary to prevent or mitigate damage to public health or welfare or the environment. For example, if EPA determines that the upper bound of the reported normal range for a given release is high enough to raise concern about the potential threat posed by the release, the Agency may require the person in charge of the facility or vessel to report all releases at or above some specified level within the reported normal range. (See section II.B.4., below, for a complete discussion of the normal range approach.)

If EPA determines that the reported basis is inadequate for establishing that the release is continuous and stable in quantity and rate, or other information is insufficient or unclear, the Agency may request additional information, clarification, or modifications. EPA may also ask to review the materials on file at the facility or vessel that support information submitted in the report.

Upon review, if EPA determines that the documentation does not adequately support the information in the initial written or follow-up report, the Agency may require that the person in charge amend the report to reflect supporting information. If EPA determines that the release does not qualify for reporting under section 103(f)(2), the person in charge must submit the report under section 103(f)(1) until a sufficient basis for reporting under section 103(f)(2) is developed and reported.

Several commenters requested that State-permitted emissions reports be accepted as substitutes for annual reports under CERCLA, section 103(f)(2). Since this proposal, EPA has determined that it will require a one-time follow-up report rather than annual reports. Nonetheless, the Agency does not believe that a State report can be used in lieu of the follow-up report. Reports submitted under State programs vary widely in format and information and might not include the information required in the follow-up report. Also, under today's rule follow-up reports need be submitted only once, unless there is a change in previously submitted information. Therefore, follow-up reports should not be unduly burdensome to persons in charge of facilities or vessels that also must submit reports under State programs.

c. Reports of Changes in Previously Submitted Information. After initial notification reports have been submitted for a release and reporting under section 103(f)(2) has commenced, a change in the composition or source of the release may make it necessary for the person in charge to requalify the changed or "new" release under section 103(f)(2). In the April 18, 1986, NPRM, EPA proposed that the person in charge requalify such a release under section 103(f)(2) when there is a "substantial" change in the composition or character of the release. The Agency is today defining a substantial change to be any change in the composition or source(s) of the release. A change in the composition or source(s) of a release may be caused by factors such as equipment modifications.
or process changes. The changed or "new" release may pose a hazard warranting notification and evaluation and be qualified anew for reporting under section 103(f)(2). To qualify the new release for reporting under section 103(f)(2), the person in charge must establish the new release as continuous and stable in quantity and rate by reporting to the NRC, SERC, and LEPC on a per-occurrence basis. When the basis has been established, the person in charge must submit initial telephone notifications to the NRC, SERC, and LEPC and initial written reports to the appropriate EPA Region, SERC, and LEPC within 30 days of the initial telephone notification.

If a change at a facility or vessel results in an increase in the quantity of a release above the reported normal range although other reported characteristics of the release remain unchanged, the release must be reported immediately to the NRC, SERC, and LEPC as an SSI as soon as the person in charge knows that the release has exceeded the upper bound of the reported normal range. If a change results (or will result) in a number of releases that exceed the normal range and the person in charge wishes to modify the normal range to reflect the change, the person in charge must report at least one release as an SSI, but may at the same time inform the NRC, SERC, and LEPC that the normal range of the release is being modified. Within 30 days from the telephone notification, the person in charge of the facility or vessel must submit a letter to the EPA Region describing the new normal range, the reason for the change, and the basis for stating that the release is continuous and stable at the increased quantity. Persons in charge of facilities or vessels that must report releases of CERCLA hazardous substances and EHSs under SARA Title III section 304(b) must include this information with the written notice that is required under SARA Title III section 304(c).

For all other changes in the information submitted in the initial or follow-up notification, the person in charge must notify the EPA Region in writing within 30 days of determining that the information submitted previously is no longer valid. (Such notification to SERCs and LEPCs is not required.) For example, if there is a change in charge of a facility or vessel, the new person in charge must notify the EPA Region of the change. Notifications of changes in a release or in other submitted information must include the NRC/EPA-assigned case number and a signed certification statement that the release is continuous and stable in quantity and rate and that all the reported information is accurate and correct to the best knowledge of the person in charge.

One commenter stated that, rather than requiring a new justification for reporting under section 103(f)(2), EPA should allow persons in charge to report changes in the frequency of a release by amending the annual report. As an example, the commenter cited more frequent startups and shutdowns of units under normal conditions and argued that, although there would be an increase in the annual total amount released, the change in frequency would not result in additional impact on public health or the environment; however, that may not be the case in all situations. Under today's final rule, therefore, a change in the frequency is among the changes that the person in charge must report to the EPA Region in writing within 30 days. An explanation for the change in the release frequency must be included in the letter to the EPA Region. A new initial written report is not required.

d. Statistically Significant Increase Reports. Reports of SSIs must be made by notifying the NRC by telephone as is required in 40 CFR 302.5 for notifications of episodic releases of hazardous substances that equal or exceed an RQ (50 FR 13456; April 4, 1985), and to the SERC and LEPC in the manner set forth in 40 CFR 355.40(b). Callers should identify the releases as SSIs and include the case number assigned by the NRC or EPA when initial telephone notification of the release was made, to ensure that the information is recorded correctly. EPA will immediately evaluate such releases to determine the need for a response action. In determining whether an SSI has occurred and must be reported, the person in charge of the facility or vessel should use a 24-hour period for measuring the quantity released. One commenter suggested that reports of SSIs should be made in amendments to the annual report as soon as practicable rather than by notifying the NRC by telephone. The Agency does not agree that an SSI in a release should be reported by inclusion in or amendment to a written report. EPA interprets the provisions of section 103(f)(2) to require an SSI, like any other episodic release, to be reported to the NRC under section 103(a) as soon as the person in charge is aware of its occurrence. Notification to the NRC is appropriate because an SSI is an episodic release; it is a release above the RQ that has not been reviewed or evaluated previously. Thus, like episodic releases of hazardous substances, an SSI must be evaluated promptly to determine whether a public health or welfare threat exists. It would not be sufficient to report SSIs to the EPA Region when the person in charge decides to amend the previously submitted written report. Today's final rule, therefore, requires that notification be given when an increase in the quantity of the hazardous substance being released during any 24-hour period exceeds the upper bound of the reported normal range of the release (40 CFR 302.5(c)(5), 40 CFR 355.40(a)(2)(iii)(B)).

One commenter stated that "the 24-hour time period over which releases must be aggregated" seemed excessive and urged that it be shortened considerably, perhaps to one hour. EPA does not agree that the time period for determining an SSI in a release should be shortened. The Agency believes that 24 hours is an appropriate length of time in which to determine whether SSIs have occurred because it is the length of time used to determine whether other types of episodic releases equal or exceed the RQ and must be reported under section 103(a) (50 FR 13456; April 4, 1985). The regulated community is also familiar with the 24-hour period as it was established under regulations implementing section 311 of the Clean Water Act, the predecessor of CERCLA.

In addition, the Agency is concerned that releases that may pose threats to public health or welfare or the environment may not be brought to the attention of government authorities if the 24-hour period is shortened. For example, if the period were shortened to one hour from the onset of the release as the commenter suggests, a release that continues for more than one hour may not reach the full rate of emission within the shortened time period. As a result, the threat posed by the release would be inaccurately evaluated. Within 24 hours, however, most releases should have
reached their full emission rate. In addition, the Agency believes 24 hours is an appropriate length of time for releasing that occur during batch processes or certain other operating procedures.

One commenter suggested that EPA allow the person in charge to use any routine 24-hour reporting period employed, such as a period from 7 a.m. of one day to 7 a.m. of the next day, rather than a calendar day. EPA agrees with this suggestion. The Agency does not intend that the person in charge be required to use a calendar day as the 24-hour period for measuring releases. If a release is continuous without interruption or abatement, the 24-hour period for determining whether an SSI in the release has occurred can be any routine, continuous 24-hour operating period that reasonably reflects the quantity typically released over that length of time. If the release is continuous during operating hours, or during regularly-occurring batch processes, or follows some other pattern, but is a routine, anticipated, intermittent release, the 24-hour period for determining the total amount of the release should begin at the onset of the release.

Several commenters stated that the released quantity of a hazardous substance frequently cannot be determined accurately on a 24-hour or daily basis. One commenter stated that in large, continuous processes with many pieces of equipment and storage tanks, any estimate of releases is subject to inventory errors so large that only annual data give a good measure of average loss per day. The commenter cited examples of losses from tank openings, pump seals, and other connections as not being generally known or measured.

EPA realizes that for some facilities or vessels, the persons in charge may not be able to quantify releases on a daily or a 24-hour basis. In such instances, persons in charge can use their knowledge of the processes, equipment, and operating history of the facility or vessel and the approximate amount of annual total releases to estimate or calculate the normal range of such releases. The same knowledge and judgment can also be employed to estimate releases within a 24-hour period and to determine whether it exceeds the upper bound of the reported normal range and must be reported to the NRC.

If a release is continuous without interruption or abatement, the person in charge can estimate the amount released over a 24-hour period by dividing the estimate of the total amount released by the number of 24-hour periods over which the release extends. If the release is continuous during operating hours, or during regularly-occurring batch processes, or follows some other pattern, but is a routine, anticipated, intermittent release, the period for determining an SSI begins at the onset of the release and continues for 24 hours. Releases of the same hazardous substance from the same facility must be aggregated for the 24-hour period to determine if an SSI has occurred. This does not mean that the person in charge should postpone notifying the NRC, SERC, and LEPC until the 24-period has ended. The NRC, SERC, and LEPC must be notified as soon as the person in charge knows that the quantity of a release within the 24-hour period exceeds the upper bound of the reported normal range.

4. Statistically Significant Increases

In today's final rule, the Agency defines an SSI as any release of a hazardous substance that exceeds the upper bound of the reported normal range. The normal range is defined to include all the releases (in pounds or kilograms) of a hazardous substance reported or occurring over any 24-hour period under normal operating conditions (i.e., normal conditions that prevail during the period establishing the continuity, quantity, and regularity of the released) during the preceding year. The definition reflects comments received on the NFRM definition of an SSI and is based upon the language of CERCLA section 103(f)(2)(B) that requires that notification shall be given "as soon as is practicable" at such time as there is any statistical or significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring."

The definition of SSI, therefore, does not include releases within the reported normal range of the release. The Agency considers any release that exceeds the reported normal range to be statistically significant because the normal range is established based on a set of historical data representing all releases reported or occurring during normal operations over the previous year.

In the proposed rule, EPA had selected as the definition of SSI the five percent significance level for the Type I error rate, but solicited suggestions from interested parties with data supporting a Type I error rate other than five percent (Type I error is the probability of falsely assuming a difference). Several commenters objected to EPA's choice of the five percent significance level as being too stringent. One commenter stated that the Agency might be overburdened with reports to such an extent that releases requiring responses could be obscured. Another commenter suggested that EPA change the confidence level from 95 to 99 percent to reduce the frequency of unnecessary reporting and reduce the burden on the facilities and vessels, the NRC, SERCs, and LEPCs.

The Agency agrees with the commenters that the five percent significance level might burden facilities and vessels, and the NRC, SERCs, and LEPCs with a large number of SSI reports without providing a commensurate benefit for protection of human health and welfare and the environment. At a five percent significance level, the NRC would receive approximately 18 reports per year for each hazardous substance released in a manner that is continuous without interruption or abatement (i.e., 5 percent of 365 days). Given the number of facilities and vessels that could qualify for reporting under section 103(f)(2), the NRC could be overburdened by reports at the five percent significance level. Also, if a continuous release is sufficiently stable to qualify for reduced reporting, the Agency believes that the number of reports required at the five percent significance level is unnecessary to protect public health and welfare and the environment, and might result in the government's inability to evaluate or respond to the most hazardous releases.

In the April 19, 1988 NFRM, the Agency proposed to allow the person in charge of a facility or vessel to select the appropriate statistical test for identifying SSIs at the five percent significance level. EPA included a nonparametric test and two parametric statistical tests: A control chart test and the Student-test. The Agency also proposed to allow the person in charge of a facility to use other statistical tests, provided that a demonstration is made to show that the test used is appropriate for the underlying release distribution. A number of commenters stated that quantification of releases to provide data for statistical tests is not possible for certain facilities. Some commenters objected to the use of the statistical tests because of the expense and burden of collecting the necessary data. Other commenters stated that releases from many facilities are "calculated" or "estimated" and, therefore, use of the statistical tests "does not make sense" for such facilities. Several commenters stated that CERCLA does not require monitoring for purposes of reporting under CERCLA section 103(a) and,
therefore, many facilities would not have the data necessary to use the tests. These commenters suggested that rather than using a statistical test to identify SSIs, persons in charge of facilities could establish a normal range for releases from those facilities and SSIs would be defined as those releases outside the normal range.

One commenter noted that the language of section 103(f)(2) requires reporting of "any statistically significant increase in the quantity of any hazardous substance or constituent thereof released, above that previously reported or occurring." Notification at the five percent significance level, the commenter stated, would not only require reporting of releases above the range of releases previously reported or occurring, but also would require reports of the largest five percent of releases within that range. Such reporting would be redundant and contrary to the intent of the statute.

The Agency agrees that the use of statistical tests may require empirical release data that are unavailable for some facilities or vessels whose releases could otherwise qualify for reporting under section 103(f)(2), and that the establishment of a normal range of releases provides an acceptable approach to identifying SSIs. The Agency also agrees that, in order to be consistent with the language of section 103(f)(2), the normal range, properly identified, will include all releases under normal operating conditions reported or occurring over the previous year. Thus, the definition of statistically significant will not include releases within that reported range. An SSI in an otherwise continuous and stable release is defined as any release greater than the upper bound of the reported normal range of the release.

Specification of the normal range must be made in the initial written notification report to the EPA Region, SERC, and LEPC. Identification of the normal range of a release should be based on professional judgment, the operating history of the facility or vessel, experience with the operating equipment and processes, and any existing data. Releases included in the normal range are to be evaluated over a 24-hour period. The Agency believes that persons in charge, in most cases, would have adequate information available to provide reasonable estimates or approximations of the normal range of a release, without measuring or monitoring. To establish a normal range, for example, historical data or engineering estimates of releases and operations under varying conditions could provide a reasonable indication of the nature, frequency, and source(s) of a normal range of releases that are predictable in quantity and rate of emission.

Justification of the normal range must be kept on file at the facility, or in the case of a vessel, at an office within the United States at a pier of call, place of regular berthing, or at the headquarters of the business that operates the vessel. Only those releases that are both continuous and stable in quantity and rate may be included in the normal range. Any release outside the upper limit of the reported normal range would be an SSI that would require an immediate report to the NRC, the SERC, and the LEPC. In allowing persons in charge to use this normal range approach, the Agency is not suggesting that releases within the normal range are federally permitted or risk-free. Generally, the Agency believes that the normal range approach promulgated today will result in reports of releases that may pose a hazard to human health, welfare, or the environment, without overburdening the resources of facilities or vessels, or the government. For some releases, however, reporting only those releases above the reported normal range as SSIs may not be sufficiently protective of human health, welfare, and the environment. EPA, therefore, may review the initial written notification reports and follow-up reports to determine if the release poses a potential hazard, taking into consideration the characteristics of the substance being released, the quantity and frequency of the release, the sensitivity of the location of the release, and any other relevant factors. If EPA determines, based on such factors, that the release poses a threat or potential threat to human health or welfare or the environment, EPA may take any authorized action necessary to prevent or mitigate the danger, including requiring the person in charge to report releases at or above some specified level below the upper bound of the reported normal range on a per-occurrence basis. Receipt of an initial or follow-up report without comment should not be interpreted as an indication of EPA approval of the normal range or of the other information the report contains.

One commenter suggested that an SSI should be defined with reference to some significant change in plant operations, such as an increase in capacity, a major equipment modification, or some unusual release that occurs as a result of a malfunction or upset condition. EPA does not agree with this comment. An SSI may or may not be the result of a malfunction or unusual occurrence. Some releases that result from malfunctions are episodic releases that are not continuous and stable in quantity and rate and, therefore, do not qualify for reduced reporting under section 103(f)(2). Such releases from malfunctions, although they may not exceed the upper bound of the reported normal range of the continuous release, must be reported on a per-occurrence basis under section 103(a). Also, changes in plant operations may not result in an SSI, but in a change in the source or composition of the release. Any change in source or composition is considered a "new" release for purposes of reporting under section 103(f)(2). Such changes must be re-evaluated in a timely manner, based on the full scope of information required in the initial written report, which must include a statement that the release is continuous and stable in quantity and rate under the changed conditions. EPA, therefore, does not agree that SSIs in releases can be defined as the commenter suggests.

Another commenter stated that actual daily release quantities are known for only a few sources of a few substances and that release quantities are often determined by using engineering calculations, emission factors, and operating experience. The commenter suggested that release estimates, because they are not actual daily release figures, should be rounded to two significant digits of accuracy and an SSI should be defined as a release that, when the increased release is rounded to two significant digits, results in an increase of at least one in the less significant digit.

EPA does not agree that an SSI should be defined as a numeric increase in estimated release figures because, given the variety of release sources, any such figure would be arbitrary and potentially inappropriate for some releases. The Agency believes, therefore, that for releases that can only be estimated by calculations, operating experience, and professional judgment, it is more appropriate that persons in charge estimate the normal range of the releases previously reported or occurring under normal operating conditions, and to report, as SSIs, all releases that exceed the upper bound of the reported normal range. The normal range approach can much more readily be adapted to the many different sources of releases.

Several commenters questioned whether monitoring is required to obtain

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data for reporting SSIs. One commenter stated that because no monitoring is required for purposes of reporting under section 103(a), many facility owners and operators may decide that section 103(a) reporting is less difficult and expensive than qualifying for reduced reporting under section 103(f)(2). If owners or operators opted to report continuous releases under section 103(a), the commenter believed the NRC could be overwhelmed by unnecessary reports.

As has been noted at section II.B.3 of this preamble, the Agency does not intend that monitoring systems be installed in facilities or vessels in order to collect empirical data to qualify releases for reduced reporting. The Agency believes the normal range method for identifying SSIs in releases established in today's rule is sufficiently flexible to permit persons in charge of facilities or vessels to qualify releases for reduced reporting under section 103(f)(2) without installing monitoring devices or incurring other excessive regulatory burden. By using engineering estimates, knowledge of the operating history of the facility or vessel, experience with operating processes, and professional judgment, the person in charge can establish a normal range of releases on a sound technical basis. SSIs above this normal range can be estimated in the same fashion without monitoring or measuring.

C. Relationship to Reporting Under SARA Title III

SARA Title III (sections 301-329) addresses emergency planning and community right-to-know and requires, among other things, emergency and annual notification to State and local governments in addition to the notification requirements of section 103 of CERCLA.

Section 304 Reporting

To clarify the types of releases exempt from section 304 notification, the April 19, 1988 NPRM proposed revising the applicability section of the regulations implementing section 304 to add definitions of "continuous" and "statistically significant increase." Several commenters misinterpreted the proposed rule language as incorporating CERCLA section 103(f)(2) continuous release annual report requirements under section 304.

Section 304 of SARA Title III provides release reporting requirements that parallel the requirements of section 103(a) of CERCLA, but are intended to make release information available immediately to the SERC of any State likely to be affected by the release and emergency response coordinator for the LEPC for any area likely to be affected by the release. Generally, a release of an EHS or a CERCLA hazardous substance must be reported immediately to a SERC and LEPC if it (1) is in an amount equal to or in excess of the RQ (or one pound if an alternative quantity has not been established by regulation), and (2) occurs from a facility at which a hazardous chemical is produced, used, or stored and in a manner that would require notice under CERCLA section 103(a). The addition of the definitions in today's final rule clarify the meaning of the statutory phrase, "occurs in a manner which would require notice under CERCLA section 103(a)."

To the extent that releases are continuous and stable in quantity and rate as defined by CERCLA section 103(f)(2) and today's final rule, they do not occur in a manner that requires notification under CERCLA section 103(a). Accordingly, when persons in charge of facilities or vessels releasing EHSs or CERCLA hazardous substances submit the initial notification report (including the initial written reports, which should be submitted with the follow-up report required by SARA Title III section 304(c)) to the appropriate SERC and LEPC, identifying releases of EHSs and CERCLA hazardous substances as continuous and stable in quantity and rate under the definitions in today's final rule, they need not report again to the SERC and LEPC, except for reports of SSIs. No CERCLA section 103(f)(2) follow-up reports are required under SARA Title III section 304.

If there is a change in the composition or source(s) of a release, however, the release is considered a new release and must be qualified for reporting as a continuous release. Accordingly, the new release must be reported to the NRC, SERC, and LEPC on a per-occurrence basis for a period sufficient to establish its continuity and stability. When the basis is established, the owner or operator must make an initial telephone report to notify the NRC, SERC, and LEPC of the intent to report the release as a continuous release and, within 30 days, submit initial written notifications to the EPA Region, SERC, and LEPC. No other releases in releases must be reported to the SERC or LEPC, unless there is an increase in the quantity of the release, and the owner or operator wants to modify the reported normal range of the release to redefine SSIs. To modify the reported normal range, the owner or operator must submit at least one SSI report to the NRC, SERC, and LEPC, and, within 30 days, submit a letter to the EPA Region describing the new normal range, the reason for the change, and the basis for stating that the release in the increased amount is continuous and stable in quantity and rate under definitions in today's rule. Information on the change in the normal range should also be submitted to the SERC and LEPC, along with the SARA Title III section 304(c) follow-up report, in order to redefine SSIs under section 304.

EPA intends to maintain the information submitted on continuous releases in its computerized Emergency Response Notification/Information System database. The Agency will make this information available to EPA program offices, and, upon request, will share with SERCs and LEPCs information not submitted directly to them. Continuous release information, together with the information collected under other sections of SARA Title III, will provide the SERCs and LEPCs with a comprehensive picture of chemical hazards in a particular community. EPA believes this information can be used by facilities, as well as by other government authorities, to further pollution and accident prevention goals and objectives.

Initial telephone notification to the SERC and LEPC required under today's rule must include the same information as is contained in the initial telephone notification to the NRC under 40 CFR 302.8(a)(3). To satisfy the requirements under today's rule and the requirements for a follow-up notice under SARA Title III section 304(c), the initial written notification to the SERC and LEPC must identify the facility or vessel, the person in charge, the hazardous substance being released (and whether it is an extremely hazardous substance under 40 CFR part 355, appendix A), the source(s) of the release and the medium(a) it may affect, its frequency, the basis for stating that the release continuous and stable in quantity and rate under the normal range of the release, an estimate of the total annual amount released, the population density within a one-mile radius of the facility, the identity and location of sensitive populations and ecosystems within that area, if any, and any known or anticipated acute or chronic health risks associated with the release, and precautions the public and operator must take as a result of the release. Information from
initial reports will establish the release as continuous, assist State and local officials in emergency planning, and provide a basis for the SERC or LEPC to evaluate reports of SSIs.

Commenters on section 304 requirements should note that the Agency has proposed to designate 232 EHSs as CERCLA hazardous substances (54 FR 3368; January 23, 1989). When that proposed rule becomes final and effective, continuous releases of EHSs that are newly designated as CERCLA hazardous substances will be subject to all the requirements applicable to releases of CERCLA hazardous substances, including submission of follow-up reports to the appropriate EPA Regional office under CERCLA section 103(f)(2).

Section 313 Reporting

A number of commenters urged EPA to allow substitution of the Toxic Release Inventory (TRI) report required under SARA Title III section 313 for the annual reports required under the April 19, 1988 NPRM. In today's final rule the Agency is not requiring annual reports but only an initial written notification and a one-time follow-up report. Nevertheless, to provide flexibility, the Agency is allowing persons in charge to submit a copy of the TRI report in lieu of the CERCLA section 103(f)(2) initial written and follow-up reports, provided that certain supplemental continuous release information is submitted with the TRI report.

Under SARA Title III section 313, covered facilities must submit, on or before July 1 of each year, a TRI form to the EPA Administrator and the state officials designated by the Governor of the State in which the facility is located. Annual notification requirements under SARA section 313, however, are different in scope and purpose from CERCLA section 103 reporting requirements. SARA Title III section 313 requirements apply only to facilities in the Standard Industrial Classification (SIC) Major Groups 20 through 39 (unless the Administrator exercises the discretion granted in sections 313(b)(1) or 313(b)(2) to add or delete SIC groups or individual facilities that have inventories of listed chemicals as specified threshold amounts. There are no such restrictions on the applicability of CERCLA notification requirements.

Also, the universe of substances covered by CERCLA section 103 is not the same as the universe covered by SARA Title III section 313 requirements; some substances subject to CERCLA notification requirements are not subject to section 313, and other substances not subject to CERCLA notification requirements are subject to section 313 notification requirements.

The purpose of the reporting requirements differ as well. The purpose of the SARA Title III section 313 reporting requirements is to provide the public with information concerning the release of toxic chemicals into the environment, whereas the purpose of CERCLA notification requirements is to alert response officials to releases that may require a government response to protect public health and welfare and the environment.

In accordance with its statement in the preamble to the April 19, 1988 proposed rule to resolve, if possible, the concern about duplicate reporting, the Agency initiated discussions with EPA Regional personnel to determine whether the data submitted under section 313 would be adequate for their needs. On the basis of these discussions, EPA determined that the use of the SARA Title III section 313 report to satisfy the initial written and follow-up reporting requirements of CERCLA section 103(f)(2) is feasible so long as certain additional continuous release information is included with the section 313 report. The additions will provide EPA Regions with information that is not requested for purposes of the SARA Title III section 313 report, but is required in the continuous release initial written notification or follow-up report. If the TRI report is submitted in lieu of the initial written or follow-up report, the following continuous release information will be submitted with a copy of the TRI report:

(1) The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0–50 persons, 51–100 persons, 101–500 persons, 501–2000 persons, more than 1,000 persons.

(2) The identity and location of any sensitive populations or ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, or wetlands). In addition, the following information must be supplied for each hazardous substance release claimed to qualify for reporting under section 103(f)(2):

(3) The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

(4) The frequency of the release and the fraction of the release from each source and the specific period over which it occurs.

(5) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate. Also, the person in charge must include in the report the case number assigned by the NRC or EPA and a signed statement that the hazardous substance release(s) described in the notification is continuous and stable in quantity and rate under the definitions in 40 CFR 302.2, and that all the reported information is accurate and current to the best of his or her knowledge.

This additional information must be submitted to the appropriate EPA Regional Office, along with a copy of the most recent SARA Title III section 313 annual report, within 30 days of the initial telephone notification to the NRC. A subsequent TRI report plus addendum must also be submitted within 30 days of the first anniversary date of the initial written submission. The additional information required for purposes of satisfying the requirements of today's rule should not, however, be submitted by an owner or operator when submitting the Form R report under SARA Title III section 313 to the Toxic Release Inventory data base. Rather, a copy of Form R should be submitted with the additional information to the EPA Region. (The addresses of appropriate EPA Regional Offices are listed in section II.B.3 of this preamble.) Owners and operators that do not choose to substitute the section 313 report must submit the CERCLA section 103(f)(2) initial written report within 30 days of the initial telephone notification and a follow-up report on or before the anniversary date of the initial written report.

RQ Adjustments

One commenter stated that although the proposed rule does not address modification of RQs, it highlights the need for EPA to modify the RQs for non-CERCLA EHSs. The commenter noted, for example, that the RQ for sulfur dioxide was set by SARA Title III section 304 at one pound, but that emission levels far above 200 pounds per day are permitted for power plants burning fossil fuels.

EPA has proposed a rule to designate 323 EHSs as CERCLA hazardous substances (54 FR 3368; January 23, 1989). On August 30, 1989, the Agency...
proposed adjustments to the RQs for these and other EHSs (54 FR 35988).

When the Agency promulgates the final rule, it will simultaneously adjust the RQs for these substances. Also, the commenter should note that releases in compliance with permits under other Federal programs may be exempt from CERCLA notification requirements under the federally permitted release exemption. (See CERCLA section 101(10), CERCLA section 103(e), and SARA Title III section 304(a)).

D. Multiple Concurrent Releases

In §302.8(e) of the April 19, 1988 proposed rule (53 FR 32868 at 32869), EPA stated that multiple concurrent releases of the same substance occurring at various locations from contiguous plants or installations on contiguous property that are under common ownership or control shall be added together to determine whether such releases constitute a continuous release or an SSI. Several commenters found the multiple concurrent release section of the proposed rule confusing and inconsistent with the CERCLA definition of facility. These commenters inferred that the proposed rule adopted the SARA Title III definition of "facility" for purposes of the continuous release rule. The commenters stated that the aggregation of release data from different facilities on contiguous grounds under common ownership would be inconsistent with the definition of "facility" under CERCLA, and would be difficult because there are often different persons in charge of the various facilities.

The Agency did not intend to adopt the SARA Title III definition of facility for the purposes of the continuous release rule. In today's final rule, therefore, §302.8(f) allows the person in charge to aggregate release data from separate, contiguous, adjacent facilities or to consider each facility separately. Persons in charge, however, must aggregate multiple concurrent releases of the same substance from a particular facility, to determine if an RQ has been equaled or exceeded (See 50 FR 13456 at 13459; April 4, 1985 and CERCLA section 101(9)). For the purpose of determining whether a release is continuous and stable in quantity and rate, and for the purpose of identifying SSIs, however, the aggregation of release data from separate facilities is optional. The person in charge may either consider the releases separately or in the aggregate, provided that whatever approach is elected is used for both purposes. This option should eliminate any difficulty or confusion that persons in charge of different facilities at one plant or company might otherwise have experienced.

E. Administrative Reporting Exemptions

One commenter on the April 19, 1988 proposed rule maintained that emissions that are considered de minimis, or that are exempt from regulation under other Federal or State statutes or regulations because their impact is insignificant, do not warrant reporting to the NRC. The commenter cited the example of emissions from small internal combustion engines used in the field. According to the commenter, releases from these engines easily could equal or exceed the 10-pound RQ for oxides of nitrogen, yet could be significantly below the annual emission level that would trigger a permitting requirement. Other examples the commenter mentioned were emissions from flares at tank batteries and gas processing plants, venting of small amounts of sour gas (gas containing hydrogen sulfide), and fugitive emissions. The commenter stated that these emissions have been identified to other authorities and are clearly normal, routine emissions that should be exempt from CERCLA section 103(a) reporting requirements.

The EPA would consider granting an administrative reporting exemption if EPA or another appropriate Federal agency determines that certain releases pose a hazard only rarely and that the government would rarely, if ever, respond to such releases, or if the Agency concludes that it is technically or administratively infeasible or inappropriate to respond to such releases. The commenter has not provided sufficient data or analysis for the Agency to determine whether the releases mentioned are actually de minimis and thus would rarely pose a hazard or that government authorities would rarely, if ever, want to respond to reports of such releases. The Agency, therefore, is not granting any administrative exemptions from section 103(a) or section 103(f)(2) notification requirements in today's final rule. Under the definitions of continuous and stable in quantity and rate promulgated in today's rule, however, releases such as the ones cited by the commenter may qualify for reporting under section 103(f)(2).

Another commenter proposed that EPA exempt from all continuous release notification requirements, air releases from electric utility fossil fuel-fired steam/electric generating units because some emissions from such facilities cannot be measured to any reasonable degree of accuracy, and because reporting the facility emissions that are measurable or monitorable would duplicate reporting associated with other Federal and State regulatory and permit requirements.

The Agency is aware that some releases are not measured or monitored and that persons in charge of facilities or vessels emitting such releases will not be able to provide empirical data about such releases. Consequently, for this type of release, the Agency is allowing persons in charge to make reasonable estimates or calculations of the information necessary to comply with section 103(f)(2) requirements on the basis of experience with operating processes and equipment, professional judgment, and any available data.

Also, certain releases are considered federally permitted releases under CERCLA section 101(10) and are exempt from CERCLA and SARA Title III notification and liability provisions. Congress was explicit in listing the types of releases that are exempt from notification and liability provisions.

Releases that do not come within the provisions of section 101(10), however, are subject to CERCLA notification and liability provisions, regardless of any permits or licenses that may control these releases. (For further clarification, see the proposed rule on federally permitted releases (53 FR 27268; July 19, 1988)).

III. Comments on the Federally Permitted Release Rule

A number of commenters stated that it would not be possible to assess the full impact of the continuous release rule until the federally permitted release rule was proposed. One commenter suggested that the two rules be combined for final promulgation.

The Agency understands that the provisions of today's rule and the federally permitted release rule have a related effect on CERCLA notification requirements for many facilities and vessels. Some releases that do not qualify as federally permitted releases under one of the Federal acts enumerated in CERCLA section 101(10) may nevertheless qualify for reduced reporting as continuous releases. The provisions of today's rule may, therefore, have a related effect on certain releases under CERCLA section 103(f)(2). Accordingly, the Agency has examined all comments received on the federally permitted release proposal that address reporting requirements for continuous releases. Those comments raised no significant issues regarding continuous releases that had not already been raised in the comments on the continuous release proposal.

Moreover, the Agency believes that persons in charge of facilities and vessels have had ample opportunity to
assess the impact of the rules on the basis of the proposals published in the Federal Register. The federally permitted release rule was proposed on July 19, 1988 (53 FR 27268) and the comment period was extended to October 19, 1988 to accommodate comments. The federally permitted release rule is a complex rulemaking involving the provisions of a number of statutes in addition to CERCLA section 101(10). The Agency believes it would be inappropriate to delay promulgation of today's final rule until the promulgation of the federally permitted release rule, which is not expected until the Spring of 1991. By promulgating the continuous release rule today, the Agency will enable industry to begin reporting immediately under its provisions.

IV. Regulatory Costs

In the economic analysis supporting the April 19, 1988 NPRM, EPA assumed as a baseline the costs that the regulated community would incur if a measure of the estimated costs that the affected community, government agencies, and other parties, such as the general public, would incur if a regulation were not promulgated. Estimates of the post-regulation costs can be determined once the baseline is established. The difference between the post-regulation costs and the baseline costs is the incremental cost (or cost savings) attributable to the final regulation.

Today's continuous release reporting regulation clarifies the reduced reporting requirements for facilities that release CERCLA hazardous substances at levels that equal or exceed an RQ on a continuous basis. As such, it is deregulatory in nature and results in cost savings to affected facilities and vessels relative to the costs that would be incurred were they to report on a per-occurrence basis under CERCLA section 103(a). The economic analysis supporting the NPRM in which its baseline the reporting requirements that would prevail without section 103(f)(2). That is, the economic baseline assumed that all facilities and vessels would report releases under CERCLA section 103(f). EPA believes that this is an appropriate approach, but acknowledges that many facilities and vessels with continuous releases of hazardous substances are not reporting under section 103(a) and have interpreted the statutory provisions of section 103(f)(2) as not requiring any reports of releases that are continuous and stable in quantity and rate.

Under the final rule, the person in charge of any facility or vessel that releases a CERCLA hazardous substance in a quantity equal to or exceeding the RQ in a manner that is continuous and stable in quantity and rate may submit initial and follow-up notifications, reports of SSIs in the release, and reports of changes in previously submitted information, instead of reporting such releases on a per-occurrence basis. Because of the numerous facilities that have interpreted the provisions of section 103(f)(2) not to require any reports, and have, to date, submitted no reports to the Agency, in the economic analysis supporting today's final rule, the baseline assumptions have been modified to represent the situation because of the delay in reporting that has occurred. As a result, the $5.9 million cost estimate for the final rule represents annual costs assuming that the facilities and vessels that release hazardous substances in a continuous manner are not currently complying with section 103(a) or section 103(f)(2) notification requirements. That is, it represents costs incurred to submit initial and follow-up notifications, SSIs reports, and reports of changes in previously submitted information, as required by the continuous release reporting regulation, without taking credit for the cost savings associated with daily notifications that are no longer required. The burden is expressed as a cost rather than a cost savings in order to reflect more accurately the reality of the reporting situation for these facilities. Therefore, the Agency believes it has responded fully to the commenter's concerns by estimating the potential costs of the final regulation assuming no prior compliance with CERCLA reporting requirements. The economic impact analysis (EIA) clearly shows that today's final rule is nonmajor, generating costs well below $100 million.

The same commenter stated that EPA failed to comply with the Paperwork Reduction Act by not ensuring that it had taken every reasonable step to ensure that the collection of information is the least burdensome alternative necessary for the proper performance of the Agency's functions and to comply with legal and program objectives. The Agency does not agree that it failed to comply with requirements of the Paperwork Reduction Act in the publication of the proposed rule.

The Agency considered several alternative definitions of "continuous," "stable in quantity and rate," and "statistically significant increase." In the NPRM, as well as in today's final rule, EPA selected definitions that provide the person in charge of a facility or vessel the greatest flexibility in evaluating individual release situations. In particular, "continuous" was defined in the NPRM as "continuous without interruption or abatement, or continuous during operating hours, or continuous during regularly occurring batch processes." The Agency stated, however, that it acknowledged that certain routine, anticipated, intermittent releases should also be reportable under section 103(f)(2). The Agency also proposed to allow persons in charge to determine whether a release is stable in quantity and rate. Similarly, the NPRM provided that the person in charge could use an appropriate statistical test to identify SSIs. Today's final rule provides even greater flexibility. By allowing the person in charge to determine the normal range of the release and to thereby identify SSIs, the Agency has selected the least burdensome and least expensive option that conforms with legal and program objectives.

The economic analysis supporting today's final rule considers three options: (1) Use of a broad definition of continuous to include routine,
anticipated, and intermittent releases, a
definition of SSIs as releases above the
normal range, and a definition of the
normal range to include all releases
under normal operating conditions
reported or occurring during the
preceding year; (2) use of the more
restrictive NORM definition of
“continuous” as without interruption or
abatement, and a definition of SSI as
any release in the top 5 percent of all
releases occurring under normal
operating conditions; and (3) per-
occurrence reporting. Annualized total
costs to industry and government of
these three options are: $5.9 million
under Option 1; $19.7 million under
Option 2; and $873.9 million under
Option 3, per-occurrence reporting under
section 103(a).

The following table summarizes the
estimated costs of the analyzed options:

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Costs to industry and government are
incurred in preparing and processing
notifications of hazardous substance
releases, recordkeeping, and responding
to releases. The substantial difference in
estimated total annualized costs among
the three options results largely from
differences in the number of releases
that must be reported as SSIs. Under
Option 1, about 1,500 SSIs are expected
to be reported, whereas the estimated
number of SSIs, under Option 2, is about
143,200. Under Option 3, all 2,864,000
releases of hazardous substances
estimated to occur each year in a
continuous and stable manner must be
reported to government authorities. The
estimated cost to industry of reporting
SSIs is approximately $215 per release
for releases of CERCLA hazardous
substances, and $205 per release for
releases of non-CERCLA EHSs.\footnote{The
cost difference between reporting a release
of a CERCLA hazardous substance and reporting a
release of a non-CERCLA EHS reflects the fact that
releases of non-CERCLA EHSs need not be reported
to the NRC.}

The average cost per facility to
comply with the reporting requirements
under each option, based on an
estimated universe of 10,200 affected
facilities, is approximately $510
annually under Option 1, $3,490
annually under Option 2, and $92,190
annually for per-occurrence reporting
under section 103(a). The cost savings of
reporting under the final rule are
considerable, therefore, as compared with
costs that persons in charge of
facilities or vessels would incur if they
reported on a per-occurrence basis. In
selecting the first option in the final rule,
EPA believes it has provided persons in
charge of facilities and vessels with the
least burdensome, most flexible
approach to reporting under section
103(f)(2) and has fully complied with the
requirements of the Paperwork
Reduction Act.

One commenter suggested that EPA
should use the actual number of
emergency release reports to the NRC as
the basis for estimating the number of
facilities that will report under section
103(f)(2) and actual estimates for time
spent by industry in the past to prepare
annual reports. The Agency does not
agree. The number of episodic releases
reported annually to the NRC is not
representative of the number of facilities
or vessels that are likely to report under
CERCLA section 103(f)(2). Based on
information in the Toxic Release
Inventory data base, the New Jersey
Community Right-to-Know data base, and
the Philadelphia Air Management
Services data base, the Agency
estimates that approximately 10,200
facilities are likely to release hazardous
substances in a continuous and stable
manner at reportable levels. This
estimate exceeds the 4,930 reports of
hazardous substance releases reported
to the NRC in 1988.

The Agency believes that persons in
charge of many facilities and vessels have
interpreted the provisions of section
103(f)(2) not to require any reports, and
currently are not reporting continuous releases to the NRC. The
Agency believes, therefore, that the
number of episodic release reports to
the NRC cannot be used as a basis for
estimating the number of facilities and
vessels potentially affected by today's
final rule.

Similarly, the Agency does not believe
that annual reports submitted by
industry to date can be used to estimate
costs of compliance with today's rule.
Annual reports submitted to date do not
include the information required in the
initial written notification or the follow-
up report promulgated in today's rule. In
fact, many of the annual reports
submitted to date tend simply to identify
the facility and the release, and to
provide little additional information. Cost estimates based on such reports
could underestimate reporting costs.

Several commenters stated that EPA
substantially underestimated the cost of
implementing the proposed rule by not
including the costs of installing and
operating special systems to monitor
releases of hazardous substances. EPA
does not agree that monitoring costs
should be included in the cost estimates
attributable to the continuous release
reporting rule. Neither the identification
of SSIs nor compliance with the
reporting requirements in today's final
rule requires monitoring or measuring of
releases to acquire empirical data. Use
of the normal range to identify SSIs,
rather than the use of statistical tests,
have eliminated any need for monitoring
equipment. The normal range approach
requires only that estimates be made of
the quantity of each release relative to
the reported normal range. This
estimation can be based on professional
judgment; a precise determination of the
quantity of the release is not necessary.
Also, EPA has limited the information
required in the initial and follow-up
reports to data that do not require
monitoring. Therefore, because the
provisions of today's final rule do not
require or necessitate additional
monitoring, EPA does not believe it is
appropriate to include monitoring costs
in the calculations of the estimated total
costs of today's regulation.

One commenter stated that the
Agency had underestimated costs by
inappropriately assuming that a facility
or vessel would release only one
hazardous substance subject to the
continuous release reporting requirements and, consequently, underestimated the costs to facilities or vessels reporting more than one hazardous substance release. The commenter suggested use of the Philadelphia Air Management Services data to derive an estimate of the number of facilities or vessels releasing multiple hazardous substances at levels that equal or exceed the RQ. The Agency performed the analysis suggested by the commenter, as well as analyzing data submitted under SARA Title III section 313. On the basis of these analyses, the Agency determined that, on average during a given year, facilities tend to manufacture, use, or store approximately five CERCLA hazardous substances and EIIs, and release approximately four substances. This estimate, of course, varies considerably by industry category.

Not all of the hazardous substance releases equal or exceed the RQ. Based on the Philadelphia data, less than 6 percent (approximately one in 18 releases) of releases equal or exceeded the RQ and would be reportable under CERCLA. Thus, on average, across all facilities, it is assumed that approximately one in 18 releases will occur at a reportable level. If releases are not independent, then it may be more likely that a facility will have multiple releases at reportable levels. It is not clear, however, whether these multiple releases would occur simultaneously from the same source (i.e., in a mixture) or whether they would occur as independent releases from different sources. Mixtures are reportable as one release and thus costs would not increase proportionately with the number of multiple, simultaneous releases. Releases of different hazardous substances from different sources, in contrast, must be reported separately.

The economic analysis supporting today's final rule, therefore, assumes that affected facilities releasing CERCLA hazardous substances release at most two hazardous substances in a continuous and stable manner at levels that equal or exceed an RQ, and that facilities that release non-CERCLA EIIs release one EII at a reportable level. The analysis, however, also includes a sensitivity analysis showing that, if a facility or vessel has multiple continuous releases of hazardous substances occurring in an unrelated manner at levels that equal or exceed the RQ, regulatory costs for that particular facility or vessel could increase roughly in proportion to the number of hazardous substances released at or above the RQ.

One commenter stated that EPA should revise its estimates of the number of facilities affected by the regulations to account for the possibility that some facilities that release federally permitted air emissions also may be releasing hazardous substances that are not federally permitted as defined in CERCLA section 101(19) and the proposed regulation clarifying the federally permitted release exemption. EPA agrees that some of these facilities that have Federal permits also may be releasing substances that are not considered federally permitted under CERCLA section 101(10). The Agency, therefore, has modified its estimates of the universe of facilities potentially affected by today's final rule to include some facilities that have Federal permits but may not be entirely exempted under section 101(10) from CERCLA reporting. The Agency estimates that approximately 10,200 facilities release CERCLA hazardous substances and non-CERCLA EIIs in a manner that is continuous and stable in quantity and rate, and at levels that equal or exceed the RQ. This estimate includes facilities that have Federal permits, but also release other hazardous substances not covered by permit limitations.

The information used for the cost estimates supporting the April 19, 1988 NPRM was based upon the data available at that time. In support of the final rule, however, the Agency used more recent and accurate data on facilities that release hazardous substances. The Agency used two new data bases generated as a result of SARA Title III requirements to estimate the number of facilities potentially affected by the reporting requirements under CERCLA section 103(f)(2). The New Jersey Right-to-Know data base is used to estimate the total number of facilities that manufacture, process, or use CERCLA hazardous substances and non-CERCLA EIIs in the State of New Jersey and the nation as a whole: the SARA Title III section 313 Toxic Release Inventory data base is used to estimate the relationship between the number of facilities that release CERCLA hazardous substances and non-CERCLA EIIs and the number of facilities that manufacture, process, or use the substances. The Agency notes that these data bases provide the best currently available data for estimating the number of facilities that will be affected by the CERCLA section 103(f)(2) requirements. (See Economic Impact Analysis Supporting the Final Continuous Release Reporting Regulation under section 103(f)(2) of CERCLA, available in the Superfund Docket, for details on these data bases and the methodology used to estimate the costs attributable to today's final rule.)

The 10,200 facilities estimated to be eligible to report releases under section 103(f)(2) are estimated to release approximately 13,680 CERCLA hazardous substances and 1,475 non-CERCLA EIIs in a continuous and stable manner. Under Options 1 and 2, facilities are assumed to provide initial notification for these hazardous substance releases in the first year of implementation at a unit cost of $300 for CERCLA hazardous substances and $350 for non-CERCLA EIIs. In addition to the costs of providing initial notification, persons in charge will incur costs for providing information or clarification at the request of government authorities, for providing notification of changes in submitted information, for recordkeeping, and for reporting SSIs. Option 3, reporting under section 106(a), does not have any initial or annual reporting requirements; rather, facilities must report releases immediately as they occur.

One commenter stated that EPA should include, in the estimate of the overall cost of the regulation, the cost of reporting to State and local authorities under SARA Title III section 304. EPA agrees with the commenter and has provided an estimate of these costs in the economic analysis supporting the final rule. Of the total annual cost estimate of $5.9 million for reporting and processing reports under the continuous release reporting regulation, the annualized cost of all reporting under SARA Title III 304, including SSIs reports, is estimated at $0.8 million.

One commenter argued that the continuous release reporting rule is a major rule because it will impose costs on society of over $100 million annually, and that even if it is not, it is likely to cause a major increase in costs or prices. The Agency does not agree that the continuous release rule is a major rule. Even assuming a baseline of no reporting under section 109(a), the annual cost to facilities and vessels of complying with CERCLA section 103(f)(2) requirements is estimated to be $5.16 million; the cost to the government of processing reports is estimated to be $0.76 million. This is well below the $100 million cost of a major rule and the rule does not meet the other criteria for a major rule. (Criteria for a major rule are listed in the summary of supporting analyses in section V, below.)
V. Summary of Supporting Analyses

A. Executive Order No. 12291

Executive Order (E.O.) No. 12291 requires that regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). Under E.O. No. 12291, major rules are regulations that are likely to result in:

1. An annual effect on the economy of $100 million or more; or
2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As demonstrated by an economic analysis (Economic Impact Analysis Supporting the Final Rule on Continuous Release Reporting under Section 103(f)(2) of CERCLA) performed by the Agency, available for inspection in the Superfund Docket Room 2427, U.S. EPA, 401 M Street SW., Washington, DC 20460, this final rule is nonmajor, because the rule will result in estimated annualized costs of $5.9 million, with $3.10 million incurred by facilities and vessels, and an estimated annualized cost of $0.76 million incurred by the government. Moreover, the rule will not cause a major increase in costs or prices mentioned in (2) above or cause any of the significant adverse effects mentioned in (3) above.

OMB completed its review, as required by E.O. No. 12291, on March 9, 1990 without comment.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a “significant impact on a substantial number of small entities.” EPA certifies that this final regulation will not have a significant impact on a substantial number of small entities and that a Regulatory Flexibility Analysis is not required. See Chapter Five of the Economic Analysis supporting today’s final rule, available in the Superfund Docket.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. and have been assigned OMB control numbers 2050-0066 and 2050-0062.

Public reporting burden for this collection of information is estimated at 9 hours per response for the initial written report, at 5 hours per response for the follow-up report, and at 2.2 hours per change notification letter, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked “Attention: Desk Officer for EPA.”

List of Subjects

40 CFR Part 302

Air pollution control, Chemicals, Hazardous materials transportation, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

40 CFR Part 355

Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Extremely hazardous substances, Hazardous substances, Reportable quantity, Reporting and recordkeeping requirements, Threshold planning quantity.

William K. Reilly, Administrator.

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

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

§ 302.20 Initial telephone notification.

(a) Except as provided in paragraph (c) of this section, no notification is required for any release of a hazardous substance that is, pursuant to the definitions in paragraph (b) of this section, continuous and stable in quantity and rate.

(b) Definitions. The following definitions apply to continuous releases:

Continuous. A continuous release is a release that occurs without interruption or abatement or that is routine, anticipated, and intermittent to normal operations or treatment processes.

Normal range. The normal range of a release is all releases (in pounds or kilograms) of a hazardous substance reported or occurring over any 24-hour period under normal operating conditions during the preceding year. Only releases that are both continuous and stable in quantity and rate may be included in the normal range.

Routine. A routine release is a release that occurs during normal operating procedures or processes.

Stable in quantity and rate. A release that is stable in quantity and rate is a release that is predictable and regular in amount and rate of emission.

Statistically significant increase. A statistically significant increase in a release is an increase in the quantity of the hazardous substance released above the upper bound of the reported normal range of the release.

(c) Notification. The following notifications shall be given for any release qualifying for reduced reporting under this section:

(1) Initial telephone notification;

(2) Initial written notification within 30 days of the initial telephone notification;

(3) Follow-up notification within 30 days of the first anniversary date of the initial written notification;

(4) Notification of a change in the composition or source(s) of the release or in the other information submitted in the initial written notification of the release under paragraph (c)(2) of this section or the follow-up notification under paragraph (c)(3) of this section;

(5) Notification at such times as an increase in the quantity of the hazardous substance being released during any 24-hour period represents a statistically significant increase as defined in paragraph (b) of this section.

(d) Initial telephone notification. Prior to making an initial telephone notification of a continuous release, the person in charge of a facility or vessel
must establish a sound basis for qualifying the release for reporting under CERCLA section 103(f)(2) by:

(1) Using release data, engineering estimates, knowledge of operating procedures, or best professional judgment to establish the continuity and stability of the release; or

(2) Reporting the release to the National Response Center for a period sufficient to establish the continuity and stability of the release.

(3) When a person in charge of the facility or vessel believes that a basis has been established to qualify the release for reduced reporting under this section, initial notification to the National Response Center shall be made by telephone. The person in charge must identify the notification as an initial continuous release notification report and provide the following information:

(i) The name and location of the facility or vessel; and

(ii) The name(s) and identity(ies) of the hazardous substance(s) being released.

(e) Initial written notification. Initial written notification of a continuous release shall be made to the appropriate EPA Regional Office for the geographical area where the releasing facility or vessel is located. [Note: In addition to the requirements of this part, releases of CERCLA hazardous substances are also subject to the provisions of SARA Title III section 304, and EPA's implementing regulations codified at 40 CFR part 355, which require initial telephone and written notifications of continuous releases to be submitted to the appropriate State emergency response commission and local emergency planning committee.]

(1) Initial written notification to the appropriate EPA Regional Office shall occur within 30 days of the initial telephone notification to the National Response Center, and shall include, for each release for which reduced reporting as a continuous release is claimed, the following information:

(i) The name of the facility or vessel; the location, including the latitude and longitude; the case number assigned by the National Response Center or the Environmental Protection Agency; the Dun and Bradstreet number of the facility, if available; the port of registration of the vessel; the name and telephone number of the person in charge of the facility or vessel.

(ii) The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0-50 persons, 51-100 persons, 101-500 persons, 501-1,000 persons, more than 1,000 persons.

(iii) The identity and location of sensitive populations and ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, or wetlands).

(iv) For each hazardous substance release claimed to qualify for reporting under CERCLA section 103(f)(2), the following information must be supplied:

(A) The name/identity of the hazardous substance; the Chemical Abstracts Service Registry Number for the substance (if available); and if the substance being released is a mixture, the components of the mixture and their approximate concentrations and quantities, by weight.

(B) The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

(C) The source(s) of the release (e.g., valves, pump seals, storage tank vents, stacks). If the release is from a stack, the stack height (in feet or meters).

(D) The frequency of the release and the fraction of the release from each source and the specific period over which it occurs.

(F) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

(F) An estimate of the total annual amount that was released in the previous year (in pounds or kilograms).

(G) The environmental medium(a) affected by the release:

1. If surface water, the name of the surface water body.

2. If a stream, the stream order or average flowrate (in cubic feet/second) and designated use.

3. If a lake, the surface area (in acres) and average depth (in feet or meters).

4. If on or under ground, the location of public water supply wells within two miles.

(H) A signed statement that the hazardous substance release(s) described is(are) continuous and stable in quantity and under the definitions in paragraph (a) of this section and that all reported information is accurate and current to the best knowledge of the person in charge.

(i) Follow-up notification. Within 30 days of the first anniversary date of the initial written notification, the person in charge of the facility or vessel shall evaluate each hazardous substance release reported to verify and update the information submitted in the initial written notification. The follow-up notification shall include the following information:

(i) The name of the facility or vessel; the location, including the latitude and longitude; the case number assigned by...
the best knowledge of the person in charge.

(g) Notification of changes in the release. If there is a change in the release, notification of the change, not otherwise reported, shall be provided in the following manner:

(1) Change in source or composition. If there is any change in the composition or source(s) of the release, the release is a new release and must be qualified for reporting under this section by the submission of initial telephone notification and initial written notification in accordance with paragraphs (c)(1) and (2) of this section as soon as there is a sufficient basis for asserting that the release is continuous and stable in quantity and rate;

(2) Change in the normal range. If there is a change in the release such that the quantity of the release exceeds the upper bound of the normal range, the release must be reported as a statistically significant increase in the release. If a change will result in a range, the release must be reported as a statistically significant increase in a continuous release. A determination of whether an increase is a "statistically significant increase" shall be made based upon calculations or estimation procedures that will identify releases that exceed the upper bound of the reported normal range.

(i) Annual evaluation of releases. Each hazardous substance release shall be evaluated annually to determine if changes have occurred in the information submitted in the initial written notification, the follow-up notification, and/or in a previous change notification.

(j) Use of the SARA Title III section 313 form. In lieu of an initial written report or a follow-up report, owners or operators of facilities subject to the requirements of SARA Title III section 313 may submit to the appropriate EPA Regional Office for the geographical area where the facility is located, a copy of the Toxic Release Inventory form submitted under SARA Title III section 313 the previous July 1, provided that the following information is added:

(i) The population density within a one-mile radius of the facility or vessel, described in terms of the following ranges: 0-50 persons, 51-100 persons, 101-500 persons, 501-1,000 persons, more than 1,000 persons;

(ii) The identity and location of sensitive populations and ecosystems within a one-mile radius of the facility or vessel (e.g., elementary schools, hospitals, retirement communities, or wetlands);

(iii) For each hazardous substance release claimed to qualify for reporting under CERCLA section 103(f)(2), the following information must be supplied:

(i) The upper and lower bounds of the normal range of the release (in pounds or kilograms) over the previous year.

(ii) The frequency of the release and the fraction of the release from each release source and the specific period over which it occurs.

(iii) A brief statement describing the basis for stating that the release is continuous and stable in quantity and rate.

(iv) A signed statement that the hazardous substance release(s) is are continuous and stable in quantity and rate under the definitions in paragraph (b) of this section and that all reported information is accurate and current to the best knowledge of the person in charge.

(k) Documentation supporting notification. Where necessary to satisfy the requirements of this section, the person in charge may rely on recent release data, engineering estimates, the operating history of the facility or vessel, or other relevant information to support notification. All supporting documents, materials, and other information shall be kept on file at the facility, or in the case of a vessel, at an office within the United States in either a port of call, a place of regular berthing, or the headquarters of the business operating the vessel. Supporting materials shall be kept on file for a period of one year and shall substantiate the reported normal range of releases, the basis for stating that the release is continuous and stable in quantity and rate, and the other information in the initial written report, the follow-up report, and the annual evaluations required under paragraphs (e), (f), and (i), respectively. Such information shall be made available to EPA upon request as necessary to enforce the requirements of this section.

(l) Multiple concurrent releases. Multiple concurrent releases of the same substance occurring at various locations with respect to contiguous plants or installations upon contiguous grounds that are under common ownership or control may be considered separately or added together in determining whether such releases constitute a continuous release or a statistically significant increase under the definitions in paragraph (b) of this section; whichever approach is elected for purposes of determining whether a release is continuous also must be used to determine a statistically significant increase in the release.

(m) Penalties for failure to comply. The reduced reporting requirements provided for under this section shall apply only so long as the person in charge complies fully with all requirements of paragraph (c) of this section. Failure to comply with respect to any release from the facility or vessel shall subject the person in charge to all of the reporting requirements of § 302.6 for each such release, to the penalties under § 302.7, and to any other applicable penalties provided for by law.
PART 355—EMERGENCY PLANNING AND NOTIFICATION

3. The authority citation for part 355 is revised to read as follows:
Authority: 42 U.S.C. 11002, 11004, and 11048.

4. Section 355.40 is amended by revising paragraph (a)(2)(iii) to read as follows:
§ 355.40 Emergency release notification.
(a) * * *
(2) * * *
(iii) Any release that is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8(b). Exemption from notification under this subsection does not include exemption from:
(A) Initial notifications as defined in 40 CFR 302.8(d) and (e);
(B) Notification of a "statistically significant increase," defined in 40 CFR 302.8(b) as any increase above the upper bound of the reported normal range, which is to be submitted to the community emergency coordinator for the local emergency planning committee for any area likely to be affected by the release and to the State emergency response commission of any State likely to be affected by the release;
(C) Notification of a "new release" as defined in 40 CFR 302.8(g)(1); or
(D) Notification of a change in the normal range of the release as required under 40 CFR 302.8(g)(2).

(Approved by the Office of Management and Budget under the control number 2050-0092)

* * *

[FR Doc. 90-15260 Filed 7-23-90; 8:45 am]
BILLING CODE 6560-50-26
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### CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

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No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1989. The CFR volume issued January 1, 1987, should be retained.

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The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984, containing those chapters.
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