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Rules and Regulations

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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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This is an amendment to the existing uniform rules of practice for administrative proceedings under various statutes. It concerns the method of service of documents or papers in such proceedings, and reflects a belief that ordinary mail is sufficient for all but a few of such items. It reduces requirements for use of certified or registered mail to what is necessary. It also provides that documents and papers served by ordinary mail on a party other than the Secretary will be deemed to be served at the time of mailing. It also extends times for filing certain documents and papers since such times will be computed from the date of mailing, rather than the date of receipt, of the documents and papers to which they must respond.

EFFECTIVE DATE: July 27, 1990, except that these amendments shall not apply to any document or paper to be filed, for which a filing date has been set by order of a Judge prior to such effective date, or for which a filing date has been specified in a written notice issued prior to such effective date and served, in a proceeding pending on such effective date.

FOR FURTHER INFORMATION CONTACT: John J. Casey, Office of the General Counsel, 2446 South Building, USDA, Washington, DC 20250-1400, 202/447-7357.

SUPPLEMENTARY INFORMATION: This is an amendment to the existing uniform rules of practice for administrative proceedings under various statutes. It concerns the method of service of documents or papers in such proceedings, and reflects a belief that ordinary mail is sufficient for all but a few of such items.

Requirements for use of certified or registered mail currently apply to all documents or papers served in such proceedings; such requirements are now being limited to a few such items:

1. A complaint or other document initially served on a person to make that person a party respondent in a proceeding;

2. A proposed decision and motion for adoption thereof upon failure to file an answer or admission of all material allegations of fact contained in a complaint;

3. A recommended final order;

4. A final order;

5. An appeal petition filed by the Department; and

6. Any other document specifically ordered by the Judge to be served by certified mail.

The amendment also provides that all other documents and papers served by ordinary mail will be deemed to be served on a party other than the Secretary at the time of mailing.

The amendment also extends times for filing certain documents and papers, from 10 days to 20, since such times will be computed from the date of mailing, rather than the date of receipt, of the documents and papers to which they must respond. No change is made in the method of filing, or service on the Secretary or agent thereof, and service of such documents will be considered made when the documents are received by the Hearing Clerk.

Recent decisions supporting the changed method of service are *Atkins* v. *Parker*, 472 U.S. 115 (1985); *U.S. Fire Ins. Co.* v. *Producciones Padosa, Inc.*, 835 F.2d 950 (1st Cir. 1987); *Old Ben Coal Co.* v. *Luker*, 826 F.2d 688 (7th Cir. 1987); and *U.S.* v. *Bolton*, 781 F.2d 528 (6th Cir. 1985), *cert. den.*, 476 U.S. 1158 (1986).

Notice of proposed rulemaking is not required by law for this amendment on the basis that it constitutes "rules of agency * * * procedure, or practice" under 5 U.S.C. 553(b)(A).

Executive Order 12291 and Regulatory Flexibility Act

This final rule is exempt from Executive Order 12291 since it relates to internal agency management concerning rules of procedure or practice in formal adjudicatory proceedings. Also, this action is exempt from the provisions of the Regulatory Flexibility Act since it is not a rule as defined by that Act.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980 does not apply to this final rule since it does not seek answers to identical questions or reporting or recordkeeping requirements imposed on ten or more persons, and the information collected is not used for general statistical purposes.

List of Subjects in 7 CFR Part 1

Agriculture, Administrative practice and procedure.

Accordingly, 7 CFR part 1, subpart H, is amended as set forth below.

PART 1—[AMENDED]

1. The authority citation for 7 CFR part 1, subpart H continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2621, 2714, 2908, 3812, 4610, 4815, 4910; 15 U.S.C. 1828; 16 U.S.C. 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740, unless otherwise noted.

2. Section 1.132 is amended by adding new paragraphs (j) and (k) to read as follows:

§ 1.132 Definitions.

* * * * *

(j) *Mail* means to deposit an item in the United States Mail with postage affixed and addressed as necessary to cause it to be delivered to the address shown by ordinary mail, or by certified or registered mail if specified.

(k) *Re-mail* means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail.

§ 1.143 [Amended]

3. Section 1.143(d) is amended by removing the number "10" and inserting in lieu thereof the number "20."

4. Section 1.147 is amended by revising paragraph (b), by redesignating existing paragraphs (c), (d) and (e) as (f),

(g) and (h), respectively, and by adding new paragraphs (c), (d), and (e), to read as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

* * * * *

(b) *Who shall make service.* Copies of all such documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be served upon the parties by the Hearing Clerk, or by some other employee of the Department, or by a U.S. Marshal or deputy marshal.

(c) *Service on party other than the Secretary.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, proposed decision and motion for adoption thereof upon failure to file an answer or other admission of all material allegations of fact contained in a complaint, initial decision, final decision, appeal petition filed by the Department, or other document specifically ordered by the Judge to be served by certified or registered mail, shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *Provided that,* if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.

(2) Any document or paper, other than one specified in paragraph (c)(1) of this section or written questions for a deposition as provided in § 1.148(d)(2) of this part, shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of mailing by ordinary mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual.

(3) Any document or paper served other than by mail, on any party to a proceeding, other than the Secretary or agent thereof, shall be deemed to be received by such party on the date of:

(i) Delivery to any responsible individual at, or leaving in a conspicuous place at, the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, or

(ii) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(d) *Service on another.* Any subpoena, written questions for a deposition under § 1.148(d)(2) of this part, or other document or paper, served on any person other than a party to a proceeding, the Secretary or agent thereof, shall be deemed to be received by such person on the date of:

(1) Delivery by certified mail or registered mail to the last known principal place of business of such person, last known principal place of business of the attorney or representative of record of such person, or last known residence of such person if an individual;

(2) Delivery other than by mail to any responsible individual at, or leaving in a conspicuous place at, any such location; or

(3) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(e) *Proof of service.* Any of the following, in the possession of the Department, showing such service, shall be deemed to be accurate:

(1) A certified or registered mail receipt returned by the postal service with a signature;

(2) An official record of the postal service;

(3) An entry on a docket record or a copy placed in a docket file by the Hearing Clerk of the Department or by an employee of the Hearing Clerk in the ordinary course of business;

(4) A certificate of service, which need not be separate from and may be incorporated in the document or paper of which it certifies service, showing the method, place and date of service in writing and signed by an individual with personal knowledge thereof, *Provided* that such certificate must be verified by oath or declaration under penalty of perjury if the individual certifying service is not a party to the proceeding in which such document or paper is served, an attorney or representative of record for such a party, or an official or employee of the United States or of a State or political subdivision thereof.

* * * * *

5. The second sentence of 1.148(d)(2) is revised to read as follows:

§ 1.148 Depositions.

* * * * *

(d) *Procedure on examination.* * * *

(2) * * * If the examination is conducted by means of written questions, copies of the applicant's questions must be received by the other party to the proceeding and the officer at least 10 days prior to the date set for the examination unless otherwise agreed, and any cross questions of a party other than the applicant must be received by the applicant and the officer at any time prior to the time of the examination. * * *

* * * * *

6. Section 1.149 is amended by revising the last sentence of paragraph (a), and all of paragraph (b), to read as follows:

§ 1.149 Subpoenas.[4]

(a) *Issuance of subpoenas.* * * * Except for good cause shown, requests for subpoenas shall be received by the Judge at least 10 days prior to the date set for the hearing.

(b) *Service of subpoenas.* Subpoenas may be served by any person not less than 18 years of age. The party at whose instance a subpoena is issued shall be responsible for service thereof. Subpoenas shall be served as provided in § 1.147 of this part.

Done at Washington, DC this 23rd day of July 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90-17511 Filed 7-26-90; 8:45 am]

BILLING CODE 3410-14-M

[4] This section relates only to subpoenas for the stated purpose and has no relevance with respect to investigatory subpoenas.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 103, 208, 236, 242, and 253

[Atty. Gen. Order No. 1435-90]

Aliens and Nationality; Asylum and Withholding of Deportation Procedures

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures to be used in determining asylum under section 208 and withholding of deportation under section 243(h) of the Immigration and

Nationality Act, as amended by the Refugee Act of 1980. The rule adopts with minor changes the revised proposed rule published on April 6, 1988 (53 FR 11300) which substantially modified an earlier proposed rule published on August 28, 1987 (52 FR 32552) and the interim rule published on June 2, 1980 (45 FR 37392). That modification responded to numerous and diverse comments received on the August 28, 1987 proposed rule, in particular a substantial number objecting to the original proposal to require that all asylum and withholding of deportation claims be adjudicated in a nonadversarial setting by Asylum Officers within the INS. The final rule provides for continued adversarial adjudications of asylum and withholding of deportation applications by Immigration Judges for those applicants who are in exclusion or deportation proceedings. At the same time, it preserves an opportunity, prior to the institution of proceedings, for adjudication of initial applications in a nonadversarial setting by a specially-trained corps of Asylum Officers.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT:

Henry L. Curry, Director, Asylum Policy and Review Unit, Department of Justice, 10th and Constitution Ave., NW., room 6213, Washington, DC 20530. Telephone: (202) 514-2415; or

Ralph Thomas, Deputy Assistant Commissioner, Refugees, Asylum, and Parole, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536. Telephone: (202) 514-2361; or

Gerald Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5107 Leesburg Pike, suite 2800, Falls Church, Virginia 22041. Telephone: (703) 756-6470.

SUPPLEMENTARY INFORMATION:

I. Background

The Refugee Act of 1980 created a statutory basis for asylum in the United States and made withholding of deportation for those who qualify mandatory rather than discretionary. In passing the Act, Congress for the first time established a statutory definition of refugee based on the definition the United States accepted upon becoming a party to the 1967 Protocol to the UN Convention Relating to the Status of Refugees. It also established a regular procedure for the admission for refugees to the United States, thus largely eliminating the need to use the Attorney General's parole authority for this purpose, and required the Attorney General to establish a procedure through which aliens already in the United States could apply for asylum on the basis of refugee status.

Consistent with the UN refugee definition, under the Act a refugee is, in essence, someone who has been persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Someone who meets the refugee definition and who has not been firmly resettled elsewhere is eligible for a discretionary grant of asylum, unless one of several specific exclusionary provisions applies (e.g., the applicant has been convicted of a serious non-political crime). The Attorney General is vested with the discretionary authority to grant or deny asylum to refugees physically present in the United States or at a land border or port of entry, irrespective of status.

Similarly, the Act specifically recognizes the obligation under the Convention and Protocol not to expel or return—*refouler*—those whose life or freedom would be threatened upon return to a country of claimed persecution except under strictly limited circumstances. Withholding of deportation is required by the statute for those who are clearly at such risk, unless the individual falls within a limited number of exclusion classes. Entitlement to withholding of deportation thus requires a showing that the life or freedom of the applicant would be threatened in the country of proposed deportation on account of race, religion, nationality, membership in a particular social group, or political opinion.

However, Congress did not legislate any particular method by which claims for asylum or withholding of deportation were to be adjudicated, directing instead that the Attorney General establish the necessary procedures for such adjudication. Interim regulations establishing procedures and standards governing applications under the provisions of the Refugee Act of 1980 were published on June 2, 1980. These interim regulations (hereafter referred to as the "1980 interim rule") were intended only to provide a temporary regulatory mechanism for adjudicating claims pending publication of permanent procedures following a period of deliberate study and analysis. After an appropriate period of experience under the interim rule, the Department of Justice ("the Department"), including the Immigration and Naturalization Service ("INS") and the Executive Office for Immigration Review ("EOIR"), the Department of State, and other concerned administrative agencies of the United States Government conducted detailed reviews and discussions of the asylum process in order to formulate and implement a comprehensive and uniform asylum policy and procedure. Designed within the legislative framework established by the Refugee Act, that policy reflects two basic guiding principles: A fundamental belief that the granting of asylum is inherently a humanitarian act distinct from the normal operation and administration of the immigration process; and a recognition of the essential need for an orderly and fair system for the adjudication of asylum claims.

The internal policy and regulatory process itself consumed more than two years of effort, culminating with the Attorney General's creation of an Asylum Policy and Review Unit within the Office of Policy Development in the Department of Justice and the subsequent publication of a proposed rule on August 28, 1987 (hereafter referred to as the "August 28, 1987 rule"). Following a 60-day period of intense public debate and comment, the Department announced on December 12, 1987 (52 FR 46776) that it intended to modify that rule in order to provide for continued adversarial adjudications of asylum and withholding of deportation applications by Immigration Judges for those applicants who are in exclusion or deportation proceedings. That major substantive modification as well as other procedural modifications necessitated by that change were reflected in a revised proposed rule published on April 6, 1988 (hereafter referred to as the "April 6, 1988 revised proposed rule") which was opened for an additional 30-day public comment period. This final rule adopts with minor changes the April 6, 1988 revised proposed rule. The "Supplementary Information" section accompanying the April 6, 1988 revised proposed rule provides a complete discussion of the major substantive and other procedural modifications.

The following provides a section-by-section analysis of the regulatory provisions contained in this final rule, including a discussion of relevant comments received in the 30-day comment period following the April 6, 1988, revised proposed rule. In addition to the questions of jurisdiction discussed above, the following analysis responds to comments on the proposed rule, but retains the procedures as were proposed regarding the revocation of asylum or withholding of deportation (§ 208.24), and adopts a new § 208.7 ensuring employment authorization for aliens

pursuing asylum claims in "good faith." This responds to concerns by commenters that aliens could lose such authorization during a period between the Asylum Officer's denial of an asylum claim and the alien's ability to renew the claim before an Immigration Judge. (It should be noted that many of the changes which have been made in the final rule are purely technical in nature, *e.g.*, the "Office of Policy Development" has been substituted for the "Office of Legal Policy." Such changes are not specifically noted in the following analysis.)

II. Analysis and Discussion of Comments

(1) *8 CFR 208.1—General.* The final rule creates the position of Asylum Officer within the Office of Refugees, Asylum, and Parole ("CORAP") in INS; requires that such officers receive specialized training in the relevant fields of international relations and international law under the co-direction of the Assistant Commissioner, CORAP, and the Director of the Asylum Policy and Review Unit of the Department of Justice ("APRU"); and reflects the role of the Deputy Attorney General and APRU in providing those officers with current information as an ongoing component of their training. In addition, under § 208.1, the new standards and procedures established in the final rule will apply only to applications for asylum or withholding of deportation filed on or after the date the rule becomes effective, unless a motion to reopen or reconsider under the new rule is granted. In addition, it is provided that a documentation center shall be maintained for the collection and dissemination of information on human rights conditions. The creation of a documentation center is an addition to the rule. It was felt that this would be a very positive development in aiding Asylum Officers to maintain current knowledge of country conditions around the world. It also reflects recent developments in the methods used to aid in the adjudication of asylum cases in other countries, such as Canada.

Many comments on the previously published rules have raised the objection that the adjudication of asylum cases will remain within INS, since the Service is also responsible for enforcement functions. This regulation creates an asylum adjudications function which is separate from INS enforcement functions. The Asylum Officers will be directed and supervised by CORAP and will deal only with asylum cases.

(2) *8 CFR 208.2—Jurisdiction.* Under the final rule, affirmative applications for asylum or withholding of deportation are to be referred in the first instance to an Asylum Officer and adjudicated in a nonadversarial setting. At the same time, the final rule provides for continued adversarial adjudications of asylum and withholding of deportation applications by Immigration Judges for those applicants who are in exclusion or deportation proceedings. Paragraph (b) provides that the "Immigration Judge shall make a determination on such claims *de novo* regardless of whether or not a previous application was filed and adjudicated by an Asylum Officer prior to the initiation of exclusion or deportation proceedings." Thus the final rule maintains a system of adjudication parallel to that established in the 1980 interim rule with the exception that Asylum Officers reporting directly to CORAP will now assume the jurisdiction formerly exercised by District Directors.

(3) *8 CFR 208.3—Form of application.* This section of the final rule prescribes the proper form for applications for asylum and withholding of deportation and is self-explanatory. Several commenters objected to the current Form I-589. While this rule does not change the content of the Form, its revision is planned in the future.

(4) *8 CFR 208.4—Filing the application.* This section establishes the procedures and locations for filing initial applications. With respect to applications filed after the institution of exclusion or deportation proceedings, the final rule necessarily incorporates significant procedural modifications to the August 28, 1987 proposed rule, as published and explained in the April 6, 1988 revised proposed rule. This modification drew serious objection from practitioners during the public comment period, many expressing the concern that the requirements for motions to reopen proceedings in order to file an initial asylum application would cause difficulty to applicants who may not have known of their right to apply for asylum previously. They thus urged a return to the standard contemplated in the August 28, 1987 rule.

However, under the August 28, 1987 rule, Immigration Judges were to be removed from the asylum adjudication process. The final rule retains the jurisdiction of Immigration Judges existing under the 1980 interim rule, including the adjudication of asylum claims raised in the context of reopening deportation or exclusion proceedings based either on the filing of an initial application under § 208.4 of the final rule or on the request to reopen or reconsider a previously denied claim under § 208.19 of the final rule. In either instance, consistent with the requirements governing all proceedings, a formal motion to reopen, reconsider, or remand, as appropriate, is necessary.

Therefore, the revised rule incorporates, without substantive change, the requirements for the reopening of exclusion or deportation proceedings that existed under the 1980 interim rule and continue to exist elsewhere in title 8. In the asylum context they are considered necessary to deter late filings intended merely to delay deportation. The authority of the government to establish such requirements was upheld by the Supreme Court in *INS* v. *Abudu*, 485 U.S. 94 (1988).

(5) *8 CFR 208.5—Special duties toward aliens in custody of the service.* This section requires the Service to make asylum application forms avaiable to aliens in custody who request asylum, or express a fear of persecution, and provide, where available, a list of persons/groups who can assist the alien in preparing the application. Aliens detained under 8 CFR 235 or 242 are to be given expedited consideration where possible.

(6) *8 CFR 208.6—Disclosure to third parties.* This section is intended to protect the confidentiality of asylum and withholding of deportation applicants. Applications shall not be disclosed without the written consent of the individual, unless under the exceptions stated in this section. Exceptions are given to U.S. government officials or contractors with the need to know, any federal, state, or local court proceeding in the United States of which the application is a part, and any other official when the Attorney General deems it appropriate. Specific mention of the United Nations High Commission for Refugees ("UNHCR") is eliminated in this section. This is not meant to limit disclosure of information to UNHCR, or to increase the discretion of the Attorney General in revealing information. Rather it was felt that it is inappropriate to specify a non-governmental agency to which the Attorney General, after consultation with the Secretary of State, may reveal information.

(7) *8 CFR 208.7—Interim employment authorization.* This section mandates a grant of employment authorization for a period not to exceed one year for applicants who are not in detention and who file asylum applications which the Asylum Officer determines not to be frivolous. "Frivolous" is defined as "manifestly unfounded or abusive." The

applicant shall be able to renew his or her employment authorization in increments of up to one year, for the period of time necessary to complete administrative and judicial review of the applicant's asylum claim, so long as the applicant pursues the asylum claim through the appropriate administrative and judicial procedures.

Under this section, the alien's employment authorization will remain valid until the expiration of the alien's employment authorization document, or until sixty days after the Asylum Officer's decision denying asylum, whichever period is longer. Thus, the alien's employment authorization will continue for at least sixty days after the Asylum Officer's denial. A denial of asylum by the immigration judge or by the Board of Immigration Appeals ("BIA") will not terminate the alien's employment authorization. Rather, the employment authorization will continue in effect until the expiration of the alien's employment authorization document.

In order to obtain a renewal of employment authorization, the alien need only file a new Application for Employment Authorization (Form I-765) and show that the alien is pursuing the asylum claim through appropriate administrative or judicial review. In addition to the Form I-765, an alien who has been placed into deportation or exclusion proceedings after the Asylum Officer denied asylum need only present a copy of the Asylum Officer's denial of asylum and of the order to show cause or the notice to applicant for admission detained for hearing before an immigration judge placing the alien into proceedings. Thus, the alien will not have to wait until the Office of the Immigration Judge sets the case for hearing before applying for renewal of employment authorization. Whether the alien's claim is frivolous will not be addressed again in conjunction with an application for a renewal of employment authorization.

Nine commenters on the April 6, 1988, proposed regulations and five commenters on the August 23, 1987, proposed regulations identified the "gap" which can result from a delay between the Asylum Officer's denial of an asylum claim and the alien's ability to renew the claim before an immigration judge as a matter of serious concern. This "gap" can also result when the alien's employment authorization is not renewed in a timely fashion. New § 208.7 attempts to alleviate this problem in several ways. As noted above, new § 208.7 provides that the alien's employment authorization will continue for at least sixty days after the Asylum Officer's denial of the claim. The requirements for obtaining an extension are not burdensome. Any alien who is pursuing his claim in good faith should have no difficulty in meeting this requirement. Furthermore, new § 208.7(c) provides that employment authorization will be renewed before it expires, if the Service receives the application for renewal at least sixty days before the date on which the current employment authorization document will expire.

In some districts, high caseload or limited resources, or both, may prevent the Service from adjudicating applications for renewal of employment authorization in less than sixty days. Failure to submit an application for renewal of employment authorization at least sixty days before expiration of the current employment authorization will not be grounds to deny the renewal application. There may, however, be a gap between the expiration of the current employment authorization and the grant of a renewal, if the alien presents his renewal application less than sixty days in advance. An alien who files his application for renewal timely should not have this problem.

(8) *8 CFR 208.8—Limitations on travel outside the United States.* This section creates the presumption that an applicant (under advance parole) who returns to the country of claimed persecution has abandoned his asylum application, unless he can establish compelling reasons for assuming the risk of persecution by returning. Several comments expressed the belief that the presumption of abandonment of an application was unduly restrictive. While it remains the responsibility of the applicant to demonstrate a legitimate need to return to his country of claimed persecution, the term "extraordinary and urgent reasons," as used previously, has been changed to the less restrictive "compelling reasons."

(9) *8 CFR 208.9—Interview and procedure.* This section establishes the proper procedures for conducting an interview by an Asylum Officer. At the request of the applicant, the interview is to be conducted separate and apart from the general public. The applicant may have counsel or a representative and submit affidavits of witnesses. After the Asylum Officer administers the oaths, presents and receives evidence, and questions the applicant and any witnesses, the interview is completed. The applicant or representative shall then be allowed to make a statement or comment on the evidence, the length of which may be limited by the Asylum Officer, who may also require such a statement to be submitted in writing. The applicant may then be given up to 30 days to submit supporting evidence (longer if the Asylum Officer believes it necessary). The requirement, as stated in the April 6, 1988 revised rule, that the interview be conducted "out of hearing and view of" the general public has been modified to read "and, at the request of the applicant, separate and apart from" the general public. This change preserves the right to privacy of the applicant.

The asylum record shall consist of the application, all supporting material provided by the applicant, any comments by the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the State Department and the Asylum Policy and Review Unit (APRU) of the Justice Department, or by the INS, and any other information considered by the Asylum Officer.

(10) *8 CFR 208.10—Failure to appear.* This section provides that an unexcused failure to appear for a scheduled interview may be presumed to be an abandonment of the application.

(11) *8 CFR 208.11—Comments from the Bureau of Human Rights and Humanitarian Affairs.* This section allows BHRHA, at its option, to comment on applications received from INS. Such comment may include: Assessment of country conditions and experiences asserted, likely treatment of applicant, persecution of persons similarly situated to applicant, 208.14 grounds for denial, and other relevant information. BHRHA must respond within 45 days. Response may either be comments, request for additional time (another 30 days can be allowed), or declining to comment. If 60 days have elapsed, the Asylum Officer or Immigration Judge may decide the claim without the response.

Comments are to be made part of the asylum record; the applicant shall also be given a copy (unless it is classified) and the opportunity to respond to the comments, before an adverse decision is issued.

(12) *8 CFR 208.12—Reliance on information compiled by other sources.* This section provides that the Asylum Officer may rely on material provided by BHRHA, APRU, the Office of Refugees, Asylum, and Parole of INS, the District Director with jurisdiction over the applicant's residence/port of entry, and other credible sources, such as international organizations, private voluntary agencies, or academic institutions. If the Asylum Officer relies on such material for an adverse

decision, it must be shown to the applicant for inspection (unless it is classified) in order to explain or rebut it. However, this provision does not create an entitlement of discovery toward INS, Justice, or State records, officers, agents, or employees.

(13) *8 CFR 208.13—Establishing refugee status; burden of proof.* This section discusses the requirements for an alien to establish that he is a refugee. Section 101(a)(42) of the INA defines "refugee;" the burden of proof is on the applicant to establish that he meets this definition. If the applicant's testimony is credible in light of general conditions in the applicant's country, his testimony may be sufficient to sustain the burden of proof without corroboration. There are two methods of establishing oneself as a refugee: Actual past persecution and a well-founded fear of (future) persecution. Regarding past persecution, the applicant must first establish that persecution was actually suffered; the reason for such persecution must be one or more of the following: Race, religion, nationality, social group, or political opinion. The applicant also must be unwilling or unable to avail himself of that country's protection. If the applicant establishes past persecution, the burden is then on the government to show (by a preponderance of evidence) that conditions have changed so substantially that the applicant would not have a well-founded fear if he were to return. The applicant can then in turn assume the burden of demonstrating that he has compelling reasons not to return, owing to the severity of the persecution. This is consistent with the intent of the Act because it allows past persecution as grounds for establishing refugee status while at the same time recognizing that asylum can be denied on account of changed conditions.

For an applicant to be a refugee on the basis of a "well-founded fear" (as opposed to "past persecution"), he must establish that there is a fear based on race, religion, nationality, membership in a particular social group, or political opinion; that there is a reasonable possibility of suffering such persecution; that he is unable or unwilling to seek the protection of that country because of such fear. It is not necessary to prove he would be singled out if he can establish that there is a pattern or practice of persecuting the group of persons similarly situated, and that he can establish inclusion in/identification with such group. The Asylum Officer or Immigration Judge must also take into account whether applicant's country persecutes those persons who leave without permission or seek asylum elsewhere. Persons who have persecuted others shall not qualify as refugees.

(14) *8 CFR 208.14—Approval or denial of application.* This section sets forth the grounds for mandatory denial. Asylum shall be denied if the alien has been convicted in the U.S. of a particularly serious crime (and thus constitutes a danger to the community), has been firmly resettled, or is a danger to the security of the U.S. The alien has the burden of proving that such grounds do not apply. Many comments were received objecting to any mandatory denials. The Department believes, however, that there should be grounds for mandatory denials. This issue was discussed extensively in the "Supplementary Information" section of the April 6, 1988 revised rule.

(15) *8 CFR 208.15—Definition of "firm resettlement".* This section states that a person who enters another nation and receives before entry or therein an offer of permanent residence, citizenship, or other permanent resettlement is deemed "firmly resettled", with two exceptions. The first is that his entry into that country was a necessary consequence of flight, that he remained there only long enough to arrange onward travel, and did not establish significant ties. The second is that his conditions of residence were substantially restricted; the Asylum Officer or Immigration Judge shall examine factors such as housing and employment permitted, education, travel documentation, and other rights ordinarily available to other residents.

(16) *8 CFR 208.16—Entitlement to withholding of deportation.* This section deals with the requirements for proving eligibility for withholding of deportation. The applicant must show that his life or freedom would be threatened; testimony without corroboration may be sufficient. If the applicant has suffered past persecution, it shall be presumed he is eligible unless conditions have greatly changed. If the applicant can demonstrate that there is a pattern or practice of persecution of persons similarly situated to himself and can show his inclusion in that group, he need not demonstrate that he would be singled out. If a government threatens the life and freedom of persons who leave without authorization or seek asylum elsewhere, the Asylum Officer or Immigration Judge should give this due consideration. Pursuant to the requirements of the Act, withholding of deportation shall be denied if the applicant participated or assisted in the persecution of others, was convicted of a particularly serious crime, committed a serious non-political crime outside the U.S., or is a danger to the security of the U.S.

If an applicant is denied asylum in the exercise of discretion but granted withholding, thus precluding admission of following-to-join spouse or children, the asylum decision shall be reconsidered, as well as other reasonable alternatives for family reunification.

(17) *8 CFR 208.17—Decision.* This section requires that the Asylum Officer's decision be communicated in writing to the applicant, the District Director, the Assistant Commissioner of Refugees, Asylum, and Parole and the Director of APRU. Adverse decisions must state reasons for denial and assess the applicant's credibility.

(18) *8 CFR 208.18—Review of decisions and appeal.* This section grants review authority to the Assistant Commissioner of Refugees, Asylum, and Parole, and the Deputy Attorney General, assisted by APRU, to review decisions of Asylum Officers in designated cases. There is, however, no right of appeal to any of these offices, nor shall parties have any right to appear before these offices. An applicant may nonetheless renew an asylum or withholding application before an Immigration Judge in exclusion or deportation proceedings and, if such proceedings do not commence within 30 days of an Asylum Officer's denial, the applicant may request the District Director, in writing, that such proceedings commence, which shall be done promptly by the District Director absent exceptional circumstances.

(19) *8 CFR 208.19—Motion to reopen or reconsider.* This section states that a motion to reopen or reconsider, for proper cause, may be filed with the District Director or Office of Immigration Judge, whichever had jurisdiction for the prior determination.

(20) *8 CFR 208.20—Approval and employment authorization.* This section states that a grant of asylum is for an indefinite period. Employment authorization is automatically given or extended upon a grant of asylum. In the case of withholding, authorization is given unless the alien is detained pending removal to a third country. INS must give the alien documentation of his employment authorization.

(21) *8 CFR 208.21—Admission of asylee's spouse and children.* This section permits granting of asylum to the principal's spouse or child, unless they persecuted others, were convicted of a particularly serious crime in the U.S., or are, on reasonable grounds, a danger to the security of the U.S. If the spouse or

child in the U.S. was not included in the original application, or they are outside the U.S., the principal may request asylum for them by filing an I-730 with the District Director. The status shall be for an indefinite period, unless the principal's status is revoked. The burden of proof is on the alien to establish eligibility of the spouse or child; there is no appeal from a denial. By error, in the April 6, 1988 revised rule, the 'serious non-political crime outside the United States' section was included as a ground for mandatory denial. This was inadvertent, since such ground had been specifically removed for asylees. This error has been corrected.

(22) *8 CFR 208.22—Effect on deportation proceedings.* This section states that an alien granted asylum may not be excluded or deported unless his status is revoked. If his status is revoked, he shall be placed in exclusion or deportation proceedings.

(23) *8 CFR 208.23—Restoration of status.* This section states that an alien denied asylum or withholding who was maintaining nonimmigrant status at the time of his filing may continue or be restored to that status.

(24) *8 CFR 208.24—Revocation of asylum or withholding of deportation.* This section sets forth standards and procedures for revocations. Asylum or withholding may be revoked upon motion of the Assistant Commissioner for changed country conditions, fraud, or commission of an act which is grounds for denial under 208.14(c), after a hearing before an Asylum Officer. The alien shall be given 30 days notice before the hearing, and given the opportunity to present evidence; a decision to revoke shall be given the alien in writing. Revocation shall not preclude the alien from reasserting his claim in a deportation hearing. The Deputy Attorney General, assisted by APRU, shall have authority to review these revocations before they become effective; this does not, however, create a right of appeal to, or of appearance by parties before, the Deputy or APRU. An Immigration Judge or the BIA may re-open a case and revoke for the reasons stated above.

Some commenters raised the issue of a perceived lack of due process rights in the procedure of revocation by an Asylum Officer. However, the Department believes that those rights are adequately protected by the final rule. Current procedures under the interim rule give the power to revoke to the District Director in § 208.15, with only an opportunity to present written evidence; there is no hearing. An Asylum Officer hearing as detailed in this section of the final rule provides more rights to the alien than existing practice. Additionally, the Office of the Deputy Attorney General, assisted by APRU, has authority to conduct a neutral review, independent of INS. Finally, the applicant can reassert an asylum or withholding claim in any subsequent deportation hearing.

(25) *8 CFR 236.3—Applications for asylum or withholding of deportation.* This section deals with exclusion hearings in instances where the alien expresses fear of persecution or harm upon return. In such instances, the Immigration Judge shall advise the alien regarding asylum and withholding, and make the appropriate forms available. The Immigration Judge is to follow the requirements and standards set out in part 208, after an evidentiary hearing on material factual issues. If there is a mandatory denial pursuant to § 208.14 or § 208.16, such a hearing need not be held. The decision shall be communicated to the applicant and Trial Attorney for the Government; an adverse decision must state grounds for denial. Many comments objected to the provision stating that an evidentiary hearing is not necessary if there is a mandatory denial. This issue was discussed extensively in the "Supplementary Information" section of the April 6, 1988 revised rule. The Department continues to maintain, as stated at that time that:

> If it is apparent upon the record developed during a proceeding that the alien is clearly ineligible for asylum or withholding of deportation, the Immigration Judge will be permitted to forego a further evidentiary hearing on questions extraneous to the decision, thus avoiding unnecessary and time consuming factual hearings on nondispositive issues.

(26) *8 CFR 242.17—Ancillary matters, applications.* This section deals with deportation hearings in instances where the alien expresses fear of persecution or harm upon return. In such instances, the Immigration Judge shall advise the alien regarding asylum and withholding, and make the appropriate forms available. The Immigration Judge is to follow the requirements and standards set out in part 208, after an evidentiary hearing on material factual issues. If there is a mandatory denial pursuant to § 208.14 or § 208.16, such a hearing need not be held. The decision shall be communicated to the applicant and Trial Attorney for the Government; an adverse decision must state grounds for denial. As stated in section 25 above, the Department continues to believe that the provision stating that an evidentiary hearing is not necessary in instances where there is a mandatory denial, should remain in order to avoid unnecessary and time consuming factual hearings on nondispositive issues.

(27) *8 CFR 253.1—Parole.* This section deals with crewmen, stowaways, or those excluded under section 235(c), who allege persecution. Any of the above are eligible to apply for asylum or withholding. The alien must be given the appropriate application forms and given 10 days to file with the District Director having jurisdiction over the port of entry. Pending the decision, the alien shall be removed from the conveyance and may be either detained by INS, paroled into the custody of the ship's agent, or otherwise paroled in accordance with § 212.5; he shall not be excluded or deported before the Asylum Officer renders a decision on his application. Alien crewmen and stowaways denied asylum may appeal to the Board of Immigration Appeals.

The Department believes that promulgation of this final rule will facilitate the adjudication of claims for asylum and withholding of deportation in a manner consistent with the Refugee Act of 1980.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of E.O. 12291. The information collections in this rule have been approved under the Paperwork Reduction Act under OMB Control No. 1115-0086.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Asylum, Immigration, Jurisdiction, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 242

Administrative practice and procedure, Aliens, Detention, Deportation.

8 CFR Part 253

Air carriers, Airmen, Aliens, Asylum, Crewmen, Maritime carriers, Parole, Reporting and recordkeeping requirements, Seamen.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—[AMENDED]

1. The authority citation for part 3 continues to read as follows:

Authority: 8 U.S.C. 1103, 1362; 28 U.S.C. 509, 510, 1746; 5 U.S.C. 301; Sec. 2, Reorg. Plan No. 2 of 1950.

2. Section 3.1 is amended by adding paragraph (b)(9) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(9) Decisions of Asylum Officers of the Service on applications for asylum or withholding of deportation filed by alien crewman or stowaways, as provided in § 253.1(f)(4) of this chapter.

* * * * *

§ 3.22 [Amended]

3. Section 3.22 is amended by revising the second sentence of paragraph (b)(1) to read as follows: "Such motions shall comply with applicable provisions of 8 CFR 208.4, 208.19, and 242.22.".

PART 103—[AMENDED]

4. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 522(a); 8 U.S.C. 1101, 1103, 1201, 1304; 31 U.S.C. 9701; E.O. 12356; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

5. Section 103.1 is amended as follows:

a. The third sentence of § 103.1(n)(1) is revised;

b. Section 103.1(q) is amended by adding the words "asylum officer" after the words "Legalization Assistant," and before the words "or senior or supervisory officer";

c. And by adding a new paragraph (v) to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(n)(1) *District Directors.* * * * District directors are delegated the authority and responsibility to grant or deny any application or petition submitted to the Service, except for matters delegated to asylum officers pursuant to part 208 and § 253.1(f) of this chapter, to initiate any authorized proceeding in their respective districts, and to exercise the authorities under §§ 242.1(a), 242.2(a) and 242.7 of this chapter without regard to geographical limitations. * * *

* * * * *

(v) *Asylum Officers.* Asylum officers serve under the general supervision and direction of the Assistant Commissioner for Refugees, Asylum and Parole, and shall be especially trained as required in § 208.1(b) of this chapter. Asylum officers are delegated the authority to hear and adjudicate applications for asylum and for withholding of deportation, as provided under part 208 and § 253.1(f) of this chapter.

6. Part 208 is revised to read as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

Sec.

208.1 General.
208.2 Jurisdiction.
208.3 Form of application.
208.4 Filing the application.
208.5 Special duties toward aliens in custody of the Service.
208.6 Disclosure to third parties.
208.7 Interim employment authorization.
208.8 Limitations on travel outside the United States.
208.9 Interview and procedure.
208.10 Failure to appear.
208.11 Comments from the Bureau of Human Rights and Humanitarian Affairs.
208.12 Reliance on information compiled by other sources.
208.13 Establishing refugee status; burden of proof.
208.14 Approval or denial of application.
208.15 Definition of "firm resettlement."
208.16 Entitlement to withholding of deportation.
208.17 Decision.
208.18 Review of decisions and appeal.
208.19 Motion to reopen or reconsider.
208.20 Approval and employment authorization.
208.21 Admission of asylee's spouse and children.
208.22 Effect on deportation proceedings.
208.23 Restoration of status.
208.24 Revocation of asylum or withholding of deportation.

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1253, and 1283.

§ 208.1 General.

(a) This part shall apply to all applications for asylum or withholding of deportation that are filed on or after October 1, 1990. No application for asylum or withholding of deportation that has been filed with a District Director or Immigration Judge prior to October 1, 1990, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an Immigration Judge or an Asylum Officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of 8 CFR 3.2, 3.8, 3.22, 103.5, and 242.22 where applicable. The provisions of this part shall not affect the finality or validity of any decision made by District Directors, Immigration Judges, or the Board of Immigration Appeals in any asylum or withholding of deportation case prior to October 1, 1990.

(b) There shall be attached to the Office of Refugees, Asylum, and Parole such number of employees as the Commissioner, upon recommendation from the Assistant Commissioner, shall direct. These shall include a corps of professional Asylum Officers who are to receive special training in international relations and international law under the joint direction of the Assistant Commissioner, Office of Refugees, Asylum, and Parole and the Director of the Asylum Policy and Review Unit of the Office of Policy Development of the Department of Justice. The Assistant Commissioner shall be further responsible for general supervision and direction in the conduct of the asylum program, including evaluation of the performance of the employees attached to the Office.

(c) As an ongoing component of the training required by paragraph (b) of this section, the Assistant Commissioner, Office of Refugees, Asylum and Parole, shall assist the Deputy Attorney General and the Director of the Asylum Policy and Review Unit, in coordination with the Department of State, and in cooperation with other appropriate sources, to compile and disseminate to Asylum Officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion, as well as other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.

§ 208.2 Jurisdiction.

(a) Except as provided in paragraph (b) of this section, the Office of Refugees, Asylum, and Parole shall have initial jurisdiction over applications for asylum and withholding of deportation filed by an alien physically present in the United States or seeking admission at a port of entry. All such applications shall be decided in the first instance by Asylum Officers under this part.

(b) Immigration Judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served notice of referral to exclusion proceedings under part 236 of

this chapter, or served an order to show cause under part 242 of this chapter, after a copy of the charging document has been filed with the Office of the Immigration Judge. The Immigration Judge shall make a determination on such claims *de novo* regardless of whether or not a previous application was filed and adjudicated by an Asylum Officer prior to the initiation of exclusion or deportation proceedings. Any previously filed but unadjudicated asylum application must be resubmitted by the alien to the Immigration Judge.

§ 208.3 Form of application.

(a) An application for asylum or withholding of deportation shall be made in quadruplicate on Form I-589 (Request for Asylum in the United States). The applicant's spouse and children as defined in section 101 of the Act may be included on the application if they are in the United States. An application shall be accompanied by one completed Form G-325A (Biographical Information) and one completed Form FD-258 (Fingerprint Card) for every individual included on the application who is fourteen years of age or older; additional supporting material may also accompany the application and, if so, must be provided in quadruplicate. Forms I-589, G-325A, and FD-258 shall be available from the Office of Refugees, Asylum, and Parole, each District Director, and the Offices of Immigration Judges.

(b) An application for asylum shall be deemed to constitute at the same time an application for withholding of deportation, pursuant to §§ 208.16, 236.3, and 242.17 of this chapter.

§ 208.4 Filing the application.

If no prior application for asylum or withholding of deportation has been filed, an applicant shall file any initial application according to the following procedures:

(a) *With the District Director.* Except as provided in paragraph (b) of this section, applications for asylum or withholding of deportation shall be filed with the District Director having jurisdiction over the place of the applicant's residence or over the port of entry from which the applicant seeks admission to the United States. The District Director shall immediately forward the application to an Asylum Officer with jurisdiction in his district. The Asylum Officer shall notify the Asylum Policy and Review Unit of the Department of Justice and shall forward a copy of the completed application, including any supporting material subsequently received pursuant to § 208.9(e), to the Office of Refugees, Asylum and Parole and the Bureau of Human Rights and Humanitarian Affairs of the Department of State.

(b) *With the Immigration Judge.* Initial applications for asylum or withholding of deportation are to be filed with the Office of the Immigration Judge in the following circumstances (and shall be treated as provided in part 236 or 242 of this chapter):

(1) *During exclusion or deportation proceedings.* If exclusion or deportation proceedings have been commenced against an alien pursuant to part 236 or 242 of this chapter, an initial application for asylum or withholding of deportation from that alien shall be filed thereafter with the Office of the Immigration Judge.

(2) *After completion of exclusion or deportation proceedings.* If exclusion or deportation proceedings have been completed, an initial application for asylum or withholding of deportation shall be filed with the Office of the Immigration Judge having jurisdiction over the prior proceeding in conjunction with a motion to reopen pursuant to 8 CFR 3.8, 3.22 and 242.22 where applicable.

(3) *Pursuant to appeal to the Board of Immigration Appeals.* If jurisdiction over the proceedings is vested in the Board of Immigration Appeals under part 3 of this chapter, an initial application for asylum or withholding of deportation shall be filed with the Office of the Immigration Judge having jurisdiction over the prior proceeding in conjunction with a motion to remand or reopen pursuant to 8 CFR 3.2 and 3.8 where applicable.

(4) Any motion to reopen or remand accompanied by an initial application for asylum filed under paragraph (b) of this section must reasonably explain the failure to request asylum prior to the completion of the exclusion or deportation proceeding.

§ 208.5 Special duties toward aliens in custody of the Service.

(a) When an alien in the custody of the Service requests asylum or withholding of deportation or expresses fear of persecution or harm upon return to his country of origin or to agents thereof, the Service shall make available the appropriate application forms for asylum and withholding of deportation and shall provide the applicant with a list, if available, of persons or private agencies that can assist in preparation of the application.

(b) Where possible, expedited consideration shall be given to applications of aliens detained under 8 CFR part 235 or 242. Except as provided in paragraph (c) of this section, such alien shall not be deported or excluded before a decision is rendered on his initial asylum or withholding of deportation application.

(c) A motion to reopen or an order to remand accompanied by an application for asylum or withholding of deportation pursuant to § 208.4(b) shall not stay execution of a final order of exclusion or deportation unless such a stay is specifically granted by the Board or the Immigration Judge having jurisdiction over the motion.

§ 208.6 Disclosure to third parties.

(a) An application for asylum or withholding of deportation shall not be disclosed, except as permitted by this section, or at the discretion of the Attorney General, without the written consent of the applicant. Names and other identifying details shall be deleted from copies of asylum or withholding of deportation decisions maintained in public reading rooms under § 103.9 of this chapter.

(b) The confidentiality of other records kept by the Service (including G-325A forms) that indicate that a specific alien has applied for asylum or withholding of deportation shall also be protected from disclosure. The Service will coordinate with the Department of State to ensure that the confidentiality of these records is maintained when they are transmitted to State Department offices in other countries.

(c) This section shall not apply to any disclosure to:

(1) Any United States Government official or contractor having a need to examine information in connection with:

(i) Adjudication of asylum or withholding of deportation applications;

(ii) The defense of any legal action arising from the adjudication of or failure to adjudicate the asylum or withholding of deportation application;

(iii) The defense of any legal action of which the asylum or withholding of deportation application is a part; or

(iv) Any United States Government investigation concerning any criminal or civil matter; or

(2) Any Federal, state, or local court in the United States considering any legal action:

(i) Arising from the adjudication of or failure to adjudicate the asylum or withholding of deportation application; or

(ii) Arising from the proceedings of which the asylum or withholding of deportation application is a part.

§ 208.7 Interim employment authorization.

(a) The Asylum Officer to whom an initial application for employment authorization (Form I-765) accompanying an application for asylum or withholding of deportation is referred shall authorize employment for a period

not to exceed one year to aliens who are not in detention and whose applications for asylum or withholding of deportation the Asylum Officer determines are not frivolous. "Frivolous" is defined as manifestly unfounded or abusive.

(b) Employment authorization shall be renewable, in increments not to exceed one year, for the continuous period of time necessary for the Asylum Officer or Immigration Judge to decide the asylum application and, if necessary, for final adjudication of any administrative or judicial review.

(1) If the asylum application is denied by the Asylum Officer, the employment authorization shall terminate at the expiration of the employment authorization document or sixty days after the denial of asylum, whichever is longer.

(2) If the application is denied by the Immigration Judge, the Board of Immigration Appeals, or upon judicial review of the asylum denial, the employment authorization terminates upon the expiration of the employment authorization document.

(c) In order for employment authorization to be renewed under this section, the alien must provide the Asylum Officer, or District Director where appropriate, with a Form I-765 and proof that he has continued to pursue his application for asylum before an Immigration Judge or sought administrative or judicial review. Pursuit of an application for asylum, for purposes of employment authorization is established by presenting to the Asylum Officer one of the following, depending on the stage of the alien's immigration proceedings:

(1) If the alien's case is pending before the Immigration Judge, and the alien wishes to pursue an application for asylum, a copy of the asylum denial and the Order to Show Cause (Form I-221/I-221S) or Notice to Applicant for Admission Detained for Hearing before Immigration Judge (Form I-122) placing the alien in proceedings after asylum has been denied;

(2) If the immigration judge has denied asylum a copy of the Notice of Appeal (EOIR-26) date stamped by the Office of the Immigration Judge to show that a timely appeal has been filed from a denial of the asylum application by the Immigration Judge; or

(3) If the Board has dismissed the alien's appeal of the denial of asylum, a copy of the petition for judicial review or for habeas corpus pursuant to section 106 of the Immigration and Nationality Act, date stamped by the appropriate court.

(d) In order for employment authorization to be renewed before its expiration, applications for renewal must be received by the Service sixty days prior to expiration of the employment authorization.

(e) Upon the denied applicant's request, the District Director, in his discretion, may grant further employment authorization pursuant to 8 CFR 274a.12(c)(12).

§ 208.8 Limitations on travel outside the United States.

An applicant who leaves the United States pursuant to advance parole granted under 8 CFR 212.5(e) shall be presumed to have abandoned his application under this section if he returns to the country of claimed persecution unless he is able to establish compelling reasons for having assumed the risk of persecution in so returning.

§ 208.9 Interview and procedure.

(a) For each application for asylum or withholding of deportation within the jurisdiction of an Asylum Officer, an interview shall be conducted by that Officer, either at the time of application or at a later date to be determined by the Officer in consultation with the applicant. Applications within the jurisdiction of an Immigration Judge are to be adjudicated under the rules of procedure established by the Executive Office for Immigration Review in parts 3, 236, and 242 of this chapter.

(b) The Asylum Officer shall conduct the interview in a nonadversarial manner and, at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for the form of relief sought. The applicant may have counsel or a representative present and may submit affidavits of witnesses.

(c) The Asylum Officer shall have authority to administer oaths, present and receive evidence, and question the applicant and any witnesses, if necessary.

(d) Upon completion of the interview, the applicant or his representative shall have an opportunity to make a statement or comment on the evidence presented. The Asylum Officer, in his discretion, may limit the length of such comments or statement and may require their submission in writing.

(e) Following the interview the applicant may be given a period not to exceed 30 days to submit evidence in support of his application, unless, in the discretion of the Asylum Officer, a longer period is required.

(f) The application, all supporting information provided by the applicant, any comments submitted by the Bureau of Human Rights and Humanitarian Affairs of the Department of State, the Asylum Policy and Review Unit of the Department of Justice, or by the Service, and any other information considered by the Asylum Officer shall comprise the record.

§ 208.10 Failure to appear.

The unexcused failure of an applicant to appear for a scheduled interview may be presumed an abandonment of the application. Failure to appear shall be excused if the notice of the interview was not mailed to the applicant's current address and such address had been provided to the Office of Refugees, Asylum, and Parole by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the Asylum Officer determines that the applicant received reasonable notice of the interview. Such failure to appear may be excused for other serious reasons in the discretion of the Asylum Officer.

§ 208.11 Comments from the Bureau of Human Rights and Humanitarian Affairs.

(a) At its option, the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the Department of State may comment on an application it receives pursuant to §§ 208.4(a), 236.3 or 242.17 of this chapter by providing:

(1) An assessment of the accuracy of the applicant's assertions about conditions in his country of nationality or habitual residence and his own experiences;

(2) An assessment of his likely treatment were he to return to his country of nationality or habitual residence;

(3) Information about whether persons who are similarly-situated to the applicant are persecuted in his country of nationality or habitual residence and the frequency of such persecution;

(4) Information about whether one of the grounds for denial specified in § 208.14 may apply; or

(5) Such other information or views as it deems relevant to deciding whether to grant or deny the application.

(b) In all cases, BHRHA shall respond within 45 days of receiving a completed application by either providing comments, requesting additional time in which to comment, or indicating that it does not wish to comment. If BHRHA requests additional time in which to provide comments, the Asylum Officer or Immigration Judge may grant BHRHA up to 30 additional days when necessary to gather information pertinent to the

application or may proceed without BHRHA's comments. Failure to receive BHRHA's response shall not preclude final decision by the Asylum Officer or Immigration Judge if at least 60 days have elapsed since mailing the completed application to BHRHA. If the Deputy Attorney General determines that an expedited decision is necessary or appropriate, BHRHA shall provide its comments immediately.

(c) Any Department of State comments provided under this section shall be made a part of the asylum record. Unless the comments are classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), the applicant shall be given a copy of such comments and be provided an opportunity to respond prior to the issuance of an adverse decision.

§ 208.12 Reliance on information compiled by other sources.

(a) In deciding applications for asylum or withholding of deportation, the Asylum Officer may rely on material provided by the Department of State, the Asylum Policy and Review Unit, the Office of Refugees, Asylum, and Parole, the District Director having jurisdiction over the place of the applicant's residence or the port of entry from which the applicant seeks admission to the United States, or other credible sources, such as international organizations, private voluntary agencies, or academic institutions. Prior to the issuance of an adverse decision made in reliance upon such material, that material must be identified and the applicant must be provided with an opportunity to inspect, explain, and rebut the material, unless the material is classified under E.O. 12356.

(b) Nothing in this part shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

§ 208.13 Establishing refugee status; burden of proof.

(a) The burden of proof is on the applicant for asylum to establish that he is a refugee as defined in section 101(a)(42) of the Act. The testimony of the applicant, if credible in light of general conditions in the applicant's country of nationality or last habitual residence, may be sufficient to sustain the burden of proof without corroboration.

(b) The applicant may qualify as a refugee either because he has suffered actual past persecution or because he has a well-founded fear of future persecution.

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if he can establish that he has suffered persecution in the past in his country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, and that he is unable or unwilling to return to or avail himself of the protection of that country owing to such persecution.

(i) If it is determined that the applicant has established past persecution, he shall be presumed also to have a well-founded fear of persecution unless a preponderance of the evidence establishes that since the time the persecution occurred conditions in the applicant's country of nationality or last habitual residence have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he were to return.

(ii) An application for asylum shall be denied if the applicant establishes past persecution under this paragraph but is determined not also to have a well-founded fear of future persecution under paragraph (b)(2) of this section, unless it is determined that the applicant has demonstrated compelling reasons for being unwilling to return to his country of nationality or last habitual residence arising out of the severity of the past persecution. If the applicant demonstrates such compelling reasons, he may be granted asylum unless such a grant is barred by paragraph (c) of this section or § 208.14(c).

(2) *Well-founded fear of persecution.* An applicant shall be found to have a well-founded fear of persecution if he can establish first, that he has a fear of persecution in his country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, second, that there is a reasonable possibility of actually suffering such persecution if he were to return to that country, and third, that he is unable or unwilling to return to or avail himself of the protection of that country because of such fear.

(i) In evaluating whether the applicant has sustained his burden of proving that he has a well-founded fear of persecution, the Asylum Officer or Immigration Judge shall not require the applicant to provide evidence that he would be singled out individually for persecution if:

(A) He establishes that there is a pattern or practice in his country of nationality or last habitual residence of persecution of groups of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) He establishes his own inclusion in and identification with such group of persons such that his fear of persecution upon return is reasonable.

(ii) The Asylum Officer or Immigration Judge shall give due consideration to evidence that the government of the applicant's country of nationality or last habitual residence persecutes its nationals or residents if they leave the country without authorization or seek asylum in another country.

(c) An applicant shall not qualify as a refugee if he ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. If the evidence indicates that the applicant engaged in such conduct, he shall have the burden of proving by a preponderance of the evidence that he did not so act.

§ 208.14 Approval or denial of application.

(a) An Immigration Judge or Asylum Officer may grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act unless otherwise prohibited by paragraph (c) of this section.

(b) If the evidence indicates that one or more of the grounds for denial of asylum enumerated in paragraph (c) of this section may apply, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(c) *Mandatory denials.* An application for asylum shall be denied if:

(1) The alien, having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community;

(2) The applicant has been firmly resettled within the meaning of § 208.15; or

(3) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

§ 208.15 Definition of "firm resettlement."

An alien is considered to be firmly resettled if, prior to arrival in the United States, he entered into another nation with, or while in that nation received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he establishes:

(a) That his entry into that nation was a necessary consequence of his flight from persecution, that he remained in that nation only as long as was necessary to arrange onward travel, and

that he did not establish significant ties in that nation; or

(b) That the conditions of his residence in that nation were so substantially and consciously restricted by the authority of the country of refuge that he was not in fact resettled. In making his determination, the Asylum Officer or Immigration Judge shall consider the conditions under which other residents of the country live, the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation including a right of entry and/or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

§ 208.16 Entitlement to withholding of deportation.

(a) *Consideration of application for withholding of deportation.* If the Asylum Officer denies an alien's application for asylum, he shall also decide whether the alien is entitled to withholding of deportation under section 243(h) of the Act. If the application for asylum is granted, no decision on withholding of deportation will be made unless and until the grant of asylum is later revoked or terminated and deportation proceedings at which a new request for withholding of deportation is made are commenced. In such proceedings, an Immigration Judge may adjudicate both a renewed asylum claim and a request for withholding of deportation simultaneously whether or not asylum is granted.

(b) *Eligibility for withholding of deportation; burden of proof.* The burden of proof is on the applicant for withholding of deportation to establish that his life or freedom would be threatened in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible in light of general conditions in the applicant's country of nationality or last habitual residence, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

(1) The applicant's life or freedom shall be found to be threatened if it is more likely than not that he would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion.

(2) If the applicant is determined to have suffered persecution in the past such that his life or freedom was threatened in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that his life or freedom would be threatened on return to that country unless a preponderance of the evidence establishes that conditions in the country have changed to such an extent that it is no longer more likely than not that the applicant would be so persecuted there.

(3) In evaluating whether the applicant has sustained the burden of proving that his life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the Asylum Officer or Immigration Judge shall not require the applicant to provide evidence that he would be singled out individually for such persecution if:

(i) He establishes that there is a pattern or practice in the country of proposed deportation of persecution of groups of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) He establishes his own inclusion in and identification with such group of persons such that it is more likely than not that his life or freedom would be threatened upon return.

(4) In addition, the Asylum Officer or Immigration Judge shall give due consideration to evidence that the life or freedom of nationals or residents of the country of claimed persecution is threatened if they leave the country without authorization or seek asylum in another country.

(c) *Approval or denial of application.* The following standards shall govern approval or denial of applications for withholding of deportation:

(1) Subject to paragraph (c)(2) of this section, an application for withholding of deportation to a country of proposed deportation shall be granted if the applicant's eligibility for withholding is established pursuant to paragraph (b) of this section.

(2) An application for withholding of deportation shall be denied if:

(i) The alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) There are serious reasons for considering that the alien has committed a serious nonpolitical crime outside the United States prior to arrival in the United States; or

(iv) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

(3) If the evidence indicates that one or more of the grounds for denial of withholding of deportation enumerated in paragraph (c)(2) of this section apply, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(4) In the event that an applicant is denied asylum solely in the exercise of discretion, and the applicant is subsequently granted withholding of deportation under this section, thereby effectively precluding admission of the applicant's spouse or minor children following to join him, the denial of asylum shall be reconsidered. Factors to be so considered will include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his spouse or minor children in a third country.

§ 208.17 Decision.

The decision of an Asylum Officer to grant or deny asylum or withholding of deportation shall be communicated in writing to the applicant, the District Director having jurisdiction over the place of the applicant's residence or over the port of entry from which he sought admission to the United States, the Assistant Commissioner, Refugees, Asylum, and Parole, and the Director of the Asylum Policy and Review Unit of the Department of Justice. An adverse decision will state why asylum or withholding of deportation was denied and will contain an assessment of the applicant's credibility.

§ 208.18 Review of decisions and appeal.

(a) The Assistant Commissioner, Office of Refugees, Asylum, and Parole, shall have authority to review decisions by Asylum Officers, before they become effective, in any cases he shall designate. The Office of the Deputy Attorney General, assisted by the Asylum Policy and Review Unit, shall have authority to review decisions by Asylum Officers, before they become effective, in any cases designated pursuant to 28 CFR 0.15(f)(3). There shall be no right of appeal to the Office of Refugees, Asylum, and Parole, to the Office of the Deputy Attorney General, or to the Asylum Policy and Review Unit, and parties shall have no right to

appear before such offices in the course of such review.

(b) Except as provided in § 253.1(f) of this chapter, there shall be no appeal from a decision of an Asylum Officer. However, an application for asylum or withholding of deportation may be renewed before an Immigration Judge in exclusion or deportation proceedings. If exclusion or deportation proceedings have not been instituted against an applicant within 30 days of the Asylum Officer's final decision, the applicant may request in writing that the District Director having jurisdiction over the applicant's place of residence commence such proceedings. Absent exceptional circumstances, the District Director shall thereafter promptly institute proceedings against the applicant.

(c) A denial of asylum or withholding of deportation may only be reviewed by the Board of Immigration Appeals in conjunction with an appeal taken under 8 CFR part 3.

§ 208.19 Motion to reopen or reconsider.

(a) A proceeding in which asylum or withholding of deportation was denied may be reopened or a decision from such a proceeding reconsidered for proper cause upon motion pursuant to the requirements of 8 CFR 3.2, 3.8, 3.22, 103.5, and 242.17 where applicable.

(b) A motion to reopen or reconsider shall be filed:

(1) With the District Director having jurisdiction over the location at which the prior determination was made who shall forward the motion immediately to an Asylum Officer; or

(2) With the Office of the Immigration Judge having jurisdiction over the prior proceeding.

§ 208.20 Approval and employment authorization.

When an alien's application for asylum is granted, he is granted asylum status for an indefinite period. Employment authorization is automatically granted or continued for persons granted asylum or withholding of deportation unless the alien is detained pending removal to a third country. Appropriate documentation showing employment authorization shall be provided by the INS.

§ 208.21 Admission of asylee's spouse and children.

(a) *Eligibility.* A spouse, as defined in section 101(a)(35) of the Act, or child, as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act, may also be granted asylum if accompanying or following to join the principal alien, unless it is determined that:

(1) The spouse or child ordered, incited, assisted, or otherwise participated in the persecution of any persons on account of race, religion, nationality, membership in a particular social group, or political opinion;

(2) The spouse or child, having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community of the United States; or

(3) There are reasonable grounds for regarding the spouse or child a danger to the security of the United States.

(b) *Relationship.* The relationship of spouse and child as defined in section 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved, except for children born to or legally adopted by the principal alien and spouse after approval of the principal alien's asylum application.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States but was not included in the principal alien's application, the principal alien may request asylum for the spouse or child by filing Form I-730 with the District Director having jurisdiction over his place of residence, regardless of the status of that spouse or child in the United States.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the principal alien may request asylum for the spouse or child by filing form I-730 with the District Director, setting forth the full name, relationship, date and place of birth, and current location of each such person. Upon approval of the request, the District Director shall notify the Department of State, which will send an authorization cable to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located.

(e) *Denial.* If the spouse or child is found to be ineligible for the status accorded under section 208(c) of the Act, a written notice explaining the basis for denial shall be forwarded to the principal alien. No appeal shall lie from this decision.

(f) *Burden of proof.* To establish the claim of relationship of spouse or child as defined in section 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in 8 CFR 204.2(c)(2) and (c)(3). The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he is making a request under this section is an eligible spouse or child.

(g) *Duration.* The spouse or child qualifying under section 208(c) of the Act shall be granted asylum for an indefinite period unless the principal's status is revoked.

§ 208.22 Effect on deportation proceedings.

(a) An alien who has been granted asylum may not be excluded or deported unless his asylum status is revoked pursuant to § 208.24. An alien in exclusion or deportation proceedings who is granted withholding of deportation may not be deported to the country as to which his deportation is ordered withheld unless withholding of deportation is revoked pursuant to § 208.24.

(b) When an alien's asylum status or withholding of deportation is revoked under this chapter, he shall be placed in exclusion or deportation proceedings. Exclusion or deportation proceedings may be conducted concurrently with a revocation hearing scheduled under § 208.24.

§ 208.23 Restoration of status.

An alien who was maintaining his nonimmigrant status at the time of filing an application for asylum or withholding of deportation may continue or be restored to that status, if it has not expired, notwithstanding the denial of asylum or withholding of deportation.

§ 208.24 Revocation of asylum or withholding of deportation.

(a) *Revocation of asylum by the Assistant Commissioner, Office of Refugees, Asylum, and Parole.* Upon motion by the Assistant Commissioner and following a hearing before an Asylum Officer, the grant to an alien of asylum made under the jurisdiction of an Asylum Officer may be revoked if, by a preponderance of the evidence, the Service establishes that:

(1) The alien no longer has a well-founded fear of persecution upon return due to a change of conditions in the alien's country of nationality or habitual residence;

(2) There is a showing of fraud in the alien's application such that he was not eligible for asylum at the time it was granted; or

(3) The alien has committed any act that would have been grounds for denial of asylum under § 208.14(c).

(b) *Revocation of withholding of deportation by the Assistant Commissioner, Office of Refugees, Asylum, and Parole.* Upon motion by the Assistant Commissioner, and following a hearing before an Asylum Officer, the

grant to an alien of withholding of deportation made under the jurisdiction of an Asylum Officer may be revoked if, by clear and convincing evidence, the Service establishes that:

(1) The alien is no longer entitled to withholding of deportation due to a change of conditions in the country to which deportation was withheld;

(2) There is a showing of fraud in the alien's application such that he was not eligible for withholding of deportation at the time it was granted;

(3) The alien has committed any other act that would have been grounds for denial of withholding of deportation under § 208.16(c)(2).

(c) *Notice to applicant.* Upon motion by the Assistant Commissioner to revoke asylum status or withholding of deportation, the alien shall be given notice of intent to revoke, with the reason therefore, at least thirty days before the hearing by the Asylum Officer. The alien shall be provided the opportunity to present evidence tending to show that he is still eligible for asylum or withholding of deportation. If the Asylum Officer determines that the alien is no longer eligible for asylum or withholding of deportation, the alien shall be given written notice that asylum status or withholding of deportation along with employment authorization are revoked.

(d) *Revocation of derivative status.* The termination of asylum status for a person who was the principal applicant shall result in termination of the asylum status of a spouse or child whose status was based on the asylum application of the principal.

(e) *Reassertion of asylum claim.* A revocation of asylum or withholding of deportation pursuant to paragraphs (a) or (b) of this section shall not preclude an applicant from reasserting an asylum or withholding of deportation claim in any subsequent exclusion or deportation proceeding.

(f) *Review.* The Office of the Deputy Attorney General, assisted by the Asylum Policy and Review Unit, shall have authority to review decisions to revoke asylum or withholding of deportation, before they become effective, in any cases designated pursuant to 28 CFR 0.15(f)(3). There shall be no right of appeal to the Office of the Deputy Attorney General or to the Asylum Policy and Review Unit and parties shall have no right to appear before such offices in the course of such review.

(g) *Revocation of asylum or withholding of deportation by the Executive Office for Immigration Review.* An Immigration Judge or the Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 242.22 of this chapter for the purpose of revoking a grant of asylum or withholding of deportation made under the exclusive jurisdiction of an Immigration Judge. In such a reopened proceeding, the Service must similarly establish by the appropriate standard of evidence one or more of the grounds set forth in paragraphs (a) or (b) of this section. Any revocation under this paragraph may occur in conjunction with an exclusion or deportation proceeding.

PART 236—[AMENDED]

7. The authority citation for part 236 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

8. In Part 236, Exclusion of Aliens, § 236.3 is revised to read as follows:

§ 236.3 Applications for asylum or withholding of deportation.

(a) If an alien expresses fear of persecution or harm upon return to his country of origin or to a country to which he may be deported after exclusion from the United States pursuant to part 237 of this chapter, the Immigration Judge shall:

(1) Advise the alien that he may apply for asylum in the United States or withholding of deportation to that other country; and

(2) Make available the appropriate application forms.

(b) An application for asylum or withholding of deportation must be filed with the Office of the Immigration Judge, pursuant to § 208.4(b) of this chapter. Upon receipt of the application, the Office of the Immigration Judge shall forward a copy to the Bureau of Human Rights and Humanitarian Affairs of the Department of State for their comments pursuant to § 208.11 of this chapter, and shall calendar the case for hearing, which shall be deferred pending receipt of the Department of State's comments. The reply, if any, from the Department of State, unless classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), shall be given to both the applicant and to the Trial Attorney representing the government.

(c) Applications for asylum or withholding of deportation so filed will be decided by the Immigration Judge pursuant to the requirements and standards established in part 208 of this chapter after an evidentiary hearing that is necessary to resolve material factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to 8 CFR 208.14 or 208.16 is not necessary once the Immigration Judge has determined that such a denial is required.

(1) Evidentiary hearings on applications for asylum or withholding of deportation will be closed to the public unless the applicant expressly requests that it be open pursuant to 8 CFR 236.2.

(2) Nothing in this section is intended to limit the authority of the Immigration Judge properly to control the scope of any evidentiary hearing.

(3) During the exclusion hearing, the applicant shall be examined under oath on his application and may present evidence and witnesses on his own behalf. The applicant has the burden of establishing that he is a refugee as defined in section 101(a)(42) of the Act pursuant to the standard set forth in § 208.13 of this chapter.

(4) The Trial Attorney for the government may call witnesses and present evidence for the record, including information classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), provided the Immigration Judge or the Board has determined that such information is relevant to the hearing. When the Immigration Judge receives such classified information he shall inform the applicant. The agency that provides the classified information to the Immigration Judge may provide an unclassified summary of the information for release to the applicant whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its source. The summary should be as detailed as possible, in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision.

(d) The decision of an Immigration Judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the Trial Attorney for the government. An adverse decision will state why asylum or withholding of deportation was denied.

PART 242—[AMENDED]

9. The authority citation of part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1252, 1254, 1362.

10. In Part 242, Proceedings To Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal, § 242.17(c), is revised to read as follows:

§ 242.17(c) Ancillary matters, applications.

* * * * *

(c) *Applications for asylum or withholding of deportation.* (1) The Immigration Judge shall notify the respondent that if he is finally ordered deported his deportation will in the first instance be directed pursuant to section 243(a) of the Act to the country designated by the respondent and shall afford him an opportunity then and there to make such designation. The Immigration Judge shall then specify and state for the record the country, or countries in the alternative, to which respondent's deportation will be directed pursuant to section 243(a) of the Act if the country of his designation will not accept him into its territory, or fails to furnish timely notice of acceptance, or if the respondent declines to designate a country.

(2) If the alien expresses fear of persecution or harm upon return to any of the countries to which he might be deported pursuant to paragraph (c)(1) of this section, the Immigration Judge shall:

(i) Advise the alien that he may apply for asylum in the United States or withholding of deportation to those countries; and

(ii) Make available the appropriate application forms.

(3) An application for asylum or withholding of deportation must be filed with the Office of the Immigration Judge, pursuant to § 208.4(b) of this chapter. Upon receipt of the application, the Office of the Immigration Judge shall forward a copy to the Bureau of Human Rights and Humanitarian Affairs of the Department of State for their comments pursuant to § 208.11 of this chapter, and shall calendar the case for hearing, which shall be deferred pending receipt of the Department of State's comments. The reply, if any, of the Department of State, unless classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), shall be given to both the applicant and to the Trial Attorney representing the government.

(4) Applications for asylum or withholding of deportation so filed will be decided by the Immigration Judge pursuant to the requirements and standards established in part 208 of this chapter after an evidentiary hearing that is necessary to resolve factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to 8 CFR 208.14 or 208.16 is not necessary once the Immigration Judge has determined that such a denial is required.

(i) Evidentiary hearings on applications for asylum or withholding of deportation will be open to the public unless the applicant expressly requests that it be closed.

(ii) Nothing in this section is intended to limit the authority of the Immigration Judge properly to control the scope of any evidentiary hearing.

(iii) During the deportation hearing, the applicant shall be examined under oath on his application and may present evidence and witnesses in his own behalf. The applicant has the burden of establishing that he is a refugee as defined in section 101(a)(42) of the Act pursuant to the standard set forth in § 208.13 of this chapter.

(iv) The Trial Attorney for the government may call witnesses and present evidence for the record, including information classified under E.O. 12356 (3 CFR, 1982 Comp., p. 166), provided the Immigration Judge or the Board has determined that such information is relevant to the hearing. When the Immigration Judge receives such classified information he shall inform the applicant. The agency that provides the classified information to the Immigration Judge may provide an unclassified summary of the information for release to the applicant, whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its source. The summary should be as detailed as possible, in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state whether such information is material to the decision.

(5) The decision of an Immigration Judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the Trial Attorney for the government. An adverse decision will state why asylum or withholding of deportation was denied.

* * * * *

PART 253—[AMENDED]

11. The authority citation for part 253 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1282, 1283, 1285.

12. In Part 253, Parole of Alien Crewman, § 253.1(f) is revised to read as follows:

§ 253.1 Parole.

* * * * *

(f) *Crewman, stowaway, or alien temporarily excluded under section 235(c) alleging persecution.* Any alien crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act who alleges that he cannot return to his country of nationality or last habitual residence (if not a national of any country) because of fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, is eligible to apply for asylum or withholding of deportation under part 208 of this chapter.

(1) If the alien is on a vessel or other conveyance and makes such fear known to an immigration inspector or other official making an examination on the conveyance, he shall be promptly removed from the conveyance. If the alien makes his fear known to an official while off such conveyance, he shall not be returned to the conveyance but shall be retained in or transferred to the custody of the Service.

(2) In either case, the alien shall be provided the appropriate application forms and such other information as is required by § 208.5 of this chapter and may then have ten (10) days within which to file an application for such relief with the District Director having jurisdiction over the port of entry from which the applicant seeks entry into the United States. The District Director, pursuant to § 208.4(a) of this chapter, shall immediately forward any such application to an Asylum Officer with jurisdiction over his district.

(3) Pending adjudication of the application by the Asylum Officer, the applicant may be detained by the Service, or paroled into the custody of the ship's agent or otherwise paroled in accordance with § 212.5 of this chapter and shall not be excluded or deported before a decision is rendered by the Asylum Officer on his asylum application.

(4) A decision denying asylum to an alien crewman or stowaway, but not an alien temporarily excluded under section 235(c) of this chapter, may be appealed directly to the Board of Immigration Appeals. Such appeal must be filed within ten (10) days of the Asylum Officer's decision by filing a notice of appeal on Form I-290A with the District Director, who shall immediately forward the notice to the Asylum Officer. The Asylum Officer shall transmit the notice of appeal, his decision, and the record on which that decision was based, to the Board of Immigration Appeals. The filing of a notice of appeal shall stay the exclusion or deportation of the applicant pending decision on the appeal by the Board.

* * * * *

Dated: July 18, 1990.

Dick Thornburgh,

Attorney General.

[FR Doc. 90-17453 Filed 7-26-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 166

[Docket No. 90-129]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Swine Health Protection regulations by (1) removing Indiana from the list of States that permit the feeding of treated garbage to swine and adding it to the list of States that prohibit garbage feeding, (2) removing Maryland from the list of States that prohibit garbage feeding and adding it to the list of States that permit the feeding of treated garbage to swine, and (3) removing Alaska from the list of States that issue garbage treating licenses under cooperative agreements with the Animal and Plant Health Inspection Service, United States Department of Agriculture. These actions reflect changes in the status of these States, and thereby facilitate the administration of the Swine Health Protection regulations.

EFFECTIVE DATE: August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. William C. Stewart, Chief Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, Room 736, Federal Building, 6505 Belcrest Road, Hyattsville, Md 20782, 301-436-7767.

SUPPLEMENTARY INFORMATION:

Background

The "Swine Health Protection" regulations (contained in 9 CFR part 166 and referred to below as the regulations) were established under the Swine Health Protection Act (contained in 7 U.S.C. 3801 *et seq.*, and referred to below as the Act). The Act and the regulations contain provisions concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. These provisions operate as safeguards against the spread of certain swine diseases in the United States.

On April 23, 1990, we published in the Federal Register (55 FR 15236-15237, Docket Number 89-122), a document proposing to (1) remove Indiana from the list of States in § 166.15(b) that permit the feeding of treated garbage to swine and add it to the list of States in § 166.15(a) that prohibit the feeding of garbage to swine; (2) remove Maryland from the list of States in § 166.15(a) that prohibit the feeding of garbage to swine and add it to the list of States in § 166.15(b) that permit the feeding of treated garbage to swine; and (3) remove Alaska from the list in § 166.15(d) of States that have cooperative agreements with APHIS. We also proposed to make nonsubstantive changes to the regulations in § 166.15(b) for the purposes of clarity.

Comments on the proposed rule were required to be received on or before June 22, 1990. We did not receive any comments. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

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

Almost all persons who operate facilities for the treatment of garbage to be fed to swine or who permit the feeding of garbage to swine are considered small entities.

Indiana has no licensed garbage feeders; therefore, prohibiting the feeding of garbage to swine in Indiana will have no economic impact there. This rule reflects changes that Indiana has already made with respect to Swine Health Protection.

Maryland has one licensed garbage feeder, and Alaska has two. Changing the status of Maryland and Alaska will have no effect on the business operations of these entities; this rule reflects changes that Maryland and Alaska have already made with respect to swine health protection. Therefore, it is not anticipated that the licensed garbage feeders operating in Maryland and Alaska will experience any economic impact as a result of this rule.

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

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

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

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Swine vesicular disease, Vesicular exanthema of swine.

PART 166—SWINE HEALTH PROTECTION

Accordingly, 9 CFR part 166 is amended as follows:

1 The authority citation for part 166 continues to read as follows:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

§ 166.15 [Amended]

2. Paragraph (a) of § 166.15 is amended by adding "Indiana," immediately after "Illinois," and by removing "Maryland".

3. Paragraph (b) of § 166.15 is amended by correcting the spelling of "Main" to "Maine"; by adding "Maryland," immediately after "Maine"; and by removing "Indiana".

4. Paragraph (d) of § 166.15 is amended by removing "Alaska,".

Done in Washington, DC, this 23rd day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-17539 Filed 7-26-90; 8:45 am]

BILLING CODE 3410-34-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Transportation System

July 19, 1990.

AGENCY: National Aeronautics and Space Administration (NASA).

SUMMARY: NASA is amending 14 CFR Part 1214 by removing Subpart 1214.10, "Space Transportation System; Procurement of Spinning Solid Upper Stages." It has served its purpose and is no longer in keeping with current policy.

EFFECTIVE DATE: July 27, 1990.

ADDRESSES: Associate Administrator for Space Flight, Code M, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Gail A. Gabourel, 202 453–2959.

List of Subjects in 14 CFR Part 1214

Spinning Solid Upper Stages (SSUS).

PART 1214—[AMENDED]

§§ 1214.1000—1214.1003 (Subpart 1214.10) [Removed and reserved]

14 CFR part 1214 subpart 1214.10 (consisting of §§ 1214.1000 through 1214.1003) is hereby removed and reserved.

Dated: July 19, 1990.

Richard H. Truly,

Administrator.

[FR Doc. 90–17551 Filed 7–26–90; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-89-65]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Town of Jupiter, the Coast Guard is revising the regulations governing the Indiantown Road (SR 706) drawbridge at Jupiter by permitting the number of openings to be limited during certain periods. This change is being made because vehicular and vessel traffic has increased. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on August 27, 1990.

FOR FURTHER INFORMATION CONTACT: Walt Paskowsky, (305) 536–4103.

SUPPLEMENTARY INFORMATION: On February 12, 1990, the Coast Guard published proposed rule (55 FR 4869) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated March 6, 1990. In each notice interested persons were given until March 29, 1990, to submit comments.

Drafting Information

The drafters of these regulations are Walter J. Paskowsky, project officer, and LCDR D.G. Dickman, project attorney.

Discussion of Comments

Ten comments were received. A large marine association supported the proposed 20 minute schedule, but expressed strong opposition to longer closed periods due to unpredictable and unsafe holding conditions near the bridge. The Florida Inland Navigation District opposed the increased closed periods citing unsafe navigation conditions as a large number of vessels are required to await openings in this narrow reach of the Atlantic Intracoastal Waterway. One commentor stated the increased closed periods would cause economic hardship to marinas located upstream of the bridge due to potential loss of marine business. Six commentors objected to the 20 minute schedule and urged openings at 30 minute or longer intervals. Several of these commentors recommended that a high level fixed bridge be constructed as the ultimate solution to the problem. This suggestion, which the Coast Guard supports, has been passed to the bridge owner for consideration. The Coast Guard has carefully considered all of the comments. No additional information was presented to justify further change to the proposed rule. The final rule is, therefore, unchanged from the proposed rule published on February 12, 1990.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures. (44 FR 11034; February 26, 1979) The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 111 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.261(q) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(q) Indiantown Road (SR 706) bridge, mile 1006.2 at Jupiter. The draw shall open on signal, except that from 7 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

* * * * *

Dated: July 10, 1990.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 90–17529 Filed 7–26–90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[COTP Grand Haven Reg. 90-06]

Safety Zone Regulations; Grand Haven Harbor, Grand Haven, MI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Grand Haven Harbor, Grand Haven, MI, to protect the safety of life and property on the water during the Coast Guard Festival Fireworks Display on 04 August 1990.

EFFECTIVE DATE: This regulation becomes effective at 7 p.m. (EDST) on 04 August 1990 and will terminate at 3 a.m. (EDST) on 05 August 1990.

FOR FURTHER INFORMATION CONTACT: John R. Allyn, Radarman First Class, U.S. Coast Guard Group, 650 Harbor Ave., Grand Haven, MI 49417, (616) 847-4500.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to preclude damage to vessels and equipment or injury to people in the vicinity.

Drafting Information

The drafters of this regulation are John R. Allyn, Radarman First Class, U.S. Coast Guard Group Grand Haven and M. Eric Reeves, Lieutenant Commander, U.S. Coast Guard, Project Attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation result from a fireworks display which will be conducted in the Grand Haven Harbor, Grand Haven, MI during this time. The safety zone is needed to ensure the protection of life and property during the Coast Guard Festival Fireworks Display.

This regulation is issued pursuant to 33 U.S.C. 1225 and all 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

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

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T0919 is added to read as follows:

§ 165.T0919 Safety Zone: Grand Haven Harbor, Grand Haven, MI.

(a) *Location:* The following area is a safety zone: Grand Haven Harbor from the pierheads (mile 0.0) to the Bascule Bridge (mile 2.89).

(b) *Effective date:* This regulation will become effective at 7:00 P.M. (EDST) 04 August 1990, and terminate at 3:00 A.M. (EDST) 05 August 1990.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited, except when expressly authorized by the Coast Guard Patrol Commander Commanding officer, U.S. Coast Guard Station, Grand Haven, MI.).

(2) The Coast Guard will Patrol the safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Operators of vessels, not participating in the event, desiring to transit the regulated area, may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area, under the direction of the Coast Guard Patrol Commander, shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: July 10, 1990.

L.L. Mizell,

Commander, U.S. Coast Guard, Captain of the Port, Grand Haven, MI.

[FR Doc. 90-17530 Filed 7-26-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

36 CFR Part 327

Shoreline Management at Civil Works Projects

AGENCY: U.S. Army Corps of Engineeers, DoD.

ACTION: Final rule.

SUMMARY: This final rule suspercedes the regulation (ER 1130-2-406) issued by the U.S. Army Corps of Engineers on December 13, 1974. The rule provides policy and guidance on the management of shorelines of Corps of Engineers managed Civil Works water resource projects. This action incorporates changes deemed necessary to better meet new and changing conditions.

EFFECTIVE DATE: July 27, 1990.

ADDRESSES: Office of the Chief of Engineers, ATTN: CECW-ON, 20 Massachusetts Avenue NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Lewis, (202) 272-0247.

SUPPLEMENTARY INFORMATION:

Classification

The Secretary of the Army has determined that this revision is not a "major" rule within the meaning of Executive Order (E.O.) 12291. This is because the revision will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local governmental agencies; or (3) have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of a United States-based enterprise to compete with foreign-

based enterprise in domestic or export markets.

The purpose and effect of this revision is to incorporate changes deemed necessary to meet new and changing conditions. It clarifies and strengthens the regulation for more effective management and enhancement of the public enjoyment of U.S. Army Corps of Engineers water resource development projects. This rule is also intended to make the regulation consistent with legislative actions. No increased paperwork burden is imposed by the revision.

This revision was submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

Regulatory Analysis

Under E.O 12291, the Department of the Army must determine if a regulation is "major" and, therefore, subject to a Regulatory Impact Analysis. Because the Department of the Army believes that this revision is not "major", it is not subject to such an analysis.

Background

On June 8, 1988, a notice of proposed rule 36 CFR part 327, Shoreline Management at Civil Works Projects, was published in the **Federal Register** (53 FR 21495–21500). A 45-day period for public review was provided. During this period, 175 letters of comment were received from a broad spectrum of interests including individuals, corporations, environmental groups, local and national associations, State, local and Federal agencies.

The comments predominatly were of constructive nature, pointing out errors and problems with the proposed rule and suggesting ways to strengthen the rule or correct the problem. As requested by the request for review and comments, most of the comments were specific and made reference to the part of the proposed rule to which the comments were directed.

It should be noted that many comments supported the proposed regulations. However, that support was not repeated on a paragraph-by-paragraph basis and is not repeated herein on that basis. The Army has considered and evaluated each of the comments received and has developed responses. Many comments resulted in corresponding changes to the rules. Conversely, some did not. Keeping in mind both points of view, the Corps has endeavored to further clarify and streamline the regulation where possible.

The following discusses the comments and Army's responses to the concerns expressed on the proposed rule. Copies of all written comments received are available for public inspection at the Office of the Chief of Engineers, room 6219, 20 Massachusetts Avenue, NW., Washington, DC. Copies of the final rule are also available upon request.

A number of comments addressed criteria for setting the fee for shoreline permits. The fee schedule will be published separately and will be published in the **Federal Register** for public review and comment prior to any change. The fee schedule is not addressed in this regulation except to state that fees shall be paid prior to issuance of a permit and that the fee schedule will be published separately. Therefore, comments on the fees were not addressed.

Comments on Specific Sections

Section 327.30(a) Purpose.

Comment: The regulation should be applicable only to freshwater projects where the Corps holds fee simple title to the shoreline on impoundments and not canals. One commenter wanted to retain the protection and restoration language in the existing regulation.

Response: The proposed change stated that this rule would apply to situations where the Corps holds fee simple title to the shoreline. This was intended to restrict the application of this rule of Corps water resource development projects where the Lakeshore Management regulation is now applied. However, several commenters pointed out that it resulted in a much broader application. The reference to fresh water impoundments is considered to be too limiting. There is no intent for this rule to apply to intercoastal waterways or similar water resource projects. The section was changed to make this rule applicable only to those shorelines on Civil Works water resource projects where 36 CFR part 327 is applicable. The protection and restoration language was not retained because both are adequately addressed in the project master plans and operational management plans, separate but related documents.

Section 327.30(b) Applicability.

Comment: Expand the non-applicability statement concerning shoreline management activities on Indian lands or lands covered by treaties with Indian Nations.

Response: The change was not made because the current wording in this section and 36 CFR 327.1(f) are considered adequate protection for these rights and lands.

Section 327.30(c) References.

Comment: Add ER 1130–2–435, Preparation of Project Master Plans, and the National Electric Code, (section 555) as cited references.

Response: There references were not added as they do not contain criteria specifically required for the development and implementation of shoreline management plans.

Section 327.30(c)(3) National Historic Preservation Act of 1966.

Comment: Recommend the issuance of Shoreline Use Permits be subject to a section 196 review under the provisions of the National Historic Preservation Act of 1966.

Response: This Act is cited in the list of references for this rule, and its provisions for review will be applied where appropriate. The specific requirement for a review was not added to the final rule as it would not be applicable to most shoreline use permits issued but would be more appropriately addressed in the project master plan, a separate but related document.

Section 327.30(d)(1). Policy.

Comment: Nineteen commenters expressed some concerns about its content. Two of the commenters recommended retaining the wording in the current regulation. Ten of the commenters were in opposition to any expansion of private exclusive use, one citing an alleged adverse impact on marina development. One commenter asked for a definition of "balance", another suggested making the paragraph applicable only to projects were private use in now permitted. Three commenters suggested wording to assure resource protection. One commenter addressed issues specific to only one project.

Response: No changes were made. Balance is achieved by continuing to allow the issuance of new shoreline permits while being responsive to the mission of resource stewardship.

Section 327.30(d)(2) Policy.

Comment: Docks and other shoreline uses should be allowed on 25% of the shoreline of Richard B. Russell Lake, a post-December 13, 1974 project.

Response: This section was changed to say that "except to honor written commitments made prior to publication of this regulation, private shoreline uses are not allowed on water resource projects where construction was initiated after December 13, 1974, or on water resource projects where no private shoreline uses existed as of that date." This will allow private shoreline uses at this project in accordance with

the commitment made by the Assistant Secretary of the Army (Civil Works).

Section 327.30(d)(3) Policy.

Comment: Recommend reviewing the Shoreline Management Plan at least every five years rather than periodically.

Response: The word "periodically" was deleted and a specified review period of "at least once every five years" was included in the third sentence of this section. This will assure that the plan addresses current issues while giving the district commander the flexibility necessary to effectively administer and implement the plan.

Comment: Project resources were not adequately considered and that local norms and public demand should not be the only considerations for expanding private shoreline uses.

Response: No changes were made. The public participation process and guidance directing the development of project master plans and operation management plans, spearate but related documents, provide adequate protection for these resources.

Comment: Recommend the Corps take the land is developing Shoreline Management Plans on projects involving joint jurisdiction.

Response: No change was made. The term "coordinator" is considered appropriate.

Comment: The fourth sentence should include uses that do not pose significant environmental affects.

Response: This sentence has been revised to include this comment since environmental effects are a primary concern of this regulation.

Section 327.30(d)(4) Policy.

Comment: Concerned with the reduction of emphasis on community docks.

Response: This section does not preclude the mooring of group owned (community) docks in areas designated for limited development. However, they may create management problems in some locations. Therefore, they should not be encouraged for all limited development areas. No change was made.

Section 327.30(d)(5) Policy.

Comment: It should be made clear that the public has the right of "pedestrian" access.

Response: No change was made. Inserting types of access could cause one to assume the access types mentioned are an all inclusive list of the types of access. By simply stating that the public has the right of access assumes that the public has pedestrian access in addition to other types of access.

Comment: In the statement that reads "* * * take necessary precautions to protect their property * * *", the precautions should be confined to the structure (i.e., fence or gate).

Response: This change was not made because "precautions" could be taken in another form other than a fence or gate.

Comment: Delete the sentence regarding "* * * necessary precautions * * *".

Response: This sentence was not changed. It is necessary to let permittees know that they may take precautions to protect their personal property; however, they cannot restrict the public's right of access to the water or the public land adjacent to the permittee's facility, be it by pedestrian or vessel access.

Section 327.30(d)(6) Policy.

Comment: Eight commenters indicated a concern about the term "contiguous private property." They thought that this reflected perferential treatment for adjacent landowners.

Response: The paragraph was rewritten to make it clearer and the words "across contiguous private property" have been removed.

Comment: Change the words "public lands" to "project lands."

Response: Not favorably considered since not all project lands are open to use by the public.

Section 327.30(e)(2) Preparation.

Comment: Opposed to a moratorium. Suggest a limit of one year on moratoriums.

Response: No changes were made as a result of these comments. The moratorium, while not a requirement, does provide the district commander with a means of maintaining a degree of management flexibility. A moratorium is considered to be a fair and logical way to freeze the action while the plan is being prepared or reviewed. Limiting the moratorium period could adversely affect its effectiveness. The moratorium could last as long as it takes to complete or update the plan.

Comment: The Shoreline Management Plan (SMP) should agree with the project master plan.

Response: Since the SMP is part of the Operational Management Plan (OMP) and the regulation which addressed OMPs requires continuity with the master plan, this concern is adequately addressed. No change was made.

Comment: The development of the SMP should be subject to a section 106 review under the provisions of the Historic Preservation Act of 1966.

Response: Where such a review is necessary, its applicability does not need to be repeated in this section since it is implicit in the refernece cited in § 327.30(c)(3).

Section 327.30(e)(3) Approval.

Comment: Two commenters suggested additions to the last sentence. One suggested adding "upon request" and the other suggested adding "for the cost of reproduction."

Response: Neither change was made. It is within the district commander's authority to set guidelines for distribution of the plans and determining whether the cost of reproduction warrants recovery.

Comment: An appeal process should be addressed in this paragraph for those who do not agree with the plan approved by the division commander.

Response: Individuals have ample opportunity to make their views and positions known during the public participation process outlined in § 327.30(e)(6).

Section 327.30(e)(4) Scope and Format.

Comment: Change the title of the paragraph from "Scope and Format" to "Scope and Plan."

Response: This change was not made as "Format" is considered more descriptive of the procedures required in the development and implementation of a shoreline management plan. In response to two other comments, the reference in the first sentence was corrected to read, "* * * § 327.30(e)(6)."

Section 327.30(e)(5) Shoreline Allocation.

Comment: Add a category for Indian lands.

Response: Shorline management plans are not applicable to Indian lands as stated in § 327.30(b).

Comment: Two commenters suggested a total of six new or different shoreline allocations.

Response: While these offered different descriptive terms, no changes were made since they did not offer any advantages over the allocations described in §§ 327.30(e)(5)(i) through (e)(5)(iv). Added a definition as to what land and water areas shoreline allocations cover and a definition of private shoreline use.

Response: In response to one comment, the words, "during the plan preparation, review or updating." were added to the last sentence to more clearly define when constraints could be added and unique areas identified.

Comment: Shoreline allocations should be expressed in terms of the

distance it extends "back into public land."

Response: A sentence was added to clarify the limits of the shoreline management allocations.

Comment: Use the Master Plan land classifications for the Shoreline Mangement Plan.

Response: This was not adopted because the two systems, although complimentary, serve two different purposes. A sentence was added to emphasize that shoreline allocations should compliment land use classifications.

Comment: Eliminate the requirement to "conspicuously display" the map in the project administration office.

Response: The fourth sentence was changed to read, "* * * conspicuously displayed or readily available for viewing * * *" to accommodate offices with a limited amount of display area.

Section 327.30(e)(5)(i) Limited Development Areas.

Comment: Three commenters each recommended a change to this paragraph.

Response: The second sentence was revised. The word "is" was changed to "may be" to more clearly define the intent of the statement.

Comment: Oppose any limited mowing.

Response: No change was made as this would be contrary to § 327.30(d)(2).

Comment: Vegetation modification is a minor right in real estate.

Response: This was not considered pertinent to the subject at hand and no change was made.

Section 327.30(e)(5)(ii) Public Recreation Areas.

Comment: Consideration should be given to allow "ski docks" under this classification since this activity is usually near a recreation area.

Response: Permitting these structures within this allocation would be inconsistent with the shoreline management program objectives. No changes were made in this paragrpah.

Section 327.30(e)(5)(iii) Protected Shoreline Areas.

Comment: Object to vegetation modification in a Protected Shore Area. Object to paths within this allocation or at least require them to be built to some standard.

Response: No changes were made. Further restrictions on these activities would not be in keeping with § 327.30(d)(2). The district commander may establish construction and maintenance requirements for facilities including paths in Shoreline Management Plans.

Comment: Visual impacts should be considered within this allocation.

Response: Scenic areas are difficult to define in a defensible, quantitative manner. Beauty is often in the eye of the beholder. There are some methods that could be applied. For example, a visual contrast reduction methodology is used by the Bureau of Land Management. The term "visual" was not included in this allocation because of its varied definitions.

Comment: The term "protected shoreline" is confusing to boaters because protected shoreline means safe harbor or passage.

Response: No change was made since this is not a boating regulation and "Protected Shoreline Areas" are defined in the first sentence of this paragraph.

Response: In response to a comment regarding erosion, the second sentence was reworded to elimiate redundancy. The words "to protect unstable shoreline from erosion" were deleted and the word "erosion" was added after "siltation,".

Comment: This section applies to fixed as well as floating facilities.

Response: The words "or fixed" were added after the word "floating" in the third sentence.

Comment: The following sentence should be added at the end of this section "In making this determination the affect on water quality will also be considered."

Response: This sentence was added since environmental concerns are of prime concern in this regulation.

Section 327.30(e)(5)(iv) Prohibited Access Areas.

Comment: Add "public health" to the first sentence.

Response: The word "health" was added.

Comment: Allow limited mowing for fire protection within this allocation.

Response: This change was not made. Mowing is fully addressed in appendix A.

Comment: Add endangered species, wetlands and fish spawning/nurseries to the definition of prohibited access areas.

Response: This change was not made because these activities are covered in the definition of "Protected Shoreline Areas" in § 327.30(e)(5)(iii).

Section 327.30(e)(6) Public Participation

Comment: Delete the word "preparation" from the first sentence.

Response: This change was not made. The public can participate in different ways, at different times.

Comment: Delete the sentence about developing a computer program.

Response: This was not deleted because a computerized permit program could be indispensable to projects with a large number of permits.

Comment: Request "Indian tribes" be added to the special notification list in the third sentence from the end. Suggest adding the words "and subsequent revisions" to the same sentence.

Response: Both changes were made to assure opportunity for full public involvement. In response to another comment, the word "as" was deleted from between the word "entities" and "during" in the third sentence from the end to provide for better sentence structure.

Comment: Add a statement encouraging the development of "citizen's committees" as part of the public participation program.

Response: Full public involvement is already encouraged. Citizen's Committees are for specific purposes and times and must be approved by the Department of the Army. The review of shoreline management is too narrow a program to apply this requirement nationwide.

Comment: Include a reference to the preparation of National Environmental Policy Act documents and require the permits to be consistent with the Clean Water Act.

Response: These requirements were not considered applicable to this paragraph. Reference has already been made to these acts in §§ 327.30 (c)(5) and (c)(6).

Section 327.30(e)(7) Periodic Review

Comment: Define the frequency of review.

Response: This section was changed to require review of shoreline management plans periodically, but no less often than every five years, to determine the need for update. This is consistent with § 327.30(d)(3).

Comment: Require the district commander to publish summaries of the results of any shoreline review in the media.

Response: The public participation process is adequate to keep interested members of the public informed of any actions taken during the review.

Comment: Add an additional sentence which states "Cummulative environmental impacts of permit actions and the possibility of preparing or revising project NEPA documentation will be considered."

Response: Added as the fourth sentence.

Section 327.30(f)(1)(i) Shoreline Use Permits

Comment: Strengthen enforcement of current violations of title 36.

Response: This was not considered pertinent to § 327.30.

Comment: Delete the words "for private floating recreation facilities" since the permits cover other activities as well.

Response: This change was made.

Comment: Private exclusive use permits are unfair to the commercial concessionaires operating on the project.

Response: Nearness to commercial facilities is addressed in § 327(e)(5)(ii), thus, no change was made in this section.

Section 327.30(f)(1)(ii) Shoreline Use Permits

Comment: Request the type of structure that is not considered to be a vessel be defined and "navigable" be defined.

Response: It is not appropriate to list everything that is not a vessel. Vessels and watercraft are defined in 36 CFR 327.3.

Section 327.30(f)(1)(iii) Shoreline Use Permits

Comment: Request definitions of "non-floating" and "non-navigable."

Response: These terms are self-explanatory.

Section 327.30(f)(1)(v) Shoreline Use Permits

Comment: Allow shorter term permits initially to provide for a gradual conversion to five-year permits so that approximately one-fifth of the permit renewals or issuances would come due each year.

Response: The flexibility to do this already exists. Shorter term permits increase the administration costs and should be avoided if possible.

Comment: Permits for vegetative modification need to be reviewed periodically.

Response: Permits can be checked periodically without reducing the term of the permit. If circumstances dictate the need, shorter term permits can be issued.

Section 327.30(f)(1)(vi) Shoreline Use Permits

Comment: This paragraph should mention the possible need for a section 10 or section 404 Permit.

Response: Section 10 and section 404 permits are addressed in § 327.30(f)(2).

Comment: There should be minimum size requirements for riprap materials.

Response: The establishment of minimum size materials is not appropriate due to the nationwide application of this regulation. It may be established in individual project shoreline management plans.

Section 327.30(f)(2) Department of Army Permits.

This paragraph was rewritten for clarification.

Section 327.30(f)(3) Real Estate Instruments.

Comment: All land-based support facilities for boat docks should be authorized under a shoreline use permit or a real estate license, but not both.

Response: A Shoreline Use Permit does not convey any property rights (§ 327.30(d)(5)) that may be needed for a right-of-way or other land form modification. Therefore, no change was made. A sentence was added to the end of the paragraph for clarification.

Section 327.30(g) Transfer of Permits.

Comment: Shoreline use permits should be transferable. To prohibit transfer of the dock with the property is a confiscation of property rights.

Response: The dock is private property and thus transferable to anyone. It is the permit to place the dock on the shoreline that can not be transferred. If a dock is sold, the permit becomes null and void. The new dock owner must apply for a new permit.

Section 327.30(h) Existing Facilities Now Under Permit.

A number of commenters suggested changes to this section. Some minor rewording was made for clarification. Other changes were not made because the criteria is established by Public Laws 97–140 and 99–662 and cannot be changed unilaterally.

Section 327.30(i) Facility Maintenance.

Comment: Sixty days is too long a period to wait for the correction of major safety deficiencies.

Response: The second sentence was rewritten to provide the resource manager with the flexibility to establish a time period consistent with the seriousness of the deficiency.

Section 327.30(j) Density of Development.

Comment: The 50% density and one-third cove width restrictions are arbitrary. Each area be considered on a case-by-case basis.

Response: The one-third maximum cove width was established on the basis of fifteen years of experience and provided as a guide. It is a safety consideration. As written, this criteria is not absolute, but should be deviated from only when local safety conditions warrant.

Comment: Eliminate the public notification requirement for areas that have reached maximum density.

Response: This was not favorably considered. Such public notice is necessary to maintain good public relations and an informed public.

Comment: Add words "and fixed" after the word "floating" in the first sentence.

Response: Words added for clarification purposes.

Comment: Remove the word "floating" in the third sentence.

Response: Word deleted since we are addressing all types of facilities covered by the regulation.

Comment: Replace the word "floating" in the fourth sentence with the word "the". Also add the words "in the water" after the word "facilities".

Response: These changes were made since they clarify the density of development criteria.

Comment: Remove the word "floating" in the fifth sentence.

Response: Word deleted.

Section 327.30(k) Permit Fees.

A number of comments addressed criteria for setting the fee for shoreline permits. The fee schedule will be published separately and will be published in the **Federal Register** for public review and comment prior to any change. The fee schedule cannot be added to the list of references in that it has not yet been published.

Appendix A—Guidelines for Granting Shoreline Use Permits.

A–1. General.

A–1.(a).

Comment: One commenter suggested deleting all of appendix A and two others recommended minor word changes to this paragraph.

Response: No changes were made.

A–1.(b).

Comment: Need to give more consideration to the effects on aesthetics, despoilment.

Response: Added a sentence which states that the installation and use of such facilities will not be in conflict with the preservation of the natural characteristics of the shoreline.

Comment: The second sentence should be modified to include the following words "nor will they result in significant environmental damage."

Response: Modification made. Environmental concerns and affects are the prime concern of this regulation.

A–1.(c).

Comment: Add "mooring buoys" to the first sentence.

Response: Mooring buoys are considered to be "mooring facilities." It is not necessary to provide an all inclusive list of facilities or activities that will be allowed. That is more appropriate for inclusion in individual project Shoreline Management Plans.

Comment: Delete the references to ski jumps, slalom courses and duck blinds from the requirement for a permit. Specify guidelines for duck blinds and ice fishing houses where State regulations do not exist, and state that issuance of a permit may require review under the National Environmental Policy Act.

Response: The references to ski jumps, duck blinds and slalom courses were not deleted since the paragraph states that permits may be granted rather than, will be granted. Specific guidelines for duck blinds and ice fishing houses are more appropriately outlined in project Shoreline Management Plans. NEPA review requirements are addressed in § 327.30(e)(7).

Comment: Clarify shoreline use permit requirements for facilities covered by real estate instruments.

Response: A sentence was added to the end of the paragraph that states "When a facility or activity is authorized by a shoreline use permit, a separate real estate instrument is generally not required."

A–1.(d).

The paragraph was reworded for clarity.

A–2. Applications for Shoreline Use Permits.

A–2.(c)(1).

Comment: The guidelines listed in this section duplicate many of the permit conditions found in appendix C.

Response: Appendix A provides guidelines for granting shoreline use permits while appendix C lists the conditions to the shoreline management permits. The duplication was intentional. The words "vessel or" were inserted before the word "watercraft' in two places for consistency with § 327.3(a).

A–2.(c)(2).

Comment: Insert the words "definite and blatant" in front of the word "appearance".

Response: This would tend to encourage "minor" infractions and limit the resource manager's authority. The change was not made.

Comment: Add a statement that this paragraph does not apply to commercial docks.

Response: This regulation applies only to private and group shoreline uses.

A–2.(c)(3).

Comment: The size of the dock should not be limited to the size of the owner's boat or boats.

Response: A description of boats is not a part of the permit application. The resource manager has the flexibility necessary to make the size determination on the basis of plans submitted.

Comment: The requirement that boats be moored "within the authorized slip dimension" should be deleted.

Response: Recognizing that various mooring arrangements are possible, and that such wording might preclude mooring buoys, the last sentence was deleted. The resource manager will still maintain approval authority over moorage arrangements.

A–2.(c)(4).

Comment: Builder certification is not adequate to ensure public safety as the builder and the permittee are often the same party. Corps construction standards should be used.

Response: Corps construction standards were not included since construction requirements and types of facilities may vary widely across the nation. District commanders have the authority to develop such standards in project Shoreline Management Plans. Wording was changed to allow certification at time of application from a licensed engineer. Several suggestions for minor word changes were satisfied.

Comment: Remove the word "or" in the first line and replace it with the word "including".

Response: This change was made since it clarifies the intent of the sentence.

A–2.(c)(5).

Comment: Apply Corps standards.

Response: Corps construction standards were not included since construction requirements and types of facilities may vary widely across the nation. District commanders have the authority to develop such standards in project Shoreline Management Plans.

A–2.(c)(6).

This paragraph was written for clarification.

A–2.(c)(7).

Comment: Some states do not certify or register electricians.

Response: The fourth and fifth sentences were rewritten to take this fact into consideration.

Comment: Underground electrical service may require the permittee to obtain a real estate instrument for the service right-of-way.

Response: A sentence was added to the paragraph to address this fact.

Comment: Require certification only once every ten years.

Response: The maximum term of a permit is five years. Requiring certification less often than when a permit is reissued is inappropriate.

Comment: One commenter opposed to any electrical service, and one would not allow electric service where it does not now exist.

Response: This would not be in keeping with the policy of allowing balanced use as stated in § 327.30(d)(1).

A–2.(c)(8)

Comment: Add the words "any authorized project purposes, including" after the word "with".

Response: Words added. There are situations were facilities could interfere with project purposes other than navigation.

A–2.(c)(9).

Comment: Retain the "minimum surveillance interval" referenced in the current regulation.

Response: Those words were not inserted because of the difficulties associated with its enforcement on an equitable basis. The words "or his/her authorized representative" were added after the word "commander" in the first sentence.

A–2.(c)(10).

Comment: Most of the commenters expressed opposition to vegetative modification by chemical means. Others were opposed to mowing and the use of pesticides. One suggested that grazing should be considered a type of vegetation modification. Others were concerned with the cost of retaining a licensed applicator to apply chemical compounds.

Response: No change was made in the sentence dealing with the use of chemicals. Adequate safeguards are in place under existing law which governs the use of chemicals, herbicides and/or pesticides. The words "by licensed applicator" were deleted from the first sentence and from § 327.30, appendix C, paragraph 23. Grazing activities were not included as they are covered by a

real estate instrument, rather than a shoreline use permit.

A–2.(c)(11).

The word "related" was deleted from the second sentence to improve readability.

A–2.(c)(12).

This paragraph has been rewritten for clarification.

A–2.(c)(13).

Comment: The responsibility for making the assessment needs to be defined. Adverse impacts could be the basis for not permitting the activity.

Response: The phase, "* * * by the resource manager and it has been determined that no significant adverse impacts will result." was added to the end of the sentence for clarification.

Comment: The effect on water quality should be considered before issuance of permits for vegetation modification in protected areas.

Response: A sentence has been added which allows for this consideration.

A–2.(c)(14).

Comment: The completed application would serve as the permit for the facilities/uses specified thereon.

Response: This paragraph deals solely with the disposition of the copies of the permit application. No change was made.

A–3. Permit Revocation.

The words ", Shoreline Management Plan," were inserted after the words "* * * and condition of the permit," near the end of the first sentence. Each of the three documents listed are closely related and contain compliance requirements necessary for effective resource management.

Comment: A copy of the shoreline management regulation should be attached to each permit.

Response: Copies of the shoreline management regulation are available upon request as stated in § 327.30(e)(3). Copies of both the regulation and the approved plan for individual projects are available for viewing at Resource Manager's and District Offices.

Comment: Delete the last two sentences of this paragraph.

Response: The last sentence was deleted. The next to the last sentence was retained for consistency with paragraph 1.c. of this appendix.

A–5. Posting of Permit Number.

Comment: Do not require the posting of a permit number for vegetative modification permits.

Response: This requirement was retained. The posting of the permit number facilitates the identification process during inspections and alerts the public that the land is not private property. The words "on floating facilities" were deleted from the first sentence for consistency with wording in the remainder of the paragraph. A final sentence was added to allow for identification of facilities and/or activities permitted under special conditions discussed in § 327.30(h).

Appendix C—Shoreline Use Permit Conditions.

C–1.

The condition was rewritten to reference the "attached permit." The words "opposite side of this form" would not apply when computer generated forms are used, as authorized by appendix A, section 2.b.

C–2.

Comment: Recommend an expansion of the liability definition.

Response: The waivers of liability discussed in this condition and in Condition 6 are adequate as written. For consistency with the other provisions of the regulation, the words "and/or activities" were added after the words "permitted facilities" in the final sentence as both facilities and activities may be covered by the same permit.

C–4.

Comment: Replace the words, "navigable waters or" with "public waters and/or."

Response: This change was made to provide a more descriptive definition of the lands and waters involved. For consistency with the other provisions of the regulation, the words "and/or activity" were added at the end of the paragraph as both facilities and activities may be covered by the same permit.

Comment: Add the words "any authorized project purposes, including" between the words "with" and "navigation".

Response: These words were added since there are situations where facilities could interfere with project purposes other than navigation.

C–5.

For consistency with the other provisions of the regulation, the words "and/or activity" were added in conjunction with the term "permitted facility" at two places in this condition since both facilities and activities may be covered by the same permit.

C–6.

Comment: Make this condition specific to the property "of the permittee."

Response: The present wording is considered adequate.

C–7.

For consistency with the other provisions of the regulation, the words "and/or activity" were added following the words "permitted facility" in the first sentence as both facilities and activities may be covered by the same permit.

C–8.

For consistency with the other provisions of the regulation, the words "and/or activity" were added following the words "permitted facility" in the final sentence as both facilities and activities may be covered by the same permit.

C–9.

For consistency with the other provisions of the regulation, the words "and/or activity" were added following the words "permitted facility" in the second sentence as both facilities and activities may be covered by the same permit.

C–10.

This condition was rewritten for clarification.

C–11.

For consistency with the definition contained in § 327.3, the words "vessel or" were added in conjunction with the word "watercraft."

C–12.

Comment: Request a better definition of "for human habitation."

Response: These words were replaced with the phrase "as a place of habitation or as a full or part-time residence." This is consistent with §§ 327.3(f) and 327.22(a).

Comment: Change the word "thereto" to "therein."

Response: The word was not changed, as "thereto" could apply to either interior or exterior mooring.

Comment: Require vessels with sanitary facilities to moor at commercial facilities.

Response: This was considered discriminatory and unenforceable and was not included.

C–13.

Comment: Repeat the non-transferable statement from Condition

20 in this Condition. Include Condition 26 in this condition.

Response: These changes would create undue repetition. The contents of the other conditions have more impact when listed separately. To further clarify the intent of the first sentence, the word "rented," was inserted after the word "leased", and the word "any" before the word "means."

C–14.

Comment: Consider the possible contamination resulting from the re-use of old containers. Foam bead flotation material pollutes the shoreline and should be prohibited.

Response: The words "or sink when punctured" were replaced with the phrase "sink or contaminate the water if punctured."

Comment: The reference to closed cell (extruded) expanded polystyrene should be removed since it is a proprietary product.

Response: The reference to closed cell (extruded) expanded polystyrene has been removed. In its place additional criteria have been added. These additional criteria will allow for the use of new technology as it is developed and becomes available for use.

C–15.

Comment: Safety deficiencies should be corrected as soon as possible. The condition as written gives the permittee 30 days to submit a schedule, but does not require any corrective action.

Response: The second sentence was revised to reflect the provisions of § 327.30(i). This will provide the flexibility necessary to promptly correct serious problems, and allow a longer time for minor deficiencies. A recommendation to combine this Condition with Condition 25, Condition 13 was not implemented because they have more impact listed separately.

C–16.

This paragraph was rewritten for clarification.

C–17.

For consistency of terms used elsewhere in the regulation, the words "floating facility" were changed to "permitted facility."

C–18.

Comment: Revise the first sentence to read, "Vegetation alteration is prohibited except as specifically prescribed in the permit."

Response: The intent of the regulation is to prohibit vegetation modification where it is not in conflict with project purposes. The present wording is appropriate.

C–19.

Comment: Expand permit authority. Allow construction of private access roads, grading, excavation and fill.

Response: These actions are beyond the scope of the shoreline use permits (see § 327.30(f)(2) and § 327.30(f)(3)) and were not included. For clarification, the word "allowed" was changed to "authorized by this permit."

C–20.

Comment: Make the permits transferable. Combine this condition with Conditions 13 and 26.

Response: Making permits transferable would increase administrative problems and costs. The conditions were not combined because they will have more impact if listed separately.

C–21.

Comment: Recommend revocation authority be delegated to the resource manager and that the referenced hearing be before the resource manager.

Response: The recommendation to revoke the permit would, in most cases, be initiated by the resource manager and there may be extenuating circumstances that cannot be fully addressed at project level. The first part of the third sentence was rewritten to clarify the appeal process. The last sentence was revised to prevent any misunderstanding of when a decision can be expected following the hearing.

C–22.

For consistency, the word "paragraph" was changed to "condition."

C–23.

The reference to licensed applicators was deleted.

C–25.

Comment: Recommend the condition be revised to indicate that the resource manager has the necessary approval authority.

Response: This is consistent with other permit conditions. The condition was reworded.

C–26.

Comment: Suggested wording to simplify the notification process in event of ownership or address changes. The new owner might be unduly penalized if the former owner failed to notify the Corps in advance of sale or transfer.

Response: The first sentence was revised by adding the words "or new owner" between the words "permittee" and "will notify."

C–27.

This condition was reworded by replacing the words "may request" with the words "may require." This change gives the resource manager a firmer position when dealing with these matters.

List of Subjects in 36 CFR Part 327

Public lands, Water Resources, Natural Resources, Resource Management, Proposed Rule.

Approved:

Albert J. Genetti, Jr.,

Colonel, Corps of Engineers, Chief of Staff.

1. The authority citation for Part 327 is revised to read as follows:

Authority: The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C. 1).

2. Section 327.30 is amended by revising the section heading and adding text to read as follows:

§ 327.30 Shoreline Management on Civil Works Projects.

(a) *Purpose.* The purpose of this regulation is to provide policy and guidance on management of shorelines of Civil Works projects where 36 CFR part 327 is applicable.

(b) *Applicability.* This regulation is applicable to all field operating agencies with Civil Works responsibilities except when such application would result in an impingement upon existing Indian rights.

(c) *References.* (1) Section 4, 1944 Flood Control Act, as amended (16 U.S.C. 460d).

(2) The Rivers and Harbors Act of 1894, as amended and supplemented (33 U.S.C. 1)

(3) Section 10, River and Harbor Act of 1899 (33 U.S.C. 403).

(4) National Historic Preservation Act of 1966 (Pub. L. 89–665; 80 Stat. 915) as amended (16 U.S.C. 470 et seq.).

(5) The National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.).

(6) The Clean Water Act (33 U.S.C. 1344, et seq.).

(7) The Water Resources Development Act of 1986 (Pub. L. 99–662).

(8) Title 36, chapter III, part 327, Code of Federal Regulations, "Rules and Regulations Governing Public Use of Water Resource Development Projects Administered by the Chief of Engineers."

(9) Executive Order 12088 (13 Oct. 78).

(10) 33 CFR 320–330, "Regulatory Programs of the Corps of Engineers."

(11) ER 1130-2-400, "Management of Natural Resources and Outdoor Recreation at Civil Works Water Resource Projects."

(12) EM 385-1-1, "Safety and Health Requirements Manual."

(d) *Policy.* (1) It is the policy of the Chief of Engineers to protect and manage shorelines of all Civil Works water resource development projects under Corps jurisdiction in a manner which will promote the safe and healthful use of these shorelines by the public while maintaining environmental safeguards to ensure a quality resource for use by the public. The objectives of all management actions will be to achieve a balance between permitted private uses and resource protection for general public use. Public pedestrian access to and exit from these shorelines shall be preserved. For projects or portions of projects where Federal real estate interest is limited to easement title only, management actions will be appropriate within the limits of the estate acquired.

(2) Private shoreline uses may be authorized in designated areas consistent with approved use allocations specified in Shoreline Management Plans. Except to honor written commitments made prior to publication of this regulation, private shoreline uses are not allowed on water resource projects where construction was initiated after December 13, 1974, or on water resource projects where no private shoreline uses existed as of that date. Any existing permitted facilities on these projects will be grandfathered until the facilities fail to meet the criteria set forth in § 327.30(h).

(3) A Shoreline Management Plan, as described in § 327.30(e), will be prepared for each Corps project where private shoreline use is allowed. This plan will honor past written commitments. The plan will be reviewed at least once every five years and revised as necessary. Shoreline uses that do not interfere with authorized project purposes, public safety concerns, violate local norms or result in significant environmental effects should be allowed unless the public participation process identifies problems in these areas. If sufficient demand exists, consideration should be given to revising the shoreline allocations (e.g. increases/decreases). Maximum public participation will be encouraged as set forth in § 327.30(e)(6). Except to honor written commitments made prior to the publication of this regulation, shoreline management plans are not required for those projects where construction was initiated after December 13, 1974, or on projects not having private shoreline use as of that date. In that case, a statement of policy will be developed by the district commander to present the shoreline management policy. This policy statement will be subject to the approval of the division commander. For projects where two or more agencies have jurisdiction, the plan will be cooperatively prepared with the Corps as coordinator.

(4) Where commercial or other public launching and/or moorage facilities are not available within a reasonable distance, group owned mooring facilities may be allowed in Limited Development Areas to limit the proliferation of individual facilities. Generally only one permit will be necessary for a group owned mooring facility with that entity, if incorporated, or with one person from the organization designated as the permittee and responsible for all moorage spaces within the facility. No charge may be made for use of any permitted facility by others nor shall any commercial activity be engaged in thereon.

(5) The issuance of a private shoreline use permit does not convey any real estate or personal property rights or exclusive use rights to the permit holder. The public's right of access and use of the permit area must be maintained and preserved. Owners of permitted facilities may take necessary precautions to protect their property from theft, vandalism or trespass, but may in no way preclude the public right of pedestrian or vessel access to the water surface or public land adjacent to the facility.

(6) Shoreline Use Permits will only be issued to individuals or groups with legal right of access to public lands.

(e) *Shoreline Management Plan*—

(1) *General.* The policies outlined in § 327.30(d) will be implemented through preparation of Shoreline Management Plans, where private shoreline use is allowed.

(2) *Preparation.* A Shoreline Management Plan is prepared as part of the Operational Management Plan. A moratorium on accepting applications for new permits may be placed in effect from the time an announcement of creation of a plan or formal revision of a plan is made until the action is completed.

(3) *Approval.* Approval of Shoreline Management Plans rests with division commanders. After approval, one copy of each project Shoreline Management Plan will be forwarded to HQUSACE (CECW-ON) WASH DC 20314-1000. Copies of the approved plan will also be made available to the public.

(4) *Scope and Format.* The Shoreline Management Plan will consist of a map showing the shoreline allocated to the uses listed in § 327.30(e)(6), related rules and regulations, a discussion of what areas are open or closed to specific activities and facilities, how to apply for permits and other information pertinent to the Corps management of the shoreline. The plan will be prepared in sufficient detail to ensure that it is clear to the public what uses are and are not allowed on the shoreline of the project and why. A process will be developed and presented in the Shoreline Management Plan that prescribes a procedure for review of activities requested but not specifically addressed by the Shoreline Management Plan.

(5) *Shoreline Allocation.* The entire shoreline will be allocated within the classifications below and delineated on a map. Any action, within the context of this rule, which gives a special privilege to an individual or group of individuals on land or water at a Corps project, that precludes use of those lands and waters by the general public, is considered to be private shoreline use. Shoreline allocations cover that land and/or water extending from the edge of the water and waterward with the exception of allocations for the purpose of vegetation modification which extends landward to the project boundary. These allocations should complement, but certainly not contradict, the land classifications in the project master plan. A map of sufficient size and scale to clearly display the shoreline allocations will be conspicuously displayed or readily available for viewing in the project administration office and will serve as the authoritative reference. Reduced or smaller scale maps may be developed for public dissemination but the information contained on these must be identical to that contained on the display map in the project administration office. No changes will be made to these maps except through the formal update process. District commanders may add specific constraints and identify areas having unique characteristics during the plan preparation, review, or updating process in addition to the allocation classifications described below.

(i) *Limited Development Areas.* Limited Development Areas are those areas in which private facilities and/or activities may be allowed consistent with § 327.30(h) and appendix A. Modification of vegetation by individuals may be allowed only following the issuance of a permit in accordance with appendix A. Potential low and high water conditions and

underwater topography should be carefully evaluated before shoreline is allocated as Limited Development Area.

(ii) *Public Recreation Areas.* Public Recreation Areas are those areas designated for commercial concessionaire facilities, Federal, state or other similar public use. No private shoreline use facilities and/or activities will be permitted within or near designated or developed public recreation areas. The term "near" depends on the terrain, road system, and other local conditions, so actual distances must be established on a case by case basis in each project Shoreline Management Plan. No modification of land forms or vegetation by private individuals or groups of individuals is permitted in public recreation areas.

(iii) *Protected Shoreline Areas.* Protected Shoreline Areas are those areas designated to maintain or restore aesthetic, fish and wildlife, cultural, or other environmental values. Shoreline may also be so designated to prevent development in areas that are subject to excessive siltation, erosion, rapid dewatering, or exposure to high wind, wave, or current action and/or in areas in which development would interfere with navigation. No Shoreline Use Permits for floating or fixed recreation facilities will be allowed in protected areas. Some modification of vegetation by private individuals, such as clearing a narrow meandering path to the water, or limited mowing, may be allowed only following the issuance of a permit if the resource manager determines that the activity will not adversely impact the environment or physical characteristics for which the area was designated as protected. In making this determination the effect on water quality will also be considered.

(iv) *Prohibited Access Areas.* Prohibited Access Areas are those in which public access is not allowed or is restricted for health, safety or security reasons. These could include hazardous areas near dams, spillways, hydro-electric power stations, work areas, water intake structures, etc. No shoreline use permits will be issued in Prohibited Access Areas.

(6) *Public Participation.* District commanders will ensure public participation to the maximum practicable extent in Shoreline Management Plan formulation, preparation and subsequent revisions. This may be accomplished by public meetings, group workshops, open houses or other public involvement techniques. When master plan updates and preparation of the Shoreline Management Plans are concurrent, public participation may be combined and should consider all aspects of both plans, including shoreline allocation classifications. Public participation will begin during the initial formulation stage and must be broad-based to cover all aspects of public interest. The key to successful implementation is an early and continual public relations program. Projects with significant numbers of permits should consider developing computerized programs to facilitate exchange of information with permittees and to improve program efficiency. Special care will be taken to advise citizen and conservation organizations; Federal, state and local natural resource management agencies; Indian Tribes; the media; commercial concessionaires; congressional liaisons; adjacent landowners and other concerned entities during the formulation of Shoreline Management Plans and subsequent revisions. Notices shall be published prior to public meetings to assure maximum public awareness. Public notices shall be issued by the district commander allowing for a minimum of 30 days for receipt of written public comment in regard to the proposed Shoreline Management Plan or any major revision thereto.

(7) *Periodic Review.* Shoreline Management Plans will be reviewed periodically, but no less often than every five years, by the district commander to determine the need for update. If sufficient controversy or demand exists, consideration should be given, consistent with other factors, to a process of reevaluation of the shoreline allocations and the plan. When changes to the Shoreline Management Plan are needed, the plan will be formally updated through the public participation process. Cumulative environmental impacts of permit actions and the possibility of preparing or revising project NEPA documentation will be considered. District commanders may make minor revisions to the Shoreline Management Plan when the revisions are consistent with policy and funds for a complete plan update are not available. The amount and type of public involvement needed for such revision is at the discretion of the district commander.

(f) *Instruments for Shoreline Use.* Instruments used to authorize private shoreline use facilities, activities or development are as follows:

(1) *Shoreline Use Permits.* (i) Shoreline Use Permits are issued and enforced in accordance with provisions of 36 CFR part 327.19.

(ii) Shoreline Use Permits are required for private structures/activities of any kind (except boats) in waters of Civil Works projects whether or not such waters are deemed navigable and where such waters are under the primary jurisdiction of the Secretary of the Army and under the management of the Corps of Engineers.

(iii) Shoreline Use Permits are required for non-floating structures on waters deemed commercially non-navigable, when such waters are under management of the Corps of Engineers.

(iv) Shoreline Use Permits are also required for land vegetation modification activities which do not involve disruption to land form.

(v) Permits should be issued for a term of five years. To reduce administration costs, one year permits should be issued only when the location or nature of the activity requires annual reissuance.

(vi) Shoreline Use Permits for erosion control may be issued for the life or period of continual ownership of the structure by the permittee and his/her legal spouse.

(2) *Department of the Army Permits.* Dredging, construction of fixed structures, including fills and combination fixed-floating structures and the discharge of dredged or fill material in waters of the United States will be evaluated under authority of section 10, River and Harbor Act of 1899 (33 U.S.C. 403) and section 404 of the Clean Water Act (33 U.S.C. 1344). Permits will be issued where appropriate.

(3) *Real Estate Instruments.* Commercial development activities and activities which involve grading, cuts, fills, or other changes in land form, or establishment of appropriate land-based support facilities required for private floating facilities, will continue to be covered by a lease, license or other legal grant issued through the appropriate real estate element. Shoreline Management Plans should identify the types of activities that require real estate instruments and indicate the general process for obtaining same. Shoreline Use Permits are not required for facilities or activities covered by a real estate instrument.

(g) *Transfer of Permits.* Shoreline Use Permits are non-transferable. They become null and void upon sale or transfer of the permitted facility or the death of the permittee and his/her legal spouse.

(h) *Existing Facilities Now Under Permit.* Implementation of a Shoreline Management Plan shall consider existing permitted facilities and prior written Corps commitments implicit in their issuance. Facilities or activities permitted under special provisions should be identified in a way that will

set them apart from other facilities or activities.

(1) Section 6 of Public Law 97–140 provides that no lawfully installed dock or appurtenant structures shall be required to be removed prior to December 31, 1989, from any Federal water resources reservoir or lake project administered by the Secretary of the Army, acting through the Chief of Engineers, on which it was located on December 29, 1981, if such property is maintained in usable condition, and does not occasion a threat to life or property.

(2) In accordance with section 1134(d) of Public Law 99–662, any houseboat, boathouse, floating cabin or lawfully installed dock or appurtenant structures in place under a valid shoreline use permit as of November 17, 1986, cannot be forced to be removed from any Federal water resources project or lake administered by the Secretary of the Army on or after December 31, 1989, if it meets the three conditions below except where necessary for immediate use for public purposes or higher public use or for a navigation or flood control project.

(i) Such property is maintained in a usable and safe condition,

(ii) Such property does not occasion a threat to life or property, and

(iii) The holder of the permit is in substantial compliance with the existing permit.

(3) All such floating facilities and appurtenances will be formally recognized in an appropriate Shoreline Management Plan. New permits for these permitted facilities will be issued to new owners. If the holder of the permit fails to comply with the terms of the permit, it may be revoked and the holder required to remove the structure, in accordance with the terms of the permit as to notice, time, and appeal.

(i) *Facility Maintenance.* Permitted facilities must be operated, used and maintained by the permittee in a safe, healthful condition at all times. If determined to be unsafe, the resource manager will establish together with the permittee a schedule, based on the seriousness of the safety deficiency, for correcting the deficiency or having it removed, at the permittee's expense. The applicable safety and health prescriptions in EM 385–1–1 should be used as a guide.

(j) *Density of Development.* The density of private floating and fixed recreation facilities will be established in the Shoreline Management Plan for all portions of Limited Development areas consistent with ecological and aesthetic characteristics and prior written commitments. The facility density in Limited Development Areas should, if feasible, be determined prior to the development of adjacent private property. The density of facilities will not be more than 50 per cent of the Limited Development Area in which they are located. Density will be measured by determining the linear feet of shoreline as compared to the width of the facilities in the water plus associated moorage arrangements which restrict the full unobstructed use of that portion of the shoreline. When a Limited Development Area or a portion of a Limited Development area reaches maximum density, notice should be given to the public and facility owners in that area that no additional facilities will be allowed. In all cases, sufficient open area will be maintained for safe maneuvering of watercraft. Docks should not extend out from the shore more than one-third of the width of a cove at normal recreation or multipurpose pool. In those cases where current density of development exceeds the density level established in the Shoreline Management Plan, the density will be reduced to the prescribed level through attrition.

(k) *Permit Fees.* Fees associated with the Shoreline Use Permits shall be paid prior to issuing the permit in accordance with the provisions of § 327.30(c)(1). The fee schedule will be published separately.

Appendix A to § 327.30—Guidelines for Granting Shoreline Use Permits

1. General

a. Decisions regarding permits for private floating recreation facilities will consider the operating objectives and physical characteristics of each project. In developing Shoreline Management Plans, district commanders will give consideration to the effects of added private boat storage facilities on commercial concessions for that purpose. Consistent with established policies, new commercial concessions may be alternatives to additional limited development shoreline.

b. Permits for individually or group owned shoreline use facilities may be granted only in Limited Development Areas when the sites are not near commercial marine services and such use will not despoil the shoreline nor inhibit public use or enjoyment thereof. The installation and use of such facilities will not be in conflict with the preservation of the natural characteristics of the shoreline nor will they result in significant environmental damage. Charges will be made for Shoreline Use Permits in accordance with the separately published fee schedule.

c. Permits may be granted within Limited Development Areas for ski jumps, floats, boat moorage facilities, duck blinds, and other private floating recreation facilities when they will not create a safety hazard and inhibit public use or enjoyment of project waters or shoreline. A Corps permit is not required for temporary ice fishing shelters or duck blinds when they are regulated by a state program. When the facility or activity is authorized by a shoreline use permit, a separate real estate instrument is generally not required.

d. Group owned boat mooring facilities may be permitted in Limited Development Areas where practicable (e.g. where physically feasible in terms of access, water depths, wind protection, etc.).

2. Applications for Shoreline Use Permits

a. Applications for private Shoreline Use Permits will be reviewed with full consideration of the policies set forth in this and referenced regulations, and the Shoreline Management Plan. Fees associated with the Shoreline Use Permit shall be paid prior to issuing the permit. Plans and specifications of the proposed facility shall be submitted and approved prior to the start of construction. Submissions should include engineering details, structural design, anchorage method, and construction materials; the type, size, location and ownership of the facility; expected duration of use; and an indication of willingness to abide by the applicable regulations and terms and conditions of the permit. Permit applications shall also identify and locate any land-based support facilities and any specific safety considerations.

b. Permits will be issued by the district commander or his/her authorized representative on ENG Form 4264–R (Application for Shoreline Use Permit) (appendix B). Computer generated forms may be substituted for ENG Form 4264–R provided all information is included. The computer generated form will be designated, "ENG Form 4264–R–E, Oct 87 (Electronic generation approved by USACE, Oct 87)".

c. The following are guides to issuance of Shoreline Use Permits:

(1) Use of boat mooring facilities, including piers and boat (shelters) houses, will be limited to vessel or watercraft mooring and storage of gear essential to vessel or watercraft operation.

(2) Private floating recreation facilities, including boat mooring facilities shall not be constructed or used for human habitation or in a manner which gives the appearance of converting Federal public property on which the facility is located to private, exclusive use. New docks with enclosed sides (i.e. boathouses) are prohibited.

(3) No private floating facility will exceed the minimum size required to moor the owner's boat or boats plus the minimum size required for an enclosed storage locker of oars, life preservers and other items essential to watercraft operation. Specific size limitations may be established in the project Shoreline Management Plan.

(4) All private floating recreation facilities including boat mooring facilities will be constructed in accordance with plans and specifications, approved by the resource manager, or a written certification from a licensed engineer, stating the facility is structurally safe will accompany the initial submission of the plans and specifications.

(5) Procedures regarding permits for individual facilities shall also apply to

permits for non-commercial group mooring facilities.

(6) Facilities attached to the shore shall be securely anchored by means of moorings which do not obstruct the free use of the shoreline, nor damage vegetation or other natural features. Anchoring to vegetation is prohibited.

(7) Electrical service and equipment leading to or on private mooring facilities must not pose a safety hazard nor conflict with other recreational use. Electrical installations must be weatherproof and meet all current applicable electrical codes and regulations. The facility must be equipped with quick disconnect fittings mounted above the flood pool elevation. All electrical installations must conform to the National Electric Code and all state, and local codes and regulations. In those states where electricians are licensed, registered, or otherwise certified, a copy of the electrical certification must be provided to the resource manager before a Shoreline Use Permit can be issued or renewed. The resource manager will require immediate removal or disconnection of any electrical service or equipment that is not certified (if appropriate), does not meet code, or is not safely maintained. All new electrical lines will be installed underground. This will require a separate real estate instrument for the service right-of-way. Existing overhead lines will be allowed, as long as they meet all applicable electrical codes, regulations and above guidelines, to include compatibility and safety related to fluctuating water levels.

(8) Private floating recreation facilities will not be placed so as to interfere with any authorized project purposes, including navigation, or create a safety or health hazard.

(9) The district commander of his/her authorized representative may place special conditions on the permit when deemed necessary.

(10) Vegetation modification, including but not limited to, cutting, pruning, chemical manipulation, removal or seeding by private individuals is allowed only in those areas designated as Limited Development Areas or Protected Shoreline Areas. An existing (as of July 1, 1987) vegetation modification permit, within a shoreline allocation which normally would not allow vegetation modification, should be grandfathered. Permittees will not create the appearance of private ownership of public lands.

(11) The term of a permit for vegetation modification will be for five years. Where possible, such permits will be consolidated with other shoreline management permits into a single permit. The district commander is authorized to issue vegetation modification permits of less than five years for one-time requests or to aid in the consolidation of shoreline management permits.

(12) When issued a permit for vegetative modification, the permittee will delineate the government property line, as surveyed and marked by the government, in a clear but unobtrusive manner approved by the district commander and in accordance with the project Shoreline Management Plan and the conditions of the permit. Other adjoining owners may also delineate the common boundary subject to these same conditions. This delineation may include, but is not limited to, boundary plantings and fencing. The delineation will be accomplished at no cost to the government.

(13) No permit will be issued for vegetation modification in Protected Shoreline Areas until the environmental impacts of the proposed modification are assesed by the resource manager and it has been determined that no significant adverse impacts will result. The effects of the proposed modification on water quality will also be considered in making this determination.

(14) The original of the completed permit application is to be retained by the permittee. A duplicate will be retained in the resource manager's office.

3. Permit Revocation

Permits may be revoked by the district commander when it is determined that the public interest requires such revocation or when the permittee fails to comply with terms and conditions of the permit, the Shoreline Management Plan, or of this regulation. Permits for duck blinds and ice fishing shelters will be issued to cover a period not to exceed 30 days prior to and 30 days after the season.

4. Removal of Facilities

Facilities not removed when specified in the permit or when requested after termination or revocation of the permit will be treated as unauthorized structures pursuant to 36 CFR part 327.20.

5. Posting of Permit Number

Each district will procure 5" × 8" or larger printed permit tags of light metal or plastic for posting. The permit display tag shall be posted on the facility and/or on the land area covered by the permit, so that it can be visually checked, with ease in accordance with instructions provided by the resource manager. Facilities or activities permitted under special provisions should be identified in a way that will set apart from other facilities or activities.

Appendix B to § 327.30—Application for Shoreline Use Permit (Reserved)

Appendix C to § 327.30—Shoreline Use Permit Conditions

1. This permit is granted solely to the applicant for the purpose described on the attached permit.

2. The permittee agrees to and does hereby release and agree to save and hold the Government harmless from any and all causes of action, suits at law or equity, or claims or demands or from any liability of any nature whatsoever for or on account of any damages to persons or property, including a permitted facility, growing out of the ownership, construction, operation or maintenance by the permittee of the permitted facilities and/or activities.

3. Ownership, construction, operation, use and maintenance of a permitted facility are subject to the Government's navigation servitude.

4. No attempt shall be made by the permittee to forbid the full and free use by the public of all public waters and/or lands at or adjacent to the permitted facility or to unreasonably interfere with any authorized project purposes, including navigation in connection with the ownership, construction, operation or maintenance of a permitted facility and/or activity.

5. The permittee agrees that if subsequent operations by the Government require an alteration in the location of a permitted facility and/or activity or if in the opinion of the district commander a permitted facility and/or activity shall cause unreasonable obstruction to navigation or that the public interest so requires, the permittee shall be required, upon written notice from the district commander to remove, alter, or relocate the permitted facility, without expense to the Government.

6. The Government shall in no case be liable for any damage or injury to a permitted facility which may be caused by or result from subsequent operations undertaken by the Government for the improvement of navigation or for other lawful purposes, and no claims or right to compensation shall accrue from any such damage. This includes any damage that may occur to private property if a facility is removed for noncompliance with the conditions of the permit.

7. Ownership, construction, operation, use and maintenance of a permitted facility and/or activity are subject to all applicable Federal, state and local laws and regulations. Failure to abide by these applicable laws and regulations may be cause for revocation of the permit.

8. This permit does not convey any property rights either in real estate or material; and does not authorize any injury to private property or invasion of private rights or any infringement of Federal, state or local laws or regulations, nor does it obviate the necessity of obtaining state or local assent required by law for the construction, operation, use or maintenance of a permitted facility and/or activity.

9. The permittee agrees to construct the facility within the time limit agreed to on the permit issuance date. The permit shall become null and void if construction is not completed within that period. Further, the permittee agrees to operate and maintain any permitted facility and/or activity in a manner so as to provide safety, minimize any adverse impact on fish and wildlife habitat, natural, environmental, or cultural resources values and in a manner so as to minimize the degradation of water quality.

10. The permittee shall remove a permitted facility within 30 days, at his/her expense, and restore the waterway and lands to a condition accepted by the resource manager upon termination or revocation of this permit or if the permittee ceases to use, operate or maintain a permitted facility and/or activity. If the permittee fails to comply to the satisfaction of the resource manager, the district commander may remove the facility by contract or otherwise and the permittee agrees to pay all costs incurred thereof.

11. The use of a permitted boat dock facility shall be limited to the mooring of the permittee's vessel or watercraft and the

storage, in enclosed locker facilities, of his/her gear essential to the operation of such vessel or watercraft.

12. Neither a permitted facility nor any houseboat, cabin cruiser, or other vessel moored thereto shall be used as a place of habitation or as a full or part-time residence or in any manner which gives the appearance of converting the public property, on which the facility is located, to private use.

13. Facilities granted under this permit will not be leased, rented, sub-let or provided to others by any means of engaging in commercial activity(s) by the permittee or his/her agent for monetary gain. This does not preclude the permittee from selling total ownership to the facility.

14. On all new docks and boat mooring buoys, flotation shall be of materials which will not become waterlogged, is not subject to damage by animals, is not subject to deterioration upon contact with petroleum products (gasoline, diesel fuel, oil, or other caustic substances) and will not sink or contaminate the water if punctured. No metal-covered or injected drum flotation will be allowed. Foam bead flotation may be authorized by the district commander if it is encased in a protective coating to prevent deterioration with resultant loss of beads. Existing flotation will be authorized until it has severely deteriorated and is no longer serviceable or capable of supporting the structure, at which time it should be replaced with approved flotation.

15. Permitted facilities and activities are subject to periodic inspection by authorized Corps representatives. The resource manager will notify the permittee of any deficiencies and together establish a schedule for their correction. No deviation or changes from approved plans will be allowed without prior written approval of the resource manager.

16. Floating facilities shall be securely attached to the shore in accordance with the approved plans by means of moorings which do not obstruct general public use of the shoreline or adversely affect the natural terrain or vegetation. Anchoring to vegetation is prohibited.

17. The permit display tag shall be posted on the permitted facility and/or on the land areas covered by the permit so that it can be visually checked with ease in accordance with instructions provided by the resource manager.

18. No vegetation other than that prescribed in the permit will be damaged, destroyed or removed. No vegetation of any kind will be planted, other than that specifically prescribed in the permit.

19. No change in land form such as grading, excavation or filling is authorized by this permit.

20. This permit is non-transferable. Upon the sale or other transfer of the permitted facility or the death of the permittee and his/her legal spouse, this permit is null and void.

21. By 30 days written notice, mailed to the permittee by certified letter, the district commander may revoke this permit whenever the public interest necessitates such revocation or when the permittee fails to comply with any permit condition or term. The revocation notice shall specify the reasons for such action. If the permittee requests a hearing in writing to the district commander through the resource manager within the 30-day period, the district commander shall grant such hearing at the earliest opportunity. In no event shall the hearing date be more than 60 days from the date of the hearing request. Following the hearing, a written decision will be rendered and a copy mailed to the permittee by certified letter.

22. Notwithstanding the conditions cited in condition 21 above, if in the opinion of the district commander, emergency circumstances dictate otherwise, the district commander may summarily revoke the permit.

23. When vegetation modification on these lands is accomplished by chemical means, the program will be in accordance with appropriate Federal, state and local laws, rules and regulations.

24. The resource manager or his/her authorized representative shall be allowed to cross the permittee's property, as necessary to inspect facilities and/or activities under permit.

25. When vegetation modification is allowed, the permittee will delineate the government property line in a clear, but unobtrusive manner approved by the resource manager and in accordance with the project Shoreline Management Plan.

26. If the ownership of a permitted facility is sold or transferred, the permittee or new owner will notify the Resource Manager of the action prior to finalization. The new owner must apply for a Shoreline Use Permit within 14 days or remove the facility and restore the use area within 30 days from the date of ownership transfer.

27. If permitted facilities are removed for storage or extensive maintenance, the resource manager may require all portions of the facility be removed from public property.

Appendix D to § 327.30—Permit (Reserved)

[FR Doc. 90-17535 Filed 7-26-90; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201-1, 201-2, 201-23, 201-24, 201-38, 201-39, and 201-41

[FIRMR Amendment 19]

Implementation of Title VIII, Paperwork Reduction Reauthorization Act of 1986, Regarding Automatic Data Processing Equipment

AGENCY: Information Resources Management Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation implements certain selected portions of the Paperwork Reduction Reauthorization Act of 1986 (Pub. L. 99-500). Among other changes, the amendment clarifies the applicability of the Federal Information Resources Management Regulation (FIRMR) in FIRMR part 201-1 to the acquisition, management, and use of various information resources by Federal agencies. FIRMR part 201-2 is revised to establish an umbrella term, "Federal information processing (FIP) resources," for those automatic data processing (ADP) and telecommunications resources subject to GSA's exclusive procurement authority. The term and related definitions are an efficient means for prescribing uniform programs, policies, and procedures for ADP and telecommunications resources.

In addition, the amendment streamlines the Delegations Program by establishing uniform procedures, uniform blanket delegations of procurement authority, and uniform Agency Procurement Requests (APR's) for all FIP resources. The effect of these changes to FIRMR 201-23 is to set a single competitive regulatory blanket delegation of procurement authority of $2.5 million for most ADP and telecommunications resources.

The change allows GSA to focus review activities on agencies' overall IRM programs under the Procurement Management review Program and on the most significant agency acquisitions under the Delegations Program.

The amendment also adopts continuing relevant portions of FIRMR Temporary Regulation 13 (51 FR 45887) that immediately addressed the impact of the same statute, and it consolidates or eliminates certain portions of that rule.

EFFECTIVE DATE: August 27, 1990, but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: William R. Loy, Regulations Branch (KMPR), Office of Information Resources Management Policy, telephone (202) 501-3194 or FTS, 241-0194.

SUPPLEMENTARY INFORMATION: (1) On December 23, 1986, FIRMR Temporary Regulation 13 was published in the **Federal Register** and was effective that day. It implemented applicable portions of title VIII of the Paperwork Reduction Reauthorization Act of 1986 (Pub. L. 99-500) regarding "automatic data processing equipment" (ADPE) in the FIRMR retroactively to the date of enactment, October 18, 1986. It further provided blanket regulatory delegations of procurement authority for those cases where the amended Brooks Act (40 U.S.C. 759) became applicable to acquisitions. This amendment codifies relevant portions of FIRMR Temporary Regulation 13 and incorporates additional changes resulting from the

statute as described in the succeeding paragraphs. FIRMR Temporary Regulation 13 and its supplements are canceled and superseded.

(2) A notice of proposed rulemaking regarding this action was published in the **Federal Register** on August 23, 1988, (53 FR 32085). All comments received have been considered.

(3) Explanation of the changes being made by this issuance are shown below:

(a) In part 201-1, the following changes are made.

(i) Section 201-1.000-1 is amended by revising paragraph (c) to remove language from the Paperwork Reduction Act of 1980 identifying "information management activities" and to substitute the definition of "information resources" that was provided in Public Law 99-500.

(ii) Section 201-1.102-2 is amended by removing outdated language that reflected the prior review function of the Office of Management and Budget under the Brooks Act.

(iii) Section 201-1.102-3 is amended by removing the language included in that section. Exclusions from the Brooks Act that reflected the exclusions set forth in Public Law 97-86 (10 U.S.C. 2315) are now more appropriately addressed in § 201-1.103, Applicability.

(iv) Section 201-1.103 is amended by completely revising the section. This section sets forth the extent of the FIRMR's applicability to Federal agencies. It addresses the acquisition, management, and use of FIP resources by Federal agencies. It also addresses the creation, maintenance, and use of records by Federal agencies. The exceptions to the applicability of the FIRMR are stated.

The changes in Public Law 99-500 reflect the merging of automatic data processing, communications and related technologies and the need to clarify management and operational responsibilities over the full range of resources used in the creation and operation of automated systems and subsystems. The changes are intended to encourage Federal agencies to plan for and manage their information systems as a whole, rather than separately managing elements of such systems. This expansion in the scope of the Brooks Act is reflected in the statute's broad definition of automatic data processing equipment. (ADPE), as implemented in section 201-2.

The statute recognized the evolving interdependence of ADP and other technologies. It also recognized the responsibility of the Administrator of General Services to issue regulations which provide for reasonable common-sense treatment of developing technologies and of the increasing numbers of everyday products and services which depend on ADP resources for their production and performance. Both the statute and this regulation reflect the understanding that the use of ADP resources in the performance of a contract does not necessarily mean that the product or service deserves the special management attention provided for under the FIRMR. In many cases—for example, when interconnection with Federal computers is required—such attention will be important to the unified management of Federal information resources. But ADP resources have become an integral part of virtually every aspect of everyday life. As one agency noted in its comments on the proposed rule, automobiles are made using ADP resources, and clocks and thermostats contain ADP resources. Yet contracts for the design, manufacture, or delivery of thermostats and cars hardly need be subject to the special rules designed to improve the management of and competition for Federal ADPE.

The statute specifically recognizes that even in contracts where the use of ADPE is required or significant in the performance of the contract, that use can be "incidental to the performance" of the contract. Reflecting upon everyday life, GSA has taken incidental to connote ordinary or customary practice—i.e., the use of ADPE that is a natural part of today's manufacturing process, rather than the connotation of inconsequential or minimal. The intent of the formulation adopted here is to ensure that the incidental use exception cannot be used to allow for the acquisition outside the scope of the Brooks Act of information technology that is really under the management control of a Federal agency.

(b) In part 201-2, the following changes are made.

(i) A new definition of "Data" is added.

(ii) A new definition of "Executive agency," as defined in 40 U.S.C. 472, is added.

(iii) A new definition of "Federal information processing (FIP) resources," paralleling the definition for "automatic data processing equipment" under 40 U.S.C. 759(a), is added. "Significant use" under 40 U.S.C. 759(a)(2)(A)(ii)(II) is also defined for purposes of FIRMR applicability. Specific examples of what these terms include and exclude are provided in FIRMR Bulletin 67, entitled "Federal Information Resources Management Regulation (FIRMR) Applicability."

(iv) A new definition of "Federal information processing (FIP) equipment" is added.

(v) A new definition of "Federal information processing (FIP) maintenance" is added.

(vi) A new definition of "Federal information processing (FIP) related supplies" is added.

(vii) A new definition of "Federal information processing (FIP) services" is added.

(viii) A new definition of "Federal information processing (FIP) software" is added.

(ix) A new definition of "Federal information processing (FIP) support services" is added.

(x) A new definition of "Information" is added.

(xi) A new definition of "Radar equipment" is added.

(xii) A new definition of "Radio equipment" is added which attempts to recognize the merging of technologies used to move and process information.

(xiii) A new definition of "Sonar equipment" is added.

(xiv) A new definition of "Telecommunications resources" is added.

(xv) A new definition of "Television equipment" is added.

(c) Part 201-23 is amended by completely revising the part.

(i) Section 201-23.000 is revised to more fully describe the scope of the part.

(ii) Subpart 201-23.1 is revised to address delegations of GSA's exclusive procurement authority for FIP resources.

(iii) Section 201-23.100 is revised to more accurately describe the scope of the subpart.

(iv) Section 201-23.101 is revised to describe the intent of newly established policies regarding GSA's exclusive procurement authority for FIP resources.

(v) Section 201-23.102 is revised to set forth the policies and procedures regarding accountability for acquisition of FIP resources delegated under GSA's exclusive procurement authority.

This section explains the authorities and conditions under which GSA delegates its Brooks Act exclusive procurement authority to agencies. The rule continues GSA's current practice, and clarifies the manner in which that practice implements section 111(b)(3) of the Brooks Act (40 U.S.C. 759(b)(3)), which was added in 1986. That section authorizes GSA to make delegations under certain conditions directly to the agency Designated Senior Officials (DSO's) provided for in the Paperwork Reduction Act (44 U.S.C. 3506(b)).

The delegations of procurement authority granted by GSA to DSO's may

be redelegated to qualified officials. However, DSO's remain responsible for the conduct of and accountability for the acquisitions made under that authority. Furthermore, a delegation of Brooks Act procurement authority from GSA is not synonymous with the contracting authority vested in agency heads.

(vi) Section 201–23.103 is revised to describe the methods for obtaining delegations of GSA's exclusive procurement authority for FIP resources.

(vii) Section 201–23.103–1 is added to describe the policies and procedures regarding regulatory blanket delegations of GSA's exclusive procurement authority for FIP resources.

(viii) Section 201–23.103–2 is added to provide policies and procedures regarding the establishment of agency blanket delegations of GSA's exclusive procurement authority for FIP resources. An increased regulatory blanket procurement authority is provided for FIP maintenance services from $1 million to $2.5 million. Coverage for custom developed FIP equipment is revised.

(ix) Section 201–23.103–3 is added to provide a single method for submitting an agency procurement request and obtaining a delegation of procurement authority (DPA) for acquiring FIP resources. FIRMR Bulletin 66, entitled "Instructions for preparing an Agency Procurement Request (APR)," will now provide the specific information required by GSA for requesting a DPA.

(x) Sections 201–23.103–4, is added to require technical and requirements personnel to identify the source of GSA's delegated procurement authority to an agency to contracting officers for inclusion as a solicitation provision.

(xi) Subpart 201–23.2 is revised to address delegations of GSA's multi-year contracting authority for telecommunications resources.

(xii) Section 201–23.200 is revised to more accurately describe the scope of the subpart.

(xiii) Section 201–23.201 is revised to describe GSA's authority to enter into multiyear contracts for telecommunications resources.

(xiv) Section 201–23.202 is revised to set forth more accurately the agency's accountability for acquisitions made under delegation of GSA's multiyear contracting authority for telecommunications.

(xv) Section 201–23.203 is revised to more accurately prescribe policies and procedures relating to GSA's blanket multiyear contracting authority for telecommunications resources delegated to Executive agencies.

(d) In part 201–24, the following changes are made.

(i) Section 201–24.109 is added to prescribe policies regarding severing FIP resources from requirements for non-FIP resources.

(ii) Section 201–24.202 is retitled and modified to incorporate the policy that was in § 201–1.103(b)(2). This addition requires Federal agencies to include in solicitations and resultant contracts the terms, conditions, and clauses which apply the full and open competition objective to the procurement of FIP resources by Federal contractors in certain situations.

(e) Part 201–38 is revised to delete outdated telecommunications provisions, for example agency telecommunications requests (ATR's).

(f) Sections 201–39.100 and 201–39.5202–3 are added to require contracting officers to insert a provision in solicitations identifying the source of GSA's delegated procurement authority to an agency.

(g) Section 201–41.006 has been completely revised to add provisions relating to GSA provided mandatory consolidated local telecommunications service.

(4) This amendment supersedes and cancels FIRMR Temporary Regulation 13 and its supplements upon August 27, 1990.

(5) The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA actions are based on adequate information concerning the need for and the consequences of the rule. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no net cost effect on society. It is certified that this rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.).

List of Subjects

41 CFR Parts 201–1 and 201–24

Computer technology, Government procurement, Government property management, and Telecommunications.

41 CFR Part 201–2

Archives and records, Computer technology, Government procurement, Government property management, and Telecommunications.

41 CFR Parts 201–23 and 201–39

Computer technology, Government procurement and Telecommunications.

41 CFR Part 201–38

Government procurement, Government property management, Telecommunications, and Telephone.

41 CFR Part 201–41

Government property management and Telecommunications.

PART 201–1—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM

1–2. The authority citation for part 201–1 is revised to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

3. Section 201–1.000–1 is amended by revising paragraph (c) to read as follows:

§ 201–1.000–1 Information resources management.

* * * * *

(c) The Paperwork Reduction Reauthorization Act of 1986, Public Law 99–500 [44 U.S.C. 3502(13)] defines the term "information resources management" to mean the planning, budgeting, organizing, directing, training, promoting, controlling, and management activities associated with the burden, collection, creation, use, and dissemination of information by agencies, and includes the management of information and related resources such as automatic data processing equipment (as such term is defined in section 111(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(a)). The Office of Management and Budget has broad Governmentwide authorities and functions [44 U.S.C. 3504] for accomplishing all purposes of the Act.

* * * * *

4. Section 201–1.102–2 is amended by revising paragraph (c) to read as follows:

§ 201–1.102–2 Other related authorities.

* * * * *

(c) The authority conferred upon the Administrator of General Services (and the Secretary of Commerce) by Public Law 89–306 (40 U.S.C. 759) concerning Federal information processing (FIP) resources will be exercised subject to direction by the President and to fiscal and policy control exercised by OMB. Authority so conferred upon the Administrator shall not be construed as to impair or interfere with the determination by agencies of their individual FIP resources requirements, including the development of specifications for, and the selection of, the types and configurations of

equipment needed. However, agencies shall use Federal standards as provided in parts 201-13 and 201-39 of this chapter. The Administrator will not interfere with, nor attempt to control in any way, the use made of FIP resources by any agency. The Administrator will provide adequate notice to all agencies and other users concerned with respect to each proposed determination specifically affecting them or the FIP resources used by them.

* * * * *

5. Section 201-1.102-3 is removed and reserved as follows:

§ 201-1.102-3 [Reserved]

6. Section 201-1.103 is revised to read as follows:

§ 201-1.103 Applicability.

(a) *Scope.* This section prescribes the extent to which the FIRMR applies to—

(1) The acquisition, management, and use of Federal information processing (FIP) resources by Federal agencies; and

(2) The creation, maintenance, and use of records by Federal agencies.

(b) *General.* FIRMR applicability is prescribed in terms of acquisition, management, and use of various types of information resources, consistent with the authority of the Administrator of General Services. In this regard, FIRMR applicability is prescribed in terms of FIP resources and records (see § 201-2.001 for the definitions of "Federal information processing (FIP) resources" and "records"). FIP resources means "automatic data processing equipment" as the term is defined in Public Law 99-500 (40 U.S.C. 759(a)).

(c) *Policies.* (1) The FIRMR applies to the acquisition, management, and use of FIP resources by Federal agencies.

(2) The FIRMR applies to any Federal agency solicitation or contract when either paragraph (c)(2)(i), (c)(2)(ii), or (c)(2)(iii) of this section applies:

(i) The solicitation or contract requires the delivery of FIP resources for use by a Federal agency or users designated by the agency.

(ii) The solicitation or contract explicitly requires the use by the contractor of FIP resources that are not incidental to the performance of the contract. FIP resources acquired by a contractor are incidental to the performance of a contract when:

(A) None of the principal tasks of the contract depend directly on the use of the FIP resources; or

(B) The requirements of the contract do not have the effect of substantially restricting the contractor's discretion in the acquisition and management of FIP resources, whether the use of FIP resources is or is not specifically stated in the contract.

(iii) The solicitation or contract requires the performance of a service or the furnishing of a product that is performed or produced making significant use of FIP resources that are not incidental to the performance of the contract. Significant use of FIP resources means:

(A) The service or product of the contract could not reasonably be produced or performed without the use of FIP resources; and

(B) The dollar value of FIP resources expended by the contractor to perform the service or furnish the product is expected to exceed $500,000 or 20 percent of the estimated cost of the contract, whichever amount is lower.

(3) The FIRMR applies to the creation, maintenance, and use of records by Federal agencies.

(d) *Exceptions.* (1) The FIRMR does not apply to the procurement of FIP resources—

(i) By the Central Intelligence Agency.

(ii) By the Department of Defense when the function, operation or use of such resources—

(A) Involves intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(B) Is critical to the direct fulfillment of military or intelligence missions, provided that this exclusion shall not include FIP resources used for routine administrative and business applications such as payroll, finance, logistics, and personnel management.

(2) The FIRMR does not apply to radar, sonar, radio, or television equipment, except that the FIRMR is used by GSA to implement Federal Telecommunications Standards for radio equipment.

(3) When both FIP and non-FIP resources are being acquired under the same solicitation or contract and the FIRMR applies to the contract or solicitation under the terms of this § 201-1.103, then the specific provisions of the FIRMR apply only to the FIP resources.

(4) While the FIRMR may require an agency to include in Federal solicitations and contracts provisions and clauses that control the contractor's acquisition of FIP resources, the FIRMR does not apply to FIP resources acquired by a Federal contractor that are incidental to the performance of a contract. FIP resources are incidental to the performance of a contract when:

(i) None of the principal tasks of the contract depend directly on the use of the FIP resources, or

(ii) The requirements of the contract do not have the effect of substantially restricting the contractor's discretion in the acquisition and management of FIP resources, whether the use of FIP resources is or is not specifically stated in the contract.

(5) The FIRMR does not apply to the acquisition, management, and use of products containing embedded FIP equipment when:

(i) The embedded FIP equipment would need to be substantially modified to be used other than as an integral part of the product, or

(ii) The dollar value of the embedded FIP equipment is less than $500,000 or less than 20 percent of the value of the product, whichever amount is lower. Embedded FIP equipment is FIP equipment that is an integral part of the product, where the principal function of the product is not the "automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information."

PART 201-2—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for part 201-2 is revised to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201-2.001 is amended by adding new definitions in alphabetical order to read as follows:

§ 201-2.001 Definitions.

* * * * *

Executive agency means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation (see 40 U.S.C. 472).

* * * * *

Federal information processing (FIP) resources means automatic data processing equipment (ADPE) as defined in Public Law 99-500 (40 U.S.C. 759(a)(2)), and set out in paragraphs (a) and (b) of this definition.

(a) Any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception, of data or information—

(1) By a Federal agency, or

(2) Under a contract with a Federal agency which—

(i) Requires the use of such equipment, or

(ii) Requires the performance of a service or the furnishing of a product which is produced or performed making significant use of such equipment.

(b) Such term includes—

(1) Computers;

(2) Ancillary equipment;

(3) Software, firmware, and similar procedures;

(4) Services, including support services; and

(5) Related resources as defined by regulations issued by the Administrator of General Services.

(c) For purposes of FIRMR applicability, the phrase "significant use"of FIP resources means—

(1) The service or product of the contract could not reasonably be produced or performed without the use of FIP resources; and

(2) The dollar value of FIP resources expended by the contractor to perform the service or furnish the product is expected to exceed $500,000 or 20 percent of the estimated cost of the contract, whichever amount is lower.

(d) The term, FIP resources, includes FIP equipment, maintenance, software, services, support services, and related supplies. These terms are defined as follows and are limited by the definition of ADPE in paragraphs (a) and (b) of this definition.

(1) *FIP equipment* means any equipment or interconnected system or subsystems of equipment used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(2) *FIP maintenance* means those examination, testing, repair, or part replacement functions performed on FIP equipment and software.

(3) *FIP related supplies* means any consumable item designed specifically for use with FIP equipment, maintenance, software, services, or support services.

(4) *FIP services* means any service, other than FIP support services, performed or furnished by using FIP equipment or software.

(5) *FIP software* means any software, including firmware, specifically designed to make use of and extend the capabilities of FIP equipment.

(6) *FIP support services* means any commercial nonpersonal services used in support of FIP equipment, software, or services.

(e) Specific examples of what FIP resources include and exclude are provided in FIRMR Bulletin 67.

* * * * *

Information means any communication or reception of knowledge, such as facts, data, or opinions, including numerical, graphic, or narrative forms, whether oral or maintained in any medium, including computerized data bases, paper, microform, or magnetic tape.

* * * * *

Radar equipment means any radio detection devices that provide information on range, azimuth, and/or elevation of objects.

Radio equipment means any equipment or interconnected system or subsystem of equipment (both transmission and reception) that is used to communicate over a distance by modulating and radiating electromagnetic waves in space without artificial guide. This does not include such items as microwave, satellite, or cellular telephonic equipment.

* * * * *

Sonar equipment means an apparatus that detects the presence and location of a submerged object by means of sonic, subsonic, and supersonic waves reflected back to it from the object.

* * * * *

Telecommunications resources means telecommunications equipment, facilities and services.

* * * * *

Television equipment means any equipment (both transmission and reception) used for the conversion of transient visual images into electrical signals that can be transmitted by radio or wire to distant receivers where the signals can be reconverted to the original visual images. This does not include such items as monitors for computers or computer terminals or video conferencing equipment.

* * * * *

1. Part 201–23 is revised to read as follows:

PART 201-23—DELEGATIONS OF AUTHORITY

Sec.
201–23.000 Scope of part.

Subpart 201-23.1—Delegations of GSA's Exclusive Procurement Authority

201–23.100 Scope of subpart.
201–23.101 General.
201–23.102 Accountability for acquisitions.
201–23.103 Methods of obtaining delegations.
201–23.103–1 Regulatory blanket delegations.
201–23.103–2 Specific agency blanket delegations.
201–23.103–3 Specific acquisition delegations.
201–23.103–4 Notice of procurement authority.

Subpart 201-23.2 Delegations of GSA's Multiyear Contracting Authority

201–23.200 Scope of subpart.
201–23.201 General.
201–23.202 Accountability for acquisitions.
201–23.203 Blanket delegations of GSA's multiyear contracting authority.

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201-23.000 Scope of part.

This part prescribes policies and procedures regarding the delegation to agencies of GSA's exclusive procurement authority for Federal information processing (FIP) resources and GSA's multiyear contracting authority for telecommunications resources.

Subpart 201-23.1 Delegations of GSA's Exclusive Procurement Authority

§ 201-23.100 Scope of subpart.

This subpart prescribes policies and procedures regarding the delegation of GSA's exclusive procurement authority for FIP resources under 40 U.S.C. 759 to Federal agencies. General background information is provided in § 201–23.101, accountability for the authority delegated is prescribed in § 201–23.102, methods to obtain delegations of the authority are prescribed in § 201–23.103, and a solicitation notice of procurement authority is prescribed in § 201–23.104.

§ 201-23.101 General.

Among the Federal agencies, GSA has exclusive procurement authority for FIP resources unless excluded under § 201–1.103(d) of this chapter. GSA either procures FIP resources for Federal agencies, or it authorizes Federal agencies to procure FIP resources for themselves following the policies and procedures prescribed in the FIRMR. When Federal agencies procure FIP resources, they procure under a delegation of GSA's exclusive procurement authority. Without the delegation, Federal agencies are not authorized to procure FIP resources. The policies and procedures prescibed in this subpart are intended to—

(a) Provide the broadest possible delegation of GSA's exclusive procurement authority for FIP resources to Federal agencies based on their ability to carry out acquisitions in accordance with the policies and procedures prescribed in the FIRMR;

(b) Establish responsibility with an agency designated senior official (DSO) within each Federal agency for acquisitions of FIP resources authorized under a delegation of GSA's exclusive procurement authority;

(c) Encourage agency DSO's to redelegate GSA's exclusive procurement authority for FIP resources to qualified officials at the lowest organizational level practicable;

(d) Focus GSA's pre-solicitation review activities only on the most significant procurements of FIP resources by Federal agencies while preserving GSA's right to review any agency actions supporting any acquisitions of FIP resources authorized under a delegation of GSA's exclusive procurement authority; and

(e) Preserve GSA's right to revoke or suspend any delegation of GSA's exclusive procurement authority for FIP resources when GSA determines that circumstances warrant such an action.

§ 201-23.102 Accountability for acquisitions.

(a) *Scope.* This section prescribes policies and procedures for establishing agency accountability for acquisitions of FIP resources made under delegations of GSA's exclusive procurement authority.

(b) *General.* The provisions of Public Law 96-511 (44 U.S.C. 3506) direct each executive agency head to designate a senior official (officials in DOD) reporting to the agency head to be responsible for implementing the act. The DSO is assigned responsibility for the conduct of, and accountability for, any acquisitions made under a GSA delegation of authority under 40 U.S.C. 759 (see 44 U.S.C. 3506(c)(4)). The delegations of procurement authority (DPA's) discussed in this section are given to agency DSO's when GSA determines that such officials are sufficiently independent of program responsibility and have sufficient experience, resources, and ability to carry out fairly and effectively procurements under GSA's authority as provided by 40 U.S.C. 759(b)(3). The agency's DSO may redelegate GSA's authorities for FIP resources to qualified officials. However, such delegation shall not relieve agency DSO's of the responsibility for the conduct of, and accountability for, any acquisitions of FIP resources made under a DPA from GSA as provided for in 44 U.S.C. 3506(b).

(c) *Policies.* (1) Each Federal agency head shall designate a senior official (designated senior official under Public Law 96-511 for executive agencies) reporting to the agency head to be responsible for the conduct of, and accountability for, any acquisitions of FIP resources made under a delegation of GSA's exclusive procurement authority under 40 U.S.C. 759. The head of a Federal agency not subject to Public Law 96-511 shall also designate a senior official to carry out the responsibilities of this subpart.

(2) The agency DSO may redelegate GSA's exclusive procurement authority for FIP resources to qualified officials at the lowest organizational level practicable.

(d) *Procedures.* (1) Each Federal agency head shall advise GSA's Commissioner of Information Resources Management in writing of the position title and organizational identity of the agency DSO.

(2) For any acquisition made by Federal agencies under a delegation of GSA's exclusive procurement authority, the agency DSO will establish necessary procedures to ensure compliance with applicable provisions of the FIRMR and any terms of specific delegations of procurement authority (see §§ 201-23.103-2 and 201-23.103-3).

(3) The agency DSO shall advise GSA in writing of the position title and organizational identity of officials authorized to submit agency procurement requests to GSA under the provisions of § 201-23.103-3. A change of incumbent in an unchanged position and organization assignment does not require GSA notification.

§ 201-23.103 Methods of obtaining delegations.

(a) *Scope.* This section prescribes policies and procedures regarding the methods GSA uses to delegate procurement authority for FIP resources to Federal agencies. Regulatory blanket delegations are prescribed in § 201-23.103-1. Policies and procedures regarding specific agency blanket delegations are prescribed in § 201-23.103-2. For procurements not covered by blanket delegations, § 201-23.103-3 prescribes policies and procedures regarding specific delegations GSA provides in response to an agency procurement request (APR) for a specific procurement of FIP resources. A solicitation notice of the procurement authority delegated by GSA is prescribed in § 201-23.103-4.

(b) *General.* GSA uses three methods to delegate procurement authority for FIP resources to Federal agencies. First, GSA delegates regulatory blanket procurement authorities for all Federal agencies in the FIRMR (see § 201-23.103-1). Second, GSA delegates specific agency blanket procurement authorities in writing by separate letters to agency DSO's. The specific agency blanket procurement authorities have the effect of modifying the regulatory blanket procurement authorities for individual Federal agencies (see § 201-23.103-2). Third, when procurement of FIP resources is not covered by blanket procurement authorities, GSA delegates procurement authority to Federal agencies based on GSA's review of individual APR's (see § 201-23.103-3). Federal agencies may procure FIP resources under blanket procurement authorities without prior approval of GSA.

(c) *Policies.* (1) Federal agencies are authorized to procure FIP resources in accordance with the policies and procedures prescribed in the FIRMR under—

(i) The regulatory blanket delegations of GSA's exclusive procurement authorities prescribed in § 201-23.103-1, as amended by any specific agency blanket delegations of GSA's exclusive procurement authorities provided by GSA under § 201-23.103-2; or

(ii) A specific acquisition delegation of GSA's exclusive procurement authority provided by GSA in response to an APR under § 201-23.103-3.

2. When delegating GSA's exclusive procurement authority, GSA retains authority to—

(i) Review an agency's actions supporting any acquisitions authorized under a delegation of GSA's exclusive procurement authority; and

(ii) Revoke, modify, or suspend any delegation of GSA's exclusive procurement authority when GSA determines that circumstances warrant such an action.

(d) *Procedures.* (1) The agency DSO (see § 201-23.102(c)) shall ensure that documentation relative to agency actions, authorized by GSA delegations, is available for review upon request by GSA officials.

(2) Federal agencies shall not divide or split requirements for FIP resources in order to circumvent established blanket delegation of procurement authority thresholds.

§ 201-23.103-1 Regulatory blanket delegations.

(a) *Scope.* This section prescribes the regulatory blanket procurement authority for all FIP resources delegated to Federal agencies.

(b) *General.* Regulatory blanket delegations of this section apply to all Federal agencies that have not received specific agency blanket delegations of GSA's exclusive procurement authority under the provisions of § 201-23.103-2.

(c) *Policies.* (1) Federal agencies may request telecommunications services (either local or intercity, e.g., FTS2000) directly from the GSA Office of the Assistant Commissioner for Telecommunications Services (KB) without prior approval of GSA under this part 201-23. (See part 201-41 of this

chapter for specific instructions on installation, changes or termination of FTS services.)

(2) Federal agencies may conduct procurements for FIP support services, and FIP related supplies, regardless of cost without prior approval of GSA under this part 201–23.

(3) Federal agencies may conduct procurements for FIP equipment, software, maintenance, and services without prior approval of GSA under this part 201–23 when the dollar value of any individual type of FIP resource required by the procurement (including all evaluated optional features and renewals over the life of the contract) does not exceed:

(i) $250,000 for a specific make and model specification;

(ii) $250,000 for requirements available from only one responsible source; or

(iii) $2.5 Million for other FIP requirements unless—

(A) The procurement includes telecommunications requirements which are within the scope of the mandatory FTS2000 network services, and GSA has not provided the agency an exception to the use of the FTS2000 network (see § 201–41.005 of this chapter);

(B) The procurement includes a requirement for telecommunications switching facilities or services at a location where mandatory consolidated local telecommunications services are provided by GSA, and GSA has not provided the agency an exception to the use of such resources (see § 201–41.006 of this chapter); or

(C) The procurement includes a requirement for telecommunications switching facilities or services at a location where more than one agency would provide such resources to Federal occupants at the site.

(4) When FIP equipment, software, services and support services (or any combination thereof) are combined and acquired under a single contract action, GSA approval shall be required when the dollar value of either the equipment, software, services, or support services exceeds the applicable dollar threshold in § 201–23.103–1(c)(3).

(d) *Procedures.* Federal agencies may obtain a specific delegation of GSA procurement authority for procurements of FIP resources not covered by blanket delegations by submitting an APR to GSA in accordance with § 201–23.103–3.

§ 201–23.103–2 Specific agency blanket delegations.

(a) *Scope.* This section prescribes policies and procedures regarding the modification of blanket delegations of GSA's exclusive procurement authority for FIP resources for individual Federal agencies by GSA.

(b) *General.* GSA periodically modifies blanket delegations of GSA's exclusive procurement authority for individual Federal agencies to recognize their particular abilities and to provide all Federal agencies the opportunity for the broadest possible blanket procurement authorities. GSA conducts periodic reviews of agency acquisition, management, and use of FIP resources to determine agency compliance with FIRMR policies and procedures. Review findings are used by GSA to evaluate the appropriate blanket delegation of GSA's exclusive procurement authority for FIP resources for individual Federal agencies. If these reviews reveal agencies' noncompliance with the FIRMR, GSA may withdraw or revise agencies' blanket delegations.

(c) *Policy.* The GSA Commissioner for the Information Resources Management Service or a designee may authorize changes in blanket delegations of GSA's exclusive procurement authority for FIP resources for individual Federal agencies (or components thereof) based on their ability to acquire, manage, and use FIP resources in accordance with FIRMR policies and procedures.

(d) *Procedures.* (1) GSA shall conduct periodic reviews of agency acquisition, management, and use of FIP resources by individual Federal agencies (or components thereof) as GSA deems appropriate.

(2) GSA shall report review findings in writing to the agency DSO.

(3) Based on review findings, the GSA Commissioner for Information Resources Management Service or a designee shall make appropriate modification to agency blanket delegations of GSA's exclusive procurement authority for FIP resources in writing to the agency DSO.

(4) The agency DSO shall implement a GSA letter of modification to agency blanket delegations by the effective date of the GSA Modification in accordance with agency procedures.

§ 201–23.103–3 Specific acquisition delegations.

(a) *Scope.* This section prescribes policies and procedures regarding the delegation of GSA's exclusive procurement authority to Federal agencies for the acquisition of FIP resources which are not within the scope of blanket delegations. APR submission requirements are prescribed in § 201–23.103–3(c). GSA action on APR submissions is prescribed in § 201–23.103–3(d). Section 201–23.103–3(e) prescribes policies and procedures regarding review of GSA denials of APRs by the Office of Management and Budget (OMB).

(b) *General.* The policies and procedures prescribed in this subpart are intended to inform GSA of the most significant acquisitions of FIP resources by Federal agencies, and when necessary to permit GSA to selectively conduct comprehensive pre-solicitation reviews of such acquisitions before issuing a delegation of procurement authority (DPA). GSA's goal in conducting a pre-solicitation review is to ensure that the acquisition strategy selected by the agency represents an economic and efficient method for acquiring FIP resources to support mission requirements.

(c) *Agency procurement request (APR) submission requirements.* (1) *Policy.* Federal agencies shall submit APR's to GSA and receive specific DPA's prior to releasing solicitations when acquisitions are not covered by blanket delegations of GSA's exclusive procurement authority.

(2) *Procedures.* (i) GSA encourages Federal agencies to establish early planning coordination with GSA (KMAS) delegation officials in advance of submitting APR's to GSA.

(ii) Prior to submision of APR's to GSA, Federal agencies should consider use of GSA (and other agency) services and contract programs in accordance with FIRMR policies and procedures, and shall coordinate any space requirements with GSA's Public Building Service (PBS) in accordance with Federal Property Management Regulations, policies, and procedures.

(iii) Prior to submission of an APR to GSA, Federal agencies shall perform and document the applicable pre-solicitation studies (and justifications) identified in the body of the APR.

(iv) Federal agencies shall prepare APR's as indicated by instructions in the FIRMR Bulletin series. The FIRMR Bulletin series also addresses APR's submitted under the Trail Boss Program.

(v) Two copies of the APR shall be forwarded to the General Services Administration (KMAS), Washington, DC 20405.

(vi) The APR shall be signed by an official who has been authorized to submit APR's to GSA (see § 201–23.102(d)).

(d) *GSA's action on agency procurement request (APR) submissions*—(1) *Policies.* In response to an APR, the GSA Commissioner for Information Resources Management or designee will—

(i) Delegate to the agency the authority to conduct the contracting action(s);

(ii) Delegate to the agency the authority to conduct the contracting action and provide for GSA participation in the contracting action(s) with the agency to the extent considered necessary under the circumstances;

(iii) Provide for the contracting action by GSA or otherwise satisfy the requirement on behalf of the agency; or

(iv) Provide a denial of procurement authority when circumstances warrant such an action.

(2) *Procedures.* (i) GSA will act within 20 workdays after receiving full information from an agency submitting a APR or supplemental APR data. To establish a common understanding of the 20 workday period, GSA will provide within this period written verification that identifies the date of receipt of an APR or supplemental APR data, the name and telephone number of the person handling the APR, the file and case number, and other information as appropriate to the agency concerned. When the 20 workday period (plus 5 calendar days for mail lag) has expired, the agency concerned may proceed with the contracting action as though it had, in fact, received GSA authorization.

(ii) If after review GSA finds that the APR does not contain the information required, or that unusual circumstances surrounding the acquisition dictate that a longer appraisal period will be required, GSA will provide within the 20 workday period written notice to that effect including an estimate of the time required to complete the review. Under these circumstances, the automatic authorization rule as set forth in paragraph (d)(2)(i) of this section shall not apply.

(iii) GSA will promptly review and take appropriate action on the APR. When necessary, GSA will conduct an in-depth review of the proposed acquisition before issuing a DPA under the APR submission procedure. In some instances, this may require the submission of additional information.

(e) *OMB review of GSA denial*—(1) *Policy.* If the GSA Commissioner for the Information Resources Management Service or a designee denies an APR, such denial shall be subject to the review and decision by the Director of the Office of Management and Budget (OMB), unless the President otherwise directs.

(2) *Procedures.* Review and decision by the Director of OMB shall be made only on the basis of a written appeal. The written appeal, together with any written communications to or from GSA or OMB concerning such denial shall be made available to the public unless otherwise provided by law.

§ 201-23.103-4 Notice of procurement authority.

Policy. Technical and requirements personnel shall provide relevant information to agency contracting officers to ensure that all solicitations for FIP resources that are being conducted under a delegation of GSA's exclusive procurement authority shall contain a provision identifying the source of the authority and the GSA case number, if applicable.

Subpart 201-23.2—Delegations of GSA's Multiyear Contracting Authority

§ 201-23.200 Scope of subpart.

This subpart prescribes policies and procedures regarding the delegation of GSA's multiyear contracting authority for telecommunications resources under 40 U.S.C. 481(a)(3) to executive agencies (as defined in 40 U.S.C. 472(a)).

§ 201-23.201 General.

GSA has authority to enter into multiyear contracts for telecommunications resources under 40 U.S.C. 481(a)(3). GSA delegates this authority to executive agencies through the agency DSO (see § 201-23.102) in accordance with the policies and procedures prescribed in this subpart.

§ 201-23.202 Accountability for acquisitions.

(a) *Scope.* This section prescribes policies and procedures for establishing agency accountability for acquisitions made under delegations of GSA's multiyear contracting authority to executive agencies.

(b) *General.* The policies and procedures prescribed in this section make the DSO's in executive agencies (described in § 201-23.102) accountable for acquisitions of telecommunications resources made under delegations of GSA's multiyear contracting authority.

(c) *Policy.* Each executive agency head shall designate a senior official (DSO) (44 U.S.C. 3506) reporting to the agency head to be responsible for the conduct of and accountability for any acquisition of telecommunications resources made under a delegation of GSA's multiyear contracting authority.

(d) *Procedures.* For any acquisition of telecommunications resources made by executive agencies under a delegation of GSA's multiyear contracting authority, the agency DSO will establish necessary procedures to ensure compliance with applicable provisions of the FIRMR. The agency shall also comply with OMB and General Accounting Office (GAO) budget and accounting procedures when using delegated multiyear contracting authority.

§ 201-23.203 Blanket delegations of GSA's multiyear contracting authority.

(a) *Scope.* This section prescribes the blanket multiyear contracting authority for telecommunications resources delegated to executive agencies by GSA.

(b) *General.* The policies and procedures prescribed in this section delegate executive agencies blanket GSA multiyear contracting authority for all acquisitions of telecommunications resources acquired under blanket delegations of GSA's exclusive procurement authority for FIP resources (see §§ 201-23.103-1 and 201-23.103-2). Upon request, GSA delegates its multiyear contracting authority for telecommunications resources not covered by blanket procurement authorities on a case by case basis in response to individual APR's (see § 201-23.103-3-3). Agencies may only enter into multiyear contracts for telecommunications resources when the acquisitions are being conducted under either a GSA-granted specific blanket delegation of procurement authority or an individual delegation of procurement authority that also grants multiyear contracting authority.

(c) *Policies.* (1) Agencies are authorized to enter into multiyear contracts for telecommunications resources without requesting specific GSA approval subject to the following conditions—

(i) Agencies shall have a delegation of GSA's exclusive procurement authority under §§ 201-23.103-1 and 201-23.103-2 (blanket delegations of GSA's exclusive procurement authority for Federal information processing (FIP) resources).

(ii) The contract life shall not exceed 10 years.

(iii) Agencies shall comply with OMB and General Accounting Office (GAO) Budget and accounting procedures relating to appropriated funds.

(2) The GSA Commissioner for the Information Resources Management Service or a designee may change the blanket delegations of GSA's multiyear contracting authority for a particular agency or component thereof. Any changes will be in writing to the agency designated senior official.

PART 201-24—ACQUISITION POLICIES

1-2. The authority citation for part 201-24 is revised to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

3. Section 201-24.109 is added to read as follows:

§ 201-24.109 Severing FIP resources from requirements for non-FIP resources.

(a) *Scope.* This section prescribes the policies and procedures for severing Federal information processing (FIP) resources from requirements for non-FIP resources. This section does not pertain to severing Government-supplied mandatory FIP resources, such as FTS 2000 resources.

(b) *Policies.* Agencies shall consider severing requirements for FIP resources from requirements for non-FIP resources not subject to the FIRMR when:

(1) The requirement for FIP resources is or can be clearly identified and explicitly required in a solicitation;

(2) The technical and operational needs can be satisfied by severing requirements for FIP resources from requirements for non-FIP resources;

(3) The items can be acquired by the Government and delivered to the contractor as required by the production schedule;

(4) Adequate price competition can be achieved on the severed FIP portion (see FAR 15.804-3(b); 48 CFR 15.804-3(b));

(5) The expected contract cost reduction will exceed the added costs of a separate acquisition;

(6) Severing the FIP resources will not affect the contractor's ability and responsibility to perform as required by the provisions of the contract; and

(7) The total dollar value of FIP resources explicitly required by the procurement (including all options and renewals over the life of the contract) exceeds $1,000,000.

4. Section 201-24.202 is revised to read as follows:

§ 201-24.202 Acquisition of FIP resources by Federal contractors.

(a) *Policy.* Agencies shall require their contractors to apply the policies of § 201-11.001 of this chapter the full and open competition objective, to the acquisition of FIP equipment and software whenever the Government:

(1) Requires the contractor to purchase FIP equipment or software for the account of the Government; or

(2) Requires the contractor to pass title to FIP equipment or software to the Government; or

(3) Pays the full lease costs of FIP equipment or software.

(b) *Exception.* The above does not apply if any agency has fully evaluated costs for the FIP equipment and software prior to original contract award following competitive procedures (e.g., in a firm, fixed price contract).

5. Section 201-24.203 is removed and reserved as follows:

§ 201-24.203 [Reserved]

PART 201-38—MANAGEMENT OF TELECOMMUNICATIONS RESOURCES

1-2. The authority citation for part 201-38 is revised to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

3. Subpart 201-38.2, consisting of §§ 201-38.200 through 201-38.207-3, is removed and reserved.

PART 201-39—ACQUISITION OF INFORMATION PROCESSING RESOURCES BY CONTRACTING

1. The authority citation for part 201-39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Subpart 201-39.1 heading is added to read as follows:

Subpart 201-39.1—Terminology for Identifying Procurement Authority in Solicitations

3. Section 201-39.100 is added to subpart 201-39.1 to read as follows:

§ 201-39.100 Solicitation provision.

(a) All solicitations for FIP resources subject to the FIRMR shall contain a provision identifying whether the contracting action is being conducted under a regulatory blanket DPA, a specific agency DPA, or a specific acquisition DPA.

(b) If the contracting action is being conducted under a specific agency or specific acquisition DPA, the solicitation provision shall also include the GSA case number of the specific DPA.

(c) Accordingly, the contracting officer shall—

(1) Insert a provision substantially the same as the provision at § 201-39.5202-3, Procurement Authority, in each solicitation for FIP resources; and

(2) Issue an amendment to the solicitation modifying this provision within 10 days after any of the facts set forth in the change.

4. Section 201-39.5202-2 is added and reserved as follows:

§ 201-39.5202-2 [Reserved].

5. Section 201-39.5202-3 is added to read as follows:

§ 201-39.5202-3 Procurement authority.

As prescribed in § 201-39.100, insert a provision substantially the same as the following in the solicitation:

Procurement Authority (DEC 89 FIRMR)

This acquisition is being conducted under * delegation of GSA's exclusive procurement authority for FIP resources. The specific GSA DPA case number is **.

(End of provision)

* Insert one of the following phrases:

(1) "the regulatory;"

(2) "a specific agency;" or

(3) "a specific acquisition."

** Insert one of the following:

(1) If the acquisition is being conducted under the regulatory delegation, insert "not applicable."

(2) If the acquisition is being conducted under a specific agency delegation or a specific acquisition delegation, insert the case number as provided in GSA's letter delegating the specific procurement authority (e.g., KMA-88-9999).

PART 201-41—ROUTINE CHANGES AND USE OF THE FEDERAL TELECOMMUNICATIONS SYSTEM (FTS)

1. The authority citation for part 201-41 is revised to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201-41.006 is revised to read as follows:

§ 201-41.006 Mandatory consolidated local telecommunications service.

(a) *Scope.* This section prescribes policies and procedures regarding the use of GSA mandatory consolidated local telecommunications service.

(b) *General.* GSA provides consolidated local telecommunications service in most buildings occupied by Federal employees. This service includes the major serving switch or service, universal features and applications, and the wire and cable to the designated point of connection. GSA charges to agencies for consolidated local service cover expenses for installation, changes, and termination of service. FIRMR Bulletin 69 provides additional detail regarding GSA consolidated local telecommunications service and lists locations where the use of the service is mandatory.

(c) *Policy.* Federal agencies shall use GSA provided local telecommunications service in mandatory consolidated service locations unless an exception is granted by GSA. Federal agencies' requests to GSA for exceptions to the use of GSA's local service program shall be evaluated based on agencies' unique or special service requirements which cannot be met by GSA consolidated telecommunications systems.

(d) *Procedures.* (1) An exception to the use of GSA local service must be based on the agency's unique or special requirements which cannot be met by GSA consolidated telecommunications systems. The request must be supported by the analysis required in § 201-30.009 or § 201-38.010(b) of this chapter.

(2) All agency requests for special or unique service requirements shall be sent to the General Services Administration, Information Resources Management Service (KMA), Washington, DC 20405.

(3) An agency may appeal a GSA denial of a request for an exception to the use of GSA local consolidated service to the Office of Management and Budget (OMB).

Appendix A—[Amended]

1. Appendix A to chapter 201 is amended by removing Temp. Reg. 13 and Supplements 1, 2, and 3 to Temp. Reg. 13.

Dated: April 11, 1990.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 90-16893 Filed 7-26-90; 8:45 am]

BILLING CODE 6820-25-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6881]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., Room 417, Washington, DC 20472.

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

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

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

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

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

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

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

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

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

§ 64.6 List of eligible communities.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles-Emergency Program			
Florida: Orange City, city of, Volusia County	120633	June 1, 1990	
Arkansas: Hot Spring County, unincorporated areas	050437	June 6, 1990	11-1-77
Texas: Brown County, unincorporated areas	480717	Do. Emerg	1-24-78
Georgia: Cleveland, city of, White County	130418	June 8, 1990	4-11-75
Mississippi: Smith County, unincorporated areas	280306	Do. Emerg	4-21-78
Texas:			
Hunt County, unincorporated areas	480363	June 15, 1990	8-22-78
Nacogdoches County, unincorporated areas	480947	Do. Emerg	12-27-77
Iowa: Merrill, city of, Plymouth County	190478	June 13, 1990	7-2-76
Georgia: Pulaski County, unincorporated areas	130378	June 25, 1990	7-17-77
Alabama: Newton, town of, Dale County	010419	June 20, 1990	
Texas: Comanche County, unincorporated areas	480150	Do. Emerg	
Texas:			
Enchanted Oaks, town of, Henderson County	481634	Do. Emerg	
Blanket, city of, Brown County	480719	June 22, 1990	
Lovelady, city of, Houston County	480874	Do. Emerg	10-29-76
Oklahoma:			
Woodward County, unincorporated areas	400500	June 29, 1990	
Fairland, town of, Ottawa County	400377	Do. Emerg	4-9-76
Iowa: Oxford, city of, Johnson County	190172	June 26, 1990	5-10-74

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Regular Program			
North Carolina: [1] North Topsail Beach, town of, Onslow County	370466	June 15, 1990	
Kentucky: Inez, city of, Martin County	210362	May 19, 1988, Emerg.; May 19, 1988, Reg	8-5-86
New Hampshire: Warren, town of, Grafton County	330168	June 27, 1990	4-18-83
South Carolina: [2] Kiawah Island, town of, Charleston County	450257	June 30, 1970, Emerg.; Apr. 23, 1971, Reg	7-15-88
Alabama: Louisville, town of, Barbour County	010225	Nov. 25, 1975, Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; May 30, 1990, Rein.	1-10-75
Georgia: Dublin, city of, Laurens County	130217	June 14, 1976, Emerg.; May 17, 1990, Reg.; May 17, 1990, Susp.; June 1, 1990, Rein.	5-17-90
Maine: Freedom, town of, Waldo County	230255	Oct. 1, 1975, Emerg.; Sept. 27, 1985, Reg.; May 17, 1990, Susp.; June 1, 1990, Rein.	9-27-85
Vermont: Ira, town of, Rutland County	500260	Dec. 24, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.; June 6, 1990, Rein.	9-18-85
Utah: Utah County, unincorporated areas	495517	Nov. 12, 1971, Emerg.; Oct. 15, 1982, Reg.; June 19, 1989, Susp.; June 7, 1990, Rein.	6-19-89
Missouri: Wilson City, village of, Mississippi County	290235	Feb. 5, 1975, Emerg; Jan. 18, 1989, Reg.; Jan. 18, 1989, Susp.; June 7, 1990, Rein,.	1-18-89
Pennsylvania: Cochranton, borough of, Crawford County	420348	Sept. 10, 1975, Emerg.; June 4, 1990, Reg.; June 4, 1990, Susp.; June 15, 1990, Rein.	6-4-90
Ohio: Hebron, village of, Licking County	390333	July 23, 1975, Emerg.; Dec. 15, 1982, Reg.; Aug. 3, 1989, Susp.; June 11, 1990, Rein.	12-15-82
Pennsylvania:			
Westfield, borough of, Tioga County	422093	April 22, 1975, Emerg.; March 1, 1987, Reg.; March 1, 1987, Susp.; June 25, 1990, Rein.	3-1-87
Lower Towamensing, township of, Carbon County	421255	July 29, 1975, Emerg.; Nov. 15, 1989, Reg.; Nov. 15, 1989, Susp.; June 22, 1990, Rein.	6-1-87
Limestone, township of, Lycoming County	422588	June 5, 1980, Emerg.; June 1, 1987, Reg.; June 1, 1987, Susp.; June 26, 1990, Rein.	6-1-87
Region I—Regular Program			
Connecticut:			
Bethlehem, town of, Litchfield County	090178	June 4, 1990, suspension withdrawn	6-4-90
New Canaan, town of, Fairfield County	090010	do	6-4-90
Wallingford, town of, New Haven County	090090	do	6-4-90
Wilton, town of, Fairfield County	090020	do	6-4-90
Massachusetts: Cummington, town of, Hampshire County	250159	do	6-4-90
Maine:			
Richmond, town of, Sagadahoc County	230121	do	6-4-90
Searsport, town of, Waldo County	230185	do	5-17-90
Region II			
New York: Margaretville, village of, Delaware County	360208	do	6-4-90
Region III			
Pennsylvania:			
Big Run, borough of, Jefferson County	420508	do	6-4-90
Broad Top, township of, Bedford County	421333	do	6-4-90
Conemaugh, township of, Somerset County	422047	do	6-4-90
Garrett, borough of, Somerset County	420797	do	6-4-90
Paint, township of, Somerset County	422521	do	6-4-90
Region IV			
Alabama:			
Monroe County, unincorporated areas	010325	do	6-4-90
Pickens County, unincorporated areas	010283	do	6-4-90
Georgia: Houston County, unincorporated areas	130247	do	6-4-90
Florida:			
Port Orange, city of, Volusia County	120313	do	6-4-90
South Daytona, city of, Volusia County	120314	do	6-4-90
Region V			
Wisconsin:			
Polk County, unincorporated areas	550577	do	6-4-90
Viola, village of, Richland County	550460	do	6-4-90
Region VI			
Texas: Somerville, city of, Burleson County	480091	do	6-4-90
Region III			
Pennsylvania:			
Central City, borough of, Somerset County	420796	June 18, 1990, suspension withdrawn	6-18-90
East Conemaugh, borough of, Cambria County	422259	do	6-18-90
East Fairfield, township of, Crawford County	421565	do	6-18-90
Gaskill, township of, Jefferson County	421727	do	6-18-90
Guilford, township of, Franklin County	421650	do	6-18-90
Hamilton, township of, Franklin County	421651	do	6-18-90
Hooversville, borough of, Somerset County	420798	do	6-18-90
Saegertown, borough of, Crawford County	420352	do	6-18-90
Terry, township of, Bradford County	421111	do	6-18-90
Troy, township of, Crawford County	421572	do	6-18-90
Virginia: West Point, town of, King William County	510083	do	6-18-90

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date
Region IV			
South Carolina: Marion County, unincorporated areas	450151	do	6-18-90
Region VII			
Nebraska: Scotts Bluff County, unincorporated areas	310473	do	6-18-90

[1] The Town of North Topsail Beach, North Carolina has adopted Onslow County's FIRM and Study dated July 2, 1987 for floodplain management and insurance purposes.

[2] This is a newly incorporated community eligible June 29, 1990 that was participating in the Regular Program as an unincorporated area of Charleston County, South Carolina. The town has adopted by reference the county's Flood Insurance Study and Maps for insurance and floodplain management purposes.

Code for ready third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

Issued: July 20, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-17568 Filed 7-26-90; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6883]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

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

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646-2717, Federal Center Plaza, 500 C Street SW., Room 417, Washington, DC 20472.

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

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

The Administrator finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

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

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

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

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

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

§ 64.6 List of eligible communities.

State and location	Community no.	Effective date authorization/cancellation of sale of Flood Insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I—Regular Program Conversions				
Massachusetts: Tolland, town of, Worcester County.	250345	November 24, 1975, Emergency; July 2, 1981, regular; August 2, 1990 suspension.	Aug. 2, 1990	August 2, 1990.
Maine:				
Mount Desert, town of, Hancock County.	230287	December 23, 1976, Emergency; August 2, 1990, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
South Portland, city of, Cumberland County.	230053	October 15, 1974, Emergency; August 17, 1981, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
Region II				
New York: Poughkeepsie, town of, Dutchess County.	361142	October 21, 1974, Emergency; November 15, 1978, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
Region III				
Pennsylvania:				
Beech Creek, borough of, Clinton County.	420320	June 3, 1974, Emergency; August 2, 1990, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
Black, township of, Somerset County.	422510	March 2, 1977, Emergency; September 10, 1984, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
Cambridge Springs, borough of, Crawford County.	420346	July 2, 1974, Emergency; August 2, 1990, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
Dale, borough of, Cambria County.	421428	February 28, 1977, Emergency; August 2, 1990, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
East Huntingdon, township of, Westmoreland County.	422188	March 3, 1977, Emergency; August 2, 1990, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
East Wheatfield, township of, Indiana County.	421716	March 7, 1977, Emergency; August 2, 1990, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
Fairfield, township of, Crawford County.	421567	November 19, 1975, Emergency; August 2, 1990, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
Greenfield, township of, Erie County.	421365	April 4, 1979, Emergency; August 2, 1990, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
Hayfield, township of, Crawford County.	421227	August 12, 1975, Emergency; August 2, 1990, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
Region V				
Ohio: Defiance County, unincorporated areas.	390143	September 12, 1978, Emergency; August 2, 1990, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
Region VI				
Texas: Nolan County, unincorporated areas.	481240	July 15, 1987, Emergency; August 2, 1990, regular; August 2, 1990 suspension.	Aug. 2, 1990	Do.
Region III				
Pennsylvania:				
Croyle, township of, Cambria County.	421439	December 22, 1975, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	August 15, 1990.
Delmar, township of, Tioga County.	421177	May 2, 1975, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Lorain, borough of, Cambria County.	420232	July 29, 1977, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
New Bethlehem, borough of, Clarion County.	420296	December 26, 1974, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Oil Creek, township of, Crawford County.	421568	June 27, 1974, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Penn, township of, Lycoming County.	421848	March 7, 1977, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.

State and location	Community no.	Effective date authorization/ cancellation of sale of Flood Insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Philipsburg, borough of, Centre County.	420267	August 15, 1974, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Sligo, Borough of, Clarion County.	421506	March 25, 1976, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Smithton, borough of, Westmoreland County.	420899	May 4, 1976, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
South Huntingdon, township of, Westmoreland County.	422194	February 18, 1977, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Sugar Grove, borough of, Warren County.	420842	August 7, 1975, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Youngsville, borough of, Warren County.	420844	December 19, 1974, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
West Virginia: Bruceton Mills, town of, Preston County.	540162	May 22, 1975, Emergency; August 1, 1987, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Region IV				
Georgia:				
East Ellijay, city of, Gilmer County.	130089	July 3, 1975, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Gilmer County, unincorporated areas.	130317	October 29, 1982, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Hawkinsville, city of, Pulaski County.	130155	July 15, 1975, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Murray County, unincorporated areas.	130366	May 20, 1987, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
North Carolina: Alamance, village of, Alamance County.	370457	December 17, 1987, Emergency; December 17, 1987, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Region V				
Wisconsin:				
Baldwin, village of, St. Croix County.	550380	June 26, 1975, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Clark County, unincorporated areas.	550048	June 25, 1974, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Region VI				
Texas: Del Rio, city of, Val Verde County.	420631	October 3, 1973, Emergency; June 15, 1979, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Region VII				
Iowa: Correctionville, city of, Woodbury County.	190288	March 20, 1975, Emergency; August 15, 1990 regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Missouri:				
Bollinger County, unincorporated areas.	290787	June 1, 1984, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Glen Allen, city of, Bollinger County.	290885	June 7, 1987, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Marble Hill, city of, Bollinger County.	290032	March 30, 1976, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Zalma, village of, Bollinger County.	290033	April 28, 1983, Emergency; September 1, 1986, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Region IX				
Nevada: Winnemucca, city of, Humboldt County.	220012	April 9, 1984, Emergency; September 4, 1985, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.
Region X				
Idaho:				
Lemhi county, unincorported areas.	160092	October 23, 1980, Emergency; February 5, 1986, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.

State and location	Community no.	Effective date authorization/ cancellation of sale of Flood Insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
St. Anthony, city of, Fremont County.	160062	July 15, 1975, Emergency; August 15, 1990, regular; August 15, 1990 suspension.	Aug. 15, 1990	Do.

Code for reading fourth column:

Emerg.—Emergency
Reg.—Regular
Susp.—Suspension
Rein.—Reinstatement

Issued: July 23, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-17570 Filed 7-26-90; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 64

[Docket No. FEMA 6884]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities were required to adopt floodplain management measures compliant with the NFIP revised regulations that became effective on October 1, 1986. If the communities did not do so by the specified date, they would be suspended from participation in the NFIP. The communities are now in compliance. This rule withdraws the suspension. The communities' continued participation in the program authorizes the sale of flood insurance.

EFFECTIVE DATES: As shown in fourth column.

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

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding.

In addition, the Director of the Federal Emergency Management Agency has identified the Special Flood Hazard Areas in these communities by publishing a Flood Insurance Rate Map. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the Special Flood Hazard Area shown on the map.

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

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

Pursuant to the provisions of 5 U.S.C 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on these participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

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

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

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

In each entry, the suspension for each listed community has been withdrawn. The entry reads as follows:

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Regular Program Communities			
Pennsylvania: Morrisville, borough of	Bucks	420194	June 4, 1990. Suspension withdrawn.
Vermont:			
Arlington, town of	Bennington	500012	Do.
Barnard, town of	Washington	500292	Do.
Barre, city of	Washington	500105	Do.
Barre, town of	Washington	500273	Do.
Bennington, town of	Bennington	500013	Do.
Benson, town of	Rutland	500259	Do.
Berkshire, town of	Franklin	500049	Do.
Berlin, town of	Washington	500106	Do.
Brandon, town of	Rutland	500090	Do.
Bridgewater, town of	Washington	500144	Do.
Bridport, town of	Addison	500164	Do.
Cabot, town of	Washington	500108	Do.
Calais, town of	Washington	500109	Do.
Cambridge, town of	Lamoille	500061	Do.

State and community name	County	Community No.	Effective date
Canaan, town of	Essex	500046	Do.
Castleton, town of	Rutland	500091	Do.
Charlotte, town of	Chittenden	500309	Do.
Chelsea, town of	Orange	500070	Do.
Chester, town of	Washington	500146	Do.
Chittenden, town of	Rutland	500092	Do.
Danby, town of	Rutland	500312	Do.
Derby, town of	Orleans	500248	Do.
East Montpelier, town of	Washington	500111	Do.
Fair Haven, town of	Rutland	500094	Do.
Fairfield, town of	Franklin	500053	Do.
Fayston, town of	Washington	500326	Do.
Ferrisburg, town of	Addison	500002	Do.
Franklin, town of	Franklin	500310	Do.
Georgia, town of	Franklin	500217	Do.
Highgate, town of	Franklin	500055	Do.
Hinesburg, town of	Chittenden	500322	Do.
Huntington, town of	Chittenden	500036	Do.
Hyde Park, town of	Lamoille	500230	Do.
Hyde Park, village of	Lamoille	500231	Do.
Jeffersonville, village of	Lamoille	500062	Do.
Jericho, town of	Chittenden	500037	Do.
Landgrove, town of	Bennington	500178	Do.
Lincoln, town of	Addison	500007	Do.
Ludlow, town of	Washington	500150	Do.
Ludlow, village of	Washington	500294	Do.
Manchester, town of	Bennington	500015	Do.
Marlboro, town of	Windham	500283	Do.
Middlebury, town of	Addison	500008	Do.
Milton, town of	Chittenden	500038	Do.
Monkton, town of	Addison	500167	Do.
Montpelier, city of	Washington	505518	Do.
Mt. Holly, town of	Rutland	500096	Do.
New Haven, town of	Addison	500009	Do.
Northfield, town and village of	Washington	500118	Do.
Orange, town of	Orange	500239	Do.
Pawlet, town of	Rutland	500097	June 18, 1990. Suspension withdrawn.
Pownal, town of	Bennington	500016	Do.
Putney, town of	Windham	500134	Do.
Richmond, town of	Chittenden	500040	Do.
Richmond, village of	Chittenden	500041	Do.
Rupert, town of	Bennington	500018	Do.
Rutland, town of	Rutland	500267	Do.
Shaftsbury, town of	Bennington	500019	Do.
Shelburne, town of	Chittenden	500193	Do.
Shrewsbury, town of	Rutland	500102	Do.
South Burlington, town of	Chittenden	500195	Do.
South Hero, town of	Grand Isle	500226	Do.
Stamford, town of	Bennington	500020	Do.
St. Albans, city of	Franklin	500058	Do.
St. George, town of	Chittenden	500320	Do.
Sunderland, town of	Bennington	500021	Do.
Townshend, town of	Windham	500136	Do.
Waitsfield, town of	Washington	500120	Do.
Warren, town of	Washington	500121	Do.
Waterbury, town of	Washington	500123	Do.
Waterbury, village of	Washington	500122	Do.
Westminster, town of	Windham	500139	Do.
Whitingham, town of	Windham	500141	Do.
Williston, town of	Chittenden	500043	Do.
Woodbury, town of	Washington	500314	Do.

Issued: July 20, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-17569 Filed 7-26-90; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 900790-0190]

High Seas Salmon Fishery Off Alaska

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

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes the commercial fishery for chinook salmon throughout the U.S. Exclusive Economic Zone (EEZ) off Southeast Alaska and closes the "Outer Fairweather Grounds" for all commercial salmon fishing. This action is necessary to conserve chinook salmon stocks. The intent of this action is to ensure that the harvest of chinook

salmon does not exceed the limit imposed by the Pacific Salmon Treaty. This action complements similar closures of the commercial troll fishery in waters managed by the State of Alaska.

DATES: This notice is effective from 11:59 p.m. Alaska daylight time (ADT), July 22, 1990, until 12 midnight, September 20, 1990. Public comments are invited until August 21, 1990.

ADDRESSES: Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1688. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection during the hours of 8 a.m. to 4:30 p.m. (ADT) Monday through Friday at the NMFS Regional Office, room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS) 907–586–7229.

SUPPLEMENTARY INFORMATION: The Pacific Salmon Treaty (Treaty) and the Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude (FMP) govern the salmon fisheries in the EEZ off the coast of Alaska. The FMP was developed and amended by the North Pacific Fishery Management Council. Regulations implementing the FMP (50 CFR part 674) were issued under section 7(a) of Public Law 99–5, the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 *et seq.*), and under section 305 0f the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

Closure of the Chinook Fishery

The Secretary issued a final rule, effective July 1, 1990, announcing the 1990 time and area limitations for the harvest of chinook and other species of salmon for the commercial troll fishery in the EEZ off Southeast Alaska (55 FR 29216; July 18, 1990). That rule provided for the closure of the chinook salmon troll fishery when from 206,900 to 216,900 chinook salmon were harvested and explains how these numbers were derived.

The Alaska Department of Fish and Game (ADF&G) estimates that the summer commercial troll fishery has harvested 117,000 chinook salmon as of July 10, and will have harvested between 206,000 and 217,000 chinook salmon, its harvest limit, by midnight July 22, 1990. The harvest rate of the fleet has been about 15,000 chinook salmon per day, and the ADF&G expects it to decrease to about 10,000 chinook salmon per day by the time the harvest limit is reached. The Secretary, therefore, closes the commercial troll fishery for chinook salmon in the EEZ off Southeast Alaska at 11:59 p.m. July 22, 1990.

Closure of the Outer Fairweather Grounds

A provision of the Pacific Salmon Treaty requires that each party to the treaty "minimize the effects of * * * associated fishing mortalities * * * of chinook salmon" (Annex 4, chapter 3, paragraph 1(f)). To achieve this requirement, the ADF&G and the Secretary are closing commercial fishing for all salmon species in certain areas known to have high numbers of chinook salmon. This action is expected to minimize the incidence of chinook salmon hook-and-release mortality. These areas are known to have a high chinook salmon concentration; if left open, a large number of chinook will be caught and released with a substantial mortality resulting.

The area of the EEZ being closed to all commercial salmon fishing, known as the Outer Fairweather Grounds, is bounded by lines connecting the following points:

Lat. 58°46.7′ N., Long. 138°54.5′ W.
Lat. 58°24.5′ N., Long. 139°48.8′ W.
Lat. 57°50.0′ N., Long. 138°19.5′ W.
Lat. 58°15.9′ N., Long. 137°21.5′ W.

The following Loran C lines are provided at the request of fishermen as estimates of the boundary lines of the area being closed. The closed area is roughly bounded on the northwest by Loran C line 7960–Y–29800, on the seaward side by Loran C line 7960–X–14400, and on the southeast by Loran C line 7960–Y–29150, and on the shoreward side by Loran C line 7960–X–14660. The providing of Loran C lines does not affect the legal boundaries of the area being closed and fishermen are cautioned to use the latitude and longitude lines and other navigational aids to assure that they are not conducting illegal fishing in this area. Fishermen should refer to NOAA chart 16760.

This action is authorized by 50 CFR 674.23 which provides that the Secretary may modify the fishing periods and areas by publishing a notice in the **Federal Register.** Any modification will be based on a determination by the Director of the Alaska Region of NMFS (Regional Director) that the condition of a salmon species is substantially different from the condition anticipated in the FMP and that this difference requires a modification of the fishing times and areas to conserve adequately that salmon species. The regulations specify the factors the Regional Director may consider. The regulations also specify that the Secretary must consult with the Alaska Department of Fish and Game before any time or area modifications.

In conformity with these requirements, the Regional Director (acting on behalf of the Secretary) has consulted with the ADF&G, has reviewed the information on the 1990 salmon fishery to date, and has determined that the chinook stocks in 1990 are substantially different from the condition anticipated in the FMP; some wild stocks are rebuilding under provisions of the Pacific Salmon Treaty and Alaska's new hatchery stocks are increasing their contribution to the harvest. The Regional Director has determined further that this difference in stock condition requires, in conjunction with area closures made by the ADF&G, the closure of the Outer Fairweather Grounds to all commercial salmon fishing as of 11:59 p.m. ADT on July 22, 1990.

Possibility of Reopening the Troll Chinook Fishery

After the fishery closure, the actual troll harvest of chinook salmon will be tabulated and the number of chinook salmon taken from supplemental stocks resulting from Alaska's recent enhancement activities will be determined. If the total chinook harvest by the troll fishery is considerably less than the harvest guideline, then the troll fishery will be reopened to allow harvest of the remainder of its guideline number before the troll season closes on September 20.

Classification

This action is exempt from sections 4 through 8 of the Administrative Procedure Act, the Regulatory Flexibility Act, and Executive Order 12291 because, as is expressly provided in section 7(a) of Public Law 99–5, it involves a foreign affairs function. It contains no collection-of-information requirement for purposes of the Paperwork Reduction Act.

Section 674.23(b)(3) requires the Secretary to accept and consider public comments for 30 days after the effective date of this notice. The aggregated data upon which this closure was based are available for public inspection at the above address. If comments are received, the Secretary will reconsider the necessity for this action and will publish another notice in the **Federal**

Register either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

List of Subjects in 50 CFR Part 674

Administrative practice and procedure, Fish, Fisheries, Fishing, International organizations.

Authority: 16 U.S.C. 3631 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: July 23, 1990.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-17504 Filed 7-23-90; 3:46 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 145
Friday, July 27, 1990

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

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 621 and 655

RIN 1205-AA84

Wage and Hour Division

29 CFR Part 504

RIN 1215-AA55

Attestations by Facilities Temporarily Employing Nonimmigrant Aliens as Registered Nurses

AGENCIES: Employment and Training Administration and Employment Standards Administration, Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Department of Labor (DOL or Department) is extending through August 6, 1990, the comment period on the proposed regulations, published at 55 FR 27992 (July 6, 1990), governing the filing and enforcement of attestations by facilities seeking to employ aliens as registered nurses on a temporary basis under H-1A visas.

The attestations, required under the Immigration and Nationality Act, as amended by the Immigration Nursing Relief Act of 1989 (INRA), pertain to substantial disruption in the delivery of health care services, absence of adverse effect on wages and working conditions of similarly employed registered nurses, payment to aliens at wage rates paid to other registered nurses similarly employed by the facility, taking timely and significant steps designed to recruit and retain U.S. nurses in order to reduce dependence on nonimmigrant nurses, absence of a strike or lockout, and givng appropriate notice of filing. Facilities are required to submit these attestations to DOL as a condition for being able to petition the Immigration and Naturalization Service (INS) for H-1A nurses.

Various commenters, including the American Nursing Association and the Chairman, Committee on Education and Labor, U.S. House of Representatives, have asked that the comment period be extended. The statute has required a final rule to be first published by August 1, 1990. Public Law 101-238, section 3(c)(1), 103 Stat. 2099, 2103 (December 18, 1989). However, in response to these requests for an extension, and to afford commenters a fuller period to develop and submit their comments, DOL has determined to extend the comment period through August 6, 1990. This should provide sufficient time for preparation and consideration of comments and publication of an interim final rule prior to the beginning of the H-1A program on September 1, 1990. DOL request comments on the interim final rule.

DATES: Written comments on the proposed rule published at 55 FR 27992 (July 6, 1990) are invited from interested parties. The comment period on that proposed rule is extended through August 6, 1990. Comments received after that date will be placed in the administrative file on the interim final rule in this rulemaking.

ADDRESSES: Send comments on 20 CFR parts 621 and 655, subpart D, and 29 CFR part 504, subpart D, 55 FR 27992 (July 6, 1990), to the Assistant Secretary for Employment and Training, Department of Labor, Room N-4456, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Director, U.S. Employment Service.

Send comments on 20 CFR part 655, subpart E, and 29 CFR part 504, subpart E, 55 FR 27992, (July 6, 1990) to the Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210.

Written comments on the collection of information requirements also should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: On 20 CFR parts 621 and 655, subpart D, and 29 CFR part 504, subpart D, 55 FR 27992 (July 6, 1990), contact Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N-4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202-535-0163 (this is not a toll-free number).

On 20 CFR part 655, subpart E, and 29 CFR part 504, subpart E, 55 FR 27992 (July 6, 1990), contact Mr. Solomon Sugarman, Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202-523-7605 (this is not a toll-free number).

Signed at Washington, DC, this 24th day of July 1990.

Robert T. Jones,
Assistant Secretary for Employment and Training.

William C. Brooks,
Assistant Secretary for Employment Standards.

Elizabeth Dole
Secretary of Labor.

[FR Doc. 90-17654 Filed 7-27-90; 8:45 am]

BILLING CODE 4510-30; 4510-27-M

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-760-B]

RIN 1218-AB27

Accreditation of Training Programs for Hazardous Waste Operations

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of informal public hearing; reopening of written comment period.

SUMMARY: This notice schedules informal public hearings concerning the notice of proposed rulemaking which OSHA issued on January 26, 1990 (55 FR 2776) on accreditation of training programs for hazardous waste operations for general industry. This notice also reopens the comment period for written responses to the proposed rule. There is no need to resubmit comments already submitted to the OSHA docket on this proposal.

DATES: The informal public hearings are scheduled for October 2, 1990 through October 5, 1990 in Washington, DC and for October 10, 1990 through October 11, 1990 in Cincinnati, Ohio (Covington, Kentucky). The hearings will begin at 9:30 a.m. on the first day in each city and at 9 a.m. on any succeeding day. A tentative schedule of appearances will be prepared and distributed to parties who have submitted notices of intention to appear so parties will know when issues which concern them are likely to be raised at the hearing.

Notices of intention to appear at the informal public hearing must be postmarked by September 10, 1990. Testimony and all evidence which will be offered into the hearing record must be postmarked by September 21, 1990. Written comments on the proposed rule must be postmarked by September 21, 1990.

ADDRESSES: Four copies of the notice of intention to appear, testimony, and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Ave., NW., Washington, DC 20210, (202) 523-8615.

Written comments on the proposed standard should be sent, in quadruplicate, to the Docket Officer, Docket No. S-760-B, U.S. Department of Labor, Room N-2625, 200 Constitution Ave., NW., Washington, DC 20210.

The location of the informal public hearing to be held in Washington, DC is the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. The location of the informal public hearing to be held in Cincinnati, Ohio (Covington, Kentucky) is (Holiday Inn Riverfront, 600 West Third Street, Covington, Kentucky).

FOR FURTHER INFORMATION CONTACT: *Hearing:* Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Ave., NW., Washington, DC 20210, (202) 523-8615. For additional information on how to submit notices of intention to appear, see the section on public participation, below.

Proposal and hearing issues: Mr. James Foster, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Ave., NW., Washington, DC 20210. (202) 523-8151.

SUPPLEMENTARY INFORMATION: On January 26, 1990, at 55 FR 2776, OSHA published a Notice of Proposed Rulemaking (NPRM) which proposed an accreditation procedure for training programs required in OSHA's regulations for hazardous waste site operations. These proposed accreditation procedures were mandated by Congress when section 126 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499, 29 U.S.C. 655 note) was amended in December 1987. That amendment required OSHA to develop specific procedures for the accreditation of hazardous waste operation training programs that are no less comprehensive than those procedures adopted by the U.S. Environmental Protection Agency under Title II of the Toxic Substance Control Act (TSCA) (15 U.S.C. 2646). Title II of TSCA is also known as the Asbestos Hazardous Emergency Response Act of 1986 (AHERA).

The NPRM established a public comment period which ended April 27, 1990 during which the public was afforded the opportunity to comment on OSHA's proposed rule and/or request an informal public hearing. OSHA has received a number of requests for public hearings to be held on the proposal. Several of these requested that a hearing be held in the vicinity of Cincinnati, Ohio (Covington, Kentucky). The agency has determined that those comments and hearing requests raise issues and concerns which should be addressed through a public hearing. Therefore, pursuant to section 6(b)(3) of the OSH Act, OSHA has scheduled informal public hearings to begin October 2, 1990 in Washington, DC.

In addition, OSHA has decided to reopen the written comment period for this rulemaking. This will enable interested persons to submit additional information and suggestions regarding the NPRM, the issues raised in this hearing notice and the materials and comments which are already part of the rulemaking record, even if they do not participate in the informal hearing.

There is no need to resubmit comments which have already been submitted to the OSHA docket on this proposed rule.

I. Issues

Through this hearing, the Agency expects to obtain testimony and other information pertinent to all the issues relevant to the notice of proposed rulemaking. Many issues are raised in the notice of proposed rulemaking (55 FR 2776; January 26, 1990). Some of those issues include the criteria for certification, the procedures for certification, and methods to prevent a backlog from developing. See the notice of proposed rulemaking for a discussion of those and other issues. Several issues in addition to those were emphasized in the comments and requests for a hearing. (The comments and notices of intention to appear are available for inspection at the Docket Office and review of those will indicate all issues raised by the public.) Some of those are the following.

Emergency Response Training

OSHA did not propose to accredit training programs for emergency responders covered by paragraph (q) of 29 CFR 1910.120. Several commenters addressed this issue during the comment period provided in the proposal. There is both support for accreditation of emergency response training programs and support for not accrediting emergency response training programs. Several comments suggest that OSHA is required to provide accreditation of emergency response training. This issue will be discussed during the hearings and interested parties are invited to submit any data, views, or arguments that OSHA could use in making its final determination on accreditation of emergency response training. In particular, information on the cost and benefits for accreditation of emergency response training is requested.

Submission of Copyrighted Material

OSHA proposed that applicants for training accreditation submit copies of all audio-visual aids that will be used as part of a training program. Several commenters have suggested that they would be violating copyright protection laws if they were to submit copies of the audio-visual aids they have purchased for use in their programs. It is not clear to OSHA how its review of copyrighted materials for regulatory purposes would violate the copyright laws. However, comment on the most appropriate manner in which audio-visual aids can be reviewed for acceptance is requested.

Cost of the Proposal

Several commenters have suggested that OSHA's estimated costs for submittal of applications are low. This is particularly true, it is argued, if additional copies of coyrighted material have to be purchased for submittal to the Agency to gain accreditation. Comments are requested on the costs involved to submit applications, as well as any other costs associated with the procedure.

II. Public Participation—Notice of Hearing

Pursuant to section 6(b)(3) of the Act, an opportunity to present oral testimony concerning the issues raised by the proposed standard, will be provided at informal public hearings scheduled to begin at 9:30 a.m. at the places and on the dates as follows:

Washington, DC—October 2, 3, 4, and 5, 1990. The Auditorium Frances Perkins Department of Labor Building, 200 Constitution Ave., NW., Washington, DC 20210.

Cincinnati, Ohio (Covington, Kentucky)—October 10, and 11, 1990. Holiday Inn, Riverfront, 600 West Third Street, Covington, Kentucky 41011. Telephone: 606-291-4300.

If there is less extensive testimony, the hearings in each city may terminate earlier than the last date specified. If there is more extensive testimony, the hearings may be extended.

III. Notice of Intention To Appear

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear, postmarked on or before September 10, 1990, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. S-760-B, Room N-3647, U.S. Department of Labor, 200 Constitution Ave., Washington, DC 20210; telephone (202) 523-8615. A notice of intention to appear also may be transmitted by facsimile to (202) 523-5046 or (for FTS) to 8-523-5046, by the same date, provided the original and four copies of the notice are sent to the above address within 2 days thereafter.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, Room N-2625, telephone (202) 523-7894, must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time requested for the presentation;
4. The specific issues that will be addressed;
5. A statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

IV. Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of the testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. This material must be postmarked by September 21, 1990. That material will be available for inspection and copying at the Techncial Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. If the amount of material to be presented does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of the fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearings are open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper notices of intention to appear at the hearing will be entitled to ask questions and otherwise participate fully in the proceeding.

V. Conduct and Nature of the Hearings

The hearings will commence at 9:30 a.m. on the first day in each city. At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the OSH Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, the proceeding is informal and legislative in type. The Agency's intent, in essence, is to provide interested persons with an opportunity to make effective oral presentations which can proceed expeditiously, in the absence of procedural restraints which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding, rather than an adjudicative one. The technical rules of evidence, for example do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentations to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable, stated time (known as the post hearing comment period) to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

VI. Written Comments

Interested persons are invited to submit written comments on the proposed rule, the issues raised in this hearing notice and on materials which are already part of the record for this rulemaking. Written comments must be postmarked by September 25, 1990, and submitted, in quadruplicate, to the Docket Office, Docket S-760-B, Room N-2625, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. The telephone number of the Docket Office is (202) 523-7894, and its hours of operation are 8:15 a.m. to 4:45 p.m. (EST), Monday through Friday except Federal holidays. Comments limited to 10 pages or less in length may also be transmitted by facsimile by September 21, 1990, to (202) 523-5046 or (for FTS) 8-523-5046, provided the original and four copies of the comment are sent to the Docket Officer within 2 days thereafter. Written submissions must clearly identify the provisions of

the proposal which are addressed and the position taken on each issue.

All materials submitted will be available for inspection and copying at this address. All timely submissions will be part of the record of the proceeding.

VII. Certification of Record and Final Determination After Hearing

Following the close of the post hearing comment period, the presiding Administrative Law judge will certify the record of the hearing to the assistant Secretary of Labor for Occupational Safety and Health.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Authority

This document was prepared under the direction Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington DC, on this 23rd day of July, 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90–17500 Filed 7–26–90; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5–90–043]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the International Federation of Professional and Technical Engineers, Local No. 10, the Coast Guard is considering changing the regulations that govern the operation of the Jordan Bridge across the Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, mile 2.8, in Chesapeake, Virginia, by further restricting bridge openings during the morning and evening rush hours. The proposed changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

DATES: Comments must be received on or before September 10, 1990.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004. The comments and other materials referenced in this notice will be available for inspection and copying at the above address, Room 507, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments, or data. Persons submitting comments or data should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended changes to the proposal. The Commander, Fifth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulation may be changed based on comments and data received.

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer, and Capt. M. K. Cain, project attorney.

Discussion of Proposed Regulations

The International Federation of Professional and Technical Engineers, Local No. 10, has requested that all openings of the Jordan Bridge across the Atlantic Intracoastal Waterway, Elizabeth River, Southern Branch, mile 2.8, in Chesapeake, Virginia, be eliminated during peak highway traffic hours to help reduce traffic congestion, but remain open on signal during the rest of the time. The request from the IFPTE No. 10 is to restrict bridge openings to all vessels, Monday through Friday, except Federal holidays, from 6:45 a.m. to 7:20 a.m. and from 3:30 p.m. to 4:30 p.m. Currently, the Jordan Bridge is closed to pleasure craft traffic from 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 4:30 p.m., Monday through Friday, except Federal holidays. This schedule has not been successful in reducing traffic congestion during the morning and evening rush hours due to bridge lifts since commercial traffic is allowed to request openings at any time. The hours of the day being studied are 6 a.m. to 9 a.m. and 3 p.m. to 6 p.m., since these hours appear to be the standard rush hour pattern for this area. The drawlogs for the Jordan Bridge were studied for the period from April 1989 through September 1989, Monday through Friday, except Federal holidays, from 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m. Between the hours of 6 a.m. to 9 a.m., the bridge opened on a monthly average of 105 times and from 3 p.m. to 6 p.m., it opened on a monthly average of 115 times during the six-month study period. The vehicular traffic counts were also studied during the same months, Monday through Friday, except Federal holidays, and the monthly average came to 181,423 vehicles per month. Broken down daily, the vehicle count averaged out to 9,071 per day.

As revealed in the drawlogs, the Jordan Bridge experiences excessive openings during peak rush hours. According to the City of Chesapeake, owners of the bridge, it takes approximately 1 hour in the morning and 1½ hours in the afternoon after a bridge lift for the traffic to regain a normal flow across the bridge. Also, during a bridge opening, traffic is backed up for a mile during the peak traffic hours. The City of Chesapeake's bridge office at the Jordan Bridge has confirmed that peak rush hours occur from 6:30 a.m. to 7:30 a.m. and 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays; therefore, the Coast Guard is proposing to restrict all draw openings during this time. The proposed change would close the draw to commercial, recreational, tour boats and public vessels, and extend the existing restrictions on afternoon rush hour openings by ½ hour. A provision that allows the draw to open on signal at all times for vessels in distress is being made a part of this proposal.

The request for a change to the regulations is based on increasing area highway congestion and lengthy delays across bridges caused by random, non-scheduled drawbridge openings for the commercial maritime industry of the Hampton Roads area and area growth which is resulting in more motorists on the highways. The area's bridges, and bridge-tunnel complexes are experiencing increasing congestion which can be partially remedied by restricting bridge openings during peak traffic hours to help keep the main highway arteries free flowing. The

Jordan Bridge is a vital link between the cities of Portsmouth and Chesapeake used widely by motorists that work at the Norfork Naval Shipyard, other Federal agencies located within the shipyard as well as within Portsmouth, and other industries and businesses in Portsmouth and Chesapeake. It appears that the need to extend bridge opening restrictions during peak rush hours far exceeds the need to maintain the Jordan Bridge at its present regulated schedule. The maritime industry will be given the opportunity, along with other navigational interests, to comment as to whether this proposed restriction is practical and feasible from their viewpoint. The Coast Guard believes these proposed restrictions will not unduly restrict vessel passage through the bridge, as vessel operators and the marine industry can plan transits around the proposed schedule.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of the proposed regulation on commercial navigation or on any industries that depend on waterborne transportation should be minimal. Because the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33 Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05.1(g).

2. Section 117.997(a) is revised to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

(a) The draw of the Jordan (S337) bridge, mile 2.8, at Chesapeake shall open on signal, except that:

(1) From 6:30 a.m. to 7:30 a.m. and from 3:30 p.m. to 5 p.m., Monday through Friday, except Federal holidays, the draw will remain closed to all vessel traffic.

(2) The draw shall open on signal at all times for vessels in distress.

* * * * *

Dated: July 6, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 90-17531 Filed 7-23-90; 3:46 pm]

BILLING CODE 4910-14-M

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-100; Notice 2]

RIN AB-49

Gas Detection and Monitoring in Compressor Station Buildings

AGENCY: Office of Pipeline Safety (OPS), RSPA, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to require that gas compressor buildings with 50 percent or more of wall area enclosed be equipped with gas detection and alarm systems. The history of reported incidents at compressor stations indicates a potential for leaking gas to accumulate undetected inside certain compressor buildings. Gas detection and alarm systems are needed to warn personnel of the presence of any hazardous accumulation of gas in these buildings.

DATES: Interested parties are invited to submit comments by September 25, 1990. Late filed comments will be considered so far as is practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 366-2392.

SUPPLEMENTARY INFORMATION:

Background

In 1982 a compressor engine in a compressor station operated by the Truckline Gas Company in Bonicord, Tennessee began leaking natural gas. The gas accumulated and exploded in the building that housed the compressor. Three workers in the building were killed, two others were injured, and the building was severely damaged.

The National Transporation Safety Board (NTSB) investigated the accident. In its report of the investigation, issued July 14, 1983, NTSB concluded that the building's adjustable vent louvers had been set in a position that caused leaking gas to accumulate in the building. NTSB also found that the building was not equipped with a gas detection and alarm system, although one had been scheduled for installation.

NTSB made the following Safety Recommendation to RSPA:

> Amend 49 CFR 192.173, regarding compressor station building ventilation systems equipped with restrictive devices, to require the installation of gas detection equipment that will alert employees to hazardous gas accumulations and automatically open fully all restrictive devices when accumulations of gas are detected. (Class II, Priority Action) (P-83-20)

To help determine the need for Federal regulations governing gas detectors, alarms, and automatically-controlled vents in compressor buildings, OPS examined operators' reports of incidents related to gas leakage inside compressor buildings. Of those that involved fires or explosions and personal injuries, none other than the Bonicord accident and the recurrence of reported incidents involving compressor buildings indicate a significant potential for harm that could be lessened by rulemaking action.

Next OPS published an Advance Notice of Proposed Rulemaking (ANPRM) (53 FR 10906; April 4, 1988) on

ways, including NTSB's recommendation, to reduce the potential for injury to personnel caused by gas leakage inside compressor buildings. The ANPRM, which posed five regulatory alternatives and a series of questions, drew responses from 32 operators, 3 trade associations, and a State agency.

Responses to Questions

The questions in the ANPRM addressed the prevalence and cost of gas detection systems in compressor buildings and other matters concerning the proposed alternatives. The responses to many of the questions were remarkably similar.

Twenty-eight of the 32 operators responding said they have equipped some, but not all, of their compressor buildings with gas detection systems. In some cases, only compressor buildings installed or modified after a particular date have gas detection systems. Other operators install gas detection systems only in unattended, automated stations, in fully enclosed buildings, or in stations having compressors larger than a threshold size (e.g., 1000 hp). Only one operator stated that it does not install gas detection systems in any compressor buildings; that operator has attended stations handling odorized gas. Virtually all the operators who reported they install gas detection systems link them to alarms that actuate in the range of 15 to 30 percent of the lower explosive limit (LEL) of natural gas and then to emergency shutdown devices that actuate at 50 to 75 percent of LEL.

One question sought to determine the extent to which vents in compressor buildings have adjustable louvers that are controlled automatically by gas detection systems. Commenters reported that most enclosed buildings have louvered vents that are either fixed or left set in a fixed position, being moved only when tested operationally. In buildings with ventilation systems that operate automatically, vents in some systems are designed to open when gas is detected, while others close on fire detection. Whether they fail safe depends on the type of vent system and the type of fire suppression or protection system that is installed. The comments indicate, however, that it is not common practice to use gas detection systems to automatically control vent louvers.

OPS also sought information about the cost of installing both gas detection and alarm systems and automatic ventilation systems. A number of commenters provided estimates of costs for equipping single buildings or single stations. Those estimates ranged from $3,000 per detection point to $90,000 per station. Unfortunately, it was not clear whether these estimates included only the gas detection and alarm systems or those systems plus the emergency-shutdown-system interface and other equipment that the operators use.

The American Gas Association (AGA) and the Interstate Natural Gas Association of America (INGAA) each estimated the cost of providing gas detection and alarm systems in compressor buildings throughout the gas inndustry. AGA estimated that 80 percent of compressor buildings are equipped with gas detection and alarm systems. It estimated further that installation of gas detection and alarm systems in the remaining 20 percent would cost in the range of $6 to 12 million. INGAA stated that half the companies that responded to its inquiry install gas detection and alarm systems "in all buildings housing compressor units, except for semi-enclosed buildings (enclosed wall area less than 50 percent of the total wall area)." INGAA's remaining respondents limit the use of these systems to unattended and remotely controlled compressor stations. INGAA's estimate of the cost of installing gas detection and alarm systems in compressor buildings without them was at least $6.8 million.

Comments on Alternatives

Alternative 1: Require operators to equip new and existing compressor buildings handling unodorized gas with continuously operating gas monitoring systems that will activate an alarm whenever a gas-in-air mixture above an established threshold is detected. The alarm would be capable of warning personnel of the presence of a potentially hazardous accumulation of gas prior to their entering the building.

More than 75 percent of the commenters supported requiring the installation of gas detection and alarm systems in compressor buildings to protect persons and property. In addition, about 90 percent of these respondents thought that an exception should not be provided for compressor buildings handling odorized gas, because of the need to warn persons of a hazardous accumulation of gas before they enter the building.

Alternative 2. Require operators to equip new and existing compressor buildings handling unodorized gas with restrictive ventilation devices that open automatically upon detection of a hazardous gas accumulation and fail safe.

This alternative would require installation of gas detection systems that trigger automatic opening of vent louvers upon detectioin of a hazardous accumulation of gas. The comments indicated that this type of vent system is not a common practice. This approach would make it difficult, if not impossible, to install certain highly effective fire suppression systems (e.g., Halon, CO_2) since these systems operate best in enclosed environments. In addition, some commenters doubted ventilation would fully remove the gas released by a large leak in time to prevent an explosive mixture.

Alternative 3. Revise § 192.605, "Essentials of operating and maintenance plan," to include specific procedures for checking gas before entering such buildings.

The comments indicate that operators generally do not require personnel to check the atmosphere inside a compressor building before entering it. Several operators with fixed detection systems installed in buildings commented that portable hand-held gas detectors would not be as accurate in predicting gas accumulations as are the permanently installed systems.

Alternative 4. Revise § 192.605, "Essentials of operating and maintenance plan," to include requirements to maintain compressor building restrictive ventilation devices.

The comments indicate that operators generally perform periodic inspections and maintenance on ventilation systems that contain moving parts, but that fixed ridge vents and similar systems are generally not the subject of inspection and maintenance procedures. In addition, in most cases movable-vent systems are inspected or tested as an adjunct to the testing of gas detection or emergency shutdown systems, or they are observed routinely during normal station operations. Maintenance is performed on most of these systems as an as-needed basis.

Alternative 5. Do not revise the regulations.

Several operators, although a minority, advocated no further regulation. They believed OPS's justification of the need for a generally applicable regulation was insufficient. They also said each location should be evaluated separately and that a regulation would limit the operator's options.

Discussion

The Bonicord and other reported incidents show the potential for compressor station personnel to be harmed by hazardous accumulations of natural gas in enclosed compressor buildings. This potential may exist even in the presence of properly designed and functioning ventilation systems, including those that operate automatically upon detection of gas. Building ventilation can expel certain

amounts of gas before a hazard develops, usually small leaks. The comments indicate, however, that ventilation systems currently in use may allow hazardous accumulations of gas from large leaks. Also, in the event of a malfunction, exclusive reliance on automatic ventilation could leave personnel unprotected. Thus, some protection besides ventilation seems needed to minimize the threat to personnel.

Extra protection is needed whether a building handles odorized or unodorized gas. As stated above, most of the commenters were against any exception based on odorized gas.

OPS agrees with the large majority of commenters that gas detection and alarm systems provide the most effective means to reduce the potential for harm from gas leakage inside compressor buildings. The use of portable gas detectors or improved vent maintenance would not be as effective. Portable detectors may not be as accurate as fixed sensors, and they would be impractical to use routinely everywhere leaking gas could reasonably be expected to accumulate inside a building. The commenters indicate that vents that need maintenance are receiving it, and vent malfunctions are not a wide problem. Since gas may accumulate even when vents operate smoothly, little if any payoff could be expected from stricter vent maintenance requirements.

NTSB recommended that RSPA require compressor buildings with adjustable or movable vent louvers to be equipped with an automatic vent opening device in addition to a gas detection and alarm system. OPS expressed its reservation about this aspect of NTSB's recommendation in the ANPRM, and commenters supported OPS's view. Although such devices may be beneficial in some cases, fully open, rapid ventilation could hinder the use of the most efficient or effective fire suppression systems in compressor buildings. Thus, OPS is not proposing the installation of automatic vent opening devices as a generally applicable safety requirement.

Finally, OPS does not agree with those commenters who thought rulemaking is unnecessary. Although prudent operators already include gas detection and alarm systems in new compressor buildings and retrofit old buidlings, this practice is not universal. Also, in view of this wide practice, OPS is not persuaded that a Federal requirement to install gas detection and alarm systems would hamper design flexibility. As to the alleged need to make installation decisions on a case-by-case basis, OPS believes that variation in risk among buildings depends on the amount of enclosure. Excluding semi-enclosed buildings from the proposed requirement, as set forth below, should make case-by-case decisions unnecessary.

Proposal

OPS proposes to establish a new pipeline safety rule, § 192.736, "Compressor stations: Gas detection." This rule would require each compressor building with 50 percent or more of enclosed wall area to be equipped with a gas detection and alarm system to warn persons entering or in the building of any hazardous accumulation of gas inside the building.

The proposed rule would also require that the systems be maintained and that maintenance include testing. OPS solicits comments on whether the final rule should specify the minimum frequency of testing. If so, what would be an appropriate interval between tests? In the absence of a specified test interval, testing frequency would be under each operator's discretion. However, if new rules concerning pipeline operation and maintenance (O&M) manuals are adopted as proposed (Docket PS–113; 54 FR 46685; November 6, 1989), operators would have to include system maintenance procedures and test intervals in their O&M manuals. Inspection and maintenance procedures are subject to review for adequacy by OPS or State agency enforcement personnel (49 App. U.S.C. 1680).

OPS is further proposing that operators be allowed 2 years after publication of a final rule to complete their installations. This time would allow for planning and for procuring equipment, electrical contractors, and, where necessary, a power supply.

Impact Assessment

Gas detection and alarm systems were installed in a large majority of compressor buildings when the buildings were constructed. In addition, as was the case at Bonicord, some operators are retrofitting their compressor buildings with such systems. AGA estimated that 80 percent of compressor buildings are now equipped with gas detection and alarm systems, and that retrofitting the remaining 20 percent would cost between $6 and $12 million. INGAA's retrofitting estimate also fell in this range.

OPS believes that given the work already done or planned, this additional expenditure is warranted to minimize the remaining threat to personnel in or near buildings not yet retrofitted. Preventing only one compressor station accident could result in savings equal to the costs of the proposed rule. OPS assumes the cost of requiring new compressor buildings to include gas detection and alarm systems would be minimal since industry practice is to install these systems in new buildings.

Therefore, this proposal is considered to be nonmajor under Executive Order 12291 (46 FR 13193; February 19, 1981) and is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Because gas pipeline systems operated by small entities ordinarily do not contain compressor buildings affected by this proposal, I certify under section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that this proposal would not, if adopted as final, have a significant economic impact on a substantial number of small entities.

This action has been analyzed under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987) and found not to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Alarms, Compressors, Gas detectors, Pipeline safety.

In consideration of the foregoing, OPS proposes to amend 49 CFR part 192 as follows:

1. The authority citation for part 192 would continue to read:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.736 would be added to read as follows:

§ 192.736 Compressor stations: Gas detection.

(a) Before (2 years following publication of final rule), each compressor building with 50 percent or more of its wall area enclosed must be continuously monitored for the presence of hazardous accumulations of gas with a fixed gas detection and alarm system. The system must warn persons of hazardous accumulations of gas before they enter and while they are inside the building.

(b) Each gas detection and alarm system required by this section must be maintained to function properly. The maintenance must include performance tests.

Issued in Washington, DC, on July 23, 1990.

George W. Tenley, Jr.,

Director, Office of Pipeline Safety.

[FR Doc. 90–17534 Filed 7–26–90; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Proposal To Determine the Razorback Sucker (Xyrauchen texanus) To Be an Endangered Species; Reopening of Comment Period and Public Hearing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period and public hearing.

SUMMARY: Notice is hereby given that the Fish and Wildlife Service (Service) is reopening the public comment period on the Service's proposal to list the razorback sucker as an endangered species. The comment period is being reopened for 30 days, and a public hearing will be held within this period.

DATES: The original comment period extended from May 22 through July 23, 1990. The comment period is reopened, beginning July 27, 1990, and closing on August 27, 1990. A public hearing is scheduled for August 14, 1990, from 7 p.m. to 9 p.m.

ADDRESSES: The hearing will be held in the conference room at 1235 LaPlata Highway, Farmington, New Mexico. Comments and materials concerning the Service's proposal to list the razorback sucker as an endangered species should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104-5110. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Nancy Chu, Listing Coordinator, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, FTS 776-7398 or Comm. 303/236-7398.

SUPPLEMENTARY INFORMATION:

Background

The Service proposed to list the razorback sucker (*Xyrauchen texanus*) as an endangered species on May 22, 1990 (55 FR 21154). This native fish is found in limited numbers throughout the Colorado River Basin. Evidence of natural recruitment has not been found in the past 30 years, and numbers of adult fish captured in the past 10 years demonstrate a downward trend. Significant changes have occurred in razorback sucker habitat through diversion of water, introduction of nonnative fishes, and construction and operation of dams. Further changes are anticipated as these activities continue. Listing the razorback sucker as endangered would afford this species full protection under the Endangered Species Act.

A request for a public hearing was received from a private citizen in Aztec, New Mexico. A public hearing will be held in Farmington, New Mexico, to provide interested parties an opportunity to make their views known on the proposed rulemaking. While the public comment period is reopened, any member of the public may send in comments, which must be received by August 27, 1990.

As stated in the proposed rulemaking, comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the razorback sucker;

(2) The location of any additional populations of the razorback sucker and reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution and population size of the razorback sucker; and

(4) Current or planned activities in the subject area and their possible impacts on the razorback sucker.

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)

Author

The author of this notice is Nancy Chu, U.S. Fish and Wildlife Service (see **FOR FURTHER INFORMATION CONTACT:**" above).

List of Subjects in 50 CFR Part 17

Endangered and threatened Species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: July 23, 1990.

Robert D. Jacobsen,

Acting Regional Director.

[FR Doc. 90-17573 Filed 7-26-90; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 92

RIN 1018-AB40

Migratory Bird Hunting and Conservation Stamp Licensing Program

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: The Service announces its intent to develop rules governing the licensing of the Federal Migratory Bird Hunting and Conservation Stamp design, commonly referred to as the Federal Duck Stamp, for reproduction on appropriate products manufactured and offered for sale by private enterprises and organizations. The Service also announces its intent to amend the existing nonexclusive Licensed Product Agreement entered into with The Bradford Exchange on March 30, 1990, so as to provide said Licensee with an exclusive license for the use of the Federal Duck Stamp design, for all years, on collectible plates.

DATES: Interested parties are encouraged to submit comments concerning the development of these proposed rules and on the Service's intent to amend its existing non-exclusive Licensed Product Agreement with The Bradford Exchange so as to provide said licensee with an exclusive license to reproduce Federal Duck Stamps on collectible plates.

Comments are due no later than August 27, 1990.

ADDRESSES: Comments should be submitted to: Federal Duck Stamp Program, room 2058, United States Fish and Wildlife Service, Department of the Interior, 1849 C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Opgrand, Chief, Federal Duck Stamp Program at the above address or on: (202) 208-4354.

SUPPLEMENTARY INFORMATION: Pursuant to section 5(c) of the Migratory Bird Hunting and Conservation Stamp Act, 16 U.S.C. 718e(c), the Secretary of the Interior may authorize the reproduction of the Federal Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) under such terms and conditions deemed necessary by regulations or otherwise. The Secretary's authority has been delegated to the Director, United States Fish and Wildlife Service (Service).

The Service has issued guidelines and

application procedures governing the reproduction of the Federal Duck Stamp, under which the Service has the discretion to decline to license reproduction of the Federal Duck Stamp on products that are similar in nature.

To date, however, the Service has not issued an "exclusive" license for a particular product. Because of continuing requests from prospective licensees for exclusive licensees and potential benefits to the Federal Duck Stamp Program, the Service announces its intent to propose regulations governing the licensing procedures in general and specifically addressing the issuance of exclusive licenses.

In addition, notice is hereby given that the Service intends to amend its existing non-exclusive Licensed Product Agreement with The Bradford Exchange on or after August 27, 1990 so as to provide said Licensee with an exclusive license for the use of the Federal Duck Stamp designs, for all years, on collectible plates.

Upon issuance of said amendment until expiration four years hence, unless extended or revoked, no other Licenses will be issued authorizing reproductions of any year's Federal Duck Stamp on Collectible plates. Contingent on the Service's issuance and execution of said amendment, The Bradford Exchange will increase its currently prescribed one half of one percent (½%) royalty on sales up to 100,000 products to one percent (1%), and its three quarters of one percent (¾%) royalty on sales above 100,000 products to one and one half percent (1½%).

Dated: July 13, 1990.

Richard N. Smith,

Director.

[FR Doc. 90-17544 Filed 7-26-90; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 55, No. 145
Friday, July 27, 1990

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90-133]

Availability of Environmental Assessment and Finding of No Significant Impact Relative To Issuance of a Permit to Field Test Genetically Engineered Tobacco Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the University of Kentucky to allow the field testing in Lexington, Kentucky, of tabacco plants genetically engineered to express a metallothionein gene derived from the mouse. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tobacco plants will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Schechtman, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90-071-02. Permit number 90-071-02 is a renewal of permit number 89-065-01, issued May 19, 1989.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set for the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The University of Kentucky, of Lexington, Kentucky, has submitted an application for a permit for release into the environment, to field test tobacco plants genetically engineered to express a metallothionein gene derived from the mouse. The field trial will take place in Lexington, Kentucky.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tobacco plants under the conditions described in the University of Kentucky application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the University of Kentucky, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A metallothionein (MT) gene from the mouse has been modified and inserted into a tobacco chromosome. In this field trial none of the introduced genes can spread to another plant because the test plants will not be allowed to flower. In nature, genetic material contained in a chromosome can only be transferred to another sexually compatible plant by cross-pollination and fertilization.

2. Neither the MT gene itself nor its gene product, confers on tobacco any plant pest characteristics.

3. The MT gene does not provide the transformed tobacco plants with any measurable selective advantage over nontransformed tobacco plants in their ability to be disseminated or to become established in the environment.

4. The vector used to transfer the MT gene to tobacco plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk. The vector, although derived from a DNA sequence with known plant pathogenic potential, has been disarmed; that is, the genes that are necessary for pathogenicity have been removed. The vector has been tested and shown not to be pathogenic to a susceptible plant.

5. The vector agent, the phytopathogenic bacterium that was used to deliver the vector DNA carrying the MT gene into tobacco plant cells, was eliminated and is no longer associated with the transformed tobacco plants.

6. Horizontal movement of genetic material after insertion into the plant genome (i.e., into chromosomal DNA) has not been demonstrated. After delivering and inserting the DNA to be transferred into the tobacco genome, the vector does not survive in or on the transformed plant. No mechanism is known to exist in nature to move an inserted gene horizontally from a chromosome of a transformed plant to any other organism.

7. The field test plot will be less than 0.1 acre in size, and the test plants will be located approximately 50 meters from any other tobacco plants. Measurement of heavy metal uptake by the transgenic plants will not involve administration of any exogenous heavy metals on the test plot.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 23rd day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–17538 Filed 7–26–90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 90–137]

Medfly Cooperative Eradication Program Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings and extension of comment period.

SUMMARY: We are holding public meetings and extending the comment period on the environmental impact statement we are preparing in connection with the Medfly Cooperative Eradication Program. The environmental impact statement will analyze the potential environmental effects of a program to eradicate the Mediterranean fruit fly from the United States mainland. We are seeking input from the public, including government agencies and private industry, concerning issues that should be addressed in the environmental impact statement. The public meetings will promote further public involvement in the development of the environmental impact statement, and extending the comment period on this matter will allow interested members of the public additional time to formulate and submit comments.

DATES: Consideration will be given only to comments on or before November 9, 1990. The public meetings will be held in Mesa, Arizona, on September 11, 1990; Brownsville, Texas, on September 13, 1990; Los Angeles, California, on September 18, 1990; San Jose, California, on September 20, 1990; Miami, Florida, on September 25, 1990; and in Washington, DC, on October 9, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Michael T. Werner, Deputy Director, Environmental Documentation, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 90–108. Comments received may be inspected at USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

The public meetings will be held at the following locations: (1) Datsun Ranch Inn, 1644 S. Dobson, Mesa, Arizona, on September 11, 1990; (2) Robert E. Lee Youth Center, 600 International Boulevard, Brownsville, Texas, on September 13, 1990; (3) Sheridan Plaza La Reina, 6101 W. Century Boulevard, Los Angeles, California, on September 18, 1990; (4) Le Baron Hotel, 1350 N. First Street, San Jose, California, on September 20, 1990; (5) Holiday Inn-Ocean Side, 2201 Collins Avenue, Miami, Florida, on September 25, 1990; and (6) USDA, Jefferson Auditorium, South Building, 14th Street and Independence Avenue SW., Washington, DC, on October 9, 1990.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, 301–436–8565.

SUPPLEMENTARY INFORMATION: The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly (Medfly) has been introduced to the United States mainland intermittently since its initial introduction in 1929; however, eradication programs have prevented it from becoming established. These programs have taken place in California, Florida, and Texas, and have been conducted as cooperative efforts between the United States Department of Agriculture and State departments of agriculture.

The magnitude of these programs and their controversial nature now indicate the need for the Animal and Plant Health Inspection Service (APHIS) to develop, or cooperative in the development of, a programmatic environmental impact statement (EIS) that will analyze potential environmental effects of various alternative Medfly control activities.

On June 22, 1990, we published in the **Federal Register** (55 FR 25681–25682, Docket Number 90–108) a notice advising the public that we intend to prepare an environmental impact statement (EIS) for the Medfly Cooperative Eradication Program. In our notice we also requested comments from the public to assist us in developing the EIS. This information-gathering process, called scoping, includes a solicitation of public involvement in the form of either written or oral comments, and evaluation of these comments. This process helps to determine the scope of the issues to be addressed.

The comment period was scheduled to close August 21, 1990. To give interested persons additional time to prepare and submit comments, we are extending the comment period to November 9, 1990.

Our notice of June 22, 1990, also advised the public that meetings would be held to provide further opportunity for public comment on the EIS, and that the dates and locations of the meetings would be announced in a subsequent **Federal Register** notice. The dates and locations of these meetings are provided under the "DATES" and "ADDRESSES" headings in this document.

Alternatives

We will consider all reasonable and realistic action alternatives recommended in the comments we receive, and during the public meetings. The following alternatives have already been identified for comprehensive analysis in the EIS:

(1) Integrated control,

(2) Chemical control,

(3) Sterile insect technique,

(4) Physical control,

(5) Cultural control, and

(6) No action.

Major Issues

The following are some of the major issues that will be discussed in the EIS:

(1) Program and control alternatives;

(2) Use of aerially applied chemical insecticides;

(3) Potential impacts of the alternatives on the physical environment, the non-target biological environment (especially endangered and

threatened species), and the human environment (especially health and safety);

(4) Potential cumulative impacts; and

(5) Monitoring.

Preparation of the Draft EIS

Following the public meetings and the comment period, we will prepare a draft EIS. A notice announcing that the draft EIS is available for review will then be published in the **Federal Register**. The notice will also request comments concerning the draft EIS.

Done in Washington, DC, this 23rd day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-17537 Filed 7-26-90; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 90-124]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance or termination of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the month of May 1990. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistance, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8674.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the month of May 1990:

Product license code	Date issued	Product	Establishment	Establishment license no.
1181.20	05-22-90	Bovine Rhinotracheitis-Virus Diarrhea Parainfluenza$_3$-Respiratory Syncytial Virus Vaccine, Modified Live Virus.	Beecham, Inc	225
1231.10	05-22-90	Bronchitis Vaccine, Florida Type, Live Virus	Immunogenetics, Inc	196
12P5.40	05-22-90	Bursal Disease-Newcastle Disease-Reovirus Vaccine, Killed Virus, Standard and Variant.	Immunogenetics, Inc	196
17E1.21	05-31-90	Hemorrhagic Enteritis Vaccine, Live Virus	Brinton Laboratories, Inc	343
3606.00	05-11-90	Bovine IgG	American Veterinary Reference Laboratory	347
40A6.20	05-22-90	Bovine Respiratory Syncytial Virus Vaccine-Haemophilus Somnus Bacterin, Modified Live Virus.	Beecham, Inc	225
44A6.20	05-11-90	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$ Vaccine-Pasteurella Haemolytica Bacterin, Killed Virus.	American Home Products Corporation	112
44C5.20	05-22-90	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$ Respiratory Syncytial Virus Vaccine-Haemophilus Somnus Bacterin, Modified Live Virus.	Beecham, Inc	225
5113.00	05-22-90	Pseudorabies Virus gI Antibody Test Kit	IDEXX Corp	313
7054.02	05-29-90	Bordetella Bronchiseptica-Erysipelothrix Rhusiopathie-Pasteurella Multocida Bacterin-Toxoid.	Bio-Vac Laboratories, Inc	307
7060.02	05-29-90	Bordetella Bronchiseptica-Pasteurella Multocida Bacterin-Toxoid	Bio-Vac Laboratories, Inc	307
7910.00	05-11-90	Salmonella Typhimurium Bacterin-Toxoid	IMMVAC, Inc	345
A071.20	05-29-90	Bovine Rhinotracheitis-Parainfluenza$_3$-Respiratory Syncytial Virus Vaccine, Modified Live Virus, For Further Manufacture.	Smithkline Beckman Corporation	189
A175.21	05-29-90	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenze$_3$ Vaccine, Killed Virus, For Further Manufacture.	Smithkline Beckman Corporation	189
A181.20	05-29-90	Bovine Rhinotracheitis-Virus Diarrhea-Parainfluenza$_3$-Respiratory Syncytial Virus Vaccine, Modified Live Virus, For Further Manufacture.	Smithkline Beckman Corporation	189
A341.20	05-29-90	Canine Distemper-Adenovirus Type 2-Measles-Parainfluenza Vaccine, Modified Live Virus, For Further Manufacture.	Smithkline Beckman Corporation	189
A3D1.21	05-29-90	Canine Distemper-Adenovirus Type 2-Parainfluenza-Parvovirus Vaccine, Modified Live Virus, For Further Manufacture.	Smithkline Beckman Corporation	189
A4P5.20	05-29-90	Canine Coronavirus Vaccine, Killed Virus, For Further Manufacture	Smithkline Beckman Corporation	189
A521.20	05-29-90	Equine Rhinopneumonitis Vaccine, Modified Live Virus, For Further Manufacture.	Smithkline Beckman Corporation	189
A6C1.20	05-29-90	Feline Rhinotracheitis-Calici Vaccine, Modified Live Virus, For Further Manufacture.	Smithkline Beckman Corporation	189
A8M1.21	05-29-90	Parvovirus vaccine, Modified Live Virus, For Further Manufacture	Smithkline Beckman Corporation	189
A8M1.22	05-29-90	Parvovirus Vaccine, Modified Live Virus, For Further Manufacture	Smithkline Beckman Corporation	189
A8M5.21	05-29-90	Parvovirus Vaccine, Killed Virus, For Further Manufacture	Smithkline Beckman Corporation	189
A901.22	05-29-90	Rabies Vaccine, Modified Live Virus, High Egg Passage, Flury Strain, For Further Manufacture.	Smithkline Beckman Corporation	189
A931.20	05-29-90	Bovine Rota-Coronavirus Vaccine, Modified Live Virus, For Further Manufacture.	Smithkline Beckman Corporation	189
B100.01	05-29-90	Bordetella Bronchiseptica Bacterin, For Further Manufacture	Smithkline Beckman Corporation	189
B107.00	05-29-90	Bordetella Bronchiseptica-Erysipelothrix Rhusiopathiae-Haemophilus Pleuropneumoniae-Pasteurella Multocida Bacterin, For Further Manufacture.	Smithkline Beckman Corporation	189
B772.00	05-29-90	Moraxella Bovis Bacterin, For Further Manufacture	Smithkline Beckman Corporation	189
C606.00	05-11-90	Bovine IgG, For Further Manufacture	Quad Five	366
D570.20	05-29-90	Bovine Rota-Coronavirus Vaccine-Clostridium Perfringens Type C-Escherichia Coli Bacterin-Toxoid, Killed Virus, For Further Manufacture.	Smithkline Beckman Corporation	189
H601.00	05-21-90	Tetanus Toxoid, Killed Culture	Boehringer Ingelheim Animal Health, Inc	124

The regulations of 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.)* shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license. No U.S. Veterinary Biologics Establishment Licenses were issued during the month of May 1990.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses and U.S. Veterinary Biologics Establishment Licenses. Pursuant to these regulations, on May 9, 1990, APHIS terminated U.S. Veterinary Biologics Establishment License No. 328, issued to Central Biomedia, Inc., and also terminated the following U.S. Veterinary Biological Product licenses that had been issued to this establishment:

Product license code	Product
1015.00	Autogenous Vaccine.
2051.00	Autogenous Bacterin.
2641.00	Erysipelothrix Rhusiopathiae Bacterin.
2781.00	Salmonella Choleraesuis Bacterin.
2784.00	Salmonella Dublin Bacterin.
2821.00	Salmonella Dublin-Typhimurium Bacterin.
2825.00	Salmonella Typhimurium Bacterin.
2825.01	Salmonella Typhimurium Bacterin.
3870.00	Streptococcus Suis Antiserum, Equine Origin.
7800.00	Clostridium Perfringens Type C Bacterin-Toxoid.

Done in Washington, DC, this 23rd day of July 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-17540 Filed 7-26-90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 9007940194]

Current Industrial Reports; Notice of Consideration

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of consideration.

SUMMARY: The Bureau of the Census proposes to make the changes listed below, effective January 1, 1991, to the Current Industrial Reports (CIR) program. The Census Bureau conducts the surveys in the CIR program under authority of title 13, United States Code, sections 41, 61, 81, 131, 182, 224, and 225. This action is made necessary by a proposed reduction to the 1991 Fiscal Year CIR base budget.

DATES: Comments regarding this proposal must be submitted no later than August 27, 1990.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Gaylord Worden on (301) 763-5850.

SUPPLEMENTARY INFORMATION: The Census Bureau, authorized by title 13, United States Code, conducts a series of monthly, quarterly, and annual surveys as part of the CIR program in order to provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. The following changes to the CIR program are necessary to meet the proposed reduction to the 1991 Fiscal Year CIR base budget.

Change Survey Frequency from Monthly to Quarterly

M20A—Flour milling
M20J—Oilseeds, beans, and nuts
M20K—Fats and oils
M22P—Cotton
M28A—Inorganic chemicals
M28B12—Inorganic/phosphates fertilizer
M28C—Industrial gases
M28F—Paint, varnish, lacquer
M31A—Shoes and slippers
M32D—Clay construction products
M37L—Truck trailers

Discontinue Annual Surveys

MA20D—Confectionery
MA24F—Hardwood, softwood, plywood
MA26A—Pulp, paper, and board
MA30A—Rubber
MA32J—Fibrous glass
MA34N—Selected heating equipment

Dated: July 20, 1990.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 90-17510 Filed 7-26-90; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administation

[A-588-816]

Initiation of Antidumping Duty Investigation: Benzyl P-Hydroxybenzoate From Japan

AGENCY: Import Administration, International Trade Administration, Commerce

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce (the Department), we are initiating an antidumping duty investigation to determine whether imports of benzyl p-hydroxybenzoate (benzyl paraben) from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of benzyl paraben are materially injuring, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before August 13, 1990. If that determination is affirmative, we will make a preliminary determination on or before December 6, 1990.

EFFECTIVE DATE: July 27, 1990.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Roy Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2815 or 377-5414.

SUPPLEMENTARY INFORMATION:

The Petition

On June 29, 1990, we received a petition filed in proper form by the ChemDesign Corporation, Fitchburg, Massachusetts. In compliance with the filing requirements of the Department's regulations (19 CFR 353.12), petitioner alleges that imports of benzyl paraben are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

Petitioner has stated that it has standing to file the petition because it is an interested party, as defined under section 771(9)(C) of the Act, and because it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party, as described under paragraphs (C), (D), (E), (F), or (G) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, please file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking

exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in § 353.14 of the Department's regulations.

United States Price

Petitioner bases its estimate of United States price on pricing information received from a U.S. purchaser of benzyl paraben from Japan. Peitioner adjusted the delivered price in the United States for credit costs, other direct selling expenses, indirect, U.S. inland freight, U.S. import duty, handling charges, ocean freight and insurance.

Foreign Market Value

Petitioner's estimate of foreign market value is based on pricing information which is received from sources in Japan. Petitioner adjusted the home market price for credit costs, other direct selling expenses, indirect selling expenses up to the amount of the selling expenses in the United States, and Japanese inland freight.

Petitioner calculated margins of sales at less than fair value for the highest and the lowest home market prices to illustrate the range of possible margins. For purposes of the initiation, the Department has accepted the methodology used by petitioner in calculating margins of sales at less than fair value. Based on a comparison of United States price and foreign market value, petitioner has estimated dumping margins ranging from 50 to 125 percent.

Initiation of Investigation

Pursuant to section 732(c) of the Act, the Department must determine, within 20 days after a petition is filed, whether the petition sets forth allegations necessary for the initiation of an antidumping duty investigation, and whether the petition contains information reasonably available to petitioner supporting the allegations.

We have examined the petition and found that it complies with the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of benzyl paraben from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by December 6, 1990.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedules (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classifed solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

The product covered in this investigation is benzyl p-hydroxybenzoate (benzyl paraben). Benzyl paraben is currently classifiable under HTS item number 2918.29.50 (previously classified under item 404.47 of the Tariff Schedules of the United States).

ITC Notification

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in the Department's files, provided the ITC confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Deputy Assistance Secretary for Investigations, Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 13, 1990, whether there is a reasonable indication that imports of benzyl paraben from Japan are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act.

Dated: July 19, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-17506 Filed 7-26-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

(A-582-802)

Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from Hong Kong

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Hong Kong are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of MMF sweaters from Hong Kong, as described in the "Suspension of Liquidation" section of this notice. The ITC will determine within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, a U.S. industry.

EFFECTIVE DATE: July 27, 1990.

FOR FURTHER INFORMATION CONTACT: Michelle O,Neill or Carole Showers, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1673 or 377-3217, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that MMF sweaters from Hong Kong, except those of Crystal Knitters Ltd. (Crystal) and Laws Knitters Ltd. (Laws), are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of preliminary determination (55 FR 17788, April 27, 1990), the following events have occurred. Counsel for Crystal and Comitex Knitters Ltd. (Comitex) requested that the final determination in this antidumping duty investigation be postponed until July 19, 1990, pursuant to section 735(a)(2) of the Act. On June 21, 1990, we issued a notice postponing our final determination until not later

than July 19, 1990, and announcing the public hearing (55 FR 25352).

On April 26, 1990, counsel for Prosperity Clothing Co., Ltd./Estero Enterprises Ltd. (Prosperity) filed an allegation of clerical error with regard to its and the "all others" preliminary estimated weighted-average dumping margins. On May 9, 1990, we published a notice amending the preliminary margin for Prosperity and the "all others" rate (55 FR 19289).

Verification of the questionnaire responses was conducted in Hong Kong and the United States, as appropriate, during May 1990, except for Prosperity. On May 19, 1990, counsel for Prosperity notified Department officials that the company had refused verification and that they were withdrawing as counsel. No explanation for either action was provided.

A public hearing was held on June 26, 1990. Petitioner, respondents, and other interested parties filed case and rebuttal briefs on June 21, and June 25, 1990, respectively.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS) as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date is being classified solely according to the appropriate HTS item numbers.

The products covered by this investigation include sweaters wholly or in chief weight of man-made fiber. For purposes of this investigation, sweaters of man-made fiber are defined as garments for outerwear that are knit or crocheted, in a variety of forms including jacket, vest, cardigan with button or zipper front, or pullover, usually having ribbing around the neck, bottom and cuffs on the sleeves (if any), encompassing garments of various lengths, wholly or in chief weight of man-made fiber. The term "in chief weight of man-made fiber" includes sweaters where the man-made fiber material predominates by weight over each other single textile material. This excludes sweaters 23 percent or more by weight of wool. It includes men's, women's, boys' or girls' sweaters, as defined above, but does not include sweaters for infants 24 months of age or younger. It includes all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stitches per two linear centimeters horizontally, it includes only those with a knit-on rib at the bottom.

In our preliminary determination, we clarified the scope of this investigation by deleting the phrase "but most typically ending at the waist." This has raised a number of questions. For further clarification, a product or garment will not be considered a sweater nor included in the scope of this investigation if it extends to mid-calf or below and is lined.

This merchandise is currently classifiable under HTS item numbers 6110.30.30.10, 6110.30.30.15, 6110.30.30.20, 6110.30.30.25, 6103.23.00.70, 6103.29.10.40, 6103.29.20.62, 6104.23.00.40, 6104.29.10.60, 6104.29.20.60, 6110.30.10.10, 6110.30.10.20, 6110.30.20.10 and 6110.30.20.20. This merchandise may also enter under HTS item numbers 6110.30.30.50 and 6110.30.30.55. Specifically excluded from the scope of this investigation are sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Hong Kong. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Period of Investigation

The period of investigation (POI) is April 1, 1989, through September 30, 1989.

Such or Similar Comparisons

For all respondent companies, in accordance with section 771(16) of the Act, we established one such or similar category of merchandise, consisting of all MMF sweaters.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of best information available is appropriate for Prosperity. Section 776(c) requires the Department to use the best information available "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required * * * or otherwise significantly impedes an investigation * * *." Given Prosperity's refusal to allow its response to be verified, this section of the Act applies.

In deciding what to use as best information available, § 353.37(b) of the Department's regulations (19 CFR 353.37(b)) (1990) provides that the Department may take into account whether a party refuses to provide requested information. Thus, the Department determines on a case-by-case basis what is the best information available. For purposes of this final determination, given Prosperity's refusal to allow its information to be verified, as best information available, we assigned it the highest margin in the petition, *i.e.*, 115.15 percent.

Fair Value Comparisons

To determine whether sales of MMF sweaters from Hong Kong to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Crystal and Laws, we based United States price on purchase price, in accordance with section 772(b) of the Act, because all sales were made directly to unrelated parties prior to importation into the United States. For Comitex, we based United States price on both purchase price and exporter's sales price (ESP), in accordance with section 772 (b) and (c) of the Act. ESP was used where the merchandise was not sold to unrelated purchasers until after importation into the United States.

A. Comitex

We calculated purchase price based on packed, f.o.b. Hong Kong port or customer's warehouse prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, foreign inland freight, containerization expenses, ocean freight, marine insurance, U.S. duty and fees, U.S. inland freight, and U.S. brokerage and handling expenses, in accordance with section 772(d)(2) of the Act.

Where United States price was based on ESP, we calculated ESP based on packed, f.o.b. U.S. warehouse or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, containerization expenses, ocean freight, marine insurance, U.S. brokerage and handling expenses, U.S. duty and fees, and U.S. inland freight in accordance with section 772(d)(2) of the Act. We made further deductions, where appropriate, for quota expenses (which we have considered direct selling expenses), credit expenses, product liability premiums, inventory carrying costs, and other indirect selling expenses, in accordance with section 772(e) (1) and (2) of the Act.

B. Crystal

We calculated purchase price based on packed, f.o.b. Hong Kong port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, and foreign inland freight in accordance with section 772(d)(2) of the Act.

Based on our findings at verification, we adjusted Crystal's data for certain minor clerical errors. In addition, credit expenses were recalculated to reflect the interest rate in effect during the POI rather than the period in which the merchandise was shipped. For one unique transaction, interest expense was offset by interest revenue. The net interest expense was used in the calculation of FMV. (*See* DOC Position to Comment 11 in the *Interested Party Comments* section of this notice.) Finally, the factor used for calculating indirect selling expenses was adjusted to reflect a percentage of the value of sales rather than the cost of goods sold.

C. Laws

We calculated purchase price based on packed, f.o.b. Hong Kong port prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign brokerage and handling expenses, and foreign inland freight in accordance with section 772(d)(2) of the Act.

For purposes of the preliminary determination, we excluded a sale characterized by Laws as a "distress sale." Based on our findings at verification, we did not find that this sale was a sample sale or a sale of defective merchandise. Therefore, for the purposes of this final determination, we have included it in our analysis.

D. Prosperity

See Best Information Available section of this notice.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value (FMV) based on constructed value (CV) for all respondents because there were no or insufficient sales of MMF sweaters in either the home or third country markets.

In order to determine whether there were sufficient sales of MMF sweaters in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of the such or similar category (i.e., all MMF sweaters) to the aggregate volume of third country sales, in accordance with section 773(a)(1) of the Act. For three of the respondents (Comitex, Crystal, and Laws), the volume of home market sales was less than five percent of the aggregate volume of third country sales. Therefore, we determined that home market sales did not constitute a viable basis for calculating FMV, in accordance with § 353.48 of the Department's regulations (19 CFR 353.48). In addition, for the same three respondents, the aggregate volume of third country sales was less than five percent of the volume sold to the United States. Because neither the home market nor any third country market constituted a viable basis for calculating FMV, we based FMV on CV, in accordance with section 773(a)(2) of the Act. For the fourth respondent, Prosperity, we used the best information available in accordance with section 776(c) of the Act. (See Best Information Available section of this notice.)

Petitioner alleged that Prosperity sold MMF sweaters to the third country at prices below the cost of production. Based on this allegation, we gathered data on Prosperity's production costs. However, because of Prosperity's refusal, this information was not verified. (See Best Information Available section of this notice.)

A. Comitex

As stated above, neither the home market nor any third country market was viable. Accordingly, we calculated FMV based on CV, in accordance with section 773(e)(1) of the Act. CV includes materials, fabrication, general expenses, profit, and packing. For comparisons involving purchase price sales we used: (1) The higher of either the actual general expenses or the statutory ten percent minimum of materials and fabrication, depending on the products, in accordance with section 773(e)(1)(B)(i) of the Act; (2) the statutory eight percent minimum profit because respondent did not have a viable home or third country market, in accordance with section 773(e)(1)(B)(ii) of the Act; and (3) imputed credit, which was included in selling expenses. We then reduced interest expense reflected on the company books for a portion of the expense related to these imputed credit costs in order to avoid double counting.

For comparisons involving ESP sales we used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of ten percent of materials and fabrication; (2) the statutory eight percent minimum profit because respondent did not have a viable home or third country market; and (3) imputed credit and inventory carrying costs, which were included in selling expenses. We then reduced interest expense reflected on the company books for a portion of the expense related to these imputed costs in order to avoid double counting.

Because neither the home market nor any third country market was viable, we included in CV general expenses and packing expenses based on reported U.S. experience. These expenses differed depending on whether the product was sold through a purchase price or an ESP transaction.

For material costs, we made an adjustment to reflect the simple average prices for each type of yarn for July through September, the months in which the sweaters sold during the POI were produced. We made a further adjustment to material costs to include an additional amount for dyed yarn which was not used in any sweater production. We used quota revenue as an offset to selling, general and administrative (SG&A) expenses. Further, as best information available, we included a percentage of general and administrative (G&A) expenses and finance expenses on the basis of consolidated financial statements of Comitex Holdings, Ltd. (CHL) for the year ended December 31, 1989. (For further discussion of each of these adjustments, see DOC Positions to Comments 6 through 10 in the Interested Party Comments section of this notice.)

We made an adjustment to CV, in accordance with § 353.56 of the Department's regulations, for differences in circumstances of sale (19 CFR 353.56). This adjustment was made for differences in credit expenses, quota expenses, transit interest and bank handling charges, where appropriate. We also adjusted for differences in packing.

For comparisons involving ESP transactions, we made a further deduction for indirect selling expenses, which include product liability, inventory carrying costs, and "other" indirect selling expenses capped by the indirect selling expenses incurred on ESP sales (ESPCAP), in accordance with § 353.56(b)(2) of the Department's regulations (19 CFR 353.56(b)(2)).

B. Crystal

As stated above, neither the home market nor any third country market was viable. Accordingly, we calculated FMV based on CV, in accordance with section 773(e)(1) of the Act. CV includes materials, fabrication, general expenses, profit, and packing. In all cases we used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of ten percent of materials and fabrication; (2) the statutory eight

percent minimum profit, because respondent did not have a viable home or third country market; and (3) imputed credit, which was included in selling expenses. We then reduced interest expense reflected on the company books for a portion of the expense related to these imputed credit costs in order to avoid double counting.

Because neither the home market nor any third country market was viable, we included in CV general expenses and packing expenses based on reported U.S. experience.

Material costs were adjusted to include an additional amount for dyed yarn which was not used in any sweater production. The fabrication expense was adjusted by including actual rent paid to the related party instead of the depreciation expense calculated by the respondent as the best information available for the fair market value for rent prices. G&A was increased to include donations. Further, based on the findings at verification, we corrected two clerical errors in the total G&A expenses amount and the cost of sales. Finally, interest expense was calculated based on the consolidated financial statements of Crystal Holdings Limited for the nine months ended September 30, 1989, rather than the portion of net interest expense the company attributed to the product under investigation. (For further discussion of these adjustments, see DOC Positions to Comments 6, and 12 through 16 in the Interested Party Comments section of this notice.)

We made an adjustment to CV, in accordance with § 353.56 of the Department's regulations, for differences in circumstances of sale. This adjustment was made for differences in credit expenses and bank handling charges. We also made an adjustment for differences in packing.

C. Laws

As stated above, neither the home market nor any third country market was viable. Accordingly, we calculated FMV based on CV, in accordance with section 773(e)(1) of the Act. CV includes materials, fabrication, general expenses, profit, and packing. In all cases we used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of ten percent of materials and fabrication; (2) the statutory eight percent minimum profit, because respondent did not have a viable home or third country market; and (3) imputed credit, which was included in selling expenses. We then reduced interest expense reflected on the company books for a portion of the expense related to these imputed credit costs in order to avoid double counting.

Because neither the home market nor any third country market was viable, we included in CV general expenses and packing expenses based on reported U.S. experience.

Further, at verification, we found that certain subcontractor fees did not include the cost of equipment owned by Laws but used by the subcontractors. In those instances, we increased subcontractor fees, included in fabrication costs, by the amount of depreciation of such equipment. Material costs were adjusted to include an additional amount for dyed yarn which was not used in any sweater production. In addition, we increased G&A expenses for factory overhead amounts reclassified as general expenses but not included by Laws in its consolidated general expenses. (For further discussion of these adjustments, see DOC Positions to Comments 6, 18, and 20 in *Interested Party Comments* section of this notice.)

We made an adjustment to CV, in accordance with § 353.56 of the Department's regulations, for differences in circumstances of sale. This adjustment was made for differences in credit expenses and commissions. We also made an adjustment for differences in packing.

D. Prosperity

See Best Information Available section of this notice.

Currency Conversion

We made currency conversions in accordance with § 353.60(a) of the Department's regulations (19 CFR 353.60(a)). All currency conversions were made at the rates certified by the Federal Reserve Bank.

Verification

Except where noted, we verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original source documents of the respondents. Our verification results are outlined in the public versions of the verification reports which are on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Interested Party Comments

All comments raised by parties to the proceedings in the antidumping duty investigation of MMF sweaters from Hong Kong are discussed below.

Comment 1

The Hong Kong Woolen and Synthetic Knitting Manufacturers Association, Ltd. (the Association) argues that the selection of Prosperity as a respondent by the Department was flawed because it was based on quota holdings rather than volume of actual exports. The Association contends that, had the Department based its respondent selection on actual exports rather than quota holdings, Prosperity would not have been chosen because its exports represented a relatively smaller share of total exports from Hong Kong. The Association asserts that, in fact, 30 percent coverage could have been achieved by the three largest respondents, exclusive of Prosperity.

DOC Position

Immediately after the receipt of the petition, the Department attempted to identify all potential respondents in this investigation. The Department's efforts included soliciting export information covering the POI from the U.S. Consulate in Hong Kong and the Hong Kong Section of the British Embassy in Washington, and later from counsel for the Association. A partial list of export statistics was received from the U.S. Consulate and a complete list of 1989 quota holders was obtained from the Hong Kong government. In addition, at the Department's request, on November 15, 1989, the Association submitted the following information for the 30 largest quota holders in Hong Kong: The company name; its 1989 quota allocation; its designation as either a manufacturer, exporter, or both; the quantity and value of shipments; and notes identifying related companies, if any. The Association qualified this information by stating in its submission that the shipment data were not definitive and "cover only direct exports to the United States. Data on indirect exports, made by the listed companies through trading companies (if any), was not available."

Normally, we base respondent selection on shipments or sales to the United States during a given period of time, as we did in the investigations of MMF sweaters involving the Republic of Korea and Taiwan. However, in this case, given the qualified and incomplete data available regarding shipments to the United States, we based respondent selection on the only complete information available at the time, *i.e.*, quota allocations. Based on this analysis, Comitex, Crystal, Laws, and Prosperity (combined with their related companies) accounted for 30 percent of

the 1989 Hong Kong quota allocations. This analysis is documented in a November 22, 1989, memorandum, included as part of the official record of this investigation.

The Association contends that shipment data contained in its November 15 submission combined with the new information submitted in its case brief pertaining to export licenses indicated that Comitex, Crystal and Laws alone accounted for 30 percent of exports of the Hong Kong companies designated as manufacturers and, as such, Prosperity should not have been selected as a respondent in this case. Apart from the fact that the Association itself characterized the November 15 data as incomplete and that the information in the case brief was untimely filed, we were unable to verify the characterization of companies as manufacturers or exporters with either the Hong Kong Government, the Association, or by reviewing trade directories. The relative size of companies, exports in Hong Kong could not be determined.

In summary, the only complete and verified statistical data pertaining to MMF sweaters were the quota allocations submitted by the Hong Kong Government. Given the statutory deadlines, we had no choice but to rely upon the quota allocations for purposes of respondent selection. As such, the selection of Hong Kong respondents was reasonable and justified by the facts on the record in this case.

Comment 2

The Association argues that the Department's rationale that a company not wishing to receive the "all others" rate can file a voluntary response is immaterial because the Department would not have considered any voluntary responses it received. Therefore, the Association argues there is no justification for including Prosperity's rate based on best information available in the calculation of the "all others" rate. To support its argument, the Association relies on three sources: (1) The November 22, 1989, internal memorandum regarding staffing levels and feasible caseload, (2) § 353.31(b) of the Department's regulations which states that the Department normally will not consider or retain in the record of the proceeding unsolicited responses, and (3) the decision of the U.S. Court of International Trade (CIT) in *Asocolflores* v. *United States*, 717 F. Supp. 834 (CIT 1989) *(Asocolflores II)*.

Petitioner states that the Association's argument that the change in the Department's regulations concerning the submission of voluntary responses is unpersuasive because (1) even though the language in the Department's regulations state that voluntary responses will "normally" not be considered, it does not preclude their consideration on a case by case basis, (2) since no voluntary responses were received by the Department, respondent's assumption is merely speculative, and (3) since the new regulations have come into force, the Department has received and considered voluntary responses in the Preliminary Determination of Sales of Less Than Fair Value: Gray Portland Cement and Clinker from Mexico, (55 FR 13817, April 12, 1990).

The United States a Association of Importers of Textiles and Apparels (USA–ITA) argues that although the Department's methodology for respondent selection may have been unavoidable under the circumstances of this investigation, the coverage of 30 percent of the merchandise under investigation does not reflect the Department's normal basis for calculating the "all others" rate, *i.e.*, 60 percent. In addition, USA–ITA states that the change in the Department's regulations regarding the submission of voluntary responses was confirmed in the Department's November 22, 1989, internal memo regarding feasible caseload. Consequently, USA–ITA states that companies in this investigation not chosen to receive questionnaires were involuntarily and unavoidably at risk of receiving an unfavorable "all others" rate. In support, the Association cites to *Asocolflores II* to argue that any claim that unnamed respondents could have participated by submitting voluntary responses is disingenous.

Doc. Position

The Department has accepted a voluntary response since the new regulations came into effect. See Final Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Mexico (55 FR 29244, July 18, 1990) At no time during the course of this investigation did we receive any indication that other companies in Hong Kong were even considering the filing of voluntary responses nor did we receive any requests for exclusion as permitted by § 353.14 of the regulations. The issue of whether or not the Department would have accepted such responses was never raised until briefs were filed in this case. In any event, since we have excluded Prosperity's rate from our calculation of the "all others" rate, the issue is moot.

Comment 3

Petitioner argues that Prosperity's margin based on best information available should be included in the calculation of the "all others" rate. Petitioner refers to the Department's longstanding practice of including rates based on best information available in the "all others" rate, citing to Final Determination of Sales at Less Than Fair Value: Cellular Mobile Telephones from Japan, (50 FR 45447, October 31, 1985) (*CMTs*) and the preliminary determination in the investigation of the subject merchandise from Taiwan as precedent.

The Association argues that firms not representative of the industry should not be included in the calculation of the "all others" rate, as supported by the Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Taiwan (54 FR 42543, October 17, 1989). The Association contends that petitioner's reliance on *CMTs* is misplaced because this case did not address the issue of firm representativeness nor did it address what it considered to be the Department's apparent new policy regarding voluntary responses. The Association adds that the Department's methodology discussed in the preliminary determination involving MMF sweaters from Taiwan is not binding as to this final determination.

USA–ITA argues that the Department has recognized that the companies investigated were not representative and that administrative precedent exists with respect to the exclusion of unverified non-representative margins from the "all others" rate, citing Final Determination of Sales at Less Than Fair Value: Certain Fresh Cut Flowers from Ecuador, (52 FR 2128, January 20, 1987). Furthermore, USA–ITA contends that the reasoning behind the exceptions to the exclusion from the "all others" rate was accepted by the CIT in *Serampore Industries Pvt.* v. *United States*, 696 F. Supp. 665 (CIT 1988) *(Serampore)*. USA–ITA concludes that the "all others" rate, assigned in this case to 70 percent of the industry, should follow the remedial intent of the antidumping laws rather than the punitive resort to best information available for recalcitrant or non-cooperative companies.

Next, petitioner argues that the Department must follow its longstanding practice of excluding zero or *de minimis* margins from the calculation of the "all others" rate. Petitioner argues that the exclusion of zero or *de minimis* margins

from the "all others" rate is supported by past precedent and refers to the affirmation of the Department's practice in *Serampore* regarding the calculation of the "all others" rate based on all affirmative margins.

The Association argues that the Department ordinarily investigates these companies accounting for 60 percent of exports to the United States during the POI. According to the Association, when less than 60 percent of exports are investigated, the Department normally resorts to sampling. In this case, sampling was not used because of the inability to obtain a representative sample. Rather, the Department decided to investigate those exporters representing the top 30 percent of exports. Given that the Department was only investigating 30 percent of exports rather than the normal 60 percent, the Association argues that the 30 percent investigated should be considered to be representative of the industry. The Association cites to the judicial precedent in *Asocolflores* v. *United States*, 704 F. Supp. 1114, 11 ITRD 1009 (CIT 1989), which establishes that the Department must be prepared to justify that its respondent selection process was appropriate.

The Association states, therefore, that it would be unconscionable to determine an "all others" rate calculated largely on a rate based on a company-specific, punitive, best information available, especially where the company's export performance represented only a small portion of total shipments. This situation would be more egregious, the Association contends, if the Department were to leave out the verified *de minimis* margins of other respondents. In support of its argument, the Association cites to the CIT's decision in *Serampore*, which stated that the "all others" rate should be based on the "weighted-average of the rates for the members of the sample", which would include zero or *de minimis* margins.

USA–ITA asserts that the exceptions to the Department's normal practice of excluding zero or *de minimis* margins in the "all others" rate, set forth in the decision in *Serampore*, apply to this case on the basis that the Department was unable to develop a scientific sample.

Doc Position

The Department's nornal practice with regard to a company that refuses to participate in, or otherwise impedes, the Department's investigation is to assign that company the least favorable rate based on best information available. Because Prosperity refused verification, we assigned it the highest rate in the petition, 115.15 percent, as best information available. (See Best Information Available section of this notice.) Furthermore, in the ordinary case, it is our general practice to include all rates based on best information available in our calculation of the "all others" rate. See Final Determination of Sales at Less Than Fair Value: Internal-Combustion Forklift Trucks from Japan, (53 FR 13217, April 21, 1988) (Forklift Trucks) and Final Determination of Sales at Less Than Fair value: Antifriction Bearings, Other Than Tapered Roller Bearings, and Parts Thereof from the Federal Republic of Germany, et al. (54 FR 53141, May 3, 1989) (*AFBs*). However, given (1) the enormous disparity between the three verified rates and the highest rate in the petition, *i.e.*, approximately 20 times greater, (2) our examination of only the top 30 percent of total quota holdings, and (3) the small number of firms investigated, *i.e.*, four from a potential pool of over 300, we find it inappropriate to include Prosperity's rate in the calculation of the "all others" rate for this investigation.

We do not, however, find that circumstances in this investigation justify deviation from our normal practice of excluding zero or *de minimis* rates in our calculation of the "all others" rate. In *Serampore*, the CIT found reasonable the Department's general practice of excluding respondent firms with zero or *de minimis* margins in calculating an "all others" rate. While the Department has made an exception to this practice when it relies on sampling in its selection of respondents (See Final Determination of Sales at Less Than Fair Value: Fresh Cut Flowers from Colombia (52 FR 6842, March 5, 1987)), the Department did not employ scientific or statistical sampling in selecting respondents in this investigation. Therefore, in accordance with our normal practice, we have excluded zero and *de minimis* margins from our calculation of the "all others" rate for the purposes of our final determination in this investigation. Because we have excluded both Prosperity's margin and the zero and *de minimis* margins of Crystal and Laws, the Department has found it appropriate to apply Comitex's margin, the only affirmative verified margin in this investigation, as the "all others" rate.

Comment 4

Petitioner argues that failure to incorporate Prosperity's rate in the "all others" rate would provide companies with an incentive to circumvent the antidumping duty law by refusing to provide information, terminating their businesses, and reincorporating to take advantage of a lower "all others" rate.

The Association contends that the Hong Kong government's regulations regarding use of quota prohibits any attempt at circumvention.

USA–ITA argues that the Department has both the power and discretion to counter circumvention attempts and that the situation does not warrant including margins based on best information available in the "all others" rate.

DOC Position

In many investigations, the Department calculates rates, and assigns rates based on best information available, that are higher than the "all others" rate. In this regard, this investigation is no different. We have no reason to believe that such re-incorporation has occurred, nor that it will in the future. If an antidumping duty order is issued in this case, petitioner may request an administrative review pursuant to section 751 of the Act for any company which it believes may have re-incorporated to avoid paying higher duties. Furthermore, any company that re-incorporates in the future could well be subject to a "new exporter" rate as determined in the context of an administrative review, rather than the "all others" rate. Additionally, any efforts to re-incorporate merely to avoid dumping duties may constitute Customs fraud, which would fall within the jurisdiction of the U.S. Customs Service.

Comment 5

Petitioner states that the Department did not fully examine the origin of the MMF sweaters under investigation. Petitioner states that the Department,s investigation of MMF sweaters should be limited to sweaters that are actually products of Hong Kong, *i.e.*, sweaters the panels of which are knit in Hong Kong, not merely assembled or otherwise finished in Hong Kong. Petitioner alleges that sweaters reported to be made in Hong Kong were in fact made in the People's Republic of China (PRC), and that the sweaters not knit in Hong Kong should be excluded from the investigation and should not be covered by an order. Petitioner contends that if sweaters were in fact knit in the PRC, the CV would be affected due to the differences in production costs. As part of its case brief, petitioner submitted for the first time an exhibit containing newspaper articles on the Hong Kong textile industry which it asserts supports its position.

Petitioner argues that the Department failed to adequately examine this issue

at either the sales or cost verifications, and states that the Department should have examined the relationship between subcontractors, sub-subcontractors, and respondent companies and the location of the knitting operations. Petitioner states that because of these fundamental flaws in the Department's analysis of the Hong Kong respondents, the Department should instead use best information available based on the information supplied in the petition.

Laws responds that petitioner raised the issue on the eve of verification and did not give the Department adequate time to investigate the issue properly. Nevertheless, Laws states that the Department did verify that the products were of Hong Kong origin.

Comitex rebuts petitioner's comments by stating that its subcontractor agreement stipulates that all knitting must be conducted in Hong Kong. It further states that the Department verified the subcontractors' production costs for 14 production orders, toured an unrelated subcontractor's knitting factory, and saw that Hong Kong was listed on its export licenses as the country of origin. In addition, Comitex asserts that the Department verified that sweaters made in countries other than Hong Kong were so noted and were not reported in the response, and during its completeness check, officials found no discrepancies regarding the country of origin reporting.

Crystal maintains that the Department conducted an extremely thorough verification of Crystal's sales and production records. The Department verified that Crystal either manufactured the subject merchandise itself or obtained it through the use of subcontractors located in Hong Kong. When the Department found that some companies in the Crystal group did sell sweaters made in whole or in part in the PRC, Crystal points out that it did not report these sales in its response and that the country of origin was properly identified as the PRC. Finally, Crystal states that the verification established that it complied with the U.S. country of origin rules for both marking and quota purposes.

DOC Position

Petitioner's assertions of potential country of origin problems were unsubstantiated. Petitioner provided no evidence indicating that the sweaters reported to be produced in Hong Hong were in fact produced in the PRC or elsewhere outside Hong Kong. Department officials, nevertheless, conducted a thorough investigation into the country of origin of the MMF sweaters sold during the period of investigation and considered as part of the less than fair value analysis. Because of the relatively small number of sales transactions, Department officials were able to examine almost all of the sales of the companies under investigation, and identify the location of the facilities in which the merchandise was produced. In this extremely detailed examination, Department officials found no evidence to contradict its finding that the origin of the subject merchandise was Hong Kong. When sweaters were found to be knit in a country other than Hong Kong, it was always noted as such and we found that these sweaters were appropriately excluded from the sales database.

With respect to the newspaper articles submitted as part of petitioner's case brief, these reports bear only indirect relevance to the issue, at best, and are due little (if any) credence in light of our findings on verification. Moreover, as stated in § 353.31(a)(1)(i) of the Department's regulations (19 CFR 353.31(a)(1)(i)), information submitted in an untimely manner need not be considered by the Department. Therefore, we have not taken this information into account.

Comment 6

Petitioner contends that respondents calculated their material costs for dyed yarn without adjusting for the costs of yarn that was dyed for a certain color and style of sweater, but which may not have been used for that or any other order. The petitioner argues that the Department must adjust respondents' material costs based on the best information available to reflect these unreported scrap costs.

Laws maintains that it included the cost of yarn issued to subcontractors for knitting in its material cost calculation. Further, Laws states that it did not omit from this calculation the cost of yarn specifically dyed for an order that was not consumed in the manufacture of that order or any other order. Laws argues that any discrepancy between the cost of yarn issued for knitting and the cost of yarn specifically dyed for an order is borne by the dyeing subcontractor. Laws states, therefore, that there is no difference between the cost of yarn issued for dyeing and that issued for knitting. Additionally, Laws asserts that during its verification, Department officials reviewed full documentation of a number of production lots and raised no questions with respect to discrepancies in the amount of yarn used for the production lots covered by the investigation. Laws states that no discrepancies were found and that, as such, its submitted material costs were verified and should be used by the Department.

Comitex states that its accounting system does not link dyeing charges with specific production orders. Therefore, to arrive at a dyeing cost per pound for the second and third quarters of 1989 on a yarn type-specific basis, Comitex factored in all dyeing charges incurred during those periods. Comitex argues that there was no information discovered at verification by the Department that yarn dyed for a given order exceeded the quantity of yarn shipped per order plus calculated wastage. Also, Comitex argues that if any redyeing occurs, it included such charges in the actual average dyeing costs per pound utilized in the response.

Petitioner rebuts Comitex's claim that it is customary in the trade to routinely redye previously dyed but unused yarn. Petitioner argues that this is a factual statement that cannot be accepted in a prehearing brief and has not been subject to the required verification.

Crystal asserts that the reported material costs consist of the actual costs of materials used for each job. Crystal adds that all material costs are captured in the cost calculation. As such, no separate cost for scrap exists. Furthermore, Crystal asserts that no discrepancies between dyed yarn issued and dyed yarn returned to inventory were found in the verification of its reported material cost calculations.

DOC Position

For purposes of the final determination, the Department reviewed the methodologies used by the respondents and found no evidence that all waste had been captured. Specifically, we observed that yarn dyed for a specific color and style of sweater was not used for that sweater's production or other sweaters' production. The respondents claim that excess yarn dyed for one sweater may be redyed for other orders or sold. However, at verification we found no evidence that all, or in some cases any, of the waste had been sold or used in other orders. Therefore, in order to capture this type of waste, the Department used best information available. During a plant tour in the United States, the Department observed the general sweater manufacturing process and obtained a percentage of waste for unused yarn. At verification, the Department observed that the basic steps in the production process (e.g., dyeing yarn for specific orders) were similar to those in the United States. Therefore, as best information available,

the Department increased the materials costs for the amount of yarn dyed and unused, either for that color and style of sweater or for any other purpose, by the percentage obtained during the U.S. plant tour.

Comment 7

Comitex states that the Department erred in the preliminary determination when it included the revenue attributable to the reservation of quota as an offset to SG&A expenses in CV. In the final determination, the Department should treat this as an upward circumstance of sale adjustment to U.S. price. Comitex contends that the amount it earned on each U.S. sale to this customer was the invoice price per dozen plus the quota revenue. Although the per dozen amount paid for quota from this customer to Comitex is not included in the invoice price of each shipment to the customer, Comitex argues that it is integrally related to that price. Comitex cites to AFBs to support its position.

DOC Position

For this final determination, we again have used the quota revenue as an offset to SG&A expenses in the CV, rather than treating it as a circumstance of sale adjustment. The income from the quota reservation was earned separately from the sale of sweaters and, therefore, was not directly related to those sales. In fact, we found at verification that the customer pays for the reservation before the sweaters are ordered. At verification, Comitex officials were unable to provide any documentation supporting its claim that the quota reservation fee is linked to the price paid by the customer. Thus, two wholly-separate transactions are involved: One transaction for the sale of the quota reservation and another for the sale of the sweaters.

We did, however, see evidence during verification that revenue earned through the reservation of quota was tied to sales of MMF sweaters to this customer, and therefore, we have used quota revenue as an offset to SG&A expenses in the CV. Unlike the instant case, in AFBs the Department made a circumstance of sale adjustment for differences in exchange rates where the Department was able to tie the differences to specific transactions.

Comment 8

Petitioner states that the Department's practice is to base its G&A expenses calculations on a consolidated basis. Petitioner cites to Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephones and Subassemblies Thereof from Korea, (54 FR 53141, December 27, 1989), AFBs and Forklift Trucks in support of its argument. Therefore, petitioner argues that the Department should use the consolidated general and finance expenses of CHL or the highest of the percentage of general and finance expenses of any other respondent, in lieu of the reported general and finance expenses of Comitex. Petitioner further argues that Comitex knew of the Department's request to obtain audited, consolidated financial statements from the time Comitex received the questionnaire, and that Comitex's argument that they first learned of this request at verification is therefore indefensible. The Department should also disregard Comitex's June 14, 1990, post-verification submission of a letter from its auditors providing an itemization of audited consolidated office and general, finance, and selling expenses for the year ended December 31, 1989. The data in this submission do not match those in the cost verification report. Further, the information in the June 14, 1990, submission is untimely as it was not received seven days prior to verification, as provided for in § 353.31(a)(i) of the Department's regulations.

Comitex argues that the Department did not specifically tell it prior to verification to provide consolidated data for general and finance expenses. Further, Comitex contends that it is contrary to the CV section of the statute for the Department to utilize the consolidated general and finance expenses of the Comitex group, since only Comitex manufactures MMF sweaters. Comitex states that in CMTs, the Department allocated a proportion of G&A expenses for the production company and the parent company because the parent company provided services directly related to production of the subject merchandise. Comitex contends that as no other company produces the subject merchandise, the consolidated expenses should not be used.

According to Comitex, however, if the Department does utilize the consolidated general and finance expenses of CHL, then the Department should consider the statement furnished by the company's outside auditors in its rebuttal brief, in which the exact amount for office and general expenses, and finance expenses for the consolidated corporation have been identified.

DOC Position

The Department, in its questionnaire, requests that all expenses related to headquarter operations be reported as part of general expenses. Comitex did not indicate in its CV response whether or not a proportional amount of general expenses from the consolidated operations of the group had been included in the reported general expenses. Our review of the source documentation provided a verification indicated that, in fact, Comitex did not include in its reported general expenses a proportional amount of general expenses from the consolidated operations of the group. In CMTs the Department allocated a proportional amount of headquarters' expenses to the product under investigation in order to capture G&A expenses throughout the entire organization. In the present investigation, as with the other cases cited by petitioner, the consolidated G&A expenses are being allocated over the consolidated cost of goods sold in order to allocate a proportional amount of G&A expenses to the MMF sweaters manufactured by Comitex.

The Department's approach in this investigation is therefore not inconsistent with CMTs where the Department included in G&A a proportional share of certain general expenses incurred by the parent but not specifically related to the manufacture of the product under investigation. The general methodology employed in both this investigation and CMTs was used to achieve the same objective: Capturing expenses related to total corporate operations.

The Department used Comitex's calculation of G&A expenses presented at verification: The G&A expenses reflected in the unaudited consolidated financial statement of Comitex for the year ended December 31, 1989. The Department did not rely on the information received after verification and included in the rebuttal brief as such data could not be verified and was untimely in accordance with § 353.31(a)(i) of the Department's regulations.

Comment 9

Petitioner argues that Comitex's methodology of calculating an average yarn cost can significantly distort the material costs, both by reducing possible high yarn costs for some sales to a lower average, and by including costs for production prior to the POI. Petitioner, based on its analysis of Comitex's section D response, states that Comitex's reported average cost of yarn and dyeing for all sales was different than that of two other respondents from Hong Kong. Petitioner further contends that Comitex's records are unreliable and cannot justify an

averaging approach that is inconsistent with the requirement to determine the actual cost of the yarn for each shipment or sale involved. Therefore, petitioner maintains that the Department should increase the calculated yarn cost by an appropriate percentage.

Comitex argues that its accounting books and records do not track the amount of yarn issued per production order. Accordingly, Comitex's submitted methodology was the only option available in order to provide actual material costs. Comitex also notes that initial 1989 MMF sweater production began in July 1989, and that the cost used to value the yarn for the submission was higher than any rolling average cost recorded in its books for 1989. Comitex also argues that petitioner's analysis of its materials costs was clerically incorrect. Therefore, Comitex claims that, in light of the manner in which its raw materials costs are maintained, its methodology for ascribing yarn cost was the only reasonable approach and should be accepted by the Department.

DOC Position

For the purposes of this final determination, the Department did not rely on the average 1989 fiscal year yarn costs for each type of yarn used by Comitex in its submission since these averages may have included the cost of yarn used for sweaters which were not subject to this investigation. Since production of the sweaters under investigation did not begin until July, the Department used the simple average of the purchase costs for each yarn type from July through September as the best information available in accordance with section 776(c) of the Act, rather than the average over the entire year, as reported by Comitex.

Comment 10

Petitioner argues that Comitex's average scrap cost calculation may be distortive since it does not differentiate between the actual scrap rates for different types of sweaters which have the same type of yarn.

Comitex argues that it does not track yarn issues from inventory on a product-specific basis in its accounting records, and therefore, actual scrap costs do not exist. Comitex also argues that the Department's statement in the cost verification report that its methodology may be distorted is incorrect. Comitex states that it does not maintain an inventory for finished sweaters and therefore, did not carryover sweaters from one year to the next. Further, such a carryover would not be included in the next year's quota allotment. Therefore, Comitex makes an effort to ship all quota-burdened sweaters, including the subject merchandise, by December 31 of each year. In light of these facts, Comitex's methodology for calculating scrap was the only option available.

DOC Position

The Department used the average scrap rate presented by Comitex. This was adjusted by the Department for unused dyed yarn, as described in DOC Position to Comment 6, above. At verification, the Department found that for the yarn types used by Comitex, the substantial portion of two types and all of the remaining types were used for sweaters subject to this investigation.

Comment 11

Crystal states that the imputed credit cost for one of the U.S. transactions should be disregarded since respondent was fully reimbursed by its customer and did not incur any imputed credit cost.

DOC Position

We disagree. Crystal reported interest revenue on one transaction during the POI for which it also incurred a credit expense. Crystal had charged the customer for late payment on its letter of credit. We verified that this type of transaction is rare and that the terms of sale do not specifically provide for such charges. Because Crystal incurred a credit expense until it was reimbursed by the customer, we have offset the reported credit expense for this transaction by the interest revenue received from the customer, and included it in the calculation of CV.

Comment 12

Crystal contends that the Department improperly included donations and miscellaneous expenses in calculating general expenses for the preliminary determination because these expenditures have no bearing in determining the costs of the subject merchandise. Crystal contends that the Department found that the miscellaneous expenses were unrelated to either production or sales of the products under investigation. In addition, Crystal argues that the donations are extraordinary expense items which do not relate to production or sale of any merchandise. Therefore, such voluntary contributions should not be considered normal business expenses.

Petitioner argues that the Department should not exclude donations and miscellaneous expenses from the calculation of the SG&A percentage unless the cost of sales is also reduced by the cost relating to the products to which the expenses pertained. Petitioner states that the data for making such adjustments are not available.

DOC Position

The Department included donations as part of G&A expenses. This type of expense cannot be tied to a specific product and is normally treated as an overall cost of business operations. Moreover, we verified that Crystal included these expenses as part of SG&A expenses in its financial statements. However, the Department did not include certain other miscellaneous expenses in the production costs because we found that these expenses were (1) non-operating expenses or intra-company transfers, and (2) unrelated to either production or sales of the products under investigation.

Comment 13

Petitioner argues that the Department's preliminary determination indicates that quota income was used as an offset to the G&A expenses and that this should not be allowed.

Crystal contends that it has not included quota income or used quota income as an offset to the calculation of SG&A expenses.

DOC Position

We found at verification that Crystal did not include quota income or use quota income as an offset to the calculation of SG&A expenses for the products under investigation. This quota income differs from the quota revenue for Comitex in that it was unrelated to quota reservation and was unrelated to the subject merchandise. Therefore, no adjustment to SG&A expenses was made.

Comment 14

Petitioner argues that the lack of availability of annual audited financial statements for the holding companies precludes the Department from calculating reliable SG&A expenses. Petitioner reasons that the types of expenses included in general expenses may or may not be incurred evenly throughout the year and, therefore, general expenses for nine months may not be representative of the entire year. Petitioner contends that because no audited consolidated financial statements exist for Crystal Holdings Ltd. and Crystal Group Ltd. for 1989, the Department should use either the highest rate for SG&A expenses incurred by any other respondent in this case as

best information available, or the information supplied in the petition.

Crystal argues that the Department should not use Crystal Holdings Ltd.'s consolidated financial statement because it includes expenses for a variety of subsidiaries that have no involvement in the sale or production of the subject merchandise. However, Crystal notes that if the Department uses the consolidated statements, those statements represent the most recent financial data available for all of the relevant affiliates. In addition, Crystal argues that the Department verified the accuracy of the most recent consolidated report which covers the POI. Accordingly, the best information available to the Department is the Crystal Holdings Ltd.'s unaudited consolidated financial statement for the nine months ended September 30, 1989. Crystal adds that it cannot be asked to provide audited financial statements when these do not exist.

DOC Position

The Department used the G&A expenses reported in Crystal Holdings Ltd.'s unaudited consolidated financial statement for the nine months ended September 30, 1989, in order to capture that part of the G&A expenses incurred for the overall operations of the related group of companies which are attributable to Crystal. *See* DOC Position to Comment 8 above. While these expenses may include G&A expenses of other subsidiaries, the consolidated G&A expenses were allocated based on the consolidated costs of sales, which also include the costs of these other subsidiary companies.

The Department used the unaudited consolidated financial statements for Crystal Holdings Ltd. for the nine months ended September 30, 1989, as the best information available for G&A expenses, because no consolidated financial statements for 1988 or 1989 exist and the accuracy of the consolidated worksheets for the nine-month 1989 statements was verified.

Comment 15

Petitioner argues that the ratio of net interest expenses to total cost of manufacture calculated by the Department in its preliminary determination was incorrect. According to petitioner, the ratio should be revised to reflect the finance expenses listed in Crystal Holdings Ltd.'s nine-month unaudited financial statement submitted on March 3, 1990.

Crystal contends that the finance expense ratio used by the Department in the preliminary determination is correct. The adjustment for imputed credit to finance expenses reflected in Crystal Holdings, nine-month consolidated financial statement is consistent with the Department's practice.

DOC Position

The finance expense ratio used by the Department in its preliminary determination was correct. Because imputed credit was included in selling expenses, finance expenses in Crystal Holdings, nine-month financial statement were adjusted for expenses relating to imputed credit to avoid double counting.

Comment 16

Petitioner argues that the adjustment to factory overhead expenses for rent should be based on the fair market rental cost rather than depreciation, pursuant to the Act and the Department's regulations. Petitioner adds that the fair market rental cost would be the rent paid to an unrelated party or the rent actually paid.

Crystal asserts that for purposes of its cost submissions, Crystal eliminated a variety of inter-company charges pursuant to the intent of section 773(e)(3) of the Act and calculated the actual cost, in accordance with the company's normal depreciation policy. According to Crystal, under generally accepted accounting principles the consolidated real cost of a building is the depreciation amount. Furthermore, Crystal argues that if it owned the building, the cost would clearly be based on depreciation expense. Crystal contends, therefore, that the Department should use the depreciation expense rather than actual rent paid to account for the cost of the premises.

DOC Position

In accordance with section 773(e)(2) of the Act the Department must determine whether related party transactions represent a fair market value. Crystal rented its building from affiliates, but reported depreciation expense of the building owned by the affiliates as Crystal's factory overhead expense. Because this was a related party transaction and we were unable to test Crystal's rental payment against a comparable arm's-length transaction, we have determined, as best information available, that the best approximation of the fair market rental value would be the rent actually paid by Crystal, rather than the depreciation expense reported.

Comment 17

Petitioner argues that Laws' methodology of including duties in general expenses, instead of in materials costs, is incorrect. Therefore, the Department should make an adjustment to include these costs in reported materials costs.

Laws argues that the manner in which these costs (i.e., duties) are reported in the submission is a result of the small amounts involved and because Laws does not track them by production lot in its accounting records.

DOC Position

At verification, we found that Laws included duties in its general expenses and recorded these duties as part of the expenses in the "Declaration and Certification Fees" account. However, the amount of duties paid was insignificant when compared to the cost of sales. Accordingly, movement of the entire amount of duties paid from general expenses to materials costs would not change the total costs of production. Therefore, we made no adjustment.

Comment 18

Petitioner argues that the relationship between Laws and its subcontractors is of critical importance in this investigation. Further, petitioner contends that there is an inconsistency between Laws' representation of its relationship with its subcontractors and the information the Department discovered at verification.

Laws asserts that the rental of equipment to the unrelated subcontractors were at arms-length, market prices, and there is no pattern of Laws' providing assistance to unrelated subcontractors through its equipment leasing contracts. Laws notes that other unrelated subcontractors' contracts were reviewed at verification, and none contained any indication that pricing for processing is tied to any leasing arrangements. Moreover, Laws asserts that its inability to provide copies of rental contracts for its equipment leasing operations requested by the Department on the last day of verification does not constitute an inconsistency in its representation of its relationship with unrelated subcontractors. Additionally, Laws maintains that the information submitted in its June 21, 1990, case brief subsequent to verification should be considered in the Department's investigation because the material submitted: (1) Does not contain new information and is in corroboration of prior responses verified by the Department; and (2) was requested by the Department on the last day of verification.

DOC Position

In our questionnaire, the Department requested Laws to report all requipment furnished to subcontractors. At verification, the Department found that Laws had not disclosed the use of its requipment by subcontractors. The Department has no verified evidence that a lease existed or that payments had been made by the subcontractors to Laws for use of this equipment. Therefore, as best information available, we increased the fees charged to Laws by the subcontractors by the amount of the depreciation of the equipment.

We did not consider the information on leases contained in Laws, June 21, 1990, case brief, as it was untimely submitted pursuant to § 353.31(a)(1)(i) of the Department's regulations, nor was it verified. Furthermore, we did not request any additional information on this issue after verification.

Comment 19

Petitioner argues that Laws' use of consolidated general expenses from audited financial statements for the year ended March 31, 1989, may or may not be representative of finance and general expenses for the POI, because these financial results do not cover any portion of the POI. Further, the report contained in the published financial statements does not provide detailed cost of sales and general expenses. Instead, petitioner states that the Department should use the unaudited interim financial statements for Laws International Holdings Ltd. for the period ended September 30, 1989, as best information available. Petitioner also argues that the Department should use the audited finance expense for the fiscal year ended March 31, 1989, instead of the pre-audit finance expense for the same period, which the Department used in its preliminary determination.

Laws notes that the audited consolidated financial statements covering the POI will not be available until mid-July 1990, and therefore, submitted the most recent audited consolidated financial statements available, along with unaudited interim financial statements for the fiscal year starting April 1, 1990. Laws contends that its audited consolidated financial statements for the year ended March 31, 1989, are the most appropriate basis for determining finance and general expenses for the POI.

DOC Position

During verification, the Department discovered that the reported finance expense was based on unaudited data. The Department noted that the audit adjustments proposed by Laws' external auditors for the financial statements for the fiscal year ended March 31, 1989, may have material consequences to reported general and finance expenses for the fiscal year financial statements which cover the POI. Accordingly, the interim unaudited financial statements for the period ended September 30, 1989, were not used. Therefore, as best information available, the Department accepted Laws' consolidated general expenses for the fiscal year ended March 31, 1989, for calculating CV for the purposes of the final determination.

Comment 20

Petitioner argues that Laws' methodology of reclassifying certain expenses in its submission was incorrect. Petitioner contends that the Department should change Laws reported general expenses to capture these reclassified amounts.

Laws argues that if the Department adds general expenses derived from factory overhead incurred during the POI to general expenses calculated from ratios obtained from the audited consolidated financials for the year ended March 31, 1989, it would be combining two unrelated amounts. Accordingly, Laws requests that the Department use the unadjusted general expenses from the audited consolidated financial statements for the period ended March 31, 1989, in order to calculate the general expense ratio for the CV calculations.

DOC Position

We verified that Laws' monthly financial statements included certain amounts for factory overhead that should have been included in the category of general expenses. Laws reclassified these amounts for purposes of reporting factory overhead and we accepted the reclassification. For general expenses, we added the amounts reclassified out of factory overhead to the amount for general expenses calculated from Laws' audited consolidated financial statements for the period ended March 31, 1989.

We used the 1989 statement as best information available because Laws' 1990 statement was not available at the time of verification.

Comment 21

Petitioner asserts that at verification Laws sought to reduce the interest expense through the use of a double deduction.

Laws argues that, with respect to the issue of the double reduction raised in the Department's cost verification report, it does not seek a double deduction by deducting bank charges from its reported finance expenses and agrees to the finance expense figure exclusive of these charges. Laws maintains that during the verification, the finance expense figure that was reported and verified included bank charges.

DOC Position

For purposes of calculating finance expense for the CV used in the final determination, Laws submitted total audited consolidated finance expense for the fiscal year ended March 31, 1989, as best information available. An offset related to the interest included in the credit expense was calculated by Laws to avoid double counting of this expense. No bank charges were deducted. The Department used this calculation for the final determination.

Comment 22

Petitioner argues that Laws methodology for calculating interest expense over total expenses of the consolidated corporation excluding interest expense is inconsistent with the Department's established practice of allocating interest expense over cost of sales of the consolidated corporation. Petitioner cites Preliminary Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies from Korea, (54 FR 31980, August 3, 1989), and argues that in that determination, the Department used G&A and finance expenses as a percentage of the cost of sales for the subject merchandise. Further, in support of its argument, petitioner cites *AFBs* and states that in that determination, the Department allocated the total interest expense to the total operations of the consolidated corporation based on cost of sales when calculating interest expense. Additionally, petitioner cites to Forklift Trucks and argues that in that determination the interest expense was allocated over the actual cost of sales. Moreover, petitioner asserts that there is no verification of Laws' claim that its subsidiaries are not involved exclusively in manufacturing activities.

Laws claims that its proposed alternative methodology is justified because Laws and its subsidiaries are not involved exclusively in manufacturing activities, and the non-manufacturing companies incur substantial interest and administrative expenses, but low or no cost of sales. Accordingly, it is inappropriate to allocate to sweaters Laws' entire consolidated interest expense over

consolidated cost of sales, the Department's typical approach, because this would artificially transfer interest expense from other productive businesses to sweater production.

DOC Position

We agree with petitioner that our preferred method for calculating finance expenses is to allocate interest expense over cost of sales. However, Laws calculated its consolidated finance expense as a percentage of its total cost of manufacture and G&A expenses, less finance expense, of the consolidated corporation. This percentage was then applied to the same base (i.e., total costs of manufacturing plus general and selling expenses, less finance expense) of each product. Because Laws was consistent in applying its methodology and because we found that this had virtually no effect on the cost of production, we made no adjustment to the finance expenses calculated for purposes of the final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of MMF sweaters from Hong Kong, except Crystal and Laws, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of MMF sweaters from Hong Kong exceeds the United States price as shown below.

We are also instructing the U.S. Customs Service to require that *both* the exporter of record and manufacturer be listed on all invoices accompanying imports of MMF sweaters to the United States. If the manufacturer is not listed, the "all others" rate will be applied. This suspension of liquidation will remain in effect until further notice.

The weighted-average margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Comitex Knitters, Ltd., and all related companies.	5.86 percent.
Crystal Knitters, Ltd., and all related companies, including Clevermark Industrial, Ltd.; Crystal Garments, Ltd.; Crystal Textiles, Ltd.; Crystal Woven, Ltd.; Elegance Ind. Co., Ltd.; Honson, Ltd.; Sinotex Development, Ltd.	0.00 percent (excluded).
Laws Fashion Knitters, Ltd., and all related companies, including: Cordial Knitting Co., Ltd.	0.22 percent (excluded).
Prosperity Clothing., Ltd/ Estero Enterprises, Ltd., and all related companies.	115.15 percent.
All others	5.86 percent.

ITC Notification

In accordance with section 735(c) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to the product under investigation, the applicable proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on MMF sweaters from Hong Kong entered or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act.

Dated: July 19, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-17505 Filed 7-26-90; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: August 27, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On May 25 and June 8, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (55 FR 21642 and 23465) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and services listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to Procurement List 1990:

Commodities

Repair Kit, Puncture
2640-00-052-6724

Deodorant, General Purpose
6840-00-664-6610

Services

Commissary Shelf Stocking and Custodial, Presidio of San Francisco Commissary, San Francisco, California
Food Service Attendant, Naval Amphibious Base, List Creek, Virginia
Grounds Maintenance, U.S. Army Reserve Center, 4300 S. Treadway, Abilene, Texas
Janitorial/Custodial, Supervisor's Office Facilities, Idaho Panhandle National Forests, 1201 Ironwood Drive, Coeur d'Alene, Idaho
Janitorial/Custodial, David Barrow U.S. Army Reserve Center, 1051 Russell Cave Pike, Lexington, Kentucky
Janitorial/Custodial, Air Traffic Control Tower, Essex County Airport, Fairfield, New Jersey
Janitorial/Grounds Maintenance, Federal Building, 823 Marin Street, Vallejo, California

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 90-17574 Filed 7-26-90; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1990, Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENT MUST BE RECEIVED ON OR BEFORE: August 27, 1990.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Strap, Webbing
1025-00-949-8637
5340-00-949-8637
Cover, Protective
1430-00-992-9254
1430-00-994-3086
1440-01-132-7799
(Remaining Government Requirement)
Insulation
1430-01-134-7893
(Remaining Government Requirement)
Kit, Tiedown
1440-01-132-9719
(Remaining Government Requirement)
Cap, Garrison
8405-01-232-5343
8405-01-232-5344
8405-01-232-5345
8405-01-232-5346
8405-01-232-5347
8405-01-232-5348
8405-01-232-5349
8405-01-232-5350
8405-01-232-5351
8405-01-232-5352
8405-01-232-5353
8405-01-232-5354
8405-01-232-5355
Coveralls, Disposable
8415-01-092-7529
8415-01-092-7530
8415-01-092-7531
8415-01-092-7532
8415-01-092-7533
(55% of Government Requirement)

Services

Commissary Shelf Stocking and Custodial, Walter Reed Army Medical Center, Silver Spring, Maryland
Janitorial/Custodial, Border Patrol Sector Headquarters, Spokane, Washington.

Beverly L. Milkman,
Executive Director.
[FR Doc. 90-17575 Filed 7-26-90; 8:45 am]
BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Shoreline Management Fees at Civil Works Projects

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

ACTION: Notice.

SUMMARY: The fee for a Shoreline Management permit issued in accordance with 36 CFR part 327.30, is $10 for each new permit and a $5 annual fee for inspection of the permitted facility/activity.

DATES: This action is effective 27 July 1990.

ADDRESSES: Office of the Chief of Engineers, ATTN: CECW-ON, 20 Massachusetts Avenue NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Lewis, (202) 272-0247.

SUPPLEMENTARY INFORMATION: The fee for a Shoreline Management permit issued in accordance with 36 CFR 327.30, is $10 for each new permit and a $5 annual fee for inspection of the permitted facility/activity.

36 CFR 327.30, Lakeshore Management at Civil Works Projects was published in the **Federal Register** on December 13, 1974. Section 327.30(j) directed a charge be made of $10 for each new permit and a $5 annual fee for inspection of the permitted facility. This equates to $30 for a five year permit.

On June 8, 1988, a proposed rule was published in the **Federal Register** which called for the fee schedule for Shoreline Management permits to be published separately from 36 CFR 327.30. The final rule (§ 327.30) is published elsewhere in this issue of the **Federal Register**.

Although a revision of the fee schedule is under consideration, no change will be made unless a proposed change is published for public review and comment.

Approved:

Albert J. Genetti, Jr.,
Colonel, Corps of Engineers, Chief of Staff.
[FR Doc. 90-17536 Filed 7-26-90; 8:45 am]
BILLING CODE 3710-92-M

Department of the Navy

Change in Public Hearing Date for the Draft Environmental Impact Statement for Proposed Main Gate Intersection Improvements at Naval Weapons Station Concord, CA

The date of the public hearing for the Draft Environmental Impact Statement for proposed main gate intersection improvements at Naval Weapons Station Concord, announced in the **Federal Register** on July 10, 1990, has been changed. The public hearing will be held on August 16, 1990, starting at 7 pm in the Concord City Council Chamber Auditorium, 1950 Parkside Drive, Concord California.

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for proposed main gate intersection improvements at Naval Weapons Station (WPNSTA) Concord, California.

The Navy proposes to construct an alternate transportation route for ordnance that is moved between the waterfront and mainside areas. Presently, ordnance on trains and trucks must cross Port Chicago Highway via an at-grade crossing in order to access the waterfront and mainside areas. These movements of ordnance delay general public users of Port Chicago Highway and necessitates a substantial law enforcement effort. The purpose of the proposed action is to improve safety and security for Navy truck and train crossings, and for the general public utilizing Port Chicago Highway.

Four alternatives have been analyzed in the DEIS: Weapons Station Rail/Access Road overpass, Port Chicago Highway underpass, Port Chicago Highway overpass, and no action. Impacts are analyzed in the DEIS and include wetland impacts resulting from construction of the overpass, and improvements in traffic circulation and air quality as a result of improved access and ordnance movements.

The DEIS has been distributed to various federal, state, local agencies, local elected officials, interest groups and the media. A limited number of single copies are available at the address listed at the end of this announcement.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on August 16, 1990, beginning at 7 pm in the Concord City Council Chamber Auditorium, 1950 Parkside Drive, Concord, California.

The public hearing will be conducted by the U.S. Navy. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be summarized at the public hearing and submitted in writing either at the hearing or mailed to the Commander, Western Division, Naval Facilities Engineering Command, P.O. Box 727, Attn: Code 1833, San Bruno, CA 94066–0720. All written statements must be postmarked by September 4, 1990, to become part of the official record.

Dated: July 24, 1990.

Jane M. Virga,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90–17588 Filed 7–26–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Financial Assistance Award (Cooperative Agreement); General Electric Turbine Business Operations

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of noncompetitive financial assistance application for a cooperative agreement.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2), the DOE Morgantown Energy Technology Center, gives notice of its plans to award a seventeen month cost-shared Cooperative Agreement to General Electric Turbine Business Operations, Schenectady, NY, 12345 in the approximate amount of $1,600,000.

FOR FURTHER INFORMATION CONTACT: Thomas L. Martin, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4087, Cooperative Agreement No.: DE–FG21–90MC27221.

SUPPLEMENTARY INFORMATION: The DOE will fund approximately 56 percent of the allowable costs for the Cooperative Agreement. The pending award is based on an application for a research project entitled, "Heavy-Duty Gas Turbine Combustion Tests With Simulated Low-Btu Coal Gas" which was submitted by the General Electric Power Generation Division's Turbine Business Operations. The objective of the research project is to evaluate the combustion characteristics of medium and low Btu coal gases in the advanced, high-temperature, gas turbine combustion system. The program will extend the testing which has been completed to date to fuel gases typical of an air-blown gasification processes with lower heating values. The tests will lead to an outline of the requirements and direction for future gas turbine coal gas development.

Dated: July 12, 1990.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 90–17581 Filed 7–26–90; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award (Grant); Illinois Energy and Natural Resource Department

AGENCY: U.S. Department of Energy (DOE), Morgantown Energy Technology Center.

ACTION: Notice of noncompetitive financial assistance application for a grant.

SUMMARY: Based upon a determination pursuant to 10 CFR 600.7(b)(2)(i) (B) and (C), the DOE Morgantown Energy Technology Center, gives notice of its plans to award a one year cost-shared Grant to the State of Illinois, Department of Energy and Natural Resources, Springfield, IL 62704–1892 in the approximate amount of $1,600,000.

FOR FURTHER INFORMATION CONTACT: Thomas L. Martin, U.S. Department of Energy, Morgantown Energy Technolgoy Center, P.O. Box 880, Morgantown, WV 26507–0880, Telephone: (304) 291–4087, Grant No.: DE–FG21–90MC27400.

SUPPLEMENTARY INFORMATION: The DOE will fund 50 percent of the allowable costs for the Grant. The pending award is based on an application for a research project entitled, "High Sulfur Coal Desulfurization Research" which was submitted pursuant to Annex M of a Memorandum of Understanding between the United States Department of Energy, Office of Fossil Energy and the State of Illinois. The general objective of the research project is to increase the utilization of Illinois coal resources; to make the best use of Illinois coal research facilities; to generate an interest in sulfur-in-coal research with potential researchers and industry; and to minimize duplication of research. The project is restricted to advancing coal technologies in the research areas of Fluidized Bed Combustion, Gasification, Waste Management, and Gas Stream Cleanup. The work in Fluidized Bed Combustion will lead to a better understanding of gas-solid mixing and improvements in sorbent sulfur retention. Under the Gasification segment of the project, the emphasis will be placed on conversion of coal to premium quality gas, liquids, and chemicals. Waste Mangement will

consider problems related to the disposal or utilization of waste streams from a coal processing or utilization system. The work under Gas Stream Cleanup includes cleanup of hot gases obtained from gasification of coal.

Dated: July 12, 1990.

Louie L. Calaway,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 90-17582 Filed 7-26-90; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by Office of Management and Budget

AGENCY: Energy Information Administration. DOE.

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. 96-511, 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(h) 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 per respondent 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 within 30 days of publication of this notice. 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.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 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: Jay Casselberry, Office of Statistical Standards (EI-73) Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586-2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA-28
3. 1905-0149
4. Financial Reporting System
5. Extension
6. Annual reporting
7. Mandatory
8. Businesses or other for profit
9. 23 respondents
10. 1 response
11. 1,089 hours per response
12. 25,050 hours
13. The Form EIA-28 provides data to evaluate the energy industry competitive environment and to analyze energy industry resource development, supply, distribution, and profitability issues. Survey results from 23 major energy producers are published annually for both private and public sector use.

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), 772(b), and 790a.

Issued in Washington, DC, July 24, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90-17583 Filed 7-24-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP89-161-000 et al.]

ANR Pipeline Co.; Informal Settlement Conference

July 20, 1990.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding on Monday and Tuesday, August 20 and 21, 1990, commencing at 1 p.m. Monday, at the offices of the Federal Energy Regulatory Commission, 810 North First Street, NE., Washington, DC.

Participants, as defined by 18 CFR 385.102(b), are invited to attend; attendance is limited to those parties which have been granted intervenor status.

Please refer to the Hearings Schedule posted daily at the Eighth floor at 810 N. First Street, to determine the location of the assigned hearing room. For additional information please contact Michael D. Cotleur, (202) 208-1076, or James A. Pederson, (202) 208-0738.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17508 Filed 7-26-90; 8:45 am]

BILLING CODE 6717-01-M

John W. Creighton, Jr.; Notice of Filing

[Docket No. ID-2486-000]

July 17, 1990.

Take notice that on July 9, 1990, John W. Creighton, Jr., (Applicant) tendered for filing under section 305(b) of the Federal Power Act to hold the following positions:

Director
Puget Sound Bancorp

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 3, 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. 90-17507 Filed 7-20-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-1760-000]

Texas Eastern Transmission Corp. and Texas Gas Transmission Corp.; Notice of Application

July 20, 1990.

Take notice that on July 18, 1990, Texas Eastern Transmission Corporation (Tetco), 5400 Westheimer Court, Houston, Texas 77056, and Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301 (both referred to hereinafter as Applicants), filed jointly in Docket No. CP90-1760-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a sales service provided by Texas Gas for Tetco and by Tetco for Texas Gas, all as more fully detailed in the application which is on file with the Commission and open to public inspection.

Tetco proposes to abandon the sale to Texas Gas of 207,618 dt equivalent of natural gas per day pursuant to a service agreement filed as Rate Schedule DCQ and dated November 1, 1962. Texas Gas proposes to abandon the sale to Tetco of 295,856 MMBtu equivalent of natural gas per day pursuant to a service agreement filed as Rate Schedule CDL-4 and dated October 17, 1962. It is asserted that Applicants have mutually agreed to the abandonment of sales and partial conversion of sales to firm transportation service pursuant to § 284.10 of the Commission's Regulations.

It is stated that Tetco would initially transport 80,000 dt equivalent per day for Texas Gas on a firm basis, with reductions of 30,000 dt in the second year and reductions of 25,000 dt equivalent in the third and fourth years of the four-year transportation agreement. It is stated that Texas Gas would initially transport 150,000 MMBtu per day for Tetco on a firm basis, with reductions of 100,000 MMBtu equivalent in the fifth year and 50,000 MMBtu equivalent in the sixth year of the six-year transportation agreement. It is asserted that Applicants would perform the transportation services under their respective blanket certificates in Docket No. CP88-136-000 (Tetco) and CP88-686-000 (Texas Gas). It is further asserted that no existing customers of either company would lose service as a result of the proposed abandonment. It is stated that no facilities would be abandoned in conjunction with the proposed abandonment of sales.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 30, 1990, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). 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 the 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-17509 Filed 7-26-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3815-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5073. Availability of Environmental Impact Statements Filed July 16, 1990 Through July 20, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900253, FINAL EIS, FHA, MS, ADOPTION-Black Creek Watershed, Y-36D Protection Project, Flood Prevention and Drainage, Financial Assistance, Black Creek Drainage District, Town of Tohula, Holmes County, MS, Due: August 27, 1990, Contact: Roger Gilbert (601) 965-4325.

The Department of Agriculture, Farmers Home Administration has Adopted the Department of Agriculture's Soil Conservation Services Final EIS filed with the Environmental Protection Agency 9-26-77.

EIS No. 900258, FINAL SUPPLEMENT, BLM, MT, Powder River I Regional Federal Coal Tracts, Leasing, Assessment of Economic, Social and Cultural Impacts on the Northern Cheyenne and Crow Indian Tribes, Yellowstone, Big Horn and Rosebud Counties, MT, Due: August 27, 1990, Contact: Loren Cabe (406) 255-2920.

EIS No. 900259, FINAL EIS, AFS, MT, Mill/Emigrant Timber Sale, Implementation, Gallatin National Forest, Livingston Ranger District, Park County, MT, Due: August 27, 1990, Contact: Rita E. Beard (406) 222-1892.

EIS No. 900260. DRAFT EIS, CDB, NY, Marina Redevelopment Project Area, Development and Construction, Urban Development Action Grant (UDAG) and COE Nationwide Permit, Village of Port Chester, Westchester County, NY, Due: September 14, 1990, Contact: Thomas J. Farrell (914) 937-6452.

EIS No. 900261, SECOND FINAL SUPPLE, COE, IA, Red Rock Dam and Lake Red Rock Operation and Maintenance Project, Implementation, Des Moines River, Marion County, IA, Due: August 27, 1990, Contact: Joe Slater (309) 788-6361.

EIS No. 900262, FINAL EIS, FAA, CO, Colorado Springs Municipal Airport Expansion, Construction of Runway 17L-32R parallel to existing Runway 17R-35L. Construction and Operation, Funding, City of Colorado Spring, CO, Due: August 27, 1990, Contact: Barbara Johnson (303) 286-5527.

EIS No. 900263, DRAFT EIS, AFS, ID, West Moyie Decision Area Timber Sale and Road Construction, Implementation, Idaho Panhandle National Forest, Bonners Ferry Ranger District, Boundary County, ID, Due: September 10, 1990, Contact: Mark A. Grant (208) 267-5561.

EIS No. 900264, DRAFT EIS, EPA, MS, Pascagoula Harbor Ocean Dredged Material Disposal Site (ODMDs), Designation, Gulf of Mexico, Pascagoula, MS, Due: September 10, 1990, Contact: Jeff Kellam (404) 347-2126.

EIS No. 900265, DRAFT EIS, AFS, OR, Shasta Costa Timber Sale and Integrated Resource Projects, Implementation, Siskiyou National Forest, Gold Beach and Galice Ranger Districts, Curry County, OR, Due: September 25, 1990, Contact: Kurt Wiedenmann (503) 247-6651.

EIS No. 900266, DRAFT EIS, UAF, TX, Bergstrom Air Force Base Closure, 67th Tactical Reconnaissance Wing Inactivation and 36 RF-4C Aircraft Retirement, Relocation of the 712th Air Support Operations, Center Squardron to Fort Hood, Implementation, City of Austin, Travis County, TX, Due: September 10, 1990, Contact: Tom Bartol (714) 382-4891.

EIS No. 900267, FINAL EIS, UAF, CA, Beale Air Force Base Realignment Relocation of 323rd Flying Training Wing out of Mather AFB, Implementation, Yuba County, CA, Due: August 27, 1990, Contact: Kevin Marek (402) 294-3684.

EIS No. 900268, DRAFT EIS, UAF, SC, Myrtle Beach Air Force Base Closure, 354th Tactical Fighter Wing Inactivation, Implementation, Horry County, SC, Due: September 10, 1990, Contact: Tom Bartol (714) 382-4891.

EIS No. 900269, DRAFT EIS, UAF, AR, Eaker Air Force Base Closure, 97th Bombardment Wing Inactivation, Implementation, Mississippi County, AR, Due: September 10, 1990, Contact: Tom Bartol (714) 382-4891.

EIS No. 900270, FINAL EIS, AFS, WA, Olympic National Forest, Land and Resource Management Plan, Implementation, Clallam, Grays Harbon, Jefferson and Madison Counties, WA, Due: August 27, 1990, Contact: Ted C. Stubblefield (206) 753-9534.

EIS No. 900271, FINAL EIS, SFW, NY, VT, Lake Champlain Sea Lamprey Control Temporary Program, Use of Lampricides and an Assessment of Effects on Certain Fish Populations and Sport Fisheries, Implementation, Clinton, Essex and Washington Counties, NY and Addison and Chittenden Counties, VT, Due: August 27, 1990, Contact: Ralph Abele, Jr. (617) 965-5100.

Dated: July 24, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-17585 Filed 7-26-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3815-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 9, 1990 through July 13, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-AFS-J03010-UT, Rating LO, Skyline Mine Main Line No. 41 Gas Transmission Pipeline Relocation, Manti-La Sal National Forest, Special Use Permit and Section 404 Permit, Emery, Carbon, and Sanpete Counties, UT.

Summary: EPA lacks objections to the proposed project provided BMPs are affectively implemented. EPA requests additional information on specific BMPs for preventing impacts to fisheries and water quality.

ERP No. D-AFS-J65160-CO, Rating EC2, Willow Mountain Area, Multiple-Use Management Projects, Implementation, Special Use Permit, Rio Grande National Forest, CO.

Summary: EPA has environmental concerns about potential environmental impacts from proposed water and land resource management activities. EPA also raised questions about the relationship of national and regional policies to proposed management activities. More detailed analysis should be provided to address EPA's concerns.

ERP No. D-AFS-K65124-CA Rating EO2, Shasta—Trinity National Forests, Land and Resource Management Plan, Implementation, Humboldt, Modoc, Shasta, Siskiyou, Tehama and Trinity Counties, CA.

Summary: EPA expressed environmental objections with the preferred alternative because its proposed actions (e.g., grazing activities, timber harvesting, and herbicides use). EPA requested additional discussion on mitigation measures and compensation to ensure the protection of high water quality, beneficial uses and riparian habitats.

ERP No. D-DOE-E00006-SC, Rating EC2, Savannah River Site, Continued Operation of K-L, and P-Reactors, Implementation, Aiken County, SC.

Summary: EPA expressed concerns over the continued operation of the reactors at the facility due to the impacts of the discharge of heated cooling water to area surface waters. This practice has caused adverse impacts to adequate life and area wetlands. Concern was also expressed over the contamination of ground water with tritium from the facility. EPA requested mitigation proposals to correct adverse environmental impacts from the facility.

ERP No. D-IBR-H34027-NB, Rating 3, Prairie Bend Unit Multipurpose Water Resources Project, Implementation, Platte River Valley, Section 404 Permit, Gosper, Dawson, Buffalo and Hall Counties, NB.

Summary: EPA rated this document a 3 because alternatives were inadequately addressed, Clean Water Act requirements were not met, recent changes requested by the project sponsor significantly altered the nature of the project, and a discussion of this project's relationship to other upstream water projects was lacking.

ERP No. D-MMS-L02018-AK, Rating EO2, Navarin Basin Outer Continental Shelf (OCS) Oil and Gas Sale No. 107, Leasing Bering Sea, AK.

Summary: EPA expressed objections to the proposed action due to the uncertainty about whether stipulations will be included in the sale, uncertainty about the effectiveness of mitigating stipulations, and the long disturbance effects on the endangered right whale if exploration and development activities occur in the planning area.

ERP No. DS-AFS-K65085-NV, Rating EC2, Humboldt National Forest Land and Resource Management Plan Amendment, Additional Information, Elko, Humboldt, Lincoln, Nye and White Pine Counties, NV.

Summary: EPA expressed concerns about potential impacts to water quality and riparian areas from the proposed management of livestock and wild horses.

ERP No. DS-FHW-E40108-NC, Rating EC2, Smith Creek Parkway and Downtown Spur Construction, US 117 to US 74, Wilmington, Updated and Additional Information, Funding, US Coast Guard Bridge Permit, COE Section 10 and 404 Permits, New Hanover County, NC.

Summary: EPA expressed concerns over the potential impact to area groundwater since the project will potentially cross three hazardous waste sites. Concern was also expressed over wetland losses associated with the project. EPA requested more information concerning the hazardous waste sites and options for avoiding wetland impacts.

Final EISs

ERP No. F-AFS-J67007-MT Wilson Creek Gold Project, Exploration and Mining Operating Plan Approval, Elkhorn Mountain Range, Helena National Forest, Helena County, MT.

Summary: EPA has no objection to the preferred alternative given adoption of EPA recommendations in the final EIS.

ERP No. FA-USA-K21000-00 Johnston Atoll Chemical Agent Disposal System (JACADs) for Transportation, Storage and Destruction of European Stockpile of Chemical Munitions, Updated Information, Johnston Atoll, TT.

Summary: EPA expressed concern about the frequency of monitoring of the MILVANS and any additional testing to be performed during Operational Verification Testing.

Dated: July 24, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities

[FR Doc. 90-17586 Filed 7-26-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3814-9]

Open Meeting on August 2 and 3, 1990: Small Community Subcommittee of the State and Local Programs Committee of the National Advisory Council for Environmental Policy and Technology

Under Public Law 92-463 (the Federal Advisory Committee Act), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the Small Community Subcommittee of the State and Local Programs Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). The meeting will be held at the Embassy Row Hotel, 2015 Massachusetts Avenue, Washington, DC, 20036, on Thursday, August 2, from 9 a.m. to 4:30 p.m., and on Friday, August 3, from 9 a.m. to 3:30 p.m.

This will be an organizational meeting devoted to orientation of members, goal setting, and setting the subcommittee's agenda for the remainder of the year. The meeting will be open to the public. For further information contact Ann Cole, Small Community Coordinator, U.S. EPA (A-101), 401 M St., SW., Washington, DC 20460 (tel. 202-382-4719).

Dated: July 18, 1990.

Robert Hardaker,

Designated Federal Official, NACEPT.

[FR Doc. 90-17558 Filed 7-26-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

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

July 23, 1990.

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

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0395.

Title: Automated Reporting and Management Information Systems (ARMIS), §§ 43.21 and 43.22.

Action: Revision.

Respondents: Businesses or other for-profit.

Frequency of Response: Quarterly and annually.

Estimated Annual Burden: 1,050 Responses; 328,650 Hours.

Needs and Uses: The ARMIS is needed to administer our accounting, jurisdictional separation, access charge, and joint cost rules and to analyze revenue requirements and rates of return. It collects financial and operating data from all Tier 1 and those Class A local exchange carriers with annual revenues over $100 million.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-17584 Filed 7-26-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Existing Collection in Use Without an OMB Control Number.

Title: Approval and Coordination of Requirements to Use the National Emergency Training Center (NETC) for Extracurricular Training Activities—FEMA Form 75-10, Request for Housing Accommodations, and FEMA Form 75-11, Request for Use of NETC Facilities.

Abstract: The NETC is a FEMA, Office of Training, facility which houses the Emergency Management Institute (EMI) and the National Fire Academy (NFA). The NETC provides training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, and long-term disaster discovery. The training is carried out both through a resident program at a central campus facility located in Emmitsburg, Maryland, and through an outreach program which makes courses available at the State and local levels throughout the country.

Special groups sponsored by the EMI or NFA may use NETC facilities to conduct activities closely related to and in direct support of the EMI or NFA. Such groups include other Federal departments and agencies, groups chartered by Congress such as the American Red Cross, State and local governments, volunteer groups and national and international associations representing State and local governments.

FEMA's policy is to accommodate other training activities on a space available basis at the Emmitsburg, Maryland campus. The data will be used to coordinate extracurricular training activities at the NETC. Such training is that over and above regularly scheduled training sessions of EMI and NFA. FEMA Form 75-10, Request for Housing Accommodations, will be used by Special Groups, FEMA and other Federal agency employees, Adjunct Faculty, and Guest Speakers to request lodging; FEMA Form 75-11, Request for Use of NETC Facilities, will be used by Special Groups to request space at the NETC to conduct classes, meetings, or conferences.

Type of Respondents: Individuals, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions.

Estimate of total annual reporting and recordkeeping burden: 130 hours.

Number of respondents: 1,200.

Estimated average burden hours per response: 7 minutes.

Frequency of response: One-Time.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7340, Office of Management

and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: July 18, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90-17567 Filed 7-26-90; 8:45 am]

BILLING CODE 6718-01

[FEMA-871-DR]

Amendment to Notice of a Major Disaster Declaration; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-871-DR), dated June 22, 1990, and related determinations.

DATED: July 19, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Illinois, dated June 22, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1990:

The counties of Bureau, Henry, Jo Daviess, and Marshall for Individual Assistance and Public Assistance; and

Cass County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency

[FR Doc. 90-17561 Filed 7-26-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATES: July 20, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is amended to be May 28, 1990, through and including July 15, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-17562 Filed 7-26-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-870-DR]

Amendment to Notice of a Major Disaster Declaration; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-870-DR), dated June 6, 1990, and related determinations.

DATED: July 20, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Ohio, dated June 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 6, 1990:

Columbiana County for Individual Assistance and Public Assistance; and

Mahoning and Trumbell Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support Federal Emergency Management Agency

[FR Doc. 90-17563 Filed 7-26-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-841-DR]

Amendment to Notice of a Major Disaster Declaration; Virgin Islands

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of the Virgin Islands (FEMA-841-DR), dated September 20, 1989, and related determinations.

DATED: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steven B. Singer of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Gerald J. Connolly as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Jerry D. Jennings,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 90-17564 Filed 7-26-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-874-DR]

Amendment to Notice of a Major Disaster Declaration; Wisconsin

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA-874-DR), dated July 13, 1990, and related determinations.

DATED: July 19, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3624.

NOTICE: Notice is hereby given that the incident period for this disaster is closed effective July 19, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson

Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 90-17565 Filed 7-26-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-874-DR]

Amendment to Notice of a Major Disaster Declaration; Wisconsin

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA-874-DR), dated July 13, 1990, and related determinations.

DATED: July 17, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Wisconsin, dated July 13, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 13, 1990:

The counties of Dane, Green, and Juneau for Individual Assistance and Public Assistance; and

The counties of Calumet and Rock for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-17566 Filed 7-26-90; 8:45 am]

BILLING CODE 6718-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0025]

Biological Resources, Inc.; Denial of Request for Hearing and Revocation of U.S. License No. 915

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs (the Commissioner) denies a request for hearing and revokes the establishment and product licenses issued to Biological Resources, Inc., for the manufacture of Source Plasma. The licenses are revoked because the firm failed to comply with the firm's standard operating procedures and the applicable biologics regulations designed to ensure the continued safety, purity, and potency of the manufactured product.

DATES: The revocation of U.S. License No. 915 is effective August 27, 1990.

ADDRESSES: Background information related to this notice is on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: JoAnn M. Minor, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) is taking this revocation action based upon its evaluation of the findings from an inspection and concurrent investigation of Biological Resources, Inc. (BRI), 16041 Woodward Ave., Highland Park, MI 48203, conducted on January 9 through 15, January 18 through 24, and March 5 through 21, 1985. These inspections and the investigation revealed numerous deficiencies in the applicable standards in major areas of the establishment's manufacturing operation for Source Plasma including: (1) Donor suitability determinations and related quality control procedures; (2) blood collection; (3) whole blood centrifugation and plasma processing; and (4) plasma storage and distribution. FDA concluded that these deficiencies demonstrated that the firm's management did not fulfill its responsibilities to assure that the establishment was operated in compliance with the Federal regulations and the establishment's standard procedures.

By letter dated April 5, 1985, FDA suspended the establishment license and product license for the manufacture of Source Plasma issued to BRI. By letter dated April 11, 1985, the establishment requested that the revocation be held in abeyance and outlined their corrective actions. In considering the request, FDA conducted a comprehensive review of the establishment's recent inspectional history. FDA found significant and continued noncompliance with the applicable Federal regulations and the provisions of the establishment's licenses. FDA's investigation revealed that managers of the firm were aware of the violative practices, yet did not take adequate measures to prevent their occurrence. Based on the willful nature of the violations by supervisory and nonsupervisory personnel, FDA denied the firm's request that the license revocation be held in abeyance.

Accordingly, in a letter dated May 8, 1985, issued under § 601.5(b) (21 CFR 601.5(b)), FDA notified BRI of the agency's intent to revoke U.S. License No. 915 and to issue a notice of opportunity for hearing. In letters dated May 31, June 5, June 13, and July 19, 1985, the firm, through its legal counsel, requested the agency to reconsider its decision to pursue license revocation; challenged the findings of an agency investigation conducted concurrently with inspections; and denied that the firm's management acted willfully. The agency evaluated and considered the information submitted on behalf of BRI and concluded that license revocation was appropriate. In a letter dated July 11, 1985, the agency advised the firm that the agency's determination of willfulness was based on the pervasive, continuing nature of the deficiencies and on information obtained during the FDA investigation which indicated that the management of BRI was knowledgeable of significant, ongoing deficiencies.

The suspension of BRI's license in 1985 prohibited the firm from collecting, manufacturing, and distributing Source Plasma. Since 1985, the firm has not been operating as a blood establishment, and BRI has not requested FDA to allow operations to resume.

According to documents obtained from Florida's Department of State, BRI was a corporation organized under the laws of Florida, and the corporation was involuntarily dissolved on November 1, 1985.

In the Federal Register of June 22, 1988 (53 FR 23453), FDA issued a notice of opportunity for hearing announcing its intent to revoke the establishment license (U.S. License No. 915) and product license issued to BRI for the manufacture of Source Plasma. The proposed revocation was based on the failure of the firm to conform to the applicable standards and conditions established in its license and the requirements in 21 CFR parts 600, 601, 606, 610, and 640.

Applicable Regulations

FDA procedures and requirements governing a notice of opportunity for hearing, notice of appearance and request for hearing, grant or denial of hearing, and submission of data and information to justify a hearing are contained in 21 CFR parts 12 and 601. As stated in the notice of opportunity for hearing, BRI was required to submit to FDA's Dockets Management Branch a written request for a hearing by July 22, 1988, and any data justifying a hearing by August 22, 1988. A request for a hearing may not rest upon mere allegations or denials, but must set forth a genuine and substantial issue of fact that requires a hearing. If it conclusively

appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that requires a hearing on the denial of the license, the Commissioner of Food and Drugs will enter summary judgment against the applicant requesting the hearing, making findings and conclusions that justify denying a hearing.

Request for Hearing and FDA'S Findings

For the reasons set forth below, the Commissioner finds that there is no genuine and substantial issue of fact justifying a hearing and therefore denies BRI's request for a hearing. Before discussing the substantive issues, the Commissioner notes that BRI's request for a hearing, is procedurally deficient, and therefore no opportunity for a hearing exists. The request for a hearing was submitted on behalf of BRI, Inc. As noted earlier, BRI was dissolved as a legal corporation on November 1, 1985. Therefore, although BRI requested a hearing in 1988, the legal entity that obtained U.S. license No. 915 no longer exists.

FDA's regulations provide that FDA will give the applicant a notice of opportunity for a hearing on the proposed withdrawal of approval (21 CFR 314.200(a)). The applicant who fails to request a hearing within 30 days of the notice waives the opportunity for a hearing (21 CFR 314.200(a)(2)). FDA's regulations define the term "applicant" as any person who submits an application to FDA for approval of a new drug and any person who owns an approved application (21 CFR 314.3(b)). The term "person" includes "individuals, partnerships, corporations, and associations." (21 CFR 310.3(e).)

Because BRI did not exist as a legal entity when it requested a hearing, it did not meet the definition of "person" as defined in FDA's regulations. Therefore, the Commissioner finds that there was no valid request for a hearing and the opportunity for a hearing is waived.

Because State laws vary as to when a corporation exists and what activities "de facto" corporations may engage in, the Commissioner has also addressed BRI's argument that it is entitled to a hearing because it has raised genuine and substantial issues of fact. Following publication of the notice of opportunity for hearing on June 22, 1988, FDA's Dockets Management Branch received two letters, dated July 20, 1988, and August 19, 1988, signed by the firm's legal counsel. These letters requested a hearing be granted to BRI on the revocation of the license; yet neither letter demonstrates that there is a genuine and substantial issue of fact for resolution at the hearing (21 CFR 12.24(b)). In the July 20, 1988 letter, BRI merely requested a hearing, but they submitted no information in support of its request.

In the letter of August 19, 1988, BRI states that FDA has taken the position that FDA need not afford an opportunity to demonstrate compliance if FDA first suspends a license under 21 CFR 601.6, regardless of whether or not willfulness is involved. BRI claims that this argument is wholly without merit. It is unnecessary for FDA to address this argument because the agency finds that no genuine and substantial issue of fact exists which warrants a hearing.

BRI claims that It should have an opportunity to address: (1) the issue of willfulness and (2) the issue of a defective FDA investigation at a hearing. The Commissioner will address these issues separately. Because FDA finds that BRI has not raised a genuine and substantial issue of fact regarding either of these issues, the agency is denying BRI's request for a hearing.

The Issue of Willfulness

BRI maintains that it did not act willfully, and therefore was entitled to an opportunity to demonstrate or achieve compliance before the agency acted to revoke the firm's license. FDA maintains that the management of the firm, including the responsible head, acted willfully and therefore denied the firm a chance to demonstrate or achieve compliance.

FDA's regulation regarding the revocation of license states that:

> Except as provided in 21 CFR 601.6 *or in cases involving willfulness*, the notification [of intent to revoke the license] required in this paragraph shall provide a reasonable period for the licensee to demonstrate or achieve compliance with the requirements of this chapter, before proceedings will be instituted for the revocation of the license. (Emphasis added).

21 CFR 601.5(b).

If BRI acted "willfully," then BRI was not entitled to an opportunity to show compliance with FDA's regulations and the firm's standard operating procedures before FDA initiated proceedings to revoke the firm's license. Before addressing whether BRI raised a genuine and substantial issue of fact regarding the issue of willfulness, the Commissioner will address the meaning of the term "willfulness" as used in 21 CFR 601.5(b). The meaning of "willfulness" is a question of law, not an issue of fact; and therefore, BRI is not entitled to a hearing on the meaning of "willfulness."

BRI attempts to distinguish "willfulness" from "negligence," arguing that for conduct to be "willful" in nature there must be an element of intentionality to the conduct. BRI claims that negligent conduct is different than willful conduct. (BRI's July 19, 1985 letter). FDA, on the other hand, claims that in this case, willfulness can be shown not only by the pervasive and continuing nature of deficiencies but also by information that management was knowledgeable of significant, ongoing deficiencies. (FDA's July 11, 1985 letter.) The meaning of the term "willful" depends on the context in which it is used. (*Screws* v. *United States*, 325 U.S. 91, 101 (1945).) Here, the term is used in a regulation regarding the revocation of licenses (21 CFR 601.5(b)). This regulation describes when a licensee is entitled to notification and an opportunity to achieve compliance. The language in 21 CFR 601.5(b) is similar to the language in section 558(c) of the Administrative Procedure Act (5 U.S.C. 558(c)) concerning license suspensions, withdrawals, revocations, and annulments. That section provides that:

> Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given * * * opportunity to demonstrate or achieve compliance with all lawful requirements.

Cases involving the meaning of "willful" as used in the Administrative Procedure Act have noted that the term is often used "without any implication of evil purpose, criminal intent, or the like" and "often is employed to characterize conduct marked by careless disregard." (*Eastern Produce Co.* v. *Benson*, 278 F.2d 606, 609 (3d Cir. 1960).) A number of cases that have considered the meaning of willfulness in license revocation proceedings have noted that willful conduct can be found either when a person intentionally does a prohibited act or when a person acts with careless disregard of statutory requirements. (*Goodman* v. *Benson*, 286 F.2d 896, 900 (7th Cir. 1961); *Silverman* v. *Commodity Futures Trading Commission*, 549 F.2d 28, 31 (7th Cir. 1977); *American Fruit Purveyors* v. *United States*, 530 F.2d 370, 374 (5th Cir. 1980); *Steinberg & Son: Inc.* v. *Butz*, 491 F.2d 988, 994 (2d Cir. 1974).) In a number of other cases interpreting a variety of civil statutes, courts have interpreted willful conduct as conduct marked by careless disregard for whether or not one has the right to act. (See, e.g., *TWA* v. *Thurston*, 105 S.Ct.

613 (1985).) As in cases cited, the Commissioner finds that the term "willful" as used in 21 CFR 601.5(b) means conduct which is either intentional or done in careless disregard of the applicable regulations or standards. A finding of willfulness for the purposes of license revocation need not be based on evil purpose or criminal intent.

FDA has alleged that BRI committed numerous deviations of the applicable biologics regulations. These deviations included the acceptance of donors who did not meet the donor suitability criteria, failure to maintain complete, concurrent and accurate records, improper storage temperatures, and deficiencies in blood collection. Details of the deviations are included in the April 5, and May 8, 1985 letters to BRI. FDA notified the firm that its investigation indicated that the responsible head of BRI and two named managers were knowledgeable of violative practices yet did not take adequate measures to prevent their occurrence.

BRI has a number of responses to FDA's allegations. BRI admits that the conditions at the Highland Park facility were not acceptable or in compliance with applicable plasmapheresis regulations. In an April 2, 1985 letter to FDA, BRI's responsible head stated that since assuming the position of General Manager and Responsible Head he was aware that the facility was not operating in a fully acceptable manner. He noted that the firm had attempted to take corrective action before FDA's March 1985 inspection, but these actions were not 11 fully adequate to address the problems. With regard to problems in the areas of donor reception, donor screening, and recordkeeping, the responsible head sent memoranda in February and March 1985 to the assistant manager in charge of those areas, describing specific problems that had not yet been corrected and requesting reports on various operations.

In a subsequent letter, BRI admitted that the responsible head "was negligent, even grossly negligent, in not monitoring the activities of subordinates" more closely than he did. (July 19, 1985 letter.) BRI contends, however, that the deficiencies were not willful, intentional, or consciously directed by the responsible head. In support of its contention, BRI submitted affidavits of BRI employees stating that the responsible head did not act willfully. The affidavits included statements that the responsible head never told the affiant to conceal information or to falsify records. With regard to FDA's allegations that two other managers acted willfully, BRI claims that if they did act willfully it was done outside the scope of their employment. BRI states that the activities of two former employees acting outside the scope of their employment cannot be a basis for a license revocation.

Despite BRI's allegations that the responsible head did not act willfully, the Commissioner finds that BRI has not raised a genuine and material issue of fact with regard to the issue of willfulness. Although the affidavits submitted by BRI deny that the responsible head acted with evil intent, a finding of willfulness here does not mean that the Commissioner has found that an individual acted with evil intent.

As stated above, willfulness exists when a firm acts with careless disregard of the applicable standards. A firm acts through employees who hold responsible positions in the company. The Commissioner finds that the evidence supports that BRI acted, through its responsible head and managers, with careless disregard of the biologics regulations and therefore acted willfully. This finding is based on the extensive nature of the deficiencies, together with BRI's admissions that the responsible head was aware of deficiencies, but did not take adequate measures to remedy the deficiencies.

The finding of willfulness is also based on the affidavits submitted by BRI which show that other managers of the firm were aware of violations but did not act adequately to correct the deficiencies. The Commissioner finds that the affidavits submitted by BRI do not raise a general and substantial issue of fact regarding the issue of willfulness. Some of the affidavits state that the responsible head did not act willfully and never directed any employees to falsify records or to conceal information. The Commissioner's finding that the firm acted willfully is not based on a finding of falsification of records or concealment of information.

Rather, as stated, the finding of willfulness is based on the pervasive nature of the deficiencies along with the fact that managers were knowledgeable of the deficiencies but failed to adequately correct the problems. BRI's affidavits support FDA's allegations that managers were aware of the deficiencies but failed to remedy the violations. The Commissioner concludes that BRI acted with careless disregard of the applicable regulations and thus acted willfully.

The Commissioner rejects BRI's contention that BRI cannot be found to have acted willfully because the actions of two managers were outside the scope of their employment. BRI submitted affidavits stating that two managers may have intentionally falsified documents and that the responsible head did not falsify any documents. As stated above, the finding of willfulness is not based on the falsification of documents. With regard to the significant deviations which occurred under the supervision of BRI's management, the Commissioner finds that the managers were acting within the scope of their employment. The evidence, including BRI's affidavits, shows that the managers held responsible positions with direct contact with employees, that the managers were aware of substantial violations, and that, while exercising the authority delegated to them, they failed to adequately correct the violations.

The Issue of a Defective FDA Investigation

BRI claims that the FDA investigation of BRI was incomplete and biased because FDA investigators spoke only to disgruntled employees who had personal grievances against BRI management, who were trying to divert attention from their own willful failure to adhere to the biologics regulations, and who were trying to convince FDA investigators that the responsible head acted criminally. BRI alleges that the FDA investigators avoided interviewing employees who might have provided information contrary to the statements given by disgruntled employees, and BRI argues that it would be able to present such information at a hearing. Finally, BRI claims that because FDA spoke only to disgruntled employees, its determination that the responsible head acted willfully was flawed. As discussed above, the determination of willfulness was based on the careless disregard of the regulations, not on evil intent. Although the affidavits submitted by BRI provide some evidence of evil intent on the part of managers other than the responsible head, the Commissioner has not relied on any statements of evil intent in concluding that the firm acted willfully.

The Commissioner finds that BRI's complaints that the FDA investigation was entirely one-sided and flawed do not raise a genuine and substantial issue of fact that justifies a hearing. BRI has not challenged the objective evidence, which consists of the significant deviations found at BRI, together with the responsible head's admissions that

he did not take appropriate actions to correct the violations. This evidence is more than enough to support license revocation. Thus, the allegations of a flawed FDA investigation do not change the fact that significant violations occurred, that responsible members of the firm were aware of the violations, and that they did not take appropriate action to correct the violations. Even if FDA investigators spent more time interviewing other BRI employees, the underlying evidence of significant deviations would not change.

Conclusion

Because of the reasons stated above, the Commissioner finds that BRI has failed to show that there is a genuine and substantial issue of fact requiring a hearing. The Commissioner finds that significant deviations of the biologics regulations and the standards in the license existed to warrant license revocation. Therefore, under section 351 of the Public Health Service Act (42 U.S.C. 262) and under 21 CFR 12.28, 601.4, and 601.7, the request for a hearing is denied and the establishment and product licenses for BRI are revoked.

Dated: July 18, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-17549 Filed 07-26-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90M-0222]

Cochlear Corp.; Premarket Approval of the Nucleus ™ 22 Channel Cochlear Implant for Use in Children Ages 2 Through 17 Years

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cochlear Corp., Englewood, CO, for premarket approval under the Medical Device Amendments of 1976, of the Nucleus ™ 22 Channel Cochlear Implant for use in children ages 2 through 17 years. After reviewing the recommendation of the Ear, Nose, and Throat (ENT) Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of June 27, 1990, of the approval of the application.

DATES: Petitions for administration review by August 27, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Louis E. Hlavinka, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1230.

SUPPLEMENTARY INFORMATION: On September 11, 1989, Cochlear Corp., 61 Inverness Dr. East, Suite 200, Englewood, CO 80112, submitted to CDRH an applicant for premarket approval of the Nucleus ™ 22 Channel Cochlear Implant for use in children ages 2 through 17 years. The device is an auditory sensation device. The Nucleus ™ 22 Channel Cochlear Implant for use in children ages 2 through 17 years in intended to restore a level of auditory sensation via the electrical stimulation of the auditory nerve in children ages 2 through 17 years who have a bilateral profound sensorineural hearing impairment and demonstrate little or no benefit from a hearing aid.

On November 14, 1989, the ENT Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On June 27, 1990, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Louis E. Hlavinka (HFZ-470), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 27, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 17, 1990.

Elizabeth D. Jacobson,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 90-17499 Filed 7-26-90; 8:45 am]

BILLING CODE 4160-09-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-82]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: July 27, 1990.

ADDRESSES: For further information, contact James Forsberg, room 7262,

Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying the properties determined as suitable.

The properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the landholding agencies pursuant to the court's Memorandum of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency about any property of such agency that has been identified as suitable. Within 30 days from receipt of such notice from HUD, the agency must transmit to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *U.S. Army:* HQ–DA, Attn: DAEN–ZCI–P–Robert Conte; room 1E671 Pentagon, Washington, DC 20360–2600; (202) 693–4583; *GSA* Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; *Dept. of Commerce:* Jim McCombs, Chief, National Program Division, room 1037, 14th St. and Constitution Ave. NW., Washington, DC 20237; (202) 377–3580. (These are not foll-free numbers.)

Dated: July 20, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Suitable Land (by State)

Pennsylvania

Weather Service Forecast
192 Shafer Road
Corapolis, PA Co: Allegheny
Landholding Agency: Commerce
Property Number: 279010006
Status: Unutilized
Comment: 5 acres; limitation—future weather radar system site; potential utilities.

Virginia

St. Helena Annex
Formerly Portions
Norfolk Naval Shipyard
Norfolk, VA
Landholding Agency: GSA
Property Number: 549010069
Status: Excess GSA Inventory No. 4–GR(1)–VA–525A
Comment: 2.38 acres with 165 sq. ft.; concrete block building on site; adjacent to highway; potential utilities; building needs rehab.

SUITABLE BUILDINGS (by State)

Alabama

Federal Building
107 Broad Street
Camden, AL Co: Wilcox
Landholding Agency: GSA
Property Number: 549010070
Status: Excess GSA Inventory No. 4–G–AL–570
Comment: 8536 sq. ft.; concrete brick; 4 floors; most recent use—post office.

Texas

Bldg. 4702
Fort Bliss
4702 Drake Street
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219014964
Status: Unutilized
Comment: 2,331 sq. ft.; wood frame; 1 story; off-site use only; need rehab; most recent use—vehicle maintenance shop.

Bldg. 4703
Fort Bliss
4703 Drake Street
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219014965
Status: Unutilized
Comment: 2331 sq. ft.; wood frame; one story; need rehab; off-site use only; most recent use—vehicle maintenance shop.

Bldg. 4704
Fort Bliss
4704 Drake Street
El Paso, TX Co: El Paso
Landholding Agency: Army
Property Number: 219014966
Status: Unutilized
Comment: 2331 sq. ft.; wood frame; 1 story; need rehab; off-site use only; most recent use—vehicle maintenance shop.

Universe of Properties:
Total=24
Suitable=6
Suitable Buildings=4
Suitable Land=2
Unsuitable=18
Unsuitable buildings=17
Unsuitable Land=1
Number of Resubmissions=0

[FR Doc. 90–17415 Filed 7–26–90; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-00-4740-10]

Closure of Public Lands in California

ACTION: Public use closure order for public land.

SUMMARY: Notice is hereby given related to the closure of Bureau of Land Management (BLM) administered lands to all public use in accordance with regulations contained in 43 CFR subpart 8364.1. Approximately 640 acres of public land located in the East ½ of Section 14, and the West ½ of Section 13, T.5S., R.1E., Humboldt Meridian, will be temporarily closed to all public use from 0600 hours, July 29, 1990 through 2400 hours August 10, 1990 to protect persons and property on public lands. Employees, agents and permittees of the BLM, private landowners or residents who require access through the closed area may be exempt from this closure as determined by the authorized officer.

DATES: This temporary closure order is effective at 0600 hours July 29, 1990.

SUPPLEMENTARY INFORMATION: The purpose of this temporary emergency closure order is to protect the public and federal law enforcement officers, support personnel and property in conjunction with a required law enforcement operation. This operation requires a secure area to protect law enforcement officers, support personnel, equipment, aircraft and vehicles.

This operation is authorized under federal law and Departmental guidelines.

Any violation of this closure will be enforced pursuant to 43 CFR Subpart 8360.0-7. Violations are punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed twelve (12) months.

Maps showing the area closed to public use are posted at the boundaries and are available at the Arcata Resource Area Office, 1125 16th Street, Room 219, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Christopher Brong, Special Agent-in-Charge, at the Bureau of Land Management, 2800 Cotage Way, room E-2841, Sacramento, CA 95825, or telephone (916) 978-5484.

Dated: July 17, 1990.

Ed Hastey,

State Director.

[FR Doc. 90-17436 Filed 7-26-90; 8:45 am]

BILLING CODE 4310-JB-M

[OR-030-00-4130-02: GPO-338]

Intent To Prepare an Environmental Impact Statement (EIS) Malheur Resource Area, Vale District, OR

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on an open pit gold/silver mine and heap leaching and milling operation in southeastern Oregon and notice of scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Vale District, will be directing the preparation of an EIS to be prepared by a third party contractor on the impacts of a proposed open pit gold/silver mine and heap leaching and milling operation, the Grassy Mountain project. The project is proposed on public lands in Malheur County located in southeastern Oregon. The Bureau invites comments and suggestions on the scope of the analysis.

DATES: Written comments on the scope of the analysis will be accepted until September 10, 1990. Public scoping meetings will be held August 21, 1990 at the Treasure Valley Community College, Room 10, Weese Building 650 College Blvd, Ontario, Oregon and on August 22, 1990 at The Days Inn Hotel, Ballroom, 11550 NE Airport Way, Portland, Oregon. Both meetings are scheduled from 7-10 p.m. to provide information regarding the proposal and assist interested individuals in formulating their written input. Additional scoping meetings may be held as appropriate.

ADDRESSES: Comments should be sent to the Malheur Resource Area Manager, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918, ATTN: Grassy Mountain Project.

FOR FURTHER INFORMATION CONTACT: Ralph Heft, Malheur Resource Area Manager, at (503) 473-3144.

SUPPLEMENTARY INFORMATION: Atlas Precious Metals Inc. has filed a plan of operations with the Bureau of Land management for an open pit gold/ silver mine in the Grassy Mountain area. The project area covers approximately 2,836 acres of which approximately 895 acres would involve surface disturbance. The project would consist of an open pit mine, waste rock disposal site, processing plants, heap leach systems, mill and tailings ponds, gold recovery processing plant, ancillary facilities and access roads. The proposed action would allow for the processing of 17 million tons of ore, 12 million tons of low grade material and 82 million tons of overburden over a 9 year life of the mine. The project will be located on lands administered by the Bureau of Land Management. BLM is responsible for approving the plans of operations for mineral related activities occurring on BLM managed lands, based upon the Record of Decision (ROD) and will ensure that all applicable Federal and State permits are obtained by Atlas.

Ralph Heft, Malheur Resource Area Manager, Bureau of Land Management, in Vale, Oregon, is the responsible official.

In preparing the EIS the BLM will identify and consider a range of alternatives for the site. One alternative will be no development of the site. Other alternatives may consider but not be limited to water supply, processing and reclamation options and relocation of the access route, powerline, waste rock, tailings ponds or ancillary facilities.

Public participation will be especially important at several points during the analysis. The first is during this scoping process (40 CFR 1501.7). The agency will seek information, comments and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft EIS. The scoping process includes:

1. Identifying potential issues and those to be analyzed in depth.
2. Eliminating insignificant issues or those which have been covered by a relevant previous analysis.
3. Exploring additional alternatives.
4. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

The scoping process will include a news release announcing the start of the EIS process; letters of invitation to participate in the scoping process; and a scoping document which further clarifies the proposed action, alternatives and significant issues being considered. The letters of invitation and the scoping document will be distributed to selected parties and available upon request.

The draft EIS (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for a 60 day public review by April, 1991. At that time EPA will publish a notice of filing of the DEIS in the **Federal Register**.

Comments will be analyzed and considered by the agency in preparing the final EIS (FEIS). The FEIS will include responses to substantive comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental

consequences discussed in the EIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The decision and reasons for the decision will be documented in a Record of Decision (ROD) and will be subject to appeal under part 4, title 43 CFR.

Geoffrey B. Middaugh,

Associate District Manager.

[FR Doc. 90-17591 Filed 7-26-90; 8:45 am]

BILLING CODE 4310-33-M

[CA-940-00-4212-13; CACA 22587]

California; Exchange of Public and Private Lands in Riverside County and Order Providing for Opening of Public Land; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice will correct an error in the desription of the lands conveyed to the Nature Conservancy.

FOR FURTHER INFORMATION CONTACT: Judy Bowers, BLM California State Office, 2800 Cottage Way, Room E-2845, Federal Office Building, Sacramento, CA 95825, (916) 978-4820.

The land description in paragraph 1 for serial No. CACA 22587, 54 FR 18162, April 27, 1989, is hereby corrected from T. 5 N., R. 2 W., to T. 5 S. R. 2 W.

Dated: July 17, 1990.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 90-17503 Filed 7-26-90; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531), *et seq.*):

PRT-750410

Applicant: Saeed Ullah Khan, Tucson, AZ.

The applicant requests a permit to import the personal sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by Mr. C.H. Ballantine, Adelaide, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-750379

Applicant: Los Angeles, Zoo, Los Angeles, CA.

The applicant requests a permit to export one male red-earned guenon (*Cercopithecus erythrotis camerunensis*) to the Universite de Rennes I, Staton Biologique de Paimpont, Plelan le Grand, France, for captive breeding purposes. This guenon was smuggled into the U.S. from Cameroon in 1983, was seized by the U.S. Fish and Wildlife Service and donated to the Dallas Zoo, which in turn donated the guenon to the Los Angeles Zoo.

PRT-750859

Applicant: New York Zoological Society, Bronx, NY.

The applicant requests a permit to import four gharials (*Gavialis gangeticus*) from the Atagawa Tropical & Alligator Garden, Shizuoka, Japan, for captive breeding purposes. The gharials were hatched from eggs that were removed from the wild in Nepal in 1985.

PRT-750146

Applicant: University of Texas, Austin, TX.

The applicant requests a permit to import the preserved skeleton of one captive hatched specimen of a salt-water crocodile (*Crocodylus porosus*) from Anne Warren, Bondorra, Victoria, Australia, for scientific research. The specimen is 6.3 centimeters long.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) in room 430, 4401 N. Fairfax Dr., Arlington, VA 22201, or by writing to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, room 430, Arlington, VA 22201.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: July 23, 1990.

Karen Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 90-17512 Filed 7-26-90; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office:

American Brands, Inc., 1700 East Putnam Avenue, Old Greenwich, Connecticut 06870-0811

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(I) ACCO World Corporation—Delaware
(II) Polyblend Corporation—Illinois
(III) Systems Furniture Company—Delaware
(IV) Swingline Inc.—Delaware
(V) Wilson Jones Company—Delaware
(VI) Day-Timers, Inc.—Delaware
(VII) Perma Products Company—Delaware
(VIII) Sax Arts and Crafts, Inc.—Delaware
(IX) Kensington Microware Limited—Delaware

B. 1. Parent Corporation and address of principal office: Outboard Marine Corporation, a Delaware corporation with its principal place of business at 100 Sea Horse Drive, Waukegan, Illinois 60085.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation:

OMCGB Inc.—Delaware

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-17559 Filed 7-26-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388; Sub-No. 13]

Intrastate Rail Rate Authority; Maryland

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of Maryland has filed its application for recertification with the Commission. Pursuant to State Intrastate Rail Rate Authority, 5 I.C.C.2d 680, 685 (1989), the Commission provisionally recertifies the State of Maryland to regulate intrastate railroad rates, practices, and procedures. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

DATES: This provisional recertification will be effective on July 27, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245; [TDD for hearing impaired: (202) 275-1721].

Decided: July 23, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-17555 Filed 7-26-90; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388; Sub-No. 14]

Intrastate Rail Rate Authority; Michigan

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional recertification.

SUMMARY: The State of Michigan has filed its application for recertification with the Commission. Pursuant to State Intrastate Rail Rate Authority, 5 I.C.C.2d 680, 685 (1989), the Commission provisionally recertifies the State of Michigan to regulate intrastate railroad rates, practices, and procedures. After completing its review, the Commission will issue a decision approving recertification or taking other appropriate action.

DATES: This provisional recertification will be effective on July 27, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245; [TDD for hearing impaired: (202) 275-1721].

Decided: July 23, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-17556 Filed 7-26-90; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290; Sub-No. 91X]

Norfolk and Western Railway Co. Abandonment Exemption in Mingo County, WV

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 2.2-mile line of railroad between mileposts WE-0.0 and WE-2.2, at War Eagle, in Mingo County, WV.

Applicant has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co. — Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on August 26, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 6, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by August 16, 1990, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative:

Richard W. Kienle, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains trails or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 1, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 20, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90-17486 Filed 7-26-90; 8:45 am]

BILLING CODE 7035-01-M

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[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Mississippi:
MS90-9 (Jan. 5, 1990) ..... p. 533, p. 534
MS90-12 (Jan. 5, 1990) ..... p. 539, p. 540
MS90-22 (Jan. 5, 1990) ..... p. 559, p. 560

New York:
NY90-9 (Jan. 5, 1990) ..... p. 827, p. 828
NY90-10 (Jan. 5, 1990) ..... p. 831, p. 832
NY90-20 (Jan. 5, 1990) ..... p. 908a, p. 908b

Volume II

Arkansas, AR90-1 (Jan. 5, 1990). p. 3, p. 4

Illinois:
IL90-1 (Jan. 5, 1990) ..... p. 59, pp. 68-69
IL90-2 (Jan. 5, 1990) ..... p. 87, pp. 92, 103
IL90-4 (Jan. 5, 1990) ..... p. 111, p. 113
IL90-5 (Jan. 5, 1990) ..... p. 117, p. 118
IL90-6 (Jan. 5, 1990) ..... p. 123, pp. 124-125
IL90-8 (Jan. 5, 1990) ..... p. 135, p. 138
IL90-9 (Jan. 5, 1990) ..... p. 143, p. 145
IL90-11 (Jan. 5, 1990) ..... p. 153, p. 155
IL90-12 (Jan. 5, 1990) ..... p. 161, p. 163
IL90-13 (Jan. 5, 1990) ..... p. 173, p. 176
IL90-15 (Jan. 5, 1990) ..... p. 198, p. 198
IL90-16 (Jan. 5, 1990) ..... p. 205, pp. 208, 214
Indiana, IN90-6 (Jan. 5, 1990) ..... p. 303, pp. 304-305, p. 308-, pp. 314-315

Nebraska:
NE90-3 (Jan. 5, 1990) ..... p. 725, p. 726
NE90-5 (Jan. 5, 1990) ..... p. 731, p. 732
NE90-9 (Jan. 5, 1990) ..... p. 739, p. 740
NE90-10 (Jan. 5, 1990) ..... p. 741, p. 742
NE90-11 (Jan. 5, 1990) ..... p. 743, p. 744
Ohio, OH90-35 (Jan. 5, 1990) ..... p. 918c, p. 918d

Volume III

California:
CA90-1 (Jan. 5, 1990) ..... p. 31, p. 32, 34, 39
CA90-2 (Jan. 5, 1990) ..... p. 41, p. 45
CA90-4 (Jan. 5, 1990) ..... p. 71, pp. 73-88, 90
Colorado, CO90-1 (Jan. 5, 1990). p. 107, p. 108
South Dakota, SD90-3 (Jan. 5, 1990). p. 337, p. 338
Utah, UT90-1 (Jan. 5, 1990) ..... p. 343, pp. 347-348, pp. 351-352

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 20th day of July 1990.

Alan L. Moss,
Director, Division of Wage Determinations.

[FR Doc. 90-17382 Filed 7-26-90; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total

or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 6, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 6, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 16th day of July 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Air Cooled Applications Div. (UAW)	Lockport, NY	7/16/90	6/28/90	24,588	Heat exchangers.
Alatex (ACTWU)	Andalusia, AL	7/16/90	7/02/90	24,589	Mens' shirts.
Ampacet Corp. (IBT)	Mt. Vernon,NY	7/16/90	3/01/90	24,590	Plastic.
Anderson-Bolling MFG. Co. (workers)	Spring Lake, MI	7/16/90	4/11/90	24,591	Metal stampings.
ASARCO-Gelena Mine (USWA)	Wallace, ID	7/16/90	6/27/90	24,592	Silver.
Bessemer Processing Co., Inc. (IBT)	Newark, NJ	7/16/90	6/15/90	24,593	Steel shipping drums.
Brittain Creek Cedar, Inc. (Company)	Aberdeen, WA	7/16/90	6/29/90	24,594	Shakes and shingles.
Canton Castings, Inc. (USWA)	Canton, OH	7/16/90	7/02/90	24,595	Truck brackets.
Central Steel Drum (company)	Newark, NJ	7/16/90	6/15/90	24,596	Steel drums.
Chevron, USA (workers)	New Orleans, LA	7/16/90	7/02/90	24,597	Oil & gas.
Cindy-Jo Inc. (ILGWU)	Brooklyn, NY	7/16/90	6/28/90	24,598	Ladies dresses.
Cleve-Tenn Industries, Inc	Newark, NJ	7/16/90	6/28/90	24,599	Men's & Boys' coats.
Cooper Sportswear, Inc. (ACTWU)	Newark, NJ	7/16/90	6/28/90	24,600	Mens' coats.
Colonial Corp. (company)	Tellico Plains, TN	7/16/90	6/25/90	24,601	Mens' & Ladies' sportswear.
Crane Midwest (workers)	St. Louis, MO	7/16/90	7/03/90	24,602	Steel & pipe fittings.
Cray Research, Inc. (workers)	Chippewa Falls, WI	7/16/90	6/27/90	24,603	Computers.
Crescent Brick Co. (AFL-CIO)	Altoona, PA	7/16/90	7/02/90	24,604	Bricks.
(The) Eastern Co. (USWA)	Naugatuck, CT	7/16/90	6/26/90	24,605	Melleable & steel castings.
George Harris Oil Co. (workers)	Abilene, TX	7/16/90	7/04/90	24,606	Oil & gas.
Holophane Co., Inc. (company)	Edison, NJ	7/16/90	6/21/90	24,607	Plastic lens.
Lear Siegler Seating Corp. (UAW)	Chesterfield, MO	7/16/90	7/03/90	24,608	Auto seats.
Lee Co. (workers)	Merriam, KS	7/16/90	6/27/90	24,609	Jeans.
Leica, Inc. (company)	Buffalo, NY	7/16/90	6/25/90	24,610	Microscopes.
LPL, Amphenol Corp. (IAMAW)	Sidney, NY	7/16/90	7/03/90	24,611	Electrical connectors.
MacGregor Sports, Inc. (ACTWU)	Fond du Lac, WI	7/16/90	6/29/90	24,612	Sports equip. and uniforms.
Marmot Mountain International, Inc. (company)	Grand Junction, CO	7/16/90	6/29/90	24,613	Sportswear & sleeping bags.
Miller Printing Equip. Corp. (IAMAW)	Pittsburgh, PA	7/16/90	7/05/90	24,614	Printing presses.
Montgomery Dist., Center (ACTWU)	Montgomery, AL	7/16/90	7/02/90	24,615	Shipping goods.
Neimor Contractors (ACTWU)	Newark, NJ	7/16/90	6/28/90	24,616	Mens' coats.
Oklahoma Pipe Threaders (workers)	Wynnewood, OK	7/16/90	7/06/90	24,617	Threading & repairing oil pipes.
Oxford of Covington (workers)	Covington, GA	7/16/90	6/29/90	24,618	Ladies' blouses.
Reichert Shake & Fencing, Inc. (company)	Toledo, WA	7/16/90	6/27/90	24,619	Shakes, shingles & cedar fencing.
Stevens Sportswear (workers)	Parchuta, MS	7/16/90	6/26/90	24,620	Children's sportswear.
Thermal Systems, Inc. (company)	Salt Lake City, Utah	7/16/90	7/03/90	24,621	Polyiso foam insulation.
Thermal Systems, Inc. (company)	Denver, CO	7/16/90	7/03/90	24,622	Polyiso foam insulation.
Thermal Systems, Inc. (company)	Covington, KT	7/16/90	7/03/90	24,623	Polyiso foam insulation.
Thermal Systems, Inc. (company)	Dallas, TX	7/16/90	7/03/90	24,624	Polyiso foam insulation.
Thermal Systems, Inc. (company)	Jacksonville, FL	7/16/90	7/03/90	24,625	Polyiso foam insulation.
Thermal Systems, Inc. (company)	Springfield, MA	7/16/90	7/03/90	24,626	Polyiso foam insulation.
Washita Valley Ent. Inc. (workers)	Wynnewood, OK	7/16/90	7/06/90	24,627	Threading & repairing pipes.
Westfield Sewing Co. (workers)	Westfield, NY	7/16/90	6/27/90	24,628	Ladies' dresses & blouses.

[FR Doc. 90-17580 Filed 7-26-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,164]

Santa Fe Energy Resources, Tulsa District Office, Tulsa, OK; Negative Determination Regarding Application for Reconsideration

By an application dated June 25, 1990 the workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 14, 1990 and published in the **Federal Register** on May 30, 1990 (55 FR 21954).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The workers claim that foreign competition and the unstable price of oil have led to decreased sales and production and employment. The workers believe that the same market forces at work on Santa Fe Energy are the same as those at work on Oxy, USA whose workers were certified for adjustment assistance.

Foreign competition and prices, in themselves, would not provide a basis for a worker group certification. In order for workers to obtain a worker group certification, all three of the Group

Eligibility Requirements of the Trade Act must be met: (1) A significant decrease in employment, (2) an absolute decrease in sales or production and (3) an increase in imports of articles like or directly competitive with those produced at the workers' firm and which contributed importantly to declines in sales or production and employment.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade ct of 1974 was not met. Investigation findings show that the worker separations at Tulsa resulted from a corporate consolidation of technical support activities. Workers were laid off when the technical support functions were transferred from the district level to corporate headquarters in the first quarter of 1990.

With respect to the certification of workers at Oxy Oil and Gas USA, Inc., in Tulsa (TA-W-23,501), all the Group Eligibility Requirements of the Trade Act were met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of July 1990.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 90-17578 Filed 7-26-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,304]

Westinghouse Electric Corp.; Pittsburgh, PA; Negative Determination Regarding Application for Reconsideration

By an application dated June 21, 1990 the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on June 14, 1990 and published in the **Federal Register** on June 26, 1990 (55 FR 26035).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners claim that the Ardmore site which employs Sales/Marketing Support personnel is the facility requesting a worker group certification, not Westinghouse workers in Pittsburgh, Pennsylvania. The petitioners also claim that the Ardmore workers supported Westinghouse Electric facilities in Trafford, E. Pittsburgh and West Mifflin, Pennsylvania whose workers were certified eligible to apply for worker adjustment assistance.

A review of the investigation files shows that the Department's investigation was for the Ardmore Boulevard workers who were engaged in the selling of marketing services produced by affiliates of Westinghouse Electric.

Investigation findings show that the Westinghouse workers on Ardmore Boulevard in Pittsburgh did not produce an article within the meaning of section 222(3) of the Trade Act. This issue was addressed in the Department's denial notice.

Workers of a firm providing a service may be certified only under very limited conditions. The workers may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to the subject firm by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a domestic production facility whose workers independently meet the statutory criteria for certification and the reduction must directly relate to the product impacted by imports. These conditions have not been met for workers at Westinghouse Electric Corporation's Ardmore Site in Pittsburgh.

The certifications for Westinghouse's Trafford (TA-W-15,672); E. Pittsburgh (TA-W-19,749) and W. Mifflin (TA-W-20,633) facilities expired on March 20, 1987; July 24, 1989 and June 17, 1990, respectively. The findings further show that only a negligible amount of activity involved the Westinghouse workers at W. Mifflin.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

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

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-17519 Filed 7-26-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,198]

William Prym, Dayville CT; Negative Determination Regarding Application for Reconsideration

By an application dated June 22, 1990, Local # 947T of the Amalgamated Clothing and Textile Workers Union (ACTWU) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on May 18, 1990 and published in the **Federal Register** on June 7, 1990 (55 FR 23309).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The ACTWU notes that the subject firm's sales and production increase was necessary to sustain the company during the move to South Carolina; that sales decreased from 1981 to the present; and that import competition caused the consolidation and move to South Carolina.

Section 223(b)(1) of the Trade Act does not permit the Department to certify workers laid off more than one year from the date of the petition; consequently, earlier sales or production data are not relevant to the present investigation. Finally, a domestic transfer of production would not serve as a basis for a worker group certification.

Foreign competition, in itself, would not provide a basis for certification. In order for workers to obtain a worker group certification all three of the Group Eligibility Requirements of the Trade Act must be met; 1) A significant decrease in employment 2) an absolute decrease in sales or production and 3) an increase of imports of articles that

are like or directly competitive and which "contributed importantly" to declines in sales or production and employment at the workers' firm.

The Department's denial was based on the fact that the decreased employment and decreased sales or production criteria of the Trade Act were not met. Production and sales of the plant's two primary product lines-pins and fasteners, snaps, hooks and eyes increased in 1989 compared to 1988 and in the first quarter of 1990 compared to the same period in 1989. Total sales and production for all products increased in the first quarter of 1990 compared to the same period of 1989.

Other findings show that employment remained constant in the period from 1988 through the first quarter of 1990. No worker separations were recorded during the period of investigation. Layoffs relating to the transfer of production to South Carolina did not occur during the Department's investigation. Further, worker separations resulting from a domestic transfer would not provide a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 20th day of July 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-17577 Filed 7-26-90; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90-56)]

Performance Review Board; Senior Executive Service

July 19, 1990.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of membership of SES performance review board

SUMMARY: The Civil Service Reform Act of 1978, Public Law 95-454 (section 405) requires that appointments of individual members to a Performance Review Board be published in the Federal Register.

The performance review function for the Senior Executive Service in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board and the NASA Senior Executive Committee. The latter perfoms this function for senior executives who report directly to the Administrator or the Deputy Administrator. The following individuals are serving on the Committee and the Board:

Senior Executive Committee

Samuel W. Keller, Chairperson, Associate Deputy Administrator, NASA Headquarters

John E. O'Brien, Assistant Deputy Administrator, NASA Headquarters

C. Howard Robins, Jr., Associate Administrator for Management, NASA Headquarters

Thomas P. Murphy, Non-NASA Member

Performance Review Board

John E. O'Brien, Chairperson, Assistant Deputy Administrator, NASA Headquarters

Ann P. Bradley, Executive Secretary, Assistant Associate Administrator for Human Resources, NASA Headquarters

Elmer T. Brooks, Deputy Associate Administrator for Management, NASA Headquarters

Jerry J. Fitts, Deputy Associate Administrator for Space Operations, NASA Headquarters

Paul F. Holloway, Deputy Director, NASA Langley Research Center

J. Wayne Littles, Deputy Director, NASA Marshall Space Flight Center

Victor L. Peterson, Deputy Director, NASA Ames Research Center

Robert Rosen, Deputy Associate Administrator for Aeronautics, Exploration and Technology, NASA Headquarters

Gary L. Tesch, Deputy General Counsel, NASA Headquarters

James H. Trainor, Associate Director, NASA Goddard Space Flight Center

Thomas E. Utsman, Deputy Associate Administrator for Space Flight, NASA Headquarters

Paul J. Weitz, Deputy Director, NASA Johnson Space Center

Thomas N. Tate, Non-NASA Member

Dated: July 19, 1990.

Richard H. Truly,

Administrator.

[FR Doc. 90-17552 Filed 7-26-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON CHILDREN

Notice of Hearing

Background

The National Commission on Children was created by Public Law 100-203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate

This notice announces a Hearing and Meeting of the National Commission on Children to be held in Boston, Massachusetts.

Hearing

Time: 1:30 p.m.-4:30 p.m., Thursday, August 9, 1990.

Place: Boston Public Library, 666 Boylston Street, Boston, Massachusetts 02117.

Status: 1:30 p.m.-4:30 p.m., open to the public.

Agenda: Field Hearing on "High Risk Youth".

Meeting

Time: 9 a.m.-3 p.m., Friday, August 10, 1990.

Place: Hyatt Regency, 575 Memorial Drive, Cambridge, Massachusetts 02139.

Status: 9 a.m.-3 p.m., Open to the public.

Contact: Jeannine Atalay, (202) 254-3800.

Dated: July 20, 1990.

John D. Rockefeller IV,

Chairman, National Commission on Children.

[FR Doc. 90-17542 Filed 7-26-90; 8:45 am]

BILLING CODE 6820-37-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on AC/DC Power Systems Reliability; Meeting

The Subcommittee on AC/DC Power Systems Reliability 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—10 a.m. until the conclusion of business.*

The Subcommittee will review the proposed resolution of Generic Issue B-56, "Diesel Generator Reliability."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as it 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 the NRC staff and NUMARC representatives.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat M. El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: July 19, 1990.

Gary R. Quittschreiber,

Nuclear Reactors Branch.

[FR Doc. 90-17553 Filed 7-26-90; 8:45 am]

BILLING CODE 7590-01-M

Availability of NRC Staff Comments on DOE's Progress Report on the Scientific Investigation Program for the Nevada Yucca Mountain Site for the Period September 15, 1988 through September 30, 1989

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; solicitation of comments

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of its staff comments on the Department of Energy's (DOE) Progress Report on the Scientific Investigation Program for the Nevada Yucca Mountain Site for the period September 15, 1988-September 30, 1989 and is soliciting comments on its comments.

DATE: The comment period expires October 25, 1990.

ADDRESSES: Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room P-223, Philips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of comments received may be examined at the NRC Public Document Room (PDR), 2120 L Street (Lower Level), NW., Washington, DC and the Local Public Document Rooms (LPDRs) located at the James R. Dickinson Library, Special Collections Department, University of Nevada-Las Vegas, 4505 Maryland Parkway, Las Vegas, Nevada 89154, and University Library, Government Publications Department, University of Nevada-Reno, Nevada 89557. Copies of the comments are available for public inspection and/or copying at the NRC PDR and the LPDRs listed above.

FOR FURTHER INFORMATION CONTACT: Mr. John Linehan, Director, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301/492-3387.

SUPPLEMENTARY INFORMATION: On March 2, 1990 the NRC received DOE's Progress Report on the Scientific Investigation Program for the Nevada Yucca Mountain Site for the period September 15, 1988-September 30, 1989. This report is the first of a series of reports that will hereafter be issued at six month intervals to document the progress of site characterization activities at Yucca Mountain, the candidate site selected for characterization as the nation's first geologic repository for high-level radioactive waste. The NRC has reviewed this report and has transmitted its comments to DOE.

DOE's Progress Report was issued in accordance with the requirements of section 113(b)(3) of the Nuclear Waste Policy Act (NWPA) and 10 CFR 60.18(g) concerning the schedule for issuance and the contents of such reports during site characterization. If NRC makes comments upon DOE's progress reports, it is required by 10 CFR 60.18(i) to publish in the **Federal Register** a notice of availability of the comments and announcement of a public comment period. Those are the purposes of the present notice.

Dated at Rockville, Maryland, this 20th day of July, 1990.

For the Nuclear Regulatory Commission.

Robert E. Browning,

Director, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 90-17554 Filed 7-26-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and placed under Schedule C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: John Daley, (202) 606-0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on July 6, 1990 (55 FR 12973). Individual authorities established or revoked under Schedule A, B, or C between June 1, 1990, and June 30, 1990, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, 1990.

Schedule A

No Schedule A authorities were established or revoked during June.

Schedule B

No Schedule B authorities were established or revoked during June.

Schedule C

U.S. Arms Control and Disarmament Agency

One Secretary (Stenography) to the Assistant Director, Strategic Programs Bureau. Effective June 22, 1990.

Department of Agriculture

One Private Secretary to the Deputy Under Secretary for Small Community and Rural Development. Effective June 1, 1990.

One Private Secretary to the Assistant Secretary for Food and Consumer Services. Effective June 5, 1990.

One Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective June 11, 1990.

One Confidential Assistant to the Administrator, Food and Nutrition Service. Effective June 15, 1990.

One Private Secretary to the Manager, Federal Crop Insurance Corporation. Effective June 15, 1990.

One Confidential Assistant to the Administrator, Foreign Agricultural Services. Effective June 19, 1990.

One Staff Assistant to the Administrator, Rural Electrification Administration. Effective June 19, 1990.

One Assistant Deputy Administrator for Program Operations to the Administrator, Farmers Home Administration. Effective June 21, 1990.

Agency for International Development

One Deputy Director (Program Manager), Office of Private and Voluntary Cooperation, to the Deputy Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance. Effective June 15, 1990.

One Special Assistant to the Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance. Effective June 15, 1990.

One Special Assistant to the Deputy Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance. Effective June 15, 1990.

One Special Assistant to the Administrator. Effective June 25, 1990.

Commission on Civil Rights

One Special Assistant to a Commissioner. Effective June 27, 1990.

Department of Commerce

One Director of Public Affairs to the Deputy Under Secretary for Technology. Effective June 8, 1990.

One Confidential Assistant to the Counselor to the Deputy Secretary. Effective June 8, 1990.

One Confidential Assistant to the Director, Office of External Affairs. Effective June 11, 1990.

One Confidential Assistant to the Assistant Secretary for Import Administration. Effective June 12, 1990.

One Confidential Assistant to the Director, Congressional Affairs Staff. Effective June 19, 1990.

One Special Assistant to the Director, Minority Business Development Agency. Effective June 21, 1990.

Department of Defense

One Special Assistant to the Assistant Secretary (Special Operations/Low Intensity Conflict). Effective June 8, 1990.

One Private Secretary to the Principal Deputy Assistant Secretary (Force Management and Personnel). Effective June 8, 1990.

One Staff Assistant to the Associate Director, Presidential Personnel. Effective June 20, 1990.

One Attorney-Adviser to the Assistant General Counsel/Legal Counsel. Effective June 29, 1990.

Department of Energy

One Director of the Executive Secretariat to the Director of Administration and Human Resource Management. Effective June 1, 1990.

One Staff Assistant to the Chief of Staff. Effective June 7, 1990.

One Special Assistant to the Administrator, Economic Regulatory Administration. Effective June 13 1990.

One Staff Assistant to the Director, Office of New Production Reactors. Effective June 15, 1990.

One Policy Specialist to the Director, Office of New Production Reactors. Effective June 28, 1990.

One Staff Assistant to the Deputy Assistant Secretary for International Affairs. Effective June 28, 1990.

Department of Transportation

One Staff Assistant to the Chief of Staff. Effective June 26, 1990.

Department of Education

One Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective June 1, 1990.

One Special Assistant to the Director, Intergovernmental Affairs. Effective June 12, 1990.

One Confidential Asssistant to the Assistant Secretary for Postsecondary Education. Effecive June 12, 1990.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective June 13, 1990.

One Special Assistant to the Chief of Staff/Counselor to the Secretary. Effective June 13, 1990.

One Special Assistant to the Director, Drug Abuse Prevention Oversight Staff. Effective June 15, 1990.

Environmental Protection Agency

One Staff Assistant to the Assistant Administrator for Administration and Resource Management. Effective June 15, 1990.

One Staff Assistant to the Director, External Relations and Education Division. Effective June 29, 1990.

Federal Labor Relations Authority

One Public Affairs Officer to the Chairman. Effective June 26, 1990.

Department of Housing and Urban Development

One Senior Special Assistant to the President, Government National Mortgage Association. Effective June 5, 1990.

One Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs. Effective June 8, 1990.

One Deputy to the Assistant Secretary for Public Affairs. Effective June 8, 1990.

One Special Assistant to the Assistant Secretary for Policy Development and Research. Effective June 15, 1990.

Interstate Commerce Commission

One Staff Assistant to the Director, Office of External Affairs. Effective June 4, 1990.

One Special Assistant to the Director, Office of Congressional and Legislative Affairs. Effective June 7, 1990.

Department of the Interior

Two Special Assistants to the Special Assistant to the Under Secretary (Take Pride in America Staff). Effective June 11, 1990.

Department of Justice

One Counsel to the Assistant Attorney General, Land and Natural Resources Division. Effective June 1, 1990.

One Confidential Assistant to the Assistant Attorney General, Land and Natural Resources Division. Effective June 13, 1990.

Department of Labor

One Special Assistant to the Associate Assistant Secretary for Intergovernmental Affairs. Effective June 1, 1990.

One Special Assistant to the Assistant Secretary for Occupational Safety and Health. Effective June 18, 1990.

National Credit Union Administration

One Secretary (Typing), to a Board Member. Effective June 27, 1990.

National Transportation Board

One Confidential Assistant to a Member of the Board. Effective June 5, 1990.

One Special Assistant to a Member of the Board. Effective July 7, 1990.

Office of Management and Budget

Two Confidential Assistants to the Executive Assistant to the Director. Effective June 19, 1990.

One Special Assistant to the Deputy Director. Effective June 19, 1990.

One Confidential Assistant to the Executive Associate Director. Effective June 19, 1990.

Office of National Drug Control Policy

One Special Assistant to the Deputy Director for Supply Reduction. Effective June 4, 1990.

One Staff Assistant to the Special Assistant to the Director. Effective June 25, 1990.

Office of Personnel Management

One Confidential Assistant to the Director. Effective June 26, 1990.

One Policy Analyst to the Director of Policy. Effective June 29, 1990.

Occupational Safety and Health Review Commission

One Special Assistant to the Chairman. Effective June 27, 1990.

Securities and Exchange Commission

One Secretary (Typing), to the General Counsel. Effective June 15, 1990.

One Confidential Assistant to the Chairman. Effective June 27, 1990.

Small Business Administration

One Director of Intergovernmental Affairs to the Chief of Staff. Effective June 12, 1990.

One Director of External Affairs to the Chief of Staff. Effective June 12, 1990.

Department of State

One Special Assistant to the Assistant Secretary, Bureau of Consular Affairs. Effective June 13, 1990.

One Director, Public Affairs Staff, to the Assistant Secretary, Bureau of Consular Affairs. Effective June 28, 1990.

One Legislative Management Officer to the Principal Deputy Assistant Secretary for Legislative Affairs. Effective June 28, 1990.

Tax Court of the United States

Two Trial Clerks to Judges. Effective June 15, 1990.

Department of the Treasury

One Special Assistant to the Assistant Secretary (Legislative Affairs). Effective June 8, 1990.

One Assistant Director, Travel and Special Event Services to the Deputy Assistant Secretary for Administration. Effective June 12, 1990.

One Special Assistant to the Director, Office of Thrift Supervision. Effective June 19, 1990.

One Confidential Assistant to the Assistant Secretary (International Affairs). Effective June 22, 1990.

One Public Affairs Specialist to the Treasurer of the United States. Effective June 27, 1990.

One Staff Assistant to the Assistant Secretary for Policy Management. Effective June 28, 1990.

One Confidential Assistant to the Secretary. Effective June 28, 1990.

One Special Assistant to the Director, Office of Thrift Supervision. Effective June 28, 1990.

One Executive Secretary to the Assistant Secretary for Policy Management. Effective June 29, 1990.

One Special Assistant to the Assistant Secretary (International Affairs). Effective June 29, 1990.

United States Information Agency

One Special Assisant to the Associate Director, Bureau of Educational and Cultural Affairs. Effective June 26, 1990.

Authority: 5. U.S.C. 3301; E.O. 10555, 3 CFR 1954–1958 Comp., R218.

U.S. Office of Personnel Management

Constance Berry Newman,

Director.

[FR Doc. 90–17543 Filed 7–26–90; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–28242; File No. SR–BSE–90–06]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to an Amendment to the BSE Constitution Changing the Composition of its Nominating Committee

On May 25, 1990, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article VIII of the BSE Constitution. The proposed amendment revises the composition of the BSE's Nominating Committee ("Committee").[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 28105 (June 12, 1990), 55 FR 24952 (June 19, 1990). No comments were received on the proposal.

On April 24, 1990, the BSE Board of Governors ("Board") approved the proposed amendment to the Exchange's Constitution. In its filing with the Commission, the BSE proposed to amend Article VIII of its Constitution to revise the composition of its Nominating Committee in order to provide for a greater diversity of representation among member firms, to add representation from the public sector, and to provide for the annual appointment of a Board representative to the Committee by the Vice Chairman of the Board.

Article VIII, section 2 currently provides that the Nominating Committee shall be composed of seven persons. The Committee members are elected to serve a two-year term. Article VIII provides that four of the current Committee members must be regular members of the Exchange and that three Committee members must be either regular or allied members of the Exchange. Article VIII, section 2 also provides that the Committee should be broadly representative of the membership of the Exchange and that, to the extent possible, the Committee should include a past Chairman of the Board, a sole and dual member organization representative of the Exchange, a representative of a member organization engaged in retail business, and a representative of a specialist organization.

The BSE proposes that the number of persons required to compose the Committee remain the same. As amended, however, Article VIII, section 2 would provide for the election by ballot of six of the Committee members for a two-year term. Article VIII also would provide that one member of the

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] The Nominating Committee holds at least one meeting during the month of July, following due notice to members, for the purpose of receiving members' suggestions for nominees for the offices and positions which will be filled at the Exchange's annual election (*e.g.*), the Vice Chairman and 10 members of the Board) and for members of the Nominating Committee for the ensuing fiscal year. The Nominating Committee reports the names of its nominees for offices, positions, and membership on the Nominating Committee to the Secretary of the Exchange. These names, along with the names of individuals who qualify as independent nominees by petition, are placed on the ballot for the annual election. *See* BSE Constitution, Article VIII, Sections 1 and 4.

Board may be appointed to the Committee by the Vice Chairman of the Board to serve a one-year term. Amended Article VIII would specify that the Board representative will not be eligible for reelection to the Board unless he or she is serving the first of a two-year term.[4]

Amended Article VIII, section 2 would require that five of the seven Committee members represent broker-dealer member organizations and that the remaining two Committee members represent the public. Amended Article VIII would provide that at least two, but not more than three, members of the Committee shall be floor members, and at least one of these must be a specialist. The amendment also would provide that any vacancy on the Committee may be filled, until the next annual election, by a majority vote of the remaining Committee members. Finally, amended Article VIII would provide that, to the extent possible, the Committee should include a sole and dual member organization representative of the Exchange and a representative of a member organization engaged in the retail business.

The BSE believes that the proposed amendment will enhance the composition of the Committee because it provides for greater diversity of representation among different categories of member firms, adds public representation, and provides Board representation on the Committee. The BSE states that the designated Board representative on the Committee will be in a position to advise the Committee of the Exchange's strategic plans and the desired skills in prospective Board members most likely to assist in attaining the goals of the Exchange.

The Commission finds that the proposed rule change 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 sections 6(b)(3) and (5) of the Act.[5] Section 6(b)(3) of the Act requires, among other things, that the rules of an exchange assure a fair representation of its members in the selection of directors that the proposed amendment, which revises the composition of the Committee, will assure a fair representation of Exchange members in the administration of the Committee's responsibilities because the Committee must consist of Exchange members from both on and off the floor as well as a Board representative.[6] The Commission believes that the proposal should ensure that the principal categories of Exchange members have an opportunity for representation on the Committee.

The Commission notes that it recently approved the Exchange's proposal to revise the composition of the BSE Board.[7] The Commission believes that because of the Committee's important role in the annual election of the Board,[8] the revised composition of the Committee should ensure a fair representation of Exchange members in the nominating process for Exchange officers and positions. The Commission also believes that the revisions to the Committee should complement the revisions to the composition of the Board in that both proposals serve to ensure a broad representation among various categories of members in the governance of the Exchange.

The Commission also believes that it is acceptable for the Exchange to provide for a Board representative on the Committee. Because the proposal limits the circumstances under which the Board representative selected for the Committee may stand for reelection to the Board, the proposal should ensure independent judgment of the representative in the nomination process. In addition, the Commission believes that the Board representative should provide strategic guidance to the Committee through the nomination of individuals qualified to assist in attaining the goals of the Exchange.

The Commission believes that the proposed amendment is consistent with section 6(b)(5) of the Act, among other things, protect investors and the public interest. The Commission believes that the proposed amendment should protect investors and the public interest by providing for greater diversity of representation from the various categories of member firms on the Committee. Moreover, the Commission believes that the addition of two public representatives to the Committee should ensure that the Committee's action will be responsive to public and investor concerns.

Finally, the Commission believes that the proposal's technical provisions, which clarify that a majority vote of Committee members may temporarily fill vacancies on the Committee and which remove references directing that a past Chairman of the Board and a specialist [9] should serve on the Committee, are consistent with and necessary to implement the substantive amendments to Article VIII of the BSE's Constitution.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Dated: July 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17517 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28244; [File No. SR-CBOE-90-20]]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to Trading Index Options in the TOPIX Index

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 June 25, 1990, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[4] Article VIII, section 1 of the BSE Constitution currently provides for a two-year term of office for Board members. The Commission recently approved an amendment to the BSE Constitution which provides that no Board member, other than the Chairman and Vice Chairman, may serve more than four consecutive terms on the Board. *See* Securities Exchange Act Release No. 28001 (May 7, 1990), 55 FR 20000 (May 14, 1990) (File No. SR-BSE-90-3).

[5] 15 U.S.C. 78f (1982).

[6] *See infra* note 7 and accompanying text for a summary of the composition of the BSE Board.

[7] *See* Securities Exchange Act Release No. 28001, *supra* note 4. As amended, the Constitution provides that the Board shall be composed of ten public and ten securities industry representatives. Of the ten securities industry representatives, all must represent broker-dealer members of the Exchange, and at least five must represent firms which are active on the trading floor, of which two must be active as specialists. Of the ten public representatives, at least five must be from financial institutions which are not directly associated with a member organization or a broker-dealer, and at least one of the representatives must be an officer or director of a company which has a class of stock listed on the Exchange.

[8] *See supar* note 3.

[9] Existing Article VIII directs that, to the extent possible, a specialist representative should be a member of the Committee. Amended Article VIII would provide that at least one of two floor members on the Committee must be a specialist. *See supra* pages 2-3 for a summary of the proposal.

[10] 15 U.S.C. 78s(b)(2) (1982).

[11] 17 CFR 30-3(c)(12) (1989).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE intends through this filing to trade yen-denominated options on the Tokyo Stock Price Index (TOPIX). Rules regarding the trading of index options have been previously approved by the Securities and Exchange Commission when the CBOE began trading Standard and Poor's 100 (OEX) and 500 (SPX) Stock Indexes. These rules either replaced or supplemented other CBOE rules and are contained in chapter XXIV.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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 CBOE 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 CBOE 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange is preparing to trade options based on the Tokyo Stock Price Index (TOPIX) which is an index of 1165 common stocks which are listed on the First Section of the Tokyo Stock Exchange. (Information as of March 1990). The index is capitalization weighted and uses a base market value as of January 4, 1968. In that the Exchange received SEC approval for rules relating to index options in 1983 and has traded options on the Standard and Poor's 100 and 500 Stock Indexes (OEX and SPX) since that time, minimal rules changes are needed to accommodate the trading of the TOPIX index options.

On normal business weekdays, the TSE holds two two-hour trading sessions daily. The morning trading session runs from 9 a.m. to 11 a.m. Tokyo time, and the afternoon trading sessions runs from 1 p.m. to 3 p.m. Tokyo time. In terms of Chicago time, the Friday TSE morning trading session runs from 6 p.m. to 8 p.m. Chicago time on Thursday night, and the Friday TSE afternoon trading session runs from 10 p.m. to 12 a.m. Chicago time Thursday night.

The index options will be European style (exercise at expiration only) and will trade during the regular Exchange daytime business hours and such additional hours as are approved in writing by the TSE. The daily value of the TOPIX Index will be determined based on the closing prices on the TSE of component securities in the latest trading session (normally the afternoon trading session unless that session has been cancelled, due to a holiday or other reason). The options will expire on the second Friday of each month. The last trading day in options will normally be the Thursday prior to the second Friday except as otherwise provided.

For settlement purposes, the settlement value of the TOPIX Index will be determined based on the opening TSE prices of component securities in the morning trading session on the trading day in Japan following the last day of trading in the expiring contracts. Normally, because trading in expiring options contracts will cease on a Thursday at 3:15 p.m. Chicago time, the settlement value of the TOPIX Index will be determined using the opening prices of the stocks from the Friday TSE morning trading session, that begins at 6 p.m. Chicago time on Thursday night, just under 3 hours after trading has ceased in the expiring options.

The opening TSE prices in the Friday morning session will be used because they are chronologically closest to the time when options trading on the CBOE ceases on the last trading day in expiring options series, thereby providing the most timely, reliable, and accurate measurement of the price level of TSE stocks at expiration of the Index options. As is currently done for the expiration of NSX options on the Exchange, a separate settlement value for TOPIX will be calculated and disseminated

In the event that the TSE is closed on the second calendar Friday of a contract month due to a Japanese holiday or other reasons, the last trading day for expiring TOPIX Index options contracts will not change. In this event, the Index settlement valuation will be determined at the opening of the morning trading session on the TSE on the next trading day after the second calendar Friday in Japan.

In the event that the Thursday preceding expiration Friday is not an Exchange business day in the U.S., the preceding business day will be the last trading day for expiring TOPIX Index options, and settlement will be based on the opening of the morning trading session on the TSE on the second calendar Friday in Japan.

There will be no trading on any holiday on which the CBOE is closed for trading, independent of whether the TSE is open for trading. Likewise, there will be trading on any day on which the CBOE is open for trading, independent of whether or not the TSE is open for trading.

The changes or additions to current CBOE rules reflect the specific nuances of trading TOPIX index options in the United States. Such changes include modifying when trading halts would occur, the quoting of premiums in yens and not dollars and the maximum bid/ask spread differentials.

The CBOE and TSE entered into a Surveillance Sharing Agreement on January 31, 1989 which shall apply to trading on TOPIX.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule changes, or

(b) Institute proceedings to determine whether the proposed rule changes 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 CBOE. All submissions should refer to the file number in the caption above and should be submitted by [August 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17515 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28233; File No. SR-CSE-90-11]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Cincinnati 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 21, 1990, the Cincinnati Stock Exchange, Inc. ("CSE" 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 Exchange proposes to amend its Article IV, § 1.3 to provide listing guidelines to accommodate securities not otherwise covered under existing CSE listing requirements.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change 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 Section 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

Purpose

(1) *Listing guidelines.* In today's financial markets, issuers and underwriters increasingly are proposing to list new types of securities, seeking innovative methods to achieve necessary financing vehicles. These securities may contain features borrowed from more than one category of currently listed securities, and their specific form will dpend upon the particular objectives being sought as well as general market conditions (*e.g.*, fixed face amount debt securities incorporating an opportunity, at maturity, to receive an amount in excess of par based upon the performance of an index; equity securities issued by a U.S. subsidiary of a non-U.S. company which afford full access to dividend payments; warrants to purchase debt securities and "out" rights issued by a listed company affiliate which allow holders to put their common stock back to the issuer at the initial public offering price on a specific date after the initial public offering).

In this regard, during the past several years, certain of the exchanges have added provisions to their listing criteria to accommodate securities that could not be readily categorized under the exchanges' traditional listing guidelines for common and preferred stocks, bonds, debentures, and warrants.[2]

Accordingly, the CSE desires flexibility in its guidelines in order to accommodate such multi-faceted and/or multi-purpose issues without continually having to add new provisions to its listing criteria. The guidelines set forth in proposed § 1.3(6) are intended to provide the desired flexibiity to consider the listing of new securities on a case-by-case basis, in light of the suitability of the issue for auction market trading. The guidelines set forth in proposed § 1.3(6), however, are not intended to accommodate the listing of securities that raise significant new regulatory issues, and, therefore, would require a separate filing with the Commission pursuant to Rule 19b-4 under the Act.[3]

The listing requirements in proposed § 1.3(6)(b) are intended to accommodate major issuers with assets to $100 million and stockholders' equity of $10 million.[4]

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[1] The CSE currently has pending with the Commission a proposed rule change to amend its listing criteria (*See* Securities Exchange Act Release No. 27734 (February 26, 1990), 55 FR 7859 (March 5, 1990) (noticing File No. SR-CSE-90-04)). The proposal contains amendments that will be codified in Article IV, § 1.3 (1) through (4). Any reference made herein with regard to the CSE's listing standards, therefore, refers to the CSE's listing standards as proposed to be amended by the proposed rule change and not to the CSE's current listing standards as of this date.

[2] For example, the Commission notes that the New York Stock Exchange ("NYSE") and the Midwest Stock Exchange ("MSE") recently adopted specific listing guidelines covering contingent value rights ("CVRs") (*See* Securities Exchange Act Release No. 28072 (May 30, 1990), 55 FR 23168 (June 6, 1990) (order approving the NYSE proposal to provide guidelines to list CVRs); Securities Exchange Act Release No. 28143 (June 25, 1990), 55 FR 27317 (July 2, 1990) (order granting accelerated approval of MSE's proposal to provide guidelines to list CVRs)). In addition, the Commission recently approved both American Stock Exchange ("Amex") and NYSE proposals to provide listing guidelines to accommodate hybrid securities (*See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (order approving File No. SR-Amex-89-29); Securities Exchange Act Release No. 28217 (July 18, 1990) (order granting accelerated approval to File No. SR-NYSE-90-30)), and the NYSE currently has pending with the Commission a proposed rule change regarding listing guidelines for index warrants (*See* Securities Exchange Act Release No. 27796 (March 13, 1990), 55 FR 10340 (March 20, 1990) (noticing File No. SR-NYSE-90-07)).

[3] The Commission notes that the securities that have raised significant new regulatory issues in the past include Americus Trusts (*See* Securities Exchange Act Release No. 21863 (March 18, 1985), 50 FR 11972 (March 26, 1985) (File No. SR-Amex-84-35)); currency warrants (*See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987) (File No. SR-Amex-87-15) (proposal to list warrants on foreign currencies)); index warrants (*See* Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) (order approving File No. SR-Amex-87-27) (listing guideines for foreign currency and index warrants) and Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (File No. SR-Amex-89-22) (proposal to list index warrants based on the Nikkei Stock Average)); and unbundled stock units ("USUs") (*See* File Nos. SR-NYSE-88-39 and 88-40 (proposals to list USUs and constituent securities which were subsequently withdrawn by the NYSE)).

[4] The requirements of proposed § 1.3(6) substantially exceed the CSE's standard listing criteria for equities. *See* § 1.3(1)(a) which requires net tangible assets of at least $2 million.

Such issuers generally will be expected to meet the earnings criteria set forth in § 1.3(1).[5] Issuers not meeting these criteria generally will be required to have assets in excess of $200 million and stockholders' equity of $10 million, or alternatively, assets in excess of $100 million and stockholders' equity of $20 million.

The distribution criteria in proposed § 1.3(6)(c) will be comparable to the current criteria in § 1.3(1) for equity issues,[6] except that when trading is expected to occur in much larger than average trading units (*e.g.*, $1000 principal amount) a minimum of 100 holders will be expected. The aggregate market value of issues listed under subsection (6)(d) will be expected to be at least $20 million.

Additionally, under proposed subsection (6)(e), where such an instrument contains cash settlement provisions, settlement will be required to be made in U.S. dollars. Furthermore, where the instrument contains mandatory redemption provisions, the redemption price must be at least $3 per unit.

Finally, the Exchange proposes to apply the guidelines for continued listing contained in section 3. Delisting, to proposed § 1.3(6)(a) securities as appropriate, in light of the specific nature of the securities (*e.g.*, debt/equity characteristics).

(2) *Membership circular.* Securities listed for trading under proposed § 1.3(6)(a) are likely to possess characteristics common to both debt and equity instruments. For this reason, prior to trading securities admitted to listing under subsection (6)(a), 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 the 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.

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 on 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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 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 CSE. All submissions should refer to File No. SR-CSE-90-11 and should be submitted by August 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17520 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[5] The earnings criteria pursuant to § 1.3(1) require net earnings of $200,000 annually before taxes for two prior years excluding non-recurring income.

[6] The standard distribution criteria pursuant to § 1.3(1) requires at least 250,000 shares outstanding with a minimum of 1,000 recordholders.

[Rel. No. 34-28225; File Nos. SR-CBOE-90-14, SR-CBOE-90-16, SR-CBOE-90-17, and SR-CBOE-90-18]

Self-Regulatory Organizations; Filing of Proposed Rule Changes by the Chicago Board Options Exchange, Inc. Relating to Index Warrants.

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 11, 1990 and June 21, 1990 the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The CBOE previously has submitted to the Commission a proposal that, among other things, would establish a regulatory framework to permit listing and trading of index warrants based on established foreign and domestic stock indexes on the Exchange.[1] The CBOE's proposed regulatory framework for index warrants requires the Exchange to submit separate rule proposals to the Commission for each index that the CBOE proposes to use as a basis for index warrants.[2] Accordingly, the CBOE

[1] *See* Securities Exchange Act Release No. 28015 (May 14, 1990), 55 FR 21280. In this filing (SR-CBOE-90-08), the CBOE proposes to expand the scope of its market by authorizing the trading on the Exchange of stocks, warrants, and other securities instruments and contracts on either a listed or unlisted basis. As of the date of this release, SR-CBOE-90-08 had not been approved by the Commission. Approval of SR-CBOE-90-08 must occur before approval of any CBOE proposal to list warrants based on a specific foreign or domestic index, such as those proposed herein.

[2] The Commission previously has expressed an interest in determining the impact of new index

Continued

has submitted to the Commission a series of proposals to list index warrants based on particular domestic and foreign stock indexes. Specifically, the Exchange proposes to list index warrants based on the Standard and Poor's 100 and 500 Indexes ("OEX" and "SPX", respectively),[3] the CAC-40 Index,[4] the Financial Times-Stock Exchange 100 Index ("FT-SE 100") [5] and the Deutsche Aktienindex ("DAX") Index,[6] collectively hereinafter referred to as "Index Warrants." The text of the proposed rule changes may be examined at the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. 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 Changes

The Exchange proposes that the Index Warrants will conform to the guidelines set forth in proposed Exchange Rule 31.5(E) applicable to listing index warrants based on established foreign and domestic stock indexes. The proposed guidelines provide that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in proposed Rule 31.5(A); (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public shareholders, and shall have an aggregate market value of $4,000,000.

The index warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the index warrant expiration date (if not exercisable prior to such date), the holder of an index warrant structured as a "put" would receive payment in U.S. dollars to the extent that the index has declined below a prestated cash settlement value. Conversely, holders of an index warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the index warrants would expire worthless.

The CBOE proposes that its proposed regulatory framework for index warrants would be applicable to these Index Warrant proposals. First, the suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts contained in proposed Exchange Rule 30.50, Interpretation .02 would be applicable to recommendations regarding these Index Warrants. This provision applies the options suitability standard contained in Exchange Rule 9.9 to recommendations regarding Index Warrants.

Second, with respect to the Index Warrants that the CBOE is proposing based on foreign indexes (the CAC-40, DAX, and FT-SE 100 warrants), the CBOE proposals recommend that such Index Warrants be sold only to options-approved accounts. Such treatment of these stock index warrants is consistent with proposed Exchange Rule 30.50 Interpretation .02. However, with respect to proposals regarding OEX and SPX warrants, the Exchange proposes to require that such index warrants be sold only to options-approved accounts.

Third, the CBOE proposes the provisions of its proposed framework regarding discretionary orders be applicable to these Index Warrants. Proposed CBOE Rule 30.50, Interpretation .03 requires that the standards of Exchange Rule 9.10(a) regarding any discretion orders be applied to index warrants. This provision requires a branch office manager or other Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered.

Fourth, the Exchange proposes that prior to the commencement of trading of a particular Index Warrant that the Exchange will distribute a circular to its membership calling attention to specific risks associated with warrants on the particular underlying index (*i.e.*, before CAC-40 Index warrants would be traded on the Exchange the CBOE would distribute a circular to its membership calling attention to the specific risks associated with warrants on the CAC-40 Index).

Finally, with respect to warrants overlying foreign stock indexes (the DAX, CAC-40, and FT-SE index warrants), the CBOE, consistent with the AMEX Index Warrant Approval Order,[7] proposes to ensure that there are adequate mechanisms for sharing surveillance information between the Exchange and the market on which the securities underlying the foreign indexes are traded. Accordingly, for each proposal, the CBOE is undertaking to establish an appropriate means to accomplish such information sharing.

The Exchange believes that the proposed rules changes are consistent with section 6(b) of the Act in general and in furtherance of the objectives of section 6(b)(5) in particular in that they are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and are not designed to permit unfair discrimination among customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii)

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products on U.S. financial markets. *See* Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39632 (order approving File No. SR-AMEX-87-27 permitting the listing of index warrants based on established market indexes) ("AMEX Index Warrant Approval Order").

[3] *See* File SR-CBOE-90-14. The CBOE has traded options on the OEX and SPX indexes since March 11, 1983 and July 1, 1983, respectively.

[4] *See* File SR-CBOE-90-16. The CAC-40 Index is a broad-based, capitalization-weighted index, consisting of 40 companies trading on the Paris Bourse.

[5] *See* File SR-CBOE-90-17. The FT-SE 100 Index is a broad-based, capitalization-weighted index consisting of 100 of the top British stocks listed on the International Stock Exchange ("ISE").

[6] *See* File SR-CBOE-90-18. The DAX is a broad-based, capitalization-weighted index consisting of 30 stocks traded on the Frankfurt Stock Exchange and represents 60% of the market capitalization of listed German stocks and 80 percent of their total volume.

[7] *See infra* note 2.

as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule changes, or

(b) Institute proceedings to determine whether the proposed rule changes 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file numbers in the caption above and should be submitted by August 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Dated: July 18, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17521 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[8] 17 CFR 200.30-3(a)(12) (1989).

[Release No. 34-28246; File No. SR-CBOE-90-22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Nominees

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 July 9, 1990, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 CBOE, pursuant to Rule 19b-4 of the Act, has submitted a proposed rule change to amend its Rules 1.1(mm), 3.8, 3.9 and 3.10, in order to delete the ability of an individual owner or lessee of a transferable membership to authorize a nominee to represent his or her membership.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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 statutory 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

On May 3, 1990, the Exchange submitted to the Commission a proposed rule change to clarify and consolidate its rules governing nominees, create a new inactive nominee membership classification, and redefine the rules governing membership application procedures. *See* Securities Exchange Act Release No. 28033 (May 22, 1990), 55 FR 21990 (notice of File No. SR-CBOE-90-09). The filing was approved by the Commission in Securities Exchange Act Release No. 28092 (June 4, 1990), 55 FR 23621.

Subsequent to the Commission's approval and prior to the expiration date for comment on this rule filing, the Chicago Board of Trade ("CBT") filed with the Commission two comment letters requesting the Commission to reconsider and rescind the rule change.[1] The CBT asserted that newly approved CBOE Rule 3.8(a) impermissibly restricts the rights of CBT exercisers to use their CBOE memberships.[2]

Rule 3.8(a) authorizes individual CBOE members except those individual members who own "non-transferable"[3] CBOE memberships, the right to use a nominee to conduct business on the Exchange. The CBT argues that by restricting the ability to designate nominees to transferable memberships, CBOE's Rule 3.8(a) violates CBOE's Certificate of Incorporation as well as the provisions of the Act which require the Exchange to follow its own rules, proscribe anti-competitive Exchange action and prohibit discrimination among Exchange members. In particular, the CBT argues that CBT exercisers who own non-transferable memberships as defined in section 2.5 of the CBOE Constitution have been denied the right of a full CBOE membership.

Upon reflection, the CBOE has decided to amend its Rules in order to end its policy of allowing individual owners or lessees of transferable memberships to designate nominees to represent their membership without equal treatment provided to individual non-transferable memberships, *i.e.*, CBT exercisers. Member organizations, as necessitated by their corporate or partnership structure, will continue to be required to designate nominees. The ten individual members who presently utilize nominees will be given a reasonable period of time to rectify the situation.

The Exchange believes the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchange be designed to remove impediments to and perfect the mechanism of a free and open market and prevent any unfair

[1] *See* letters from Thomas R. Donovan, President and Chief Executive Officer of the CBT, to Jonathan G. Katz, Secretary, SEC, dated June 20 and 25, 1990.

[2] The CBT formed the CBOE in 1972 as a separate, independent legal entity. The CBOE recognized the "special contribution" of CBT members made to the organization and development of the CBOE by conferring special benefits upon CBT members. In particular, Article Fifth of the CBOE Certificate of Incorporation grants individual CBT members the right to become a full CBOE member, with all the rights and privileges afforded all other individual CBOE members without cost upon exercise of such right. Further, Article Fifth safeguards these rights by providing that any amendment to the membership rights of CBT members requires an 80% vote of a "supermajority," consisting of 80% of CBT members and 80% of other CBOE members.

[3] A "non-transferable" membership on the CBOE is defined in section 2.5 of the CBOE's Constitution as a membership acquired pursuant to paragraph (b) of Article FIFTH of the Certificate of Incorporation. Specifically, this provision provides that CBT exerciser memberships are "non-transferable," and therefore, may not be offered for sale or other transfer by the owner.

discrimination between brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Commission received two comment letters from the CBT in connection with the initial rule filing, File No. SR-CBOE-90-09.[4] The present rule filing takes into account the comments set forth in these letters.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17523 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[4] *See supra* note 1.

[Release No. 34-28250; File No. SR-DTC-90-08]

Self-Regulatory Organizations; Depository Trust Company; Notice of Filing of Proposed Rule Change Implementing a Commercial Paper Program

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 May 8, 1990, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-90-08) as described in Items I, II, and III below, which Items have been prepared by DTC. 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 proposed rule change consists of the following documents that were included as exhibits to the filing: (1) DTC's final plan for a commercial paper ("CP") program, including proposed new fees ("Final Plan"); (2) proposed revisions to DTC's Rules; (3) new and revised same-day funds settlement (SDFS) participant operating procedures; and (4) interim disaster recovery procedures for SDFS/CP.

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 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. 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

The purpose of the proposed rule change is to make the depository's services available for transactions in commercial paper.

(1) Certain Operational Characteristics

The CP program is offered by DTC as an extension of its SDFS system to include CP as a new security type.[1] The automated operating procedures for CP are virtually the same as those for SDFS securities.

The CP issues made SDFS-eligible will be distributed in book-entry-only ("BEO") form by the issuer's issuing agent bank which, paralleling the SDFS medium-term note program, sends CP issuance instructions to DTC electronically. The issuer's paying agency bank, acting also as DTC's custodian, will hold master CP certificates for DTC.

Because SDFS-eligible CP is BEO and CP issuances are initiated electronically, participant operating procedures for deposits, withdrawals and underwriting distributions do not apply to CP. Because CP settles on the same day it is issued, traded or used in a financing transaction (typically, a repurchase agreement), user operating procedures for institutional delivery ("ID") system confirmations of CP trades will apply for record-keeping purposes, but institutional delivery procedures for affirmations and settlement will not apply to CP.

DTC's systems are capable of handling all foreseeable increases in transaction volume associated with the proposed CP program.

(2) Risk Management

The fundamental risk in the SDFS system is a failure of an SDFS participant to settle with DTC money owed to other participants. Controls are built into the system to keep this risk within manageable limits. The controls include: (a) Collateralization, (b) SDFS fund, (c) net debit caps, (d) receiver-authorized deliveries, (e) net and net-net settlement, and (6) resales and credit

[1] DTC's SDFS system, which began pilot operation in June 1987, currently includes the following issue types: Municipal notes, municipal variable-rate bonds with short-notice demand ("put") options, zero coupon bonds backed by U.S. Government securities, continuously offered medium-term corporate notes, auction-rate and tender-rate preferred stocks and notes, collateralized mortgage obligations and other asset-backed securities, Government trust certificates, and Government agent securities not eligible for the Federal Reserve's book-entry system.

deductions. All would be applicable to transactions in CP.

One basic SDFS control—collateralization—requires a participant to have in its account at all times during the processing day collateral at least equal in value to the participant's net settlement debit. The chief source of this collateral is the securities delivered versus payment by other participants that created the net settlement debit. Additional protection is provided by general SDFS failure-to-settle procedures under which DTC can, among other things, return to deliverer-participants securities not paid for by the defaulting receiver-participant (the collateral securities for their settlement value—the amount of money not paid.

The collateralization control assumes that the market values of collateral securities will not suddenly plummet. The failure-to-settle procedures assume that securities returned to deliverer-participants will not have market values so far below their settlement values as possibly to cause the deliverers in turn to fail to settle with DTC. These assumptions are not valid when a failure to settle is caused by a CP issuer's bankruptcy. On a day of heavy issuance and/or maturity activity or sales from the dealer's inventory in the issuer's CP, bankruptcy would cause the issuer's CP collateralizing SDFS net settlement debits to instantly become worthless and could cause one or more participants to fail to settle with DTC. These are the unique risks of a CP program to DTC.

DTC seeks to insulate itself against these unique risks in order to avoid losses to itself, its participants in the CP program, and other participants who do not use the CP program by: (a) Making SDFS-eligible only highly-rated CP, (b) admitting only well-capitalized CP dealers and issuing and paying agents to the SDFS system and/or requiring guarantees from their parents, (c) establishing a large CP component of the SDFS fund and limiting CP risks to those who use the CP program, (d) devaluing to zero all of an issuer's CP in the DTC system promptly after learning of the potential or actual downgrading of the CP below the rating for DTC eligibility, the refusal of the issuer's paying agent to pay maturity proceeds, or the issuer's bankruptcy, (e) prohibiting "free" (unvalued) transactions in CP received versus payment until settlement is completed, (f) under certain circumstances on the day of an issuer's default, borrowing from participants who initiated deliveries of that issuer's CP to a participant who fails to settle with DTC that day, and (g) applying a 2% haircut to the market value of CP when calculating its value as collateral.

(3) Pilot Operation

DTC plans to begin a pilot operation of the program in September 1990 with CP of a small number of issuers. Additional issuers' CP will be gradually included as experience with the pilot operation warrants and improvement to the SDFS system's procedures, which are described in the final plan, including faster disaster recovery procedures for CP, are installed.

(4) DTC Rule Revisions

The primary purpose of the proposed revisions of DTC's rules is to provide for the CP program. Additionally, certain of these revisions are intended to clarify the following DTC procedures relating to Participants failures to settle in DTC's next-day funds settlement ("NDFS") system: (a) DTC's ability to accept as a pledge to the participants fund securities delivered to a receiver-participant that it is unable to pay for; (b) DTC's ability to return to deliverer-participant although DTC does not cease to act for the receiver-participant; and (c) DTC's ability to return to a deliverer-participant, where necessary, less than the entire amount of securities that were the subject of the delivery not paid for the receiver-participant, clearing the deliverer's settlement account only for the securities returned.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934, as amended ("Act"), in that it promotes the prompt and accurate clearance and settlement of transactions in commercial paper. The proposed rule change will be implemented in a manner designed to safeguard the securities and funds in DTC's custody or under its control. The proposed fees for the CP program were adopted pursuant to section 17A(b)(3)(D) of the Act which it provides to participants.

(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 Received from Members, Participants, or Others

With the development of DTC's SDFS system in 1987, interested participants, the money market committee of the Public Securities Association ("PSA") and the New York Clearing House ("NYCH") requested that DTC develop a commercial paper program. This subject was consequently included in DTC's program agenda proposals for 1988–1990 and sent to users for comment in May 1988.

The PSA money market committee formed a CP task force to work with DTC. It comprises representatives from CP broker-dealers, NYCH banks, banks headquartered outside New York, and CP issuers. Meetings have been held regularly since April 1988. Based on the work of the task force, strong indications of support in users' responses to the May 1988 program agenda proposal, and discussions with individual participants and others, an initial proposal for a CP program and its safeguards was sent to participants and others for their consideration in October 1988. DTC received 37 written responses. After a series of subsequent meetings with representatives of some of the respondents and with the PSA task force, DTC modified and expanded the proposal and reissued it in July 1989. All of these presentations focused on DTC procedures to deal with any SDFS participant's failure to settle caused by a CP issuer's default, the unique risk of a CP program to DTC.

DTC received 11 written responses to its July proposal: six from banks, three from broker-dealers, one from an industry organization, and one from a CP issuer. The written comments and subsequent discussions with participants and their associations indicated a wide consensus that DTC should offer a CP program based on the July 1989 proposal with procedures added for eliminating the risk from "free" transactions. The final plan for a CP program and its safeguards includes those procedures.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the 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, Secretaries 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 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 room, at the address above. Copies of such filing will also be available for inspection and copying at principal office of DTC. All submissions should refer to the file number SR-DTC-90-08 and should be submitted August 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17524 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28239; File No. SR-NASD-90-34]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Nominating Process for Members of the Board, District Committee and District Nominating Committee

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 July 10, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one that is concerned solely with the administration of the NASD under section 19(b)(3)(A)(iii) of the Act which renders the proposal effective upon the Commission's receipt of this filing. 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

Pursuant to the provisions of section 19(b)(1) of the Act, the NASD is herewith filing a proposed rule change to Articles VII, VIII and IX of the NASD By-Laws. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Proposed Amendments to the By-Laws

Article VII

Board of Governors

Procedures for Nominations by Nominating Committees

Sec. 7(a). Before June 1 of each year, the Secretary of the Corporation shall notify in writing the Chairman of the respective District Committees of the expiration of the term of office of any member of the Board [of Governors] elected under subsection[s (1) through (5)] *b* of section *4*[3(b)] of this Article which will expire during the next calendar year. The said Chairman shall thereupon notify the Nominating Committee elected for such District pursuant to the provisions of section 3 of Article IX of the By-Laws and such Nominating Committee shall proceed to nominate a candidate from such District for the office of each such member of the Board [of Governors] whose term is to expire. Nominating Committees in nominating candidates for the office of [member of the Board of] Governor[s] shall endeavor, as nearly as practicable, to secure appropriate and fair representation on the Board [of Governors] of all classes and types of members engaged in the investment banking and securities business. No Nominating Committee shall nominate an incumbent member of the Board [of Governors] to succeed himself unless it first takes appropriate action by a written ballot sent to the entire membership within the District to ascertain that such nomination is acceptable to a majority of the members voting on such ballot in the District except where the incumbent member of the Board [of Governors] is serving pursuant to the provisions of section *8*[7](a) of this Article. *Before October 1 of each year,* [E]each candidate nominated by the Nominating Committee*s* shall be certified to the *respective* District Committee [by September 1 and]. *W*[w]ithin five (5) days [there]after *certification,* a copy of such certification shall be sent by the District Committee to each member of the Corporation eligible to vote in the district. Such candidate shall be designated the "regular candidate."

Article VIII

District Committees

Election of District Committee Members

Procedure for Nominations by Nominating Committees

Sec. 4. (a). Before June 1 of each year, the Secretary of the Corporation shall notify in writing the Chairman of each respective District Committee of the expiration of the term of office of any member of that District Committee which shall expire during the next calendar year. The said Chairman shall thereafter, but not later than July 1, advise the Nominating Committee, which shall proceed to nominate a candidate from their District for the office of each member of the District Committee whose term is to expire. Nominating Committees in nominating candidates for the office of member of the District Committee shall endeavor, as nearly as practicable, to secure appropriate and fair representation on the District Committee of the various sections of the District and of all classes and types of members engaged in the investment banking or securities business within such District. No Nominating Committee shall nominate an incumbent member of the District Committee to succeed himself unless it first takes appropriate action by a written ballot of the entire membership within the District to ascertain that such nomination is acceptable to a majority of the members in the District except where the incumbent member of the District Committee is serving pursuant to the provisions of section 5[(a)] of this Article. *Before October 1 of each year,* [E]each candidate nominated by the Nominating Committee*s* shall be certified to the *respective* District Committee [by September 1 and]. *W*[w]ithin five (5) days [there]after *certification,* a copy of such certification shall be sent by the District Committee to each member of the Corporation eligible to vote in the District. Such candidate shall be designated the "regular candidate."

ARTICLE IX

Nominating Committees

Election of Nominating Committees

Procedures for Nominations by Nominating Committees

Sec. 3(a). Before June 1 of each year the Secretary of the Corporation shall notify in writing the Chairmen of the respective District Committees as to those members of the District

Nominating Committee who were elected for the present year and as to the offices of that Committee that are to be filled by the next election. The said Chairmen shall thereupon notify the Nominating Committee elected for such District and the Nominating Committee shall proceed to nominate a candidate from such District for the offices of that Committee which are to be filled by the next election. The Nominating Committee in nominating candidates for the office of member of the Nominating Committee shall endeavor, as nearly as practicable, to secure appropriate and fair representation on the Nominating Committee of the various sections of the District and of all classes and types of members engaged in the investment banking or securities business within such District and shall assure that the composition of the Nominating Committee meets the standards contained in section 1(a) of this Article. No Nominating Committee shall nominate more than two incumbent members of the Nominating Committee to succeed themselves. No member of any Nominating Committee may serve more than two consecutive terms. *Before October 1 of each year,* [E]each candidate nominated by the Nominating Committee*s* shall be certified to the *respective* District Committee [by September 1 and]. *W*[w]ithin five (5) days [there]after *certification,* a copy of such certification shall be sent by the District Committee to each member of the Corporation eligible to vote in the District. Such candidate shall be designated the "regular candidate."

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. No comments were 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 proposed rule change amends Articles VII, VIII and IX of the NASD By-Laws that address the procedures for nominations by Nominating Committees for election by various NASD Districts of members of the Board of Governors ("Board"), the District Committees and the District Nominating Committees. These amendments result from an intensive study conducted by the NASD's Special Committee on NASD Structure and Governance ("Special Committee"). In connection with the implementation of the recommendations of the Special Committee, the Board determined that the proposed rule change is necessary to provide more time for nominating candidates for the Board from the Districts, the District Committees and the District Nominating Committees.

Board of Governors

Article VII, section 7 of the NASD By-Laws currently requires that each candidate nominated for election to the office of member of the Board by the District Nominating Committee be certified by the District Nominating Committee to the District Committee by September 1 of each year. The Board determined that the District Nominating Committees should be afforded more time to solicit and consider candidates from the members in their District. The proposed rule change provides such additional time by amending Article VII, section 7 of the By-Laws to move the date by which District Nominating Committees shall certify to the respective District Committee each candidate nominated by the District Nominating Committee for election to the office of member of the Board from "by September 1" to "before October 1" of each year.

District Committees

Article VII, section 4(a) of the NASD By-Laws currently requires that each candidate nominated for election to office of member of the District Committee by the District Nominating Committee shall be certified by the District Nominating Committee to the District Committee by September 1 of each year. The Board determined that the District Nominating Committees should be afforded more time to solicit and consider candidates from the members in their District. The proposed rule change provides such additional time by amending Article VIII, section 4(a) of the By-Laws to move the date by which District Nominating Committees shall certify to the respective District Committee each candidate nominated by the District Nominating Committee for election to the office of member of the District Committee from "by September 1" to "before October 1" of each year.

District Nominating Committees

Article XI, section 3(a) of the NASD By-Laws currently requires that each candidate nominated for election to office of member of the District Nominating Committee by the District Nominating Committee shall be certified by the District Nominating Committee to the District Committee by September 1 of each year. The Board determined that the District Nominating Committees should be afforded more time to solicit and consider candidates from the members in their District. The proposed rule change provides such additional time by amending Article IX, section 3(a) of the By-Laws to move the date by which District Nominating Committees shall certify to the respective District Committee each candidate nominated by the District Nominating Committee for election to the office of member of the District Nominating Committee from "by September 1" to "before October 1" of each year.

The NASD believes that these changes are appropriate in view of the NASD's obligation under section 15A(b)(4) of the Exchange Act that requires that "(T)he rules of the association (NASD) assure a fair representation of its members in the selection of its directors and administration of its affairs."

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competion that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing rule change has become effective, pursuant to section 19(b)(3)(A)(iii) of the Securities Exchange Act of 1934 and paragraph (e) of the Securities Exchange Act Rule 19b–4 (in that it is "concerned solely with the administration of the self-regulatory organization"). At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 Secretaries, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with repsect 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 availble 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 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.20-3(a)(12).

Dated: July 19, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17519 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28240; File No. SR-NYSE-90-32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Listing Criteria Under Section 703.20 of its Listed Company Manual

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 July 3, 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, 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 Exchange proposes to adopt section 703.20 of the NYSE's Listed Company Manual ("Manual") to provide listing guidelines for equity securities that have the effect of separating certain of the economic features of common stock into separate securities as distinct trading components.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change 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

Listed companies and their financial advisers are in the process of developing combinations of equity securities ("Units") that have the effect of separating certain of the economic features of common stock into components ("Component Securities") which investors may then trade as a Unit or via either of the components.

A Unit representing a share of common stock will be able to be separated into its two primary economic components. One component ("income component") entitles its holder to: (i) Ordinary dividends and distributions paid to the common stock and (ii) a number of shares of common stock on a preset termination date. The number of shares of common stock received is based upon the ratio between the common stock's market price on that date and a settlement amount which is established at the time of the exchange offer.

The Unit's other component ("capital appreciation component") entitles its holder to receive on the termination date shares of common stock determined by the appreciation of the common stock's price above the settlement amount. If, on the termination date, the common stock's price is at or below the settlement amount, the holder of the income component receives all of the common stock shares, while the capital appreciation component receives none. The income and capital appreciation components normally can be recombined into Units and exchanged at any time for shares of the company's common stock.

Proposed section 703.20 of the Manual is intended to accommodate the listing of these types of securities on the Exchange. Eligibility for listing will be subject to the following criteria:

(1) The proposed numerical listing criteria in section 703.20 are intended to acccommodate issuers that are NYSE listed companies that meet original listing earnings standards and that have at least $100 million in assets.

(2) The distribution criteria for Units or separate Component Securities are at least 2,000 round lot holders and at least 1.1 million publicly held shares with a minimum aggregate market value of $18 million, which reflects the combined market value of the components.

(3) The Exchange will consider whether to permit the continued listing of the Units or Component Securities if the common stock is delisted,[2] or if there are less than 1,200 round lots, or if there are less than 600,000 publicly held shares.

(4) The stated term of the Units or Component Securities may not be less than three years. A unit or its Component Securities, however, may be terminated under such earlier circumstances as may be specified in the issuer's prospectus.

(5) Not more than 20% of the outstanding common stock of an issuer can be in Unit or Component Securities form. Any redemption action must apply simultaneously to income and capital appreciation components. Proxies, annual reports and other shareholder communications must be mailed to holders of Units and Component Securities.

(6) Any voting rights associated with the Units or Component Securities must conform to the Exchange's Voting Rights Policy.[3]

Prior to the commencement of trading of the securities listed under Proposed section 703.20, the Exchange will, if appropriate, distribute a circular to its membership calling attention to any special characteristics of and risks associated with the Units or Component Securities. The purpose of the circular to

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[1] *See* Exhibit A to File No. SR-NYSE-90-32 for the exact language of the proposed rule change.

[2] *See* sections 801-809 of the Manual for the NYSE's delisting policies.

[3] *See* section 313.00 of the Manual for the Exchange's current voting rights listing standards.

the membership is to provide guidance regarding member firm compliance responsibilities when handling transactions.

Before making a recommendation in a Unit or its Component Securities, the Exchange will require that the member, member organization, allied member or employee of such member organization determine that such Units or Component Securities are suitable investments for the customer and should have a reasonable basis for believing that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transactions.

Finally, with respect to unsolicited orders, investors must be afforded an explanation of the characteristics of and risks associated with owning Units and Component Securities.

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 on 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. 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 other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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 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-90-32 and should be submitted by August 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17525 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28252; File No. SR-OCC-90-06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Options Clearing Corporation Relating to Change of Date for Annual Meeting of Stockholders

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 May 23, 1990, the Options Clearing Corporation ("OCC") 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 proposed rule change would allow OCC to amend Article II, Section 1 of its By-laws to change the date of the Annual Meeting of Stockholders from the fourth Tuesday in November of each year to the fourth Tuesday in April of each year.

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 change the date of the Annual Meeting of Stockholders of OCC from the fourth Tuesday in November of each year to the fourth Tuesday in April of each year.

The By-laws of OCC currently provide for the Annual Meeting of Stockholders to be held on the fourth Tuesday in November of each year. Directors are elected at such meeting and commence their new terms at that time. Although newly nominated Directors have, in the past, been invited to attend the Board of Directors ("Board") meeting held prior to their election at the November Annual Meeting of Stockholders, newly elected Directors have assumed their seats on the Board without the opportunity for much introduction or orientation to OCC.

In order to rectify this concern, the Board has decided to invite newly nominated Directors to attend the Winter Board Meeting as guests of the Corporation. Thus, the Winter Board Meeting, which covers industry, operational and policy issues in depth, could serve as an orientation to these nominated Directors and facilitate their transition to elected Directors. Attendance at this meeting will also allow nominated Directors to familiarize themselves with OCC management and its outside Directors.

This procedure requires the Corporation to amend its By-laws to change the date of the Annual Meeting from November to the fourth Tuesday in April. By changing the date of the Annual Meeting, the newly nominated

Directors will begin their terms in April with the benefit of having attended the comprehensive orientation provided at the Winter Board Meeting.

The proposed rule change is consistent with the purposes and requirements of section 17A of the Act, as amended, because the change of date of the Annual meeting of Stockholders will result in a more efficient use of Board of Director time as newly nominated Directors could participate in the orientation program conducted at the Winter Board Meeting.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none were received.

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)(3) of Rule 19b-4 thereunder because it is concerned solely with the administration of OCC. 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 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 the file number (SR-OCC-90-06) and should be submitted by August 17, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17527 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28243; File No. SR-PSE-90-27]

Self-Regulatory Organizations: Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc., Waiving Transaction Charges on Certain Index Warrants

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 July 9, 1990, the Pacific Stock Exchange Incorporated ("PSE" or the "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

Pursuant to the Schedule of Rates and Charges published by the Exchange, the Exchange will waive all transaction fees and charges of two Solomon Brothers Inc. index warrants on the Financial Times-Stock Exchange 100 Stock Index ("FT-SE 100"). These charges will be waived for an indefinite time period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

Although the Exchange believes that its specialists will provide excellent markets in FT-SE 100 index warrants, the Exchange is of the opinion that a waiver of certain fees and charges is necessary for the PSE to remain on a competitive footing with other exchanges. This waiver of transaction fees and charges will encourage trading decisions on the basis of the strength of the marketplace.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will increase competition and the quality of markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that a wavier of certain transaction fees and charges will increase competition among marketplaces.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Since the proposed rule change concerns changing a fee or other charge imposed by the PSE, it has become effective immediately upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder.

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 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. 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 No. SR-PSE-90-27 and should be submitted by August 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17516 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-28241; File No. SR-PSE-89-19]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Clearing Symbol "Give-Ups" for Intermarket Trading System Transactions Originating on the Options Trading Floor

I. Introduction.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") on July 13, 1989, a proposed rule change designed to require Equity Floor Brokers to "give-up" PSE Options market maker clearing symbols for equity trades originating on the options trading floor and sent out over the Intermarket Trading System ("ITS").[3] The proposed rule will be codified as PSE Rule 5.13(h).

Notice of filing of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 27146, August 17, 1989) and by publication in the **Federal Register** (54 FR 35268, August 24, 1989). No comments were received on the proposed rule change.

II. Description of the Proposal

Proposed PSE Rule 5.13(h) would require PSE equity floor brokers to "give-up" PSE options market maker clearing symbols for equity trades originating on the PSE's options trading floor and sent out over ITS. The proposed rule is designed to address a systems inadequacy that exists presently in Exchange billing procedures when an options market maker on the PSE routes an equity order over ITS for purposes of hedging options trades such as combination orders.[4] Currently, when such trades are routed over ITS for execution, the Exchange's audit systems do not capture immediately the PSE options market maker behind the trade if the clearing firm to the trade gives up its own clearing symbol on these ITS trades.

The rule change is designed to address this systems inadequacy, which the Exchange reports has resulted in lost revenues.[5] Without the appropriate options market maker clearing symbol, the Exchange claims that it currently has no way of directly billing the options market maker for equity trades sent out on the ITS system by an equity floor broker.[6] By requiring equity floor brokers to "give-up" the appropriate options market maker clearing symbol, the Exchange believes it can recover lost revenues associated with ITS transaction fees assessed against the Exchange, and, where appropriate, institute formal disciplinary actions against those firms failing to adhere to the rule's mandate. Accordingly, the Exchange contends that the proposed rule change is consistent with section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable fees among PSE members and member organizations.

III. Discussion and Conclusion

The Commission has considered carefully the terms of the proposed rule change and finds, for the following reasons, that the proposed rule change is consistent with the requirements 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 sections 6(b)(1), (4) and (5) of the Act,[8] in that it is designed to enable the Exchange to enforce compliance by its members with the rules of the Exchange, promote just and equitable principles of trade, provide for an equitable allocation of fees, and, in general, protect investors and the public interest. The Commission agrees with the Exchange that the proposed rule change will better enable the PSE to recover otherwise lost revenues for equity trades originating on the Exchange's options trading floor and routed over ITS.[9] Furthermore, a formalized rule will allow the Exchange to better enforce what was formerly an informal Exchange policy, while at the same time providing proper notice to equity floor brokers of their obligation to "give-up" the appropriate options market maker for covered trades. Finally, implementation of the proposal will have the ancillary (and beneficial) regulatory effect of providing more accurate audit trail information for options market maker equity trades originating on the Exchange's options trading floor.

The Commission has reviewed carefully the proposed rule change and has concluded that the proposal provides for the equitable allocation of reasonable fees and enhanced and enforceable fee collection procedures. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of sections 6(b)(1), (4), and (5).[10]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR-PSE-89-19) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: July 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17518 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] ITS is a communication system designed to facilitate equity trading among competing markets by providing each market with order routing capabilities based on current quotation information.

[4] A combination order is defined under PSE Rules as "an order involving a number of call option contracts and the same number of put option contracts with respect to the same underlying security." PSE Rule 6.62(h).

[5] The Exchange estimates that this "systems glitch" has resulted in $40,000 to $50,000 in lost revenues for calendar year 1988.

[6] Although the Exchange states that the proposed rule is presently an informal Exchange policy, it is not mandatory. Accordingly, the Exchange contends that a strong enforcement stance is not possible without a formal rule.

[7] 15 U.S.C. 78f(b)(4) (1982).

[8] 15 U.S.C. 78f(b) (1), (4) and (5) (1982).

[9] The Commission notes that the PSE is not proposing a new ITS transaction charge. The PSE merely is proposing to allocate the existing ITS transaction charge to the responsible party. Telephone conversation between David Semak, Vice President, Regulation, PSE, and Howard Kramer, Assistant Director, SEC, July 11, 1990.

[10] 15 U.S.C. 78f(b) (1), (4), and (5) (1982).

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] *See* 17 CFR 200.30-3(a)(12) (1989).

[Release No. 34-28245; File Nos. SR-PHLX-90-13; SR-PHLX-90-14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the Deutscher Aktienindex ("DAX") and Nikkei Stock Average ("Nikkei")

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 15, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX is proposing to list index warrants based on both the Deutscher Aktienindex ("DAX"), a capitalization-weighted index of 30 German stocks trading on the Frankfurt Stock Exchange ("FSE"), and the Nikkei Stock Average ("Nikkei"), a price-weighted index consisting of 225 actively-traded stocks on the Tokyo Stock Exchange ("TSE").[1] The PHLX proposes to trade Nikkei warrants both on a listed as well as an Unlisted Trading Privileges ("UTP") basis.

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 statutory 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.

[1] The Commission will postpone action on this filing until it has decided whether to approve a related PHLX filing (SR-PHLX-90-08) proposing generic listing standards for warrants based on domestic and international market indexes and certain sales practice rules for the trading of these warrants. *See* Securities Exchange Act Release No. 28130 (June 19, 1990), 55 FR 26041.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On June 15, 1990, the PHLX filed with the Commission a proposed rule change to list and trade index warrants based on the DAX and Nikkei. The DAX Index is a widely used indicator of the performance of the West German Equity Market comprised of 30 blue chip stocks with substantial market capitalization traded on the FSE. The DAX is continuously updated on the basis of trading activity throughout each trading day session. It is calculated and disseminated by the FSE. Adjustments to the DAX are made by the FSE in consultation with the Federation of German Stock Exchanges and the Borsen-Zeitung. The Nikkei Index is a widely used indicator of the performance of the Japanese Equity Market consisting of 225 actively traded stocks with substantial market capitalization traded on the TSE. The Nikkei is continuously updated on the basis of trading activity during the trading day session at one-minute intervals on a real-time basis by Nihon Keisai Shimbun, Inc. of Japan ("NKS").

The PHLX represents that such warrant issues will conform to the listing guidelines pending before the Commission in File No. SR-PHLX-90-08. The warrant issues will comply with amended PHLX listing guidelines that provide (1) the issuer shall have assests in excess of $100,000,000; (2) minimum public distribution of 1,000,000 warrants with a minimum of 400 public holders of those warrants; and (3) an aggregate market value of $4,000,000; or, warrants which have already been approved for trading on another national securities exchange.

Both the DAX and Nikkei Index warrants will be direct obligations of their issuer subject to cash-settlement during their three to five year term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, the holder of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

The PHLX has proposed suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts.[2] The Exchange recommends that the warrants be sold only to investors whose accounts have been approved for options trading. If, however, a member or member organization undertakes to effect a transaction in warrants for a customer whose account has not been so approved, such member or member organization must make a careful determination that such warrants are suitable for such customer in conformity with amended PHLX Rule 1026 ("Suitability Rule"). In addition, prior to trading in each particular index warrant, the PHLX proposes to distribute to its membership a circular describing the risks associated with trading in such index warrants.

The Exchange further requires, consistent with its proposal to list index warrants, that a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP") approve and initial a discretionary order in index warrants on the day the order is entered. The SROP will also be required to review the acceptance of each discretionary account to determine that the ROP had a reasonable basis to believe that the customer was able to understand and bear the risks of the proposed transactions, thus ensuring that investors will be offered an explanation of the special characteristics and rules applicable to the trading of index warrants.[3]

The Commission notes that with respect to foreign index warrants, there should be an adequate mechanism for sharing surveillance information with respect to the index's component stocks (*i.e.*, the sharing of surveillance information between the PHLX and the exchange on which the index's component stocks are traded). Accordingly, the PHLX has entered into a mutual surveillance information sharing agreement with the FSE regarding the trading in securities comprising the DAX Index. With respect to the Nikkei, the PHLX plans to execute a mutual surveillance information sharing agreement with the TSE for the purpose of reviewing trading in the underlying securities.

The Exchange believes that the proposed rule change is consistent with

[2] *See* Securities Exchange Act Release No. 28130 (June 19, 1990), 55 FR 26041 (notice of proposed rule change in File No. SR-PHLX-90-08).

[3] *See* Amended PHLX Rule 1027 ("Discretionary Accounts").

the requirements of the Act, and, in particular, section 6(b)(5), as the DAX and Nikkei warrants are designed to promote just and equitable principles of trade and serve to facilitate transactions in securities by offering an innovative financing technique for issuers as well as the opportunity for U.S. warrant purchasers to hedge against or speculate on stock market fluctuations in both Germany and Japan. In addition, the proposed rule change is consistent with that portion of section 6(b)(5) providing that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose an inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or 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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the 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. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 17, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 20, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-17526 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-9118]

Issuer Delisting; Application To Withdraw From Listing and Registration; Home Shopping Network, Inc., Common Stock, $.01 Par Value

July 23, 1990.

Home Shopping 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 American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on June 20, 1990. In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before August 13, 1990, submit by letter to the Secretary of the 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. 90-17513 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 0-14643]

Issuer Delisting; Application To Withdraw From Listing and Registration; Kent Electronics Corp., Common Stock, No Par Value

July 23, 1990.

Kent Electronics Corporation ("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 American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on July 6, 1990. In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before August 13, 1990, submit by letter to the Secretary of the 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. 90-17514 Filed 7-26-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17608; 812-7433]

Thomson McKinnon Investment Trust, et al.; Application

July 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Thomson McKinnon Investment Trust (the "Trust"), Thomson McKinnon Asset Management L.P. (the "Manager"), and Thomson McKinnon Fund Distributors Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from the provisions of sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Trust to sell two classes of securities representing interests in the same investment portfolio, which classes would be indentical in all respects except for differences relating to class designations, distribution expenses, voting rights, and dividend payments.

FILING DATE: The application was filed on November 21, 1989 and amended on March 30, 1990, May 7, 1990, and July 19, 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 15, 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.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, One State Street Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Jeremy Rubenstein, Branch Chief at (202) 272-3023, (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).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act that currently consists of nine series. The Manager provides investment advisory and management services to the Trust, and the Distributor acts as principal underwriter for the Trust.

2. The Distributor is a wholly-owned subsidiary of Thomson McKinnon Securities Inc. ("TMSI"), which is in turn a wholly-owned subsidiary of Thomson McKinnon Inc. ("TMI"). Until September 30, 1989, TMSI was a full service retail brokerage firm registered as a broker/dealer under the Securities Exchange Act of 1934 (the "Exchange Act"). TMSI also acted as the Trust's principal underwriter until the Distributor assumed that function in the fall of 1989. In September, 1989 TMSI sold substantially all of its branches to Prudential-Bache Securities, Inc. In January, 1990 TMSI surrendered its broker/dealer license, and on March 28, 1990 TMSI filed a voluntary petition for bankruptcy. Because TMSI's liabilities substantially exceed its assets, only the creditors of TMSI have an interest in its assets.

3. A significant remaining asset of TMSI is its interest in the Distributor. The Distributor's sole activity is as distributor of three registered open-end management investment companies, including the Trust. Therefore, TMSI and its creditors have a strong interest in preserving the Distributor and in enhancing its value through the success of its relationship with the Trust, because maximizing the value of the Distributor will enable TMSI's creditors to maximize their recovery.

4. The shares of the Funds are currently offered to the public at their net asset value without the imposition of a sales load at the time of purchase. All of the Funds are currently offered with a contingent deferred sales charge which was approved by earlier exemptive orders from the SEC ("CDSC Orders"). Thomson McKinnon Investment Trust, Investment Company Act Release No. 13877 (April 10, 1984); Thomson McKinnon Global Trust, Investment Company Act Release No. 15187 (June 30, 1986); Thomson McKinnon Investment Trust, Investment Company Act Release No. 16609 (October 25, 1988). Upon implementation of the Alternative Purchase Plan (described below), the CDSC will apply to the sale of shares of the Trust in exactly the same manner as it currently does under the CDSC Orders, with the sole exception that, after implementation of the Alternative Purchase Plan, the CDSC will be applicable only to the class of shares featuring the CDSC, and not to the class of shares sold pursuant to the Front-End Load Option (described below).

5. Pursuant to a distribution plan adopted by the Trust pursuant to Rule 12b-1 under the Act, the Trust pays the Distributor a distribution fee with respect to each Fund equal to 1.0% per annum of the lesser of (a) such Fund's average daily net assets or (b) the aggregate investments made in shares of such Fund since its inception, including the portion of an investment acquired through exchange from another Fund (but excluding (i) the portion of any investment attributable to reinvested dividends or capital gain distributions, (ii) the portion of an investment acquired through exchanges from another Fund which itself was attributable to reinvested dividends or capital gains distributions of the other Fund, and (iii) the portion of the investment exchanged for shares of another Fund), less the aggregate dollar amount of any redemptions from such Fund since inception on which a CDSC has been imposed or waived. In addition, an investor's proceeds from a redemption of Fund shares made within a specified period of time after purchase may be subject to a CDSC that is paid to the Distributor, in accordance with the CDSC Orders.

6. The applicants propose to establish an alternative purchase plan (the "Alternative Purchase Plan"). The Alternative Purchase Plan provides that each of the Funds may offer investors the option of purchasing shares with either (a) a front-end sales load together with a Rule 12b-1 distribution plan relating solely to shares of the Trust sold on a front-end load basis and providing for a distribution fee at a lower rate than that charged under the Trust's current Rule 12b-1 plan (the "Front-End Load Option") or (b) subject to a CDSC and a Rule 12b-1 distribution fee as is

currently offered (the "Deferred Option").

7. The Alternative Purchase Plan would be implemented by designating the existing share of each Fund as "Class B" shares and creating an additional, new class of shares ("Class A" shares) of each Fund. Class B shares would continue to be offered for sale subject to the Deferred Option, and Class A shares would be offered subject to the Front-End Load Option. The two classes of a Fund would each represent interests in the same portfolio of investments, and would be identical in all respects, except that (a) the fees charged each class of shares under its Rule 12b–1 distribution plan will only be applied to the distribution expenses attributable to the sale of such class of shares; (b) Class B Shares would pay higher distribution fees under the Class B Rule 12b–1 distribution plan than the distribution fees paid by Class A shares under the Class A Rule 12b–1 distribution plan; (c) shareholders of each class would have exclusive voting rights with respect to the Rule 12b–1 distribution plan applicable to their respective class of shares; (d) the two classes would have different exchange privileges as described below; and (e) the designation of the two classes of shares would be different.

8. Investors choosing the Deferred Option would purchase Class B Shares at net asset value without the imposition of a sales load at the time of purchase. The Trust would pay to the Distributor a distribution fee with respect to each Fund pursuant to a distribution plan adopted by the Trust pursuant to Rule 12b–1 equal to 1.0% per annum of the lesser of (i) the average daily net asset value of that Fund's Class B shares or (ii) aggregate investments made in shares of that Fund since inception (subject to the exclusions and reductions described above and also excluding investments in Class A shares of that Fund). In addition, an investor's proceeds from a redemption of Class B shares made within five years of his or her purchase may be subject to a CDSC that will be paid to the Distributor. The rate of the CDSC will be 5% on shares redeemed in the first year after purchase, 4% on shares redeemed in the second year, 3% on shares redeemed in the third year, and 2% on shares redeemed in the fourth or fifth years. Redemptions of shares after five years from purchase will not be subject to any CDSC.

9. Under the Front-End Load Option, an investor would purchase Class A shares at net asset value plus a front-end sales load. Any sales load would be subject to reductions for larger purchases and under rights of accumulation and letters of intent. The sales load would be subject to certain other reductions permitted by section 22(d) of the Act and Rule 22d–1 thereunder and set forth in the registration statement of the Trust. In addition, Class A shareholders would be assessed an ongoing distribution fee under a Rule 12b–1 distribution plan. The distribution fee applicable to the Class A shares would be at a rate currently not expected to exceed .50% of the average daily net asset value of the Class A shares, and will in all instances be at a lower rate than the rate that will be charged under the Rule 12b–1 distribution plan for Class B shares. Proceeds from the Class A distribution fee would be used primarily to pay continuing commissions or "trailers" to the broker-dealers responsible for the sale of the Class A shares and to defray the expenses of the Distributor with respect to providing distribution related services to investors choosing the Front-End Load Option.

10. The Trustees of the Trust will receive Rule 12b–1 reports relating to fees charged under the Rule 12b–1 distribution plans for each class of shares. The Distributor will furnish the Trustees with statements of distribution revenues and expenditures for each respective class of shares ("Statements"). Distribution expenses attributable to the sale of both classes of shares of a particular Fund will be allocated annually to each class of shares based upon the ratio which the sales of each class of shares of such Fund bears to the sales of both classes combined. Applicants recognize that expenditures attributable to the sale of one class of shares cannot be presented to the Trustees to justify Rule 12b–1 distribution fees of the other class of shares.

11. Broker-dealer firms that sell shares of the Trust will be compensated differently by the Distributor as a result of whether an investor chooses the Front-End Load Option or the Deferred Option. In the case of the Front-End Load Option, the selling broker-dealer will be compensated on the sale of Class A shares at the time of sale. Broker-dealers will also receive a small commission on a continuing basis in the form of a "trailer" for as long as the investor remains a holder of such Class A shares. The amount of any up-front sales compensation will be based upon the amount of the applicable front-end sales load. In the case of the Deferred Option, the selling broker-dealer will receive compensation from the Distributor in connection with the sale of Class B shares at the time of the sale or within one month thereafter. In addition, broker-dealers may receive compensation that will vary from case to case. Accordingly, it is not possible to generalize as to which class will provide selling broker-dealers with the higher level of compensation.

12. All items of income and expense of a Fund will be allocated between the two classes of shares of that Fund on the basis of the relative aggregate net asset value of the two classes, except for the expenses of each Rule 12b–1 distribution plan and any incremental expenses properly attributable to one class which the SEC shall approve by an amended order. Because of the higher ongoing distribution fees paid by the holders of Class B shares, the net income attributable to and the dividends payable on Class B shares will be lower than the net income attributable to and the dividends payable on Class A shares. Dividends and other distributions paid to each class of shares of a Fund will, however, be declared on the same days and at the same times and, except for the effect of the higher distribution fee to which Class B shares will be subject, the dividends will be determined in the same manner.

13. Applicants will maintain the records of calculations of net asset value, dividends/distributions, expenses and expense allocations in connection with the two classes of shares of each of the Funds for a period of not less than six years, the first two years in an easily accessible place, and such calculations will be available for inspection by the SEC staff during such time period.

14. Another difference between the Class A shares and Class B shares will be the exchange privileges applicable to the shares. Currently, shares of each Fund may be exchanged, either in whole or in part, at net asset value for shares of any other Fund. With the implementation of the Alternative Purchase Plan, Class A shares of each Fund will be exchangeable only for Class A shares of the other Funds, and Class B shares of each Fund will be exchangeable only for Class B shares of the other Funds. In addition, Applicants reserve the right in the future to permit exchanges of shares of either class of the Funds for shares of other money market funds sponsored by the Manager or the Distributor that hold themselves out to investors as related companies for purposes of investment and investor services. Shares of such other money market funds acquired by exchange of shares of the Funds would also be

exchangeable for shares of the Funds, but only for shares of the class involved in the original exchange into money market fund shares.

Applicants' Legal Analysis

1. The Alternative Purchase Plan permits each investor to choose the method of purchasing shares that is most beneficial given the length of time the investor expects to hold his or her shares and other relevant circumstances. Investors, including pension and other retirement plans, that would qualify for a significant discount on the front-end sales load may determine that the Front-End Load Option with the reduced distribution fee is preferable to payment of a CDSC and the higher Rule 12b–1 distribution fee. Conversely, investors whose purchases would not qualify for a discount may prefer to defer the sales load. Because the CDSC will be imposed on Class B shares only, the CDSC has no impact on investors choosing the Front-End Load Option.

2. Applicants believe that the issuance and sale by the trust of Class A shares and Class B shares will better enable the Trust to meet the competitive demands of today's financial services industry. The proposed arrangement would permit the Trust both to facilitate the distribution of its securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks. Moreover, owners of both classes of shares may be relieved of a portion of the fixed costs normally associated with open-end investment companies since such costs would, potentially, be spread over a greater number of shares than would otherwise be the case.

Applicants' Conditions

The applicants agree that the following conditions will be imposed in any order of the SEC granting the requested relief:

1. The Class A shares and Class B shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences between Class A shares and Class B shares of the same Fund will relate solely to: (a) The impact of the different Rule 12b–1 distribution plan fee payments made by the Class A shares and the Class B shares of a Fund and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order, (b) voting rights on matters which pertain to Rule 12b–1 distribution plans, (c) the different exchange privileges of the Class A shares and Class B shares as described in the Trust's prospectus (and as more fully described in its statement of additional information) and consistent with any order granted pursuant to this application, and (d) the designation of each class of shares of a Fund.

2. The Trustees of the Trust, including a majority of the independent Trustees, will consider and approve the Alternative Purchase Plan by an affirmative vote prior to the implementation of the Alternative Purchase Plan. The minutes of the meetings of the Trustees of the Trust regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Alternative Purchase Plan will reflect in detail the reasons for determining that the proposed Alternative Purchase Plan is in the best interests of both the Funds and their respective shareholders and such minutes will be available for inspection by the Commission staff and will be preserved for a period of not less than 6 years, the first two years in an easily accessible place.

3. On an ongoing basis, the Trustees of the Trust, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The Trustees, including a majority of the independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Manager and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Manager and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The Rule 12b–1 distribution plans relating to the Class A shares of each Fund will be approved and reviewed by the Trust's Trustees in accordance with the requirements and procedures set forth in Rule 12b–1, both currently and as that rule may be amended in the future. The Rule 12b–1 distribution plans relating to Class A shares will be approved by the initial sole Class A shareholder prior to implementation and submitted to the Class A shareholders for approval at the next meeting of shareholders after the initial issuance of Class A shares to the public. Such meeting is to be held within one year from the date the Class A shares are initially issued to the public. Any other series or investment company relying in the future on the order granted on the application will hold a meeting of shareholders within one year of the first date that more than one class of shares is issued to the public and outstanding and will submit its Rule 12b–1 distribution plan for the separate approval of the Class A and Class B shareholders at such meeting; provided that the approval of a particular class of shareholders shall not be necessary if the existing Rule 12b–1 plan has already been submitted for the approval of the public shareholders of such class.

5. The Trustees of the Trust will receive quarterly and annual Statements complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of one class of shares will be used to justify the Rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not directly related to the sale of a specific class of shares will not be presented to the Trustees to justify Rule 12b–1 fees charged to shareholders of such class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the independent Trustees in the exercise of their fiduciary duties under Rule 12b–1.

6. Dividends paid by a Fund with respect to its Class A shares and Class B shares, to the extent any dividends are paid, will be calculated in the same manner at the same time on the same day in the same amount (relative to the aggregate net asset value of the shares in each class), except that distribution fee payments relating to each respective class of shares will be borne exclusively by that class.

7. The methodology and procedures for calculating the net asset value and dividends/distributions of the two classes and the proper allocation of expenses between the two classes have been reviewed by an expert (the "Expert") who has rendered a report to applicants that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Trust that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act and the work papers

of the Expert with respect to such reports, following request by the Trust, which the Trust agrees to provide, will be available for inspection by the SEC staff upon written request by a senior member of the Division of Investment Management or a regional office of the SEC. Authorized staff members would be limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director and any Regional Administrator or Assistant Regional Administrator. The report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Accounting Standards No. 44 of the American Institute of Certified Public Accountants (the "AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. The applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the two classes of shares and the proper allocation of expenses between the two classes of shares and this representation has been concurred with by the Expert in its initial report referred to in condition (7) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in conditon (7) above. The applicants agree to take immediate corrective action if the Expert, or an appropriate substitute Expert, does not so concur in the ongoing reports.

9. The prospectus of the Trust will include a statement to the effect that a selling broker-dealer may receive different levels of compensation for selling Class A shares or Class B shares.

10. The Distributor will adopt compliance standards as to when Class A shares and Class B shares may appropriately be sold to particular investors. The Distributor will require all broker-dealers selling shares of the Trust to agree to conform to such standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trust with respect to the Alternative Purchase Plan will be set forth in guidelines which will be furnished to the Trustees.

12. The Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The Trust will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares separately.

13. The applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Trust may make pursuant to Rule 12b–1 distribution plans in reliance on the exemptive order.

14. The order requested by this application will apply only to series of the Trust for which Thomson McKinnon Asset Management L.P. and/or Thomson McKinnon Fund Distributors Inc. act as investment adviser and principal underwriter, and only so long as Thomson McKinnon Asset Management L.P. and/or Thomson McKinnon Fund Distributors Inc. act as such investment adviser and principal underwriter.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–17522 Filed 7–26–90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 90–046]

Towing Safety Advisory Committee; Meeting of Subcommittee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. I), notice is hereby given of meetings of the Towing Safety Advisory Committee (TSAC) Subcommittee on Tug-Barge Construction, Certification and Operations. The meetings will be held on Thursday, August 30, and Friday, August 31, 1990, in the Conference Room of the Coast Guard Marine Safety Office, Tidewater Bldg., 1440 Canal St., New Orleans, LA. The meetings are scheduled to begin at 9 a.m. both days. The Subcommittee will: (1) Discuss selection and maintenance of wire towing hawsers in the towing industry; (2) review 46 CFR part 151, Barges Carrying Bulk Liquid Hazardous Material Cargoes. Attendance is open to the public. Members of the public may present oral or written statements at the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Halsey, Chairman, TSAC Subcommittee on Tug-Barge Construction, Certification and Operations, at (601) 335–7278.

Dated: July 20, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–17533 Filed 7–26–90; 8:45 am]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

[Docket No. 90–15; Notice 1]

Auto Theft and Recovery; Preliminary Report on the Effects of Motor Vehicle Theft Law Enforcement Act of 1984

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of a preliminary report for public comment pursuant to the Motor Vehicle Theft Law Enforcement Act of 1984, which directs the Secretary of Transportation to submit a report to Congress five years after a theft prevention standard is promulgated. The statute requires the Department to report on the effects of federal regulations on auto theft and comprehensive insurance premiums and what changes, if any, to these regulations are appropriate.

As required by the Theft Act, the agency seeks public review and comment on this report prior to its submission to Congress. The report does not contain recommendations at this time. The Department will develop recommendations after a review of public comments.

DATES: Comments must be received no later than September 10, 1990.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD-51), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. An Appendix with detailed information is also available upon request. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC, 20590 (202-366-4949). (Docket hours, 9:30 a.m.-4 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Standards Evaluation, Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC, 20590 (202-366-1574).

SUPPLEMENTARY INFORMATION: The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act) added Title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Title VI requires NHTSA, by delegation from the Secretary of Transportation, to promulgate a vehicle theft prevention standard mandating a marking system for the major component parts of high theft lines. In October 1985, the Federal Motor Vehicle Theft Prevention Standard (49 CFR part 541) was issued. The standard requires manufacturers of designated high theft passenger car lines (those car lines with theft rates greater than the 1983/84 median theft rate) to inscribe or affix the vehicle identification number (VIN) onto the following major parts: engines, transmissions, fenders, doors, bumpers, quarter panels, hoods, decklids, tailgates and hatchbacks. The standard does not apply to any other types of vehicles.

Section 614 of the Theft Act directs the Secretary to submit a report to the Congress five years after the promulgation of the theft prevention standard. Congress required the Secretary to include the following information in the five year report: motor vehicle theft and recovery statistics as well as their collection and reliability; the extent to which motor vehicles are dismantled and exported; the market for stolen parts; the cost and benefit of marking parts; arrest and prosecution of auto theft offenders; the Act's effect on the cost of comprehensive premiums; the adequacy of Federal and state theft laws; and an assessment of parts marking benefits for other than passenger cars.

The Department obtained data from sources specified in the Act and available elsewhere, including the FBI's National Crime Information Center, and Uniform Crime Reporting Section; the Executive Office for U.S. Attorneys; the Bureau of Customs; the Highway Loss Data Institute; the National Automobile Theft Bureau; insurance companies; surveys of and interviews with state, county and city enforcement, motor vehicle administration and court officials; auto manufacturers; autobody repair shops and various associations and individuals.

The FBI's data base is the most comprehensive available, but it does not disaggregate theft data by motive. There are a number of possible motives for stealing motor vehicles. It is estimated that between 10 and 16 percent of all thefts occur in order that parts be removed and sold for profit (chop shop operations). An additional 9 to 25 percent are believed to be related to insurance fraud and estimates of thefts for export range from 4 to 17 percent. Because it is likely that the parts marking provisions of the Theft Act will have an effect primarily on the 25 to 50 percent of thefts made for profit, as opposed to thefts for reasons other than profit such as joy riding, conclusions made on the basis of these data cannot prove the effectiveness of the Act. Nevertheless an analysis of this information provides important insights into various aspects of the vehicle theft problem.

In 1988, there were 1,206,699 motor vehicles stolen, a rise of 35 percent since 1984, and almost 12 percent since 1987. Passenger cars account for 73 percent of all motor vehicle thefts; light trucks, vans and multipurpose vehicles account for 18 percent. The remaining 9 percent represent thefts of heavy trucks, buses and motorcycles.

In the report, theft rates are calculated in terms of thefts per 100,000 registered vehicles. The rate for passenger car theft has increased by 22 percent since 1984 and the rate for light truck theft has doubled. The rate for heavy truck theft increased by 8 percent over 5 years and the motorcycle theft rate actually declined by 12 percent since 1984. The number of recoveries have kept pace with thefts, i.e., recovery rates since 1984 have remained fairly constant reaching 88 percent for passenger cars in 1987.

The effect of parts marking was analyzed by comparing theft rates of marked and unmarked 1987 and 1988 car lines to their respective predecessor lines in 1985 and 1986. When this was done it showed that the theft rate of marked high theft cars increased 3.4 percent in comparison with the previous year. Similarly, the theft rate of low theft unmarked cars increased 13.5 percent. The higher increase in the theft rate of low theft vehicles in comparison with high theft cars continues a trend that has existed for several years and, therefore is not an indicator of the success of the Theft Act.

After applying an adjustment for pre-existing trends, the difference in the change in theft rates between marked and unmarked cars was found to be statistically insignificant. Similarly, an analysis of recovery rates showed no statistically significant differences between marked and unmarked car lines.

Evaluating the theft standard using this approach results in conclusions that are neither clear nor necessarily correct. As mentioned above, the data base that must be used does not permit analysis of theft rates for profit alone. Moreover, overall trends have not changed markedly following implementation of the Theft Act. Under such conditions no meaningful statement on the effectiveness of parts marking can be made using the available national data sets.

Given the uncertainty of these results, other data were examined. Analysis of theft claims costs of seven large insurers showed no evidence that parts marking had reduced auto theft. Insurance costs had increased for both marked and unmarked cars. Here too, however, it was necessary to adjust the data to account for pre-existing trends and the analysis, by itself, also does not produce statistically significant results.

The relative rates of recovery of "in-part" marked and unmarked cars were also examined. These are vehicles missing a major part, usually as the result of a chop shop operation. Here too, there was no difference between recovery rates for marked and unmarked cars. If the parts marking standard was reducing chop shop operations, one would expect a change in the relative recovery rate of the marked cars.

In short, evidence of the effectiveness of the theft standard cannot be obtained through analysis of the data sets examined. The Department has, however, found wide support for parts marking in the law enforcement community.

Those whose concerns focus on the prevention and deterrence of theft or the capture and prosecution of perpetrators believe that marking parts provides them a valuable tool. For the most part, these groups favor expanding the coverage of the standard and making the markings used more difficult to remove.

Of course actions to expand the use of marking will raise the cost of implementing the regulation.

As brought out in the report, the effectiveness of parts marking in its present form may not be measurable. This is due mainly to the requirement that only high theft car lines are subject to parts marking which prohibits establishing a reasonable control group. This constraint will affect future analyses as well, because the high theft and the control group of low theft (unmarked) car line populations will continue to be affected by different theft motives. There are alternative approaches that will allow conventional analyses, thus overcoming the primary constraint. However, it is not possible to identify the motive for theft from the available theft data, that is whether the theft is for profit or for other purposes. Any changes measured are for all motives combined.

If it is crucial to more definitively evaluate the standard, there are ways to implement parts marking which would accomplish this. Such approaches would require statutory action to allow the agency such flexibility. The approaches are intended to approximate an ideal experimental design and would have these features:

- The markings would be applied randomly to high and low theft vehicle lines;
- The non-marked vehicles would serve as a control group; and
- The theft experience of the two groups would be tracked for a number of years.

One approach which would have the above features would be to randomly assign passenger car lines for parts marking. Another approach would extend parts marking to light trucks—using a random assignment of light truck lines for marking. Public comment is sought on the merits of these approaches to provide a definitive answer regarding the effectiveness of parts marking as a theft deterrent.

The Act requires the Department to make recommendations for:

- Continuing the theft prevention standard without change;
- Modifying the statute to cover more or fewer passenger car lines;
- Modifying the statute to cover other types of motor vehicles; or
- Terminating the theft prevention standard for all future motor vehicles.

NHTSA seeks public comment on the report's findings and conclusions and any other information available to assist in making appropriate recommendations to the Congress.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 2022, 2023, 2034; delegation of authority at 49 CFR 1.50 and 501.8.

Donald C. Bischoff,

Acting Associate Administrator for Plans and Policy.

[FR Doc. 90-17502 Filed 7-23-90; 3:32 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: July 23, 1990.

The Department of Treasury the 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.

Internal Revenue Service

OMB Number: 1545-0203
Form Number: 5329
Type of Review: Revision
Title: Return for Additional Taxes Attributable to Qualified Retirement Plans (including IRAs), Annuities, and Modified Endowment Contracts
Description: This form is used to compute and collect taxes related to distributions from individual retirement arrangements (IRAs) and other qualified plans. These taxes are excess contributions to an IRA, premature distributions from an IRA and other qualified retirement plans, excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid.
Respondents: Individuals or households
Estimated Number of Respondents: 1,000,000
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—2 hours, 24 minutes
Learning about the law or the form—44 minutes
Preparing the form—1 hour, 32 minutes
Copying, assembling, and sending the form to IRS—35 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 5,260,000 hours

OMB Number: 1545-0803
Form Number: 5074
Type of Review: Revision
Title: Allocation of Individual Income Tax to Guam or the Commonwealth of the Northern Mariana Islands (CNMI)
Description: Form 5074 is used by U.S. citizens or residents as an attachment to Form 1040 when they have $50,000 income from U.S. sources and $5,000 from Guam or Northern Mariana Islands. The data is used by IRS to allocate income tax due to Guam or CNMI as required by 26 U.S.C. 7654.
Respondents: Individuals or households
Estimated Number of Respondents: 50
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—2 hours, 57 minutes
Learning about the law or the form—5 minutes
Preparing the form—44 minutes
Copying, assembling, and sending the form to IRS—17 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 203 hours

OMB Number: 1545-1128
Form Number: 8814
Type of Review: Extension
Title: Parent's Election to Report Child's Interest and Dividends
Description: Form 8814 is used by parents who elect to report the interest and dividend income of their child under age 14 on their own tax return. If this election is made, the child is not required to file a return.
Respondents: Individuals or households
Estimated Number of Respondents: 1,100,000
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping—20 minutes
Learning about the law or the form—8 minutes
Preparing the form—16 minutes
Copying, assembling, and sending the form to IRS—35 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 1,441,000 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and

Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-17545 Filed 7-26-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 23, 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.

Internal Revenue Service

OMB Number: 1545-0091
Form Number: IRS Form 1040X
Type of Review: Revision
Title: Amended U.S. Individual Income Tax Return
Description: Form 1040X is used by individuals to claim a refund of income taxes, pay additional income taxes, or designate a dollar to a presidential election campaign fund. The information is needed to help verify that the individual has correctly figured his or her income tax.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 2,369,000
Estimated Burden Hours Per Respondent/Recordkeeping:
Recordkeeping—1 hour, 12 minutes
Learning about the law or the form—20 minutes
Preparing the form—1 hour, 11 minutes
Copying, assembling, and sending the form to IRS—35 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 7,817,700 hours

OMB Number: 1545-0128
Form Number: IRS Form 1120-L
Type of Review: Revision
Title: U.S. Life Insurance Company Income Tax Return
Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 2,440
Estimated Burden Hours Per Respondent/Recordkeeping:
Recordkeeping—75 hours, 34 minutes
Learning about the law or the form—22 hours, 31 minutes
Preparing the form—34 hours, 59 minutes
Copying, assembling, and sending the form to IRS—2 hours, 57 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/ Reporting Burden: 331,913 hours

OMB Number: 1545-0885
Form Number: None
Type of Review: Extension
Title: Losses, Expenses, and Interest in Transactions Between Related Taxpayers
Description: Coverage of this regulation includes the deferral and restoration of loss on the sale or exchange of property from one member of a controlled group to another member under section 267(f)(2) Internal Revenue Code (IRC) as added by section 174(b)(2) of the Tax Reform Act of 1984.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 2,001
Estimated Burden Hours Per Recordkeeper: 3 hours
Frequency of Response: Other
Estimated Total Recordkeeping Burden: 6,001 hours

OMB Number: 1545-0936
Form Number: IRS Form 8453
Type of Review: Revision
Title: U.S. Individual Income Tax Declaration for Electronic Filing
Description: This form will be used to secure taxpayer signatures and declarations in conjuction with the Electronic Filing program. This form, together with the electronic transmission, will comprise the taxpayer's income tax return.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeeping: 4,200,000
Estimated Burden Hours Per Respondent/Recordkeeping:
Recordkeeping—20 minutes
Learning about the law or the form—11 minutes
Preparing the form—25 minutes
Copying, assembling, and sending the form to IRS—27 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 5,173,500 hours

OMB Number: 1545-0991
Form Number: IRS Form 8633
Type of Review: Revision
Title: Electronic Filer Application to File 1990 Individual Income Tax Returns Electronically
Description: Form 8633 will be used by tax preparers and electronic return collectors as an application to file individual income tax returns electronically; by software firms, service bureaus, electronic transmitters, to develop auxiliary services.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 25,000
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 12,500

OMB Number: 1545-1032
Form Number: IRS Form 8689
Type of Revision: Revision
Title: Allocation of Individual Income Tax to the Virgin Islands
Description: Used by U.S. citizens or residents as an attachment to Form 1040 when they have Virgin Islands source income. The data is used by IRS to verify the amount claimed on Form 1040 for taxes paid to the Virgin Islands.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents/ Recordkeepers: 800
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—33 minutes
Learning about the law or the form—18 minutes
Preparing the form—56 minutes
Copying, assembling, and sending the form to IRS—20 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 1,704 hours
Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-17546 Filed 7-26-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: July 23, 1990.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, 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.

Internal Review Service

OMB Number: 1545-0052

Form Number: IRS Forms 990-PF and 4720

Type of Review: Resubmission

Title: Return of Private Foundation or section 4947(a)(1) Trust Treated as a Private Foundation; Return of Certain Excise Taxes on Charities and Other Persons Under Chapters 41 and 42 of the Internal Review Code

Description: Internal Revenue Code section 6033 requires all private foundations, including section 4947(a)(1) trusts treated as private foundations, to file an annual information return. Section 53.4940-1(a) of the Income Tax Regulations requires that the tax on net investment income be reported on the return filed under section 6033. Section 6011 requires a report of taxes under Chapter 42 of the Code for prohibited acts by private foundations and certain related parties. Section 4947 (a) trusts may file Form 990-PF in lieu of form 1041 under the provisions of sections 6033 and 6012.

Respondents: Non-profit institutions

Estimated Number of Respondents/ Recordkeepers: 43,067

Estimated Burden Hours Per Response/ Recordkeeping:

	990-PF	4720
Recordkeeping	150 hrs., 11 min.	31 hrs., 5 min.
Learning about the law or the form	27 hrs., 11 min.	15 hrs., 31 min.
Preparing the form	31 hrs., 46 min.	22 hrs., 17 min.
Copying, assembling, and sending the form to IRS	16 min	1 hr., 37 min.

Frequency of Response: Annually

Estimated Total Recordkeeping/ Reporting Burden: 8,870,033 hours

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-17547 Filed 7-26-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review.

Date: July 23, 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.

U.S. Customs Service

OMB Number: 1515-0137

Form Number: None

Type of Review: Extension

Title: Declaration of Person Who Performed Repairs or Alterations

Description: The declaration is needed to substantiate the partial duty exemption for entries covering articles repaired or altered abroad.

Respondents: Businesses or other for-profit

Estimated Number of Respondents/ Recordkeepers: 600

Estimated Burden Hours Per Response/ Recordkeeper: 18 minutes

Frequency of Response: On occasion

Estimated Total Reporting/ Recordkeeping Burden: 410 hours

Clearance Officer: Dennis Dore, (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90-17548 Filed 7-26-90; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Accordingly, the Department of Veterans Affairs (VA) published a notice of its inventory of personal records on September 27, 1977 (42 FR 49726).

Notice is hereby given that VA is adding a new system of records entitled "Health Care Provider Credentialing and Privileging Records-VA" (77VA11).

It is the policy of the Veterans Health Services and Research Administration that all medical staff members and other health care providers be properly credentialed and privileged. Credentialing is the systematic process of reviewing the qualifications of applicants who are considered for appointment to insure that they possess the required education, training, experience and skill to perform the duties of the position for which they have applied. The credentialing process includes verification of the individual's professional license, registration and/or certification, professional education and training, previous employment, clinical

competence and health status. Privileging is the process of reviewing and granting or denying requests from health care providers to provide medical or other patient care services. Clinical privileges are based on an individual's professional license, registration or certification, experience, training, competence, health status, ability, and clinical judgment. Privileges must be delineated for physicans, dentists and direct patient care practioners who are permitted by law and the medical facility to provide patient care independently. Privileges are also delineated for those individuals for activities that are considered outside their routine professional duties and responsibilities. Privileges are not required for the routine duties of allied health practioners. Reappraisal is the process of periodically evaluating the professional credentials and clinical competence of health care providers who have been granted clinical privileges.

The purpose of the system of records is to establish a repository for the records that are related to the credentialing and privileging processes. The records include information provided by the applicant/employee, and information obtained from previous and current employers, affiliated medical schools, educational institutions, and such organizations and agencies as State licensing boards, the Federation of State Medical Boards, the National Council of State Boards of Nursing, and American Specialty Boards. The records may include information that is duplicated in an official personnel folder.

A "Report of New System" and an advance copy of the new system notice have been sent to the Chairman of the House Committee on Government Operations and the Senate Committee on Government Affairs, and the Director, Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by the OMB (50 FR 52730), December 24, 1985.

The OMB requires that a new system report be distributed no later than 60 days prior to the implementation of a new system. OMB has been requested to waive this requirement.

Interested persons are invited to submit written comments, suggestion, or objections regarding the proposed system of records to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue NW., Washington, DC 20420. All relevent material received before August 27, 1990, will be considered. All written comments received will be available for public inspection only in Room 132 of the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until September 5, 1990.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the routine uses in the system are effective August 27, 1990.

Approved: July 19, 1990.

Edward Derwinski,

Secretary of Veterans Affairs.

Notice of System of Records

77VA11

SYSTEM NAME:

Health Care Provider Credentialing and Privileging Records-VA.

SYSTEM LOCATION:

Records are maintained at each of the VA health care facilities. Address locations for VA facilities are listed in VA Appendix 1. In addition, information from these records or copies of records may be maintained at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 and/or Regional Directors' Offices. The addresses for the Regional Directors are as follows: Northeastern Region, 113 Holland Avenue, Albany, NY 12208; Mid-Atlantic Region, VA Medical Center, 508 Fulton Street, Durham, NC 27705; Southeastern Region, 5700 S.W. 34th Street, Suite 1120, Gainesville, FL 32608; Great Lakes Region, P.O. Box 1407, Ann Arbor, MI 48106; Midwestern Region, 11124 South Towne Square, St. Louis, MO 63123; Western Region, 211 Main Street, Room 1800, San Francisco, CA 94105; and Southwestern Region, 1901 North Highway 360 (Suite 350), Grand Prairie, TX 75050.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records include information concerning health care providers employed by the VA and individuals who make application to the VA and are considered for employment as health care providers. These individuals may include audiologists, dentists, dietitians, expanded-function dental auxiliaries, licensed practical or vocational nurses, nuclear medicine technologists, nurse anesthetists, nurse practitioners, nurses, occupational therapists, optometrists, clinical pharmacists, licensed physical therapists, physician assistants, physicians, podiatrists, psychologists, registered respiratory therapists, certified respiratory therapy technicians, diagnostic and therapeutic radiology technologists, social workers, and speech pathologists.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record may include information related to:

(1) The credentialing (the review and verification of an individual's qualifications for employment which includes licensure, registration or certification, professional education and training, employment history, experience, appraisals of past performance, health status, etc.) of applicants who are considered for employment;

(2) The privileging (the process of reviewing and granting or denying a provider's request for clinical privileges to provide medical or other patient care services, within well defined units, which are based on an individual's professional license, registration or certification, experience, training, competence, health status, ability, and clinical judgment) of health care provider applicants who are considered for employment and VA health care providers who are permitted by law and by the medical facility to provide patient care independently and individuals whose duties and responsibilities are determined to be beyond the normal scope of activities for their profession; and/or

(3) The periodic reappraisal of health care providers' professional credentials and the reevaluation of the clinical competence of providers who have been granted clinical privileges.

The record will include the individual's name, address, date of birth, social security number, name of medical or professional school attended and year of graduation and may include information related to: the individual's license, registration or certification by a State licensing board and/or national certifying body (e.g., number, expiration date, name and address of issuing office, status including any actions taken by the issuing office or any disciplinary board to include previous or current restrictions, suspensions, limitations, or revocations); citizenship; honors and awards; professional performance, experience, and judgment (e.g., documents reflecting work experience, appraisals of the applicant and the applicant's past and current performance and potential); educational qualifications (e.g., name and address of institution, level achieved, transcript, information related to continuing education); Drug Enforcement Administration certification (e.g., current status, any revocations, suspensions, limitations, restrictions);

physical examination and mental and physical status; evaluation of clinical and/or technical skills; involvement in any administrative, professional or judicial proceedings, whether involving VA or not, in which professional malpractice on the individual's part is or was alleged; any actions, whether involving VA or not, which result in the limitation, reduction, or revocation of the individual's clinical privileges; and, clinical performance information that is collected and used to support a determination on an individual's request for clinical privileges. Information included in the record may be duplicated in an official personnel folder.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38 U.S.C. 210(c) and Chapter 73.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. In the event that a record maintained by the VA to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee, the issuance or reappraisal of clinical privileges, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefits.

3. A record from this system of records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of the VA, information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

4. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

5. Disclosure may be made to NARA (National Archives and Records Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

6. Records from this system of records may be disclosed to a Federal agency or to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar nongovernment entity which maintains records concerning individuals' employment histories or concerning the issuance, retention or revocation of licenses, certifications, or registration necessary to practice an occupation, profession or specialty, in order for the Department to obtain information relevant to a Department decision concerning the hiring, retention or termination of an employee or to inform a Federal agency or licensing boards or the appropriate nongovernment entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients receiving medical care in the private sector or from another Federal agency. These records may also be discarded as part of an ongoing computer matching program to accomplish these purposes.

7. Information may be disclosed to private sector (i.e., non-Federal, State, or local governments), agencies, organizations, boards, bureaus, or commissions (e.g., the Joint Commission on Accreditation of Healthcare Organizations). Such disclosures may be made only when: (1) The records are properly constituted in accordance with VA requirements; (2) the records are accurate, relevant, timely, and complete; and, (3) the disclosure is in the best interests of the Government (e.g., to obtain accreditation or other approval rating). When cooperation with the private sector entity, through the exchange of individual records, directly benefits VA's completion of its mission, enhances personnel management functions, or increases the public confidence in the VA's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity is to be furnished.

8. Information may be disclosed to a State or local government entity or national certifying body which has the authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity or national certifying body for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

9. Information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

10. Hiring, performance, or other personnel related information may be disclosed to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing, maintaining, or expanding any such relationship.

11. Relevant information concerning a health care provider's professional qualifications and clinical performance may be disclosed to a VA patient, or the representative or guardian of a patient who due to physical or mental incapacity lacks sufficient understanding and/or legal capacity to make decisions concerning his/her medical care, who is receiving or contemplating receiving medical or other patient care services from the provider when the information is needed by the patient or the patient's representative or guardian in order to make a decision related to the initiation of treatment, continuation of treatment, or receiving a specific treatment that is proposed or planned by the provider. Disclosure will be limited to information concerning the health care provider's professional qualifications (professional education and training), experience, and professional performance.

12. Any information in this system which is relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to a Federal, State, local or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

13. Information may be disclosed to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matter affecting working conditions.

14. Disclosures may be made to the VA-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by the VA under medical evaluation (formerly fitness-for-duty) examination procedures or Department-filed disability retirement procedures.

15. Information may be disclosed to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

16. Information may be disclosed to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines of Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

17. Information may be disclosed to Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper documents and information included in the record may be stored on microfilm, magnetic tape or disk.

RETRIEVABILITY:

Records are retrieved by the names and social security numbers of the individuals on whom they are maintained.

SAFEGUARDS:

1. Access to VA working and storage areas in VA health care facilities is restricted to VA employees on a "need to know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. Generally, VA file areas are locked after normal duty hours and the health care facilities are protected from outside access by the Federal Protective Service or other security personnel.

2. Access to the DHCP (Decentralized Hospital Computer Program) computer room within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in the DHCP system may be accessed by authorized VA employees. Access to file information is controlled at two levels; the system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties.

3. Access to records in VA Central Office is only authorized to VA personnel on a "need-to-know" basis. Records are maintained in manned rooms during working hours. During nonworking hours, there is limited access to the building with visitor control by security personnel.

RETENTION AND DISPOSAL:

Paper records and information stored on electronic storage media are maintained and disposed of in accordance with records disposition authority approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for policies and procedures; Assistant Chief Medical Director (ACMD) for Clinical Affairs (11), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Officials maintaining the system; Chief of Staff at the health care facility where the individuals made application for employment, or are or were employed, and the ACMD for Clinical Affairs (11) for individuals who made application for employment to, or are or were employed at, VA Central Office.

NOTIFICATION PROCEDURE:

Individuals who wish to determine whether this system of records contains information about them should contact the VA facility location at which they made application for employment, or are or were employed. Inquiries should include the employees full name, social security number, date of application for employment or dates of employment, and return address.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of records in this system may write, call or visit the VA facility location where they made application for employment, or are or were employed.

CONTESTING RECORDS PROCEDURES:

(See Record Access Procedures above.)

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the applicant/employee, or obtained from State licensing boards, Federation of State Medical Boards, National Council of State Boards of Nursing, national certifying bodies, previous employers, references, educational institutions, medical schools, VA staff, and VA patient medical records.

[FR Doc. 90-17550 Filed 7-26-90; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 145
Friday, July 27, 1990

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

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 FR 27543.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Tuesday, July 31, 1990.

CHANGE IN THE MEETING: The Commission has cancelled the closed meeting to discuss a rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-17704 Filed 7-25-90; 2:13 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Friday, August 3, 1990.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-17705 Filed 7-25-90; 2:13 pm]

BILLING CODE 6351-01-M

FEDERAL COMMUNICATIONS COMMISSION

FCC to hold open Commission Meeting, Wednesday, August 1, 1990

July 25, 1990.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, August 1, 1990, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

Item No., Bureau, and Subject

1—Mass Media—Title: Television Satellite Stations: Review of Policy and Rules (MM Docket No. 87-8). Summary: The Commission will consider whether to adopt a Further Notice of Proposed Rule Making concerning television "satellite" stations. "Satellite" stations are full-power terrestrial television stations that rebroadcast all, or most, of the programming of a commonly-owned parent television station.

2—Private Radio—Title: Amendment of the Amateur Radio Rules to Make the Amateur Service More accessible to Persons with Handicaps. Summary: The Commission will consider whether to adopt a Notice of Propose Rulemaking proposing to exempt from higher speed telegraphy examinations individuals who cannot pass the examinations because of severe handicaps.

3—Chief Engineer, Mass Medica Common Carrier—Title: Amendment of the Commission's Rules with regard to the Establishment and Regulation of New Digital Audio Radio Service. Summary: The Commission will consider a Notice of Inquiry concerning new digital audio radio services.

4—Common Carrier—Title: Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service. Summary: The Commission will consider whether to initiate a rule making proceeding to establish standards for evaluating cellular radio renewal applications.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Steve Svab, Office of Public Affairs, telephone number (202) 632-5050.

Issued: July 25, 1990.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-17700 Filed 7-25-90; 2:12 pm]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

TIME AND DATE: 10:00 A.M., WEDNESDAY, AUGUST 1, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street enrtrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 542-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before the meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 24, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 17633 Filed 7-24-90; 4:58 pm]

BILLING CODE 6210-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Special Meeting of the Board of Directors

[No. 0-06]

Addition of Agenda Item

TIME AND DATE: 8:00 a.m.—Thursday, July 26, 1990.

PLACE: Federal Reserve System, Martin Building, C Street Entrance Between 20th and 21st Streets, NW., Washington, DC 20551.

SUBJECT: Banking Resolution Amendment.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Martha A. Diaz-Ortiz, Acting Secretary, 376-2400.

SUPPLEMENTARY INFORMATION: In addition to the personnel matters scheduled for discussion, the Board of Directors will also consider the amendment to the banking resolution submitted to them on July 17, 1990, for notation vote.

Martha A. Diaz-Ortiz,

Acting Secretary.

[FR Doc. 90-17687 Filed 7-25-90; 12:22 pm]

BILLING CODE 7570-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (55 FR 29451 July 19, 1990).

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, July 17, 1990.

CHANGE IN THE MEETING: Deletion.

The following item was not considered at an open meeting on Monday, July 23, 1990, at 4 p.m.

The Commission will hear oral argument on an appeal by Thomas J. Fittin, Jr., a registered broker-dealer, from an administrative law judge's initial decision. For further information, please contact R. Moshe Simon at (202) 272-7400.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Daniel Hirsch at (202) 272-2100.

Dated: July 24, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-17688 Filed 7-25-90; 12:17 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 55, No. 145
Friday, July 27, 1990

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-88-205]

Shelled Pistachio Nuts; Grade Standards

Correction

In rule document 90-16432 beginning on page 28746 in the issue of Friday, July 13, 1990, make the following correction:

§ 51.2559 [Corrected]

In § 51.2559(a)(3) and (4), on page 28748, in the first column, in the sixth and fifth lines, respectively, insert the article "a" before "⅝".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89D-0368]

Action Levels for Residues of Certain Pesticides in Food and Feed

Correction

In notice document 90-8825 beginning on page 14359 in the issue of Tuesday, April 17, 1990, make the following corrections:

1. On page 14359, in the third column, in the seventh from last line, "filed" should read "field".

2. On page 14360, in the first complete paragraph, in the eighth line, "persist" was misspelled.

3. On page 14361, in the third column, in the table for *C. Chlordane*, the last five entries in the second column should read "0.01".

4. On page 14362, in the second column, in the table for *I. Heptachlorand Heptachlor Epoxide*, the heading "Action level (ppb)" should read "Action level (ppm)".

5. On the same page, in the same column, in the same table, the 12th entry in the second column should read "1.3".

6. On the same page, in the third column, in the same table, the heading "Action level (ppb)"should read "Action level (ppm)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6786

[AK-932-00-4214-10; F-035286]

Partial Revocation of Public Land Order No. 4716 for Selection of Lands by the State of Alaska

Correction

In rule document 90-15619 beginning on page 27822 in the issue of Friday, July 6, 1990, make the following corrections:

1. On page 27823, in the first column, in the land description for Grouse Creek, in the last line, the second comma should be removed.

2. On the same page, in the same column, in the land description for U.S. Creek, in the sixth line, the second comma should be removed.

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-101; Sub-No. 7X]

Duluth, Missabe and Iron Range Railway Co.; Abandonment Exemption in St. Louis Co., MN

Correction

In notice document 90-9306 appearing on page 17317 in the issue of Tuesday, April 24, 1990, in the third column, in the file line at the end of the document, "FR Doc. 90-9305" should read "FR Doc. 90-9306".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245-AA84

Small Business Size Standards Regulation; Correction

Correction

In rule document 90-15244 beginning on page 27198 in the issue of Monday, July 2, 1990, make the following correction:

On page 27200, in the first column, in amendatory instruction (1), in the fourth line, "(a)(2)" should read "(c)(2)".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE42

Finality of Decisions

Correction

In proposed rule document 90-15849 beginning on page 28234 in the issue of Tuesday, July 10, 1990, make the following correction:

On page 28234, in the third column, under **ADDRESSES**, in the last line, "August 4, 1990" should read "August 20, 1990".

BILLING CODE 1505-01-D

federal register

Friday
July 27, 1990

Part II

Environmental Protection Agency

40 CFR Parts 264, 265, 270, and 271

Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 265, 270, and 271

[FRL-3403-8; EPA/OSW-FR-90-012]

RIN 2050-AB42

Corrective Action for Solid Waste Management Units (SWMUs) at Hazardous Waste Management Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is today proposing requirements under the Resource Conservation and Recovery Act (RCRA) for corrective action for solid waste management units (SWMUs) at facilities seeking a permit under section 3005(c) of RCRA. This proposal will establish procedures and technical requirements for implementing corrective action under section 3004(u) of RCRA.

Today's proposal would create a new subpart S in the RCRA part 264 regulations to define requirements for conducting remedial investigations, evaluating potential remedies, and selecting and implementing remedies at RCRA facilities. It also proposes to amend the RCRA part 270 permit requirements, make conforming changes to part 264 and 265 facility closure information requirements, and establish standards for States to become authorized to administer corrective action requirements.

DATES: Written comments on this proposed rule should be submitted on or before September 25, 1990.

Public hearings on this proposed rulemaking are scheduled as follows:

- October 9, 1990 in San Francisco, CA.
- October 12, 1990 in Washington, DC.

ADDRESSES: The public hearings will be held at the following locations:

- October 9, 1990 at the Hyatt Regency San Francisco in Embarcadero Center, 5 Embarcadero Center, San Francisco, CA 94111 (415-788-1234); and
- October 12, 1990 at the Omni-Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008 (202-234-0700).

Those individuals who wish to present oral testimony at either of the public hearings must request an opportunity to be heard. Requests must be made in writing to Thea McManus, Hearings Clerk, Office of Program Management (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The request should reference the RCRA Corrective Action Proposed Rule, Regulatory Docket No. F-90-CASP-FFFFF. Unless otherwise requested in writing, individuals will be scheduled 10-minute time segments to present oral testimony. Time segments will be allotted based on the order in which the written requests are received. Written requests must be received by the end of the written comment period.

Written comments on today's proposal should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (OS-305), 401 M Street SW., Washington, DC 20460. One original and two copies should be sent and identified by regulatory docket reference number F-90-CASP-FFFFF. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment by calling (202) 475-9327. Copies of docket materials may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are $0.15 per page.

FOR FURTHER INFORMATION CONTACT: General questions about the regulatory requirements under RCRA should be directed to the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, Washington, DC 20460, (800) 424-9346 (toll-free) or (202) 382-3000 (local). For the hearing impaired, the number is (800) 553-7672 (toll-free), or (202) 475-9652 (local).

Specific questions about the issues discussed in this proposed rule should be directed to David M. Fagan, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4740.

SUPPLEMENTARY INFORMATION:

Outline

I. Authority
II. Background
III. Purpose of Today's Rule
IV. EPA's Implementation of the Corrective Action Program to Date
A. Pre-HSWA RCRA Corrective Action
B. July 15, 1985, Codification Rule (50 FR 28702)
C. December 1, 1987, Codification Rule (52 FR 45788)
D. Proposed Rule, Financial Assurance for Corrective Action (51 FR 37854)
E. National RCRA Corrective Action Strategy (51 FR 37608) and the RCRA Corrective Action Outyear Strategy (Fall, 1989)
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1. Authority

These regulations are issued under the authority of sections 1003, 1006, 2002(a), 3004(u), 3004(v), 3005(c), and 3007 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6924 (a), (u), and (v), and 6925(c).

II. Background

Prior to passage of the Hazardous and Solid Waste Amendments of 1984 (HSWA), statutory authorities and promulgated regulations for compelling corrective action at facilities regulated under subtitle C of the Resource Conservation and Recovery Act (RCRA) were limited to the following: (1) Section 7003 of RCRA, which provides EPA enforcement authority to take action where solid or hazardous waste may present an imminent and substantial endangerment to human health or the environment; (2) section 3013 of RCRA, which provides authority for requiring investigations where the presence of hazardous waste or releases of hazardous waste may present a substantial hazard to human health or the environment; and (3) 40 CFR part 264, subpart F, which provides a regulatory program to address releases of hazardous wastes and hazardous constituents to ground water from "regulated units." ("Regulated units" are defined in 40 CFR 264.90 as surface impoundments, waste piles, land treatment units, and landfills which received hazardous waste after July 26, 1982.) Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), provides a broad authority, similar to RCRA section 7003, to take abatement actions to remediate any actual or potential imminent and substantial endangerment caused by actual or threatened releases of hazardous substances.

The 1984 HSWA amendments substantially expanded corrective action authorities for both permitted RCRA facilities and facilities operating under interim status. Section 3004(u) of HSWA requires that any permit issued under section 3005(c) of RCRA to a treatment, storage, or disposal facility after November 8, 1984, address corrective action for releases of hazardous wastes or hazardous constituents from any solid waste management unit (SWMU) at the facility. These permits will contain schedules of compliance where corrective action activities cannot be completed prior to permit issuance. In addition, facility owners or operators must demonstrate assurances of financial responsibility for completing the required corrective actions. Section 3004(v) authorizes EPA to require corrective action beyond the facility boundary where appropriate. Section 3008(h) provides EPA with authority to issue administrative orders or bring court action to require corrective action or other measures, as appropriate, when there is or has been a release of hazardous waste or hazardous constituents from a RCRA facility operating under interim status.

III. Purpose of Today's Rule

The purpose of today's rule is to establish a comprehensive regulatory framework for implementing the Agency's corrective action program under RCRA. This rule defines both the procedural and substantive requirements associated with sections 3004(u) and 3004(v). While the new corrective action authorities became effective on their date of enactment (November 8, 1984), today's proposed rule is intended to establish a comprehensive regulatory framework for these statutory authorities. The proposal should serve to promote national consistency in implementing this important component of the RCRA

program, and will establish standards to which States seeking authorization for section 3004(u) corrective action must demonstrate equivalence. In addition, this rulemaking provides a procedural vehicle for the regulated community and other interested parties to comment on the Agency's regulatory intentions for this program.

The following sections of this preamble provide a detailed explanation of the background and specifics of today's proposed rulemaking. Section IV discusses implementation of the corrective action program to date. Section V provides an overview of the regulatory program proposed today and the management philosophy which led to this proposal. Section VI provides a section-by-section analysis of the proposed rule. Section VII examines the relationship of today's rule to other environmental programs. Section VIII discusses public involvement in the corrective action program, while section IX provides information on State authorization for the new program.

IV. EPA's Implementation of the Corrective Action Program To Date

Since 1982, the RCRA program has been implementing the subpart F corrective action requirements for releases to ground water from regulated units through permits. Since November 1984, the HSWA corrective action requirements, which were effective immediately, have been implemented on a case-by-case basis in individual facility permits or section 3008(h) corrective action orders. To implement the HSWA corrective action program to date, EPA has issued several regulations and guidance documents. This section describes those rules and guidance documents, the current status of corrective action activities in the permitting and enforcement programs, and the availability of technical guidance documents pertaining to corrective action.

A. Pre-HSWA RCRA Corrective Action

EPA's base permit regulations, promulgated under pre-HSWA authority, establish a program for monitoring and remediating releases to ground water from regulated hazardous waste management units (40 CFR part 264, subpart F, discussed below), and reporting of releases from permitted units (under 40 CFR part 270). These regulations were established in 1982 under the general statutory authority in section 3004(a) of RCRA.

Under current subpart F regulations, the corrective action requirement (§ 264.100) is the third step of a three-phase program for detecting, characterizing, and responding to releases to the uppermost aquifer from regulated units. The first phase, called detection monitoring, requires facility owners or operators to monitor ground water at the downgradient edge of the waste management boundary for indicator parameters or constituents that indicate the likelihood of a release. If a release is detected, the owner/operator tests for all appendix IX (of 40 CFR part 264) constituents, and a ground-water protection standard (GWPS) is established for every appendix IX constituent detected above background levels. Under the second, or compliance monitoring phase of the program (which is triggered when the release is confirmed), the owner/operator is required to perform additional investigations to characterize the nature and extent of contamination. In the third and final stage—corrective action—the owner/operator is required to remove or treat in place all contaminants present in concentrations above the ground-water protection standard beyond the compliance point.

The ground-water protection standards established under subpart F are set at either the background levels, maximum contaminant levels (MCLs) for 14 specific constituents, or alternate concentration limits (ACLs). MCLs are contaminant concentration levels which represent the maximum permissible level in drinking water supplies as promulgated by the EPA under the Safe Drinking Water Act. ACLs are contaminant concentration levels determined by the Agency to be protective of human health and the environment based on site-specific circumstances. Proposed revisions to the existing subpart F regulations to create a program consistent with today's proposal for subpart S are expected to be published shortly in the **Federal Register**. A discussion of the relationship between this proposal and the proposed amendments to subpart F is included in section VII.C of this preamble.

B. July 15, 1985, Codification Rule (50 FR 28702)

On July 15, 1985, EPA promulgated regulations that codified the statutory language of the new section 3004(u) corrective action authority of HSWA (see 50 FR 28702, 40 CFR 264.90(a)(2) and 264.101). In particular, the July 1985 Codification Rule amended 40 CFR part 264, subpart F by adding new § 264 101, which essentially reiterated the statutory language of section 3004(u).

In addition, the preamble to the July 1985 Codification Rule defined the Agency's jurisdiction under the new authorities by interpreting a number of key terms in the statutory language. Specifically, the preamble discussed EPA's interpretations of the terms "facility," "solid waste management unit," and "release," in relation to the new corrective action authorities. (EPA is proposing to codify these definitions, with some modifications, in today's rule.) The preamble also provided the Agency's interpretation of the authority conferred on it through section 3008(h), the interim status corrective action authority. A detailed discussion of the Agency's interpretation of the section 3008(h) authority was provided in a December 16, 1985, guidance memorandum entitled "Interpretation of section 3008(h) of the Solid Waste Disposal Act." A copy of that memorandum may be found in the docket established for this rulemaking.

C. December 1, 1987, Codification Rule (52 FR 45788)

On December 1, 1987, EPA issued a companion to the July 1985 Codification Rule that further modified the part 264 and part 270 hazardous waste management regulations to implement the new statutory provisions of HSWA (see 52 FR 45788). This Second Codification Rule addressed issues arising from the new amendments rather than codifying requirements imposed directly by the statute. Three elements of that rule relate to the new HSWA corrective action requirements: Permit application requirements for solid waste management units (SWMUs), corrective action beyond the facility boundary, and corrective action for injection wells with permits-by-rule.

The Second Codification Rule amended the existing part B permit application requirements of § 270.14 by adding a new provision (§ 270.14(d)) that requires certain information pertaining to solid waste management units at the facility applying for a RCRA permit. The new provision requires descriptive information on all solid waste management units at the facility, and all available information pertaining to any past or current releases from these units. The provision also requires facility owner/operators to perform sampling and analysis as required by EPA to assist in determining whether or not releases have occurred from solid waste management units at the facility.

The Second Codification Rule also amended §§ 264.100 and 264.101 of the RCRA part 264 regulations to codify section 3004(v) of RCRA. This statutory provision requires facility owner/operators to address corrective action for releases that have migrated beyond

the facility boundary, unless the owner or operator demonstrates to EPA that, despite his or her best efforts, s/he was unable to obtain the necessary permission to undertake the required actions (see §§ 264.100(e) and 264.101(c)). This new provision applies to releases from all solid waste management units, including releases to the uppermost aquifer from regulated units. Moreover, section 3004(v) makes it clear that the provision applies to certain interim status units (section 3004(v)(2)), as well as units at permitted facilities (section 3004(v)(1)). Where access to off-site property is denied, EPA may require that certain measures be taken on site to mitigate the off-site contamination (*e.g.*, source control measures). As will be discussed later, EPA is today proposing changes to these regulatory provisions.

The Second Codification Rule also included new provisions governing the implementation of corrective action requirements through RCRA permits-by-rule for Class I hazardous waste injection wells (see §§ 270.60(b)(3), 144.1(h), 144.31(g)). Under 40 CFR 270.60, the corrective action requirements of § 264.101 must be addressed in order to obtain a permit-by-rule for a hazardous waste injection well. Since today's proposal will replace § 264.101, these facilities will be required to comply with today's proposed subpart S regulations in the same manner as other facilities which receive permits under section 3005(c) of RCRA.

The Second Codification Rule also clarified that a Class I hazardous waste injection well with a UIC permit issued after November 8, 1984, does not have a RCRA permit-by-rule until the corrective action requirements are imposed at the entire facility. Further, the Second Codification Rule clarified that a Class I injection well that received a UIC permit retains interim status under RCRA until corrective action requirements (if necessary) are imposed through a RCRA rider permit.

D. Proposed Rule, Financial Assurance for Corrective Action (51 FR 37854)

On October 24, 1986, EPA proposed new amendments to the financial responsibility standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities (hereinafter referred to as FACA—see 51 FR 37854). This proposed rule provided a regulatory framework for implementing the statutory requirement of section 3004(u) (codified in §§ 264.101 and 264.90(a)(2)) for demonstrating financial assurance for the costs of corrective actions.

The 1986 FACA proposal set out a detailed set of procedures implementing the section 3004(u) financial assurance requirements. These procedures addressed: (1) The timing of financial assurance demonstrations; (2) cost-estimating procedures, including the periodic adjustment of cost estimates, for determining the amounts of required financial assurance; and (3) permissible financial assurance mechanisms, including their required wording and allowable combinations of mechanisms. EPA is today proposing specific language which will clarify when financial assurance for corrective action must be demonstrated and when adjustments to the coverage levels will be required. With respect to all other procedural aspects associated with the FACA requirements (*e.g.*, the set of acceptable mechanisms or use of a mechanism for multiple financial responsibilities), EPA intends to use the FACA proposal as general guidelines for examining, on a case-by-case basis, the adequacy of the financial assurances. Financial assurance for corrective action is discussed more fully in section VII.C.5 of this preamble.

E. National RCRA Corrective Action Strategy (51 FR 37608) and the RCRA Corrective Action Outyear Strategy (Fall, 1989)

In October 1986, EPA issued a draft "National RCRA Corrective Action Strategy" to inform the Regions, States, regulated community, and the public of the Agency's overall plans for implementing the HSWA corrective action authorities. The Strategy provided an overview of the HSWA corrective action authorities and the universe of RCRA facilities subject to these authorities, and described the basic process for identifying, investigating, and remediating releases at RCRA facilities. It also discussed the Agency's plans for establishing priorities for corrective action, the relationship between permitting and enforcement authorities, factors influencing the management of corrective action, and the relationship between EPA and the States in implementing this program.

The Agency received a number of comments on the draft strategy, many of which are reflected in the content of today's proposed rule. Today's proposal, which addresses in detail most of the elements of the draft strategy, effectively finalizes the strategy.

Although some portions of the draft strategy, such as the Agency's plans for prioritizing RCRA facilities for corrective action, are not fully addressed in today's proposal, they are the subjects of recommendations contained in the RCRA Corrective Action Outyear Strategy (CAOS), published in the Fall of 1989. These recommendations outline a management approach for the corrective action program that is realistic and workable in light of the many challenges that EPA and the States will face in implementing this program over the next several years. While some of the CAOS recommendations can be directly implemented, others will be addressed in detail in forthcoming guidance.

F. Implementation of the HSWA Corrective Action Program

To implement the corrective action program to date, EPA has developed a general process to assure that actions taken are commensurate with the problem presented. In this process, each stage serves as a screen, sending forward to the next step those facilities or units at a facility which the Agency has found to be a potential problem, and eliminating from further consideration units and facilities where the Agency has discovered no current environmental problem. The Agency intends to provide sufficient flexibility in this process to facilitate timely abatement of environmental problems.

RCRA facilities are generally brought into the corrective action process at the time the Agency is considering a permit application for the facility, or when a release justifying action under section 3008(h) is identified. The process begins with an Agency-conducted RCRA Facility Assessment (RFA), which is analogous to the Superfund Preliminary Assessment/Site Investigation (PA/SI). The RFA includes: (1) A desk top review of available information on the site; (2) a visual site inspection to confirm available information on solid waste management units at the site and to note any visual evidence of releases; and (3) in some cases, a sampling visit, to confirm or disprove suspected releases. If, after completion of the RFA it appears likely that a release exists, the Agency typically develops a schedule of compliance, to be included in a facility's RCRA permit, for further studies and actions the permittee must undertake to fulfill the responsibilities imposed by section 3004(u). Alternatively, the Agency might issue an order pursuant to section 3008(h) to compel corrective action.

The second stage of the corrective action process is the RCRA Facility Investigation (RFI). The RFI is undertaken when a potentially significant release has been identified in the RFA; its purpose is to characterize

the nature and extent of contamination at the facility, and it is analogous to the Remedial Investigation (RI) process of the Superfund program. Typically, the RFI will be focused on specific concerns identified in the RFA and will be staged to avoid unnecessary analysis. When the Agency determines, on the basis of data generated during the RFI or other information, that cleanup is likely to be necessary, the owner/operator will be required to conduct a Corrective Measure Study (CMS) to identify a solution for the problem at the site. Once the Agency selects the remedy for the facility, the Agency will either issue a followup section 3008(h) order (in the case of an interim status facility), or modify the permit, and the remedy will be implemented by the owner/operator with Agency oversight.

In certain situations, the Agency may require an "interim measure" at the facility without waiting for the final results of the RFI or the CMS. Interim measures are actions required to address situations which pose a threat to human health or the environment or to prevent further environmental degradation or contaminant migration pending final decisions on required remedial activities. Superfund generally uses the removal authority provided under section 104 of CERCLA to accomplish this same objective where expedited response and/or emergency actions are needed.

Currently, implementation of the corrective action program is being undertaken by EPA, with assistance from State agencies. Six States have been authorized to date to implement the HSWA corrective action program.

The general corrective action process described above is carried forward in today's proposal. However, today's proposal will describe the requirements in greater detail, and will provide the public an opportunity to comment on this approach.

More detailed information about each of the phases of the corrective action program as implemented to date can be found in the guidance documents referenced below. Additional guidance will be developed in the future.

1. *RCRA Facility Assessment Guidance* (Final, October, 1986). This document can be obtained through the National Technical Information Services (NTIS), 5285 Port Royal Rd., Springfield, VA—(703) 487–4650. Document Number PB87–107769.

2. *RCRA Facility Investigation Guidance* (Interim Final, May, 1989). For further information, contact: Jon Perry—(202) 382–4663.

3. *Corrective Action Plan* (Interim Final, May, 1988). For further information, contact: (202) 382–4460.

4. *Interim Measures Guidance* (Interim Final, May, 1988). For further information, contact: Tracy Back—(202) 382–3122.

V. Approach to Corrective Action in Today's Rule

Together with the National Contingency Plan (NCP), which EPA recently promulgated (March 8, 1990, 55 FR 8666), today's proposal defines EPA's overall approach to the cleanup of environmental contamination resulting from the mismanagement of hazardous and solid waste. Today's proposal will establish a regulatory framework for corrective action under section 3004(u) of RCRA and will provide guidelines for corrective action orders imposed through administrative orders under section 3008(h) of RCRA. Substantive provisions of the rule, when promulgated, generally will be applicable to response actions under CERCLA involving releases of hazardous waste (including hazardous constituents). These provisions may also be "relevant and appropriate" to other CERCLA response actions.

This section of the preamble briefly summarizes EPA's basic approach to RCRA corrective action, the fundamental cleanup goals of the program, and the major elements of today's rule.

A. Priorities and Management Philosophy for RCRA Corrective Action

Approximately 5,700 facilities are currently in the RCRA subtitle C universe, and therefore are potentially subject to corrective action requirements. These facilities are likely, together, to have as many as 80,000 SWMUs. Many of these facilities, EPA believes, will require some level of remedial investigation and corrective action to address past or current releases.

The level of investigation and subsequent corrective action will vary significantly across facilities. This regulation would ensure that variation can be accommodated by recognizing that the necessary scope of investigations and studies may be different depending upon the situation presented. It is the Agency's intention that State and Regional personnel have the ability to require investigations sufficient to fully characterize the facility and assess necessary actions. In many cases the problem will pose less risk or be less complex than a major Superfund site listed on the National Priorities List. Therefore, the Agency expects that, for the most part, RCRA cleanups will be less complex and less expensive than those under CERCLA, and less detailed study will be required before remedial action begins. In some cases, however, the Agency also recognizes that the situation could be comparable to that of a major CERCLA site. In such cases, the Agency will require more detailed analysis and more rigorous oversight. There will also be cases where immediate action is required, while at many other sites, current exposure will be limited and action can be safely deferred. Not only will the nature of cleanup required vary widely, but so too will the characteristics of the facility owner/operators. Some facilities will be sites controlled by financially viable owner/operators, while others will be weak financially; some will be under active long-term management, but at others the owner/operator will be seeking to leave the site; some will be simple facilities with one or two storage tanks, yet others will be major complexes, such as large Federal facilities, with thousands of solid waste management units.

Because of the wide variety of sites likely to be subject to corrective action, EPA believes that a flexible approach, based on site-specific analyses, is necessary. No two cleanups will follow exactly the same course, and therefore the program has to allow significant latitude to the decision maker in structuring the process, selecting the remedy, and setting cleanup standards appropriate to the specifics of the situation. At the same time, a series of basic operating principles guide EPA's corrective action program under RCRA. These principles, which are reflected in today's proposal, are described briefly below.

In managing the corrective action program, the Agency will place its highest priority on action at the most environmentally significant facilities and on the most significant problems at specific facilities. EPA is committed to directing its corrective action resources first to the most environmentally significant problems. The level of threat posed by each of the 5,700 facilities now subject to corrective action varies widely—some are a major concern and require prompt attention; others will require eventual cleanup but do not currently pose a threat; still others have no significant releases and will not require corrective action at all. At some of these facilities, EPA will automatically address corrective action because of its permitting priorities. Under HSWA, statutory deadlines were established for issuance of RCRA

permits to the various types of treatment, storage, and disposal facilities. Each of these permits must, to the extent necessary, require a schedule of compliance for corrective action. However, a substantial universe of facilities that will not receive permits must also be addressed for corrective action. EPA, through its Environmental Priorities Initiative, will review and set priorities for action among these facilities, to ensure that it addresses the most significant first.

It will also be important for EPA to set priorities and focus its efforts within facilities undergoing corrective action through the permitting process. Facilities receiving permits will present the full range of remedial problems; EPA and authorized States must carefully manage their resources at these facilities to ensure that the program effectively focuses on the most pressing problems. The Agency's first priority will be to require interim measures to address sites posing an immediate threat to human health and the environment, and to pursue engineering remedies to control or eliminate further migration of environmental releases. In addition, the Agency will expect prompt remediation of all significant off-site contamination, regardless of whether human or environmental exposure to the contamination is currently occurring. On the other hand, sites where current exposure is low and releases have been effectively controlled will be a lower priority. This is particularly likely to be the case where a site is controlled by a financially viable owner/operator who can ensure that releases are adequately contained and exposure eliminated and who will be capable of undertaking eventual cleanup.

The Agency may rely on "conditional" remedies where prompt remedial action can reduce risk to levels acceptable for current uses, or where final cleanup is impracticable. As a general principle, EPA believes that cleanups must achieve a level appropriate for all actual and reasonably expected uses (The question of cleanup goals is discussed more fully in the next section of this preamble.) RCRA sites subject to corrective action, however, will typically be facilities seeking permits to manage hazardous waste, rather than sites that are widely open to the public and subject to a broad range of uses. As long as the permit is in place and the facility is under the management of the owner/operator, exposure to contaminated media within the facility boundary, such as contaminated soils, would be significantly less than it would be in an area of unrestricted access, where future uses might include residential or agricultural development. In such controlled use situations, EPA believes that it will often be reasonable to require prompt cleanup to levels consistent with current use, but to defer final cleanup as long as the owner/operator remains under a RCRA permit.

In other cases, it may be readily apparent that cleanup of a site to levels appropriate for unrestricted use will be impracticable. RCRA will have to address a number of intractable problems, such as the cleanup of large, complex sites like municipal landfills, or ground-water cleanup where the bedrock is heavily fractured. In these cases as well, it may be appropriate to rely on "conditional" remedies that control risk during the life of the permit, and rely on institutional controls to prevent future exposure.

EPA expects that these conditional remedies will play a significant role in the implementation of RCRA corrective action, and will enable the Agency and the regulated community to focus their resources most effectively on the most pressing problems. Further discussion of "conditional" remedies is contained in section VI.F.8 of this preamble.

The Agency intends to remove regulatory disincentives to independent action by facility owner/operators and will encourage voluntary cleanups. EPA recognizes that it is important to allow willing and responsible owner/operators to begin corrective action promptly without unnecessary procedural delays. In many cases, the Agency believes that owner/operators will wish to take source control measures, begin ground-water pumping, or take other measures to reduce or eliminate a problem. EPA encourages these activities, and in many cases may find it appropriate to incorporate owner/operator. initiated corrective action into permits as interim measures. In addition, the Agency has taken steps to simplify RCRA permit modification procedures for corrective action in its final rule on RCRA permit modifications (53 FR 37912, September 28, 1988). The issue of voluntary corrective action is discussed more fully in section VI.A of this preamble.

Facility investigations and other analyses will be streamlined to focus on plausible concerns and likely remedies, and to expedite cleanup decisions. While remedial investigations must be thorough enough to identify any serious problems, EPA recognizes that its own resources and those of the regulated industry are finite, and therefore that these investigations must be focused on plausible concerns and conducted in a step-wise fashion, with early screens to determine whether further investigation is necessary. Similarly, although it will be necessary in some cases—particularly at facilities with large and complex cleanup problems—for the owner/operator to analyze a wide range of cleanup alternatives, at most RCRA facilities a more limited analysis will be appropriate. For example, when the appropriate remedy is self-evident (*e.g.*, drum removal and treatment to best demonstrated available technology (BDAT)), it may be unnecessary to evaluate alternatives that would not be adopted. Similarly, where an owner/operator proposes a remedy that is effective and protective, it may be appropriate to approve the remedy and avoid continued studies that would serve only to delay cleanup. In either case, the permit would establish performance standards in the form of cleanup levels. If the remedy failed to achieve these standards, it would have to be modified accordingly. Section VI.H.5 of the preamble discusses in further detail the issue of the technical impracticability of achieving a remedial requirement given a specified remedy.

In managing the corrective action program, the Agency will emphasize early actions and expeditious remedy decisions. One of the Agency's overriding goals in managing the corrective action program will be to expedite cleanup results by requiring sensible early actions to control environmental problems on an interim basis, and using flexible and pragmatic approaches in making final remedy decisions. EPA believes that in many cases it will be possible to identify early in the corrective action process actions which can and should be taken to control exposure to contamination, or to stop further environmental degradation from occurring. Such interim measures may be relatively straightforward, such as erecting a fence or removing small numbers of drums, or may involve more elaborate measures such as installing a pump and treat system to prevent further migration of a ground-water contaminant plume. In another example, where it is obvious that the eventual remedy will require excavation and treatment or removal of contaminated "hotspots," such action should be initiated as an interim measure, rather than deferring it until after final remedy selection.

Final remedy decisions must be based on careful judgments and sound technical information. However, today's proposed rule provides for considerable flexibility in structuring studies and

selecting remedies. It is EPA's intention to use that flexibility to streamline the remedy development/decision process whenever feasible. Corrective Measure Studies should focus on plausible remedial options, and should be scaled to fit the complexity of the remedial situation. Obvious remedial solutions should not be impeded by unnecessary studies. Voluntary cleanup initiatives by owner/operators that are consistent with EPA's cleanup goals will be encouraged as a means of expediting the remedial process.

B. Cleanup Goals for Corrective Action

EPA's goal in RCRA corrective action is, to the extent practicable, to eliminate significant releases from solid waste management units that pose threats to human health and the environment, and to clean up contaminated media to a level consistent with reasonably expected, as well as current, uses. The timing for reaching this goal will depend on a variety of factors, such as the complexity of the action, the immediacy of the threat, the facility's priority for corrective action, and the financial viability of the owner/operator. However, the final goal of cleanup would remain the same.

It should be recognized that EPA's emphasis in today's rule on minimizing further releases means that corrective action will frequently require source removal, source control, and waste treatment. In this respect, today's rule reflects a shift in emphasis from current RCRA corrective action requirements for ground-water releases from regulated units. These requirements currently focus on cleanup of the ground water, but not on control of the source. However, EPA believes that it will frequently be impossible to control releases and ensure the long-term effectiveness of remedies without significant source control. For example, a response action that focuses entirely on remediation of the contaminated medium may meet acceptable cleanup standards in the short term, but continued leaking could lead to unacceptable releases in the future as the source continues to leak. Therefore, today's rule explicitly provides EPA authority to require source control.

One of the more controversial issues related to corrective action is the cleanup goals for contaminated media, or "how clean is clean." EPA has not attempted in this rule or elsewhere to establish specific cleanup levels for different hazardous constituents in each medium. Instead, EPA believes that different cleanup levels will be appropriate in different situations, and that the levels are best established as part of the remedy selection process. Generally, however, the cleanup must achieve protective levels for future as well as current uses. This is the approach taken in today's proposal.

To be "protective" of human health, EPA believes that cleanup levels for carcinogens must be equal to or below an upperbound excess lifetime cancer risk level of 1 in 10,000 (1×10^{-4}). As proposed today, cleanup levels would be selected within the upper bound 1×10^{-4} to 1×10^{-6} risk range during the selection of remedy process; however, remedies at the more protective end of the range would ordinarily be preferred. For non-carcinogens, cleanup levels would be set at a level at which adverse effects would not be expected to occur. The application of this approach to specific media is described below.

Ground water. Potentially drinkable ground water would be cleaned up to levels safe for drinking throughout the contaminated plume, regardless of whether the water was in fact being consumed. Where maximum contaminant levels (MCLs) established under the Safe Drinking Water Act are available for specific contaminants, these limits generally will be used; otherwise, the levels would be set within the protective range. Alternative levels protective of the environment and safe for other uses could be established for ground water that is not an actual or reasonably expected source of drinking water.

Soil. Contaminated soil would be remediated to levels consistent with plausible future patterns of use. For example, where access to an area would be unrestricted, cleanup would generally be required to levels appropriate for residential development. At industrial sites or sites dedicated to long-term hazardous waste management, cleanup to less stringent levels might be appropriate, although institutional controls could be necessary to ensure that the use pattern did not change.

Surface water. Releases to surface water should be remediated to levels consistent with potential uses. For example, where surface water is designated for drinking water or is a potential drinking water source, cleanup to drinkable levels would be required. In the case of surface water, environmental effects are likely to be particularly important, because levels protective for humans may often be insufficient for protection of aquatic organisms.

Air. Like soil, air releases from solid waste management units would be of concern where they posed a threat to humans or the environment under plausible current or future use patterns. Typically, corrective action involving air concerns would involve source control to minimize further releases.

C. Major Elements of Today's Proposal

The principles described above will shape EPA's general approach to corrective action, and they serve as operating assumptions behind today's notice. Today's proposal will establish the basic framework for the corrective action program, both for EPA and authorized States. More specifically, it codifies the procedures for identifying problems and selecting remedies at RCRA facilities; the standards for cleanup, including the establishment of cleanup levels; and the standards for managing cleanups and the wastes generated by cleanups. The major elements of the proposal are summarized below.

Permitting procedures and permit schedules of compliance. Today's proposal, which implements section 3004(u), addresses corrective action at facilities seeking RCRA permits. Corrective action requirements will be imposed on these facilities directly through the permitting process and will be incorporated into permits through schedules of compliance. Typically, before a permit is issued, EPA or an authorized State would conduct an RFA at the facility to determine whether a potential problem existed. Where a likely release was found, the permit would contain a schedule of compliance, as specified in proposed § 264.510, requiring a remedial investigation focusing on the specifics of the likely release. This schedule of compliance would be a part of the permit, and would be successively modified, as necessary, as studies and corrective actions at the facility proceeded.

Trigger or "action levels." Where contamination is identified during the facility investigation, EPA or an authorized State will have to make a decision on whether further analysis, including analysis of potential remedies, is appropriate, or whether the contamination is at an insignificant level. For this reason, the rule incorporates the concept of "action levels"—levels that, if found in the environment, will typically trigger a Corrective Measure Study. Under today's proposal, action levels would be established in the initial permit, or, in some cases, through a permit modification after a release has been identified.

Section 264.521 of the proposal establishes the general principles by which action levels would be established for each medium. To provide

guidance for RCRA permit writers, industry, and the public, today's proposal includes in Appendix A of this preamble values that the Agency believes may be appropriate as action levels for a number of hazardous constituents in different environmental media. These levels would be incorporated individually into permits through the permitting process.

If environmental levels were found to be below the action levels, no further action would ordinarily be required. However, even if an action level has been exceeded, the proposal in § 264.514 would allow the owner/operator to demonstrate that no action was necessary. For example, if ground water were not a potential source of drinking water because of high levels of natural contamination, an owner/operator might successfully argue that cleanup was unnecessary. In this way, action levels would constitute rebuttable presumptions. This issue is discussed in more detail in section VI.E.2 of this preamble.

Corrective Measure Study and remedy selection. Typically, if an action level has been exceeded, the facility owner/operator would be required under the proposal to conduct a Corrective Measure Study (CMS). The purpose of the CMS is to identify and evaluate potential remedies. EPA anticipates that, in a few cases, owner/operators of larger sites with complex environmental problems may need to evaluate several alternative remedial approaches in determining the most appropriate remedy for the facility. For most RCRA facilities, however, it will be possible to abbreviate the analysis, and frequently it may be appropriate for the owner/operator to propose a single alternative, which EPA would approve or disapprove. The proposed regulation in § 264.522 gives the Agency the necessary flexibility to vary the scope of the Corrective Measure Study, depending on the specifics of the situation.

EPA would approve or select the remedy under the standards and criteria proposed in § 264.525. Proposed § 264.525(a) would require the remedy to be protective of human health and the environment, to achieve media cleanup standards, to minimize further releases, and to comply with subtitle C and other waste management standards. In selecting the remedy, the Agency would be required to consider a wide range of factors, such as the remedy's short- and long-term effectiveness and its practicability. These factors are generally comparable to the factors considered by the Agency in selecting Superfund remedies under § 300.430 of the NCP. (See 55 FR 8666, March 8, 1990.)

Remedies selected under § 264.525 would require formal permit modifications, with opportunity for public comment and rights of appeal. After public comment, the proposed permit schedule of compliance would be amended, (if necessary) and approved, to require that the owner/operator develop a specific remedial design and, after approval of the design, carry out the remedy.

Cleanup levels. The Agency's goal is that remedies clean up to levels determined to be protective of human health and the environment. EPA's general cleanup goals are described in section B above and in section VI.F.5 of this preamble. Specific levels for each facility, consistent with these goals, would be established during the remedy selection process and would be incorporated into the permit and made available for public comment.

Where protective levels could not be attained, or where wastes were left on site in disposal units, long-term management would be required through the permit.

Standards for management of corrective action waste. Proposed §§ 264.550–264.552 would establish standards for conducting corrective action and handling wastes generated during corrective action. If corrective action waste meets the RCRA regulatory definition of hazardous it would have to be handled under the proposal as hazardous waste. With some limited exceptions, new units built to treat, store, or dispose of this waste on-site would have to comply with 40 CFR part 264 performance standards for hazardous waste units. Similarly, hazardous waste shipped off site would have to be sent to RCRA subtitle C facilities.

The rule would also establish more flexible standards for temporary treatment and storage units developed during the course of corrective action.

Completion of remedy. Proposed § 264.530 would establish requirements for remedy completion. Similar to RCRA closures, an independent engineer or other qualified professional would have to certify completion of the remedy, and, in addition, public notice and comment would be required before the Agency made a final decision on whether the remedy had been completed.

In some cases, it might become clear in the course of a remedy that it was not technically practicable to reach the cleanup levels specified in the permit. In this case, proposed § 264.531 would allow termination of the remedial action and waiver of the cleanup standard. However, if environmental contamination remained at unprotective levels, long-term institutional or other controls would be required to prevent human and environmental exposure.

These requirements and alternatives that the Agency considered are discussed in more detail in the following sections.

VI. Section-by-Section Analysis

A. Purpose/Applicability (Section 264.500)

1. *Conforming Changes to Previous Codification of § 3004(u) and General Discussion.* In today's proposal, EPA is establishing a new subpart S to 40 CFR part 264. This section of the proposed rule sets forth the general applicability of the proposed subpart S regulations. The procedures and technical requirements of subpart S apply to any facility seeking a permit under section 3005(c) of RCRA.

The language of § 264.500(a) through § 264.500(d) reiterates the statutory language of section 3004(u) and section 3004(v). Proposed §§ 264.500 (b), (c), and (d) have already taken effect as a final rule following public notice and comment, and are codified at 40 CFR 264.101 (on July 15, 1985, 50 FR 28702; and December 1, 1987, 52 FR 45788). It is not the Agency's intention to reopen for public comment the substance of these pre-existing provisions. The Agency seeks comment only on the minor language changes reflected in § 264.500 (*e.g.*, compare the first sentence of § 264.101(b) with the first sentence of § 264.500(c)), and its proposal to move these provisions from § 264.101 to § 264.500.

Proposed § 264.500(a) clarifies that subpart S applies to corrective action for all SWMUs, including regulated units (defined in § 264.90(a)(2) as any landfill, surface impoundment, waste pile, or land treatment unit that received hazardous waste after July 26, 1982). Corrective action for releases to ground water from regulated units is currently governed by § 264.100. Subpart S will apply to the investigation of releases to ground water from other SWMUs. Releases to other media (air, soil and surface waters) from both regulated units and other SWMUs will also be governed by subpart S.

The Agency intends to modify the § 264.100 standards to be consistent with the applicable sections of subpart S. Thus, regulated units and other SWMUs would be subject to the same standards for identifying and

implementing necessary remedial action. However, regulated units will continue to be subject to slightly different standards for identifying and confirming unacceptable releases to ground water. EPA believes that this distinction between regulated units and the larger universe of SWMUs is justified by the slightly different function of investigating procedures in the context of regulated units; the purpose of the ground-water detection and compliance monitoring programs in subpart F is primarily preventive, rather than essentially responsive like the subpart S program.

The statutory language of section 3004(u), repeated in §§ 264.500 (b) and (c), allows EPA to issue a RCRA permit with a schedule of compliance for investigating and correcting releases, rather than delay issuance of the permit until cleanup has been completed. This will allow more prompt permitting both of interim status facilities, bringing them under the more stringent 40 CFR part 264 standards sooner, and of new facilities, allowing more rapid expansion of treatment, storage, and disposal capacity.

Schedules of compliance, which are enforceable components of the permit, will thus be the primary vehicle by which EPA will specify the procedural and technical requirements that owner/operators must follow to achieve compliance with their subpart S responsibilities. EPA is proposing specific procedural requirements for corrective action schedules of compliance, including requirements associated with modifications to the schedules, in today's rule as amendments to the existing 40 CFR part 270 permit regulations.

As specified in proposed § 264.500(b), subpart S regulations will apply to all facilities seeking permits under subtitle C of RCRA (with the exception of the specific permits identified in proposed § 264.500(f)). Permits subject to subpart S include post-closure permits, as well as permits issued to operating hazardous waste management facilities. Further discussion of the applicability of post-closure permit requirements and their relationship to section 3004(u) corrective action is discussed in the preamble to the Second Codification Rule (December 1, 1987, 52 FR 45788).

2. *Exceptions to Applicability.* Today's proposed § 264.500(f) lists four types of RCRA "permits" to which the subpart S regulations would not apply. Each is discussed below.

a. *Permits for Land Treatment Demonstrations.* Current RCRA regulations for hazardous waste land treatment units (see § 270.63(a) and § 264.272) provide for a two-phased permit process in certain circumstances. A "permit" can be issued to a facility with permit conditions which cover only the activities needed to demonstrate that the hazardous waste constituents can be completely degraded, transformed, or immobilized in the treatment zone. Such a permit does not address the full RCRA standards (*e.g.*, financial assurance, general facility standards) that apply to land treatment facilities. In the absence of permit conditions addressing full RCRA facility standards, this first-phase demonstration permit is not considered a full RCRA permit issued under the authority of section 3005. Once the demonstration is successfully completed and the actual operating permit (*i.e.*, second part of the two-phased permit) for the land treatment unit is issued, the subpart S corrective action requirements will apply.

b. *Emergency Permits.* Section 270.61 of the RCRA regulations provides for issuance of emergency permits, not to exceed 90 days in duration, where immediate actions that involve treatment, storage, or disposal of hazardous waste are necessary to protect human health and the environment. The emergency permit provision was included in the RCRA regulations as a way to provide a mechanism for responses by an owner/operator in true emergency situations which could not be delayed until a full RCRA permit could be issued. In some cases, emergency permits can be issued orally when followed by a written permit within a specified time frame. EPA does not believe it is appropriate to apply subpart S requirements to emergency permits, since such a requirement would render this permit mechanism unworkable for the quick-response situations it was designed to address. If a facility is required to continue to operate under a RCRA permit beyond the allowable time limit for emergency permits, a full operating permit would be required and the facility would be subject to subpart S requirements.

c. *Pemits-by-Rule for Ocean Disposal Barges or Vessels.* Ocean disposal barges and vessels are regulated primarily under the Marine Protection, Research and Sanctuaries Act (MPRSA) The applicable RCRA regulations (40 CFR 270.60(a)) provide that operation of vessels accepting hazardous waste for ocean dumping are deemed to have a RCRA permit if they have obtained and comply with an ocean dumping permit issued under the MPRSA, and comply with certain RCRA administrative requirements. The RCRA permit-by-rule functions primarily to ensure that certain administrative requirements of the RCRA system—in particular, waste manifest requirements—apply to owner/operators of such vessels. Furthermore, as of November 1988, the Ocean Dumping Ban Act has in effect banned the ocean dumping of industrial waste. While corrective action requirements under subpart S do apply to underground injection control (UIC) facilities and publicly-owned treatment works (POTWs) with National Pollutant Discharge Elimination System (NPDES) permits subject to RCRA permits-by-rule under 40 CFR 270.60, such requirements are necessary to ensure that corrective action requirements apply to releases from all solid waste management units at these facilities not regulated under other laws. MPRSA permits, however, cover all portions of ocean-dumping vessels. (Any onshore storage or treatment facility that may be associated with the ocean disposal operation is required to obtain a separate RCRA permit.) Thus there are no unregulated units within an ocean dumping barge "facility." Furthermore, unauthorized releases from such vessels are subject to regulation under the MPRSA. EPA does not believe it is appropriate to apply subpart S to these vessels because the substantive requirements of section 3004(u) of RCRA are already effectively satisfied by MPRSA requirements.

d. *Research, Development and Demonstration Permits.* EPA does not believe that RCRA requires the application of section 3004(u) requirements to facilities seeking a research and development demonstration permit under section 3005(g) of RCRA. The conference report on section 3004(u) expressly states that the provision is intended to apply to facilities seeking a permit under section 3005(c) of RCRA. Accordingly, facilities seeking a permit under section 3005(g) would not automatically be encompassed by section 3004(u). Moreover, the reading of section 3004(u) suggested by the conference report is supported by the statutory language of section 3005(g). Section 3005(g)(1) provides that the Regional Administrator shall include such terms and conditions in research and development demonstration permits as s/he deems necessary to protect human health and the environment, including provisions related to monitoring, financial responsibility and remedial action. Section 3005(g)(1) further provides that these provisions may be established case-specifically in each permit without the establishment of

separate regulations. Accordingly, the plain language of section 3005(g)(1), and the legislative history of section 3004(u) both suggest that research and development demonstration permits can be subject to case-specific remedial conditions in the permit as determined to be necessary, and need not be subject to the general corrective action regulations developed under section 3004(u).

3. *Voluntary Corrective Action.* Today's proposal for corrective action under the authority of RCRA section 3004(u) applies to RCRA facilities which are seeking permits under RCRA subtitle C. Certain facilities where RCRA hazardous wastes are present, and where corrective action may be needed, are not required to obtain subtitle C permits, and, therefore, are not subject to today's rule. For example, facilities which generate hazardous wastes and accumulate and store the wastes on site for less than 90 days prior to shipment to another facility are not subject to permits or to today's proposed rule.

In a number of cases, owner/operators not subject to a RCRA permit have expressed an interest in proceeding with corrective action in an attempt either to reduce their liability or to preclude subsequent Agency or State actions. Some activities conducted during voluntary corrective action may require a permit if hazardous waste is involved (*e.g.*, excavated waste is placed into a disposal unit or stored on site for more than 90 days).

Current regulations, however, provide significant flexibility for non-permitted facilities to undertake corrective action without a RCRA permit. For example, 40 CFR 262.34 allows generators to accumulate hazardous waste on site in tanks or containers for up to 90 days without a permit or interim status, as long as certain conditions—most importantly compliance with tank and container standards of 40 CFR part 265—are met. In addition, this authority allows generators to treat hazardous waste in tanks during the accumulation period. Under RCRA regulations, a facility owner/operator conducting voluntary corrective action involving hazardous waste could often be considered a generator. One approach to achieving cleanup without triggering the need to obtain a subtitle C permit would be to store or treat such generated wastes in tanks within the accumulation period, so long as the wastes remained on site for less than 90 days, and other conditions of § 262.34 were met.

In addition, voluntary corrective action could take place under a consent decree issued under section 7003 of RCRA. This authority allows EPA (or an authorized State with comparable authority) to require remedial action in the case of an imminent and substantial threat to human health or the environment, "notwithstanding any other provisions of this Act." Thus, under this authority, EPA could order a facility to take corrective action, while at the same time waiving permit requirements. Any facility interested in taking corrective action under this authority should consult with the appropriate Region or authorized State to explore the possibility of a section 7003 consent order.

The concept of "voluntary" corrective action may also apply to owner/operators who have been issued permits with corrective action schedules of compliance. Some facilities, such as those with small or low-risk contamination problems, will be of relatively low priority for expending the substantial resources required to oversee investigations and studies and make remedy decisions. For those facilities, EPA's oversight attention could be deferred for several years while the program focuses on high priority facilities with major environmental problems. However, owner/operators of lower priority facilities may wish, for various reasons, to expeditiously initiate cleanup actions, rather than wait for EPA to begin actively pursuing corrective action for the facility. EPA strongly encourages owner/operator cleanup initiatives at permitted facilities, and intends to facilitate such actions by minimizing any administrative obstacles which may impede cleanup.

Owner/operators may take a wide range of remedial-type activities at RCRA permitted facilities without triggering the need for formal approval by the Agency or modification of the permit. Such activities include, for example, treatment, storage, or disposal of any non-hazardous solid wastes; excavation of hazardous wastes for disposal off site; less-than-90-day storage or treatment of hazardous wastes in tanks; and treatment of contaminated ground water in an exempt wastewater treatment unit. However, some activities which may be necessary to achieve corrective action goals at the facility would require a permit modification. Such activities might include creation of a new hazardous waste land disposal unit, consolidation and/or movement of hazardous wastes between SWMUs at the facility, or construction (or movement on site) of a new hazardous waste incinerator to manage corrective action wastes.

The Agency intends to pursue an approach to this type of "voluntary" corrective action which will provide sufficient Agency oversight over cleanup activities to prevent possible adverse effects of cleanup actions without creating disincentives to owner/operators who wish to take a proactive position vis-a-vis their corrective action responsibilities. This approach would encourage the owner/operator to notify EPA and the State of any remedial-type activities being undertaken at the facility, even though the activities are not subject to formal Agency approval. For proposed cleanup activities that are subject to permit modification requirements, the owner/operator would be required to submit a request for a Class I, II or III permit modification, or a request for temporary authorization for the activities. (See the final permit modification regulations at 53 FR 37912, September 28, 1988.) In the request for a permit modification (or temporary authorization), the owner/operator would be expected to include: (1) A description of the remediation initiative, including details of the unit or activity that is subject to permit requirements; and (2) an explanation of how the proposed action is consistent with overall corrective action objectives and requirements outlined in today's proposed regulation. EPA expects that the corrective action regulations proposed today will offer owner/operators clear guidance in fashioning acceptable remedies and making such showings of consistency.

EPA's review of the application would focus on the units or actions subject to the permit modification requirements; it would not, however, focus on whether the proposed cleanup action as a whole satisfies the subpart S requirements. Rather, EPA will screen the cleanup proposal to ensure that it would not pose unacceptable risks to human health and the environment (*e.g.*, by producing undesirable cross-media impacts) or interfere with attainment of the final remedy at the site (*e.g.*, by creating a new unit over an area of soil contamination which may later need to be treated or removed to health-based levels). Following this review, the Agency would approve or disallow the application.

Where a permit modification is approved under these circumstances, the modification will make clear that the voluntary activities initiated for corrective action purposes may not be the final remedy, and that those activities, when completed, will not necessarily absolve the owner/operator from further cleanup responsibilities at a

later date. This will also hold for cleanup actions reviewed by the Agency that are not subject to permit modifications. It is not possible for the Agency to delegate to owner/operators the ultimate responsibility for ensuring that remedial activities fully satisfy RCRA's statutory requirement for protection of human health and the environment.

The Agency solicits comments on the approach to voluntary corrective action described above.

B. Definitions (Section 264.501)

EPA is today proposing to define five key terms which apply specifically to this subpart.

1. *Facility.* In the July 15, 1985, Codification Rule, EPA interpreted the term "facility" in the context of section 3004(u) to mean all contiguous property under the control of the owner/operator of a facility seeking a permit under subtitle C. This interpretation was upheld in a decision of the U.S. District Court of Appeals (*United Technologies Corporation* vs. *U.S. EPA,* 821 F2d. 714 (DC Cir. 1987)). Thus, by proposing this interpretation as the definition of facility in today's rule, EPA is not modifying its basic interpretation as previously elaborated for the purpose of implementing section 3004(u). There are, however, several aspects of this definition which merit further clarification.

The definition of facility in today's proposal at § 264.501 is not intended to alter or subsume the existing—and narrower—definition of "facility" that is given in 40 CFR 260.10. That definition describes the facility as "* * * all contiguous land and structures * * * used for treating, storing or disposing of hazardous waste * * *" EPA intends to retain this definition for the purposes of implementing RCRA subtitle C requirements, with the exception of subpart S corrective action (including those provisions governing corrective action for regulated units). At the same time, however, the Agency is reviewing its uses of the term "facility" in other parts of the subtitle C regulations to ensure consistent usage.

Today's proposed definition refers to "contiguous property" under the control of the owner/operator. Several questions have been raised as to the Agency's interpretation of "contiguous property" in the context of defining the areal limits of the facility. Clearly, property that is owned by the owner/operator that is located apart from the facility (*i.e.,* is separated by land owned by others) is not part of the "facility." EPA does intend, however, to consider property that is separated only by a public right-of-way (such as a roadway or a power transmission right-of-way) to be contiguous property. The term "contiguous property" also has significant additional meaning when applied to a facility where the owner is a different entity from the operator. For example, if a 100-acre parcel of land were owned by a company that leases five acres of it to another company that, in turn, engages in hazardous waste management on the five acres leased, the "facility" for the purposes of corrective action would be the entire 100-acre parcel. Likewise, if (in the same example) the operator also owned 20 acres of land located contiguous to the 100-acre parcel, but not contiguous to the five-acre parcel, the facility would be the combined 120 acres. EPA invites comment on these interpretations of contiguous property.

In some cases, adjacent properties may be separately owned by two different subsidiaries of a parent company, where only one of the subsidiaries' operations involves management of hazardous wastes. In such cases, EPA intends to consider the ownership to be held by the parent corporation. Thus, in the example provided, the facility would include both properties.

EPA acknowledges that, in some situations, "ownership" of property can involve a complex legal determination. EPA solicits comment and information on the interpretation offered in general, and specifically on the issue of how ownership or "control" of property should be determined in the context of subsidiary-parent companies.

2. *Release.* Today's proposal includes the definition of "release" articulated in the preamble to the July 15, 1985, Codification Rule. This definition essentially repeats the CERCLA definition of release. Today's proposed definition also includes language from SARA which extended the concept of "release" to include abandoned or discarded barrels, containers, and other closed receptacles containing hazardous wastes or hazardous constituents.

Although this definition of release is quite broad, section 3004(u) is limited to addressing releases from solid waste management units. Thus, there may be releases at a facility that are not associated with solid waste management units, and that are therefore not subject to corrective action under this authority. (See discussion below which defines solid waste management unit.)

Many facilities have releases from solid waste management units that are issued permits under other environmental laws. For example, stack emissions from a solid waste refuse incinerator at a RCRA facility are likely to be authorized under a State-issued air permit. Another example would be NPDES (National Pollutant Discharge Elimination System, under the Clean Water Act), or State-equivalent, permits for discharges to surface water from an industrial wastewater treatment system. EPA does not intend to utilize the section 3004(u) corrective action authority to supersede or routinely reevaluate such permitted releases. However, in the course of investigating RCRA facilities for corrective action purposes, EPA may find situations where permitted releases from SWMUs have created threats to human health and the environment. In such a case, EPA would refer the information to the relevant permitting authority or program office for action. If the permitting authority is unable to compel corrective action for the release, EPA will take necessary action under section 3004(u) (for facilities with RCRA permits) or section 3008(h) (for interim status facilities), as appropriate, and to the extent not inconsistent with certain applicable laws (see section 1006(a) of RCRA).

3. *Solid Waste Management Unit (SWMU).* Today's rule proposes the following definition of solid waste management unit:

> Any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

This definition is also derived from the Agency interpretation discussed in the July 15, 1985, Codification Rule. A discernible unit in this context includes the types of units typically identified with the RCRA regulatory program, including landfills, surface impoundments, land treatment units, waste piles, tanks, container storage areas incinerators, injection wells, wastewater treatment units, waste recycling units, and other physical, chemical or biological treatment units.

The proposed definition also includes as a type of solid waste management unit those areas of a facility at which solid wastes have been released in a routine and systematic manner. One example of such a unit would be a wood preservative "kickback drippage" area, where pressure treated wood is stored in a manner which allows preservative fluids routinely to drip onto the soil, eventually creating an area of highly contaminated soils. Another example might be a loading/unloading area at a

facility, where coupling and decoupling operations, or other practices result in a relatively small but steady amount of spillage or drippage, that, over time, results in highly contaminated soils. Similarly, if an outdoor area of a facility were used for solvent washing of large parts, with amounts of solvent continually dripping onto the soils, that area could also be considered a solid waste management unit.

For clarification purposes it may also be useful to identify certain types of releases that the Agency does not propose to consider solid waste management units using the "routine and systematic" criterion. A one-time spill of hazardous wastes (such as from a vehicle travelling across the facility) would not be considered a solid waste management unit. If the spill were not cleaned up, however, such a spill would be illegal disposal, and therefore subject to enforcement action under section 3008(a) or section 7003 of RCRA. Similarly, leakage from a chemical product storage tank would generally not constitute a solid waste management unit; such "passive" leakage would not constitute a routine and systematic release since it is not the result of a systematic human activity. Likewise, releases from production processes, and contamination resulting from such releases, will generally not be considered solid waste management units, unless the Agency finds that the releases have been routine and systematic in nature. (Such releases could, however, be addressed as illegal disposal under section 3008(a) or section 7003.) EPA solicits comment on these interpretations, and on the overall definition of solid waste management unit.

EPA recognizes that these interpretations have the effect of precluding section 3004(u) from addressing some environmental problems at RCRA facilities. However, EPA intends to exercise its authority, as necessary, under the RCRA "omnibus" provision (section 3005(c)(2)), or other authorities provided in RCRA (*e.g.*, section 3008(a) and section 7003) or CERCLA (*e.g.*, CERCLA section 104 or section 106), or States, under State authorities, to correct such problems and to protect human health and the environment.

The RCRA program has identified certain specific units and waste management practices at facilities about which questions have been raised concerning applicability of the definition of a solid waste management unit. One such question relates to military firing ranges and impact areas. Such areas are often potentially hazardous, due to the presence of unexploded ordnance. EPA has decided that such areas should not be considered solid waste management units. There is a strong argument that unexploded ordnance fired during target practice is not discarded material which falls within the regulatory definition of "solid waste." Ordnance that does not explode, as well as fragments of exploded ordinance, would be expected to land on the ground. Hence, the "ordinary use" of ordnance includes placement on land. Moreover, it is possible that the user has not abandoned or discarded the ordnance, but rather intends to reuse or recycle them at some time in the future. In addition, a U.S. District Court decision (*Barcello* vs. *Brown*, 478 F. Supp. 646, 668–669 (D. Puerto Rico 1979)), has suggested that materials resulting from uniquely military activities engaged in by no other parties fall outside the definition of solid waste, and thus would not be subject to section 3004(u) corrective action.

Another issue which raises questions regarding the definition of "solid waste management unit" relates to industrial process collection sewers. Process collection sewers are typically designed and operated as a system of piping into which wastes are introduced, and which usually discharge into a wastewater treatment system. The Agency believes that there are sound reasons for considering process collection sewers to be solid waste management units. Such sewers typically handle large volumes of waste on a more or less continuous basis, and are an integral component of many facilities' overall waste management system. Program experience has further indicated that many of these systems, especially those at older facilities, have significant leakage, and can be a principal source of soil and ground-water contamination at the facility. Although process collection sewers are physically somewhat unique in the context of the types of units which have traditionally been regulated under RCRA, EPA believes that including them as solid waste management units for purposes of corrective action is well within the discretion provided under the statute for EPA to determine what "units" should be subject to RCRA standards.

EPA recognizes that there may be technical problems associated with investigating releases from process collection sewers, and with correcting leakage. Information and comment are specifically solicited on EPA's tentative decision to treat process collection sewers as solid waste management units, and on technical approaches and limitations to investigating and correcting releases from such systems.

For essentially the same reasons as described above for process sewers, EPA also proposes to include open (or closed) ditches that are used to convey solid wastes as solid waste management units; comment is also solicited on this interpretation.

4. *Hazardous Waste and Hazardous Constituents.* Section 3004(u) requires corrective action for releases of "hazardous wastes or constituents." The Agency believes that use of the term "hazardous waste" denotes "hazardous waste" as defined in section 1004(5) of RCRA. Accordingly, today's proposed rule repeats the statutory definition of "hazardous waste" found in that section. The term "hazardous waste" is distinguished from the phrase "hazardous waste listed and identified," which is used elsewhere in the statute to denote that subset of hazardous wastes specifically listed and identified by the Agency pursuant to section 3001 of RCRA. Thus, the remedial authority under section 3004(u) is not limited to releases of wastes specifically listed in 40 CFR part 261 or identified pursuant to the characteristic tests found in that section. Rather, it extends potentially to any substance meeting the statutory definition. However, EPA believes that use of the phrase "hazardous wastes or *constituents*" (emphasis added) indicates that Congress was particularly concerned that the Agency use the section 3004(u) authority to address a specific subset of this broad category, that is, hazardous constituents.

The term "hazardous constituent" used in section 3004(u) means those constituents found in appendix VIII to 40 CFR part 261. See H. Rep. No. 98–198, 98th Cong., 1st Sess. 60–61, May 17, 1983. In addition, the Agency proposes to include within the definition those constituents identified in appendix IX to 40 CFR part 264. Appendix IX generally constitutes a subset of appendix VIII constituents particularly suitable for ground-water analyses. However, it also includes additional constituents not found on appendix VIII, but commonly addressed in ground-water analysis conducted as a part of Superfund cleanups.

It is EPA's intention that investigations of releases under subpart S focus on the subset of hazardous waste (including hazardous constituents) that is likely to have been released at a particular site, based on the available information. Only where very little is known of waste characteristics, and where there is a

potential for a wide spectrum of wastes to have been released, would the owner/operator be required to perform extensive or routine analysis for a broader spectrum of wastes.

5. *Corrective Action Management Unit (CAMU).* The definition of CAMU is provided in section VI.J 3.b of today's preamble. This section also provides a thorough discussion of the CAMU concept and of how the Agency intends to define CAMUs in the context of implementing remedies.

C. Remedial Investigations (Sections 264.510–264.513)

1. *General.* The RCRA Facility Investigation (RFI) is the second phase of the RCRA corrective action process, and will typically be preceded by a RCRA Facility Assessment (RFA), conducted by EPA or the State prior to issuance of the permit or section 3008(h) order. The RFA is the first step in the RCRA corrective action process, and is analogous to the Preliminary Assessment/Site Investigation (PA/SI) stage of the Superfund program. The RFA serves as a screen, eliminating solid waste management units (SWMUs), environmental media, or entire facilities from further consideration where the Agency determines that there is no evidence of a release or likelihood of a release that poses a threat to human health and the environment. The RFA also serves to focus the scope of the follow-on remedial investigations by identifying those releases or areas that are of the most environmental concern at the facility. The RCRA RFI is comparable to the Remedial Investigation in the Superfund program. Because of the similarity of the two processes and because of their common goals, the RFI is referred to in this section and in the rule by the more generic term, remedial investigation.

As described above, EPA would require a remedial investigation under proposed § 264.510 if the RFA indicated that a release from a SWMU was likely to have occurred or to be occurring, or, in certain limited circumstances, likely to occur in the future. Requirements for the remedial investigation would be specified by the Agency in a schedule of compliance in the facility's permit. The schedule would typically identify the SWMUs and environmental media that required more detailed investigation as well as the types of investigations required; it would also typically require the owner/operator to develop a plan for conducting these investigations. The permit would also include "action levels" for specific constituents in specific media under investigation. If subsequent investigation indicated that these action levels had been exceeded, a Corrective Measure Study could be required by the Agency.

EPA has recently issued a guidance document entitled *RCRA Facility Investigation Guidance,* which describes a menu of technical investigations that may be appropriate to conducting remedial-type investigations at RCRA facilities. EPA wishes to emphasize that the nature and scope of remedial investigations for RCRA facilities under proposed § 264.510 will be tailored to the specific conditions and circumstances at the facility. Investigations will be focused on the specific units, releases, and exposure pathways that have been identified by EPA to be of concern. In some cases, the scope of a remedial investigation could be limited to taking several soil samples of a particular area of discolored soils. Likewise, for inactive units that do not contain substantial volumes of volatile organic compounds, remedial investigations will rarely need to address air releases. In defining the nature and scope of remedial investigations at RCRA facilities, EPA will endeavor to minimize unnecessary and unproductive investigations, and to focus resources on characterizing actual environmental problems at facilities.

Today's rule, in §§ 264.511 through 264.513, proposes a regulatory framework (both procedural and substantive) for conducting remedial investigations. For more information on technical approaches to these investigations, readers should refer to the *RFI Guidance,* which has been included in the public record of this rulemaking.

EPA also anticipates that remedial investigations will typically be phased, to avoid unnecessary investigations where a concern can be quickly eliminated. Because of the importance of accurate data, and the likely need to extend or modify the analysis as data are developed, the remedial investigation will often, in addition, require a high level of interaction between the permittee and the Agency. The specific contents and scope of the investigations are described below.

2. *Scope of Remedial Investigations (§ 264.511).* Proposed § 264.511 defines in general terms the scope of remedial investigations which may be required under § 264.510. Proposed § 264.511(a) states the general performance objective that remedial investigations characterize the nature, extent, direction, rate, movement, and concentration of releases, as required by the Agency. The scope and complexity of remedial investigations will depend on the nature and extent of the contamination, whether the releases have migrated beyond the facility boundary, the amount of existing information on the site, the likely risk at the site, and other pertinent factors. The proposed general performance standard gives considerable flexibility to the Agency in defining the specific scope, level of detail, and data requirements for each remedial investigation. The specific investigation requirements deemed to be appropriate at a given facility will be included in the permit as part of the schedule of compliance.

Proposed §§ 264.511(a)(1)–(7) provide a menu of more specific types of information that may be required in remedial investigations: (1) Characterization of the environmental setting; (2) characterization of solid waste management units; (3) description of the humans and environmental systems which are, have been, or may potentially be exposed to the release; (4) information that will assist the Agency in assessing the risk posed to humans and environmental systems by the release; (5) extrapolations of future contaminant movement; (6) laboratory, bench-scale, or pilot-scale tests or studies to determine the feasibility or effectiveness of treatment or other technologies which may be appropriate in implementing remedies at the facility; and (7) statistical analyses to aid in the interpretation of data required in the investigation.

The *RFI Guidance* describes in detail technical approaches to characterizing the releases and environmental settings in remedial investigations. In addition, the RCRA Ground-Water Monitoring Technical Enforcement Guidance Document (September 1986) provides specific guidelines for characterizing ground-water releases. Therefore, this preamble will not describe in detail these technical procedures.

Section 264.511(a)(1)(i)–(v) describes five types of information that may be required in a characterization of the environmental setting: Hydrogeologic conditions; climatological conditions; soil characteristics; surface water characteristics including sediment quality; and air quality and meteorological conditions. This information would be required as appropriate to address the concerns identified in the RFA. Specific requirements for the facility will be included in the permit schedule of compliance.

Section 264.511(a)(2) would allow EPA to require a characterization of any SWMU from which releases may be

occurring or may have occurred. This characterization, which could include chemical and physical analyses, will often be important in making decisions as to potential source control measures that may be needed. Characterization of wastes contained in SWMUs may involve generation of chemical and physical data about the wastes, their constituent breakdown, volumes, concentrations, and other relevant data. In some cases, unit characteristics such as materials of construction, age, or type and thickness of liners may be relevant to remedy decisions.

Section 264.511(a)(3) proposes that the Agency may require a full "* * * description of human and environmental systems which are or may be exposed to release(s)." The proximity and distribution of exposed populations may indicate the need for interim measures as proposed under § 264.540 of today's rule. Useful exposure information will generally be available at facilities with landfills or surface impoundments, in the form of Exposure Information Reports required under section 3019 of RCRA. The RFA report may also provide useful information on human and environmental systems which may potentially be exposed. Where information available prior to permit issuance does not adequately identify potentially exposed populations, EPA will require this information, as appropriate, to be generated as part of the remedial investigation.

The Agency is also concerned with the potential exposure of sensitive environmental species or systems to releases from SWMUs. As in the Superfund program, the Agency intends to carefully evaluate effects on sensitive environmental systems, including wetlands, estuaries, and habitats of endangered or threatened species.

Section 264.511(a)(4) would provide the Agency with the authority to require information that will assist the Regional Administrator in the assessment of risks to human health and the environment from releases from solid waste management units. Information collected under § 264.511(a)(3) also would be used in the assessment of risk. The risk assessment would integrate information on exposed human and environmental systems and information on contaminant concentrations to assess the magnitude of threats to exposed populations. The Agency may perform a risk assessment to determine whether interim measures are appropriate prior to selecting the final remedy or to evaluate whether a determination is warranted so that no further action is necessary (under proposed § 264.514). The permittee should refer to chapter VIII of the *RFI Guidance* for information regarding the Agency's expectations for data that may be needed to conduct a risk assessment.

Section 264.511(a)(5) would provide the authority for the Agency to require a permittee to submit information that extrapolates future contaminant movement. Such information could be important in determining whether interim measures will be required to prevent further migration of contamination and what measures are likely to be effective in doing so. In addition, extrapolated contaminant movement will be important in assessing the adequacy of proposed schedules of implementation of the remedy.

Section 264.511(a)(6) would provide the Agency with the authority to require "* * * laboratory, bench-scale, or pilot-scale tests or studies to determine the feasibility or effectiveness of treatment technologies * * * that may be appropriate in implementing remedies at the facility." It is often difficult, and sometimes impossible, to predict the effectiveness of treatment technologies accurately without data from bench- or pilot-scale studies. Experience in the Superfund program has shown that bench-scale and pilot-scale studies can be useful both in developing potential remedies and in predicting the effectiveness of alternative approaches. Typically, such studies would be performed during the Corrective Measure Study (CMS) (which may be required after a contaminant concentration level specified in the permit as an "action level" is exceeded). However, in some cases such studies may need to be initiated during the remedial investigation to prevent delays in cleanups, and the Agency should have the regulatory authority to require this. For example, at SWMUs at facilities where confirmed releases have occurred over a long period of time and where wastes placed in those SWMUs were highly toxic or mobile, it should not be necessary to wait for the CMS phase of the corrective action process to begin to evaluate, on a small scale, the effectiveness of various treatment technologies in achieving protective concentration levels in the contaminated medium.

Section 264.511(a)(7) would provide the authority for the Agency to require a permittee to perform statistical analyses to aid in the interpretation of data collected through remedial investigations required under § 264.510. For example, such statistical analyses may be needed to determine whether measured concentrations of contaminants exceed action levels.

Section 264.511(b) would authorize the Regional Administrator to specify the constituents and parameters for which samples collected during remedial investigations would be analyzed. Generally, analyses required will be limited to certain hazardous wastes or hazardous constituents listed in appendix VIII of 40 CFR part 261 or appendix IX of 40 CFR part 264 that are known or suspected to have been released from the unit. However, in some cases, where the wastes disposed in the unit are unknown to the owner/operator, or the unit is known to contain a hazardous substance(s) not included on either appendix VIII or IX, referenced above, additional analyses may be required. In the first case, it may be necessary to have an initial analysis which is designed to scan, for example, for all appendix IX constituents. Further analyses may then be limited to constituents which are found to be present in the initial sample. In addition, EPA may stipulate a requirement to analyze for substances not on either appendix VIII or IX (see preamble discussion on the definition of "hazardous waste"). Authority to specify the analyses to be performed, and for which constituents, will be important in ensuring that quality data are developed to accurately characterize releases, and to support no further action decisions that may be appropriate.

3. *Plans for Remedial Investigations (§ 264.512).* Under today's proposed § 264.512, permittees may be required to submit a plan for conducting the remedial investigation if an investigation is determined to be necessary. The Agency considered, but is not proposing, making submittal of such plans an absolute requirement; that is, expressing it as a "shall" rather than a "may". In some cases the Region or State may have extensive knowledge of the facility prior to permit issuance, and may be able to specify, in detail, how the investigations should be conducted. In this situation, it would not be necessary to require the owner/operator to submit a workplan for approval. Likewise, in some other cases the permittee may have begun remedial investigations under an interim status corrective action order, under CERCLA, or on a voluntary basis. Where the workplan developed for investigations prior to permit issuance is determined by the Regional Administrator to be adequate, it will not be necessary to require submission and approval of the current plan—that plan would simply be

incorporated into the permit. In the great majority of cases, however, the Agency believes that plans for remedial investigations will need to be submitted by the permittee. The permit would specify a schedule for submission of the plan, as well as the elements the plan must include. These requirements will generally reflect the complexity of the situation to be addressed. The Agency considered a requirement that would impose a definite deadline for every owner/operator required to submit an RFI plan (*e.g.*, 90 days after permit issuance). Typically 90 days would be sufficient time for an owner/operator to develop and submit a plan for the investigation. However, the circumstances at some facilities may be highly complex (*e.g.*, location above a Karst formation) and may mean that more than 90 days would be required to develop an adequate plan. Further, where the Agency must set priorities to manage a heavy work load, facilities suspected of having serious contamination may be required to submit plans more quickly. Therefore, EPA has not proposed a specific time period within which the plan must be submitted, but the Agency is soliciting comment on whether such an approach is preferable to the more flexible approach in today's proposal.

Plans for conducting remedial investigations would be subject to review and approval or modification by the Regional Administrator. When a workplan submitted for the Regional Administrator's approval does not adequately address all elements of the investigation, the Regional Administrator may either disapprove the plan and return it to the permittee for revision, or make modifications to the plan and return the modified plan to the owner/operator as the approved plan. The latter approach is analogous to the discretion provided the Regional Administrator to modify closure plans submitted by an owner/operator pursuant to § 265.112 during interim status, or through a Notice of Deficiency during the permitting process. An approved plan will establish both requirements applicable to the conduct of the investigation and a schedule for its implementation. Section 264.512(b) would provide regulatory authority for enforcing compliance with the approved plan, which becomes an enforceable part of the permit schedule of compliance. In most cases, it is expected that the initial permit will specify that the plan becomes an enforceable component of the permit upon approval. Alternatively, the permit may be modified to incorporate the provisions of the approved plan.

Proposed § 264.512(a) lists items that the Regional Administrator may require in the work plan. Such plans should generally call for focused, staged investigations, the scope and emphasis of which will be refined as releases are verified and/or found not to have occurred. The work plans would generally include: A description of overall approach; technical and analytical approaches and methods; quality assurance procedures; and data management procedures and formats to document and track the results of investigations. In addition, the Regional Administrator may impose other elements, as necessary, to assure that work undertaken will be of an adequate quality (and an appropriate level of detail) to serve as the primary basis for decisions on further stages of the corrective action process that may be necessary at the facility.

The description of the overall approach, which could be required under proposed § 264.512(a)(1), would generally include a description of the objectives of the investigation, its schedule, and the qualifications of the persons conducting the investigation. The schedule is particularly important because, when approved, it will become enforceable as part of the schedule of compliance.

A requirement to specify the technical and analytical approaches to be employed (under proposed § 264.512(a)(2)) might include specifications for the location, construction, and frequency of sampling of ground-water monitoring wells. This would be analogous to the types of specifications for wells that are typically in permits for land disposal units.

Submissions of proposed quality assurance procedures under § 264.512(a)(3) would be evaluated to ensure that data generated during the investigation are accurate, and that they can be used with confidence to support the next steps of the corrective action process. Guidance on appropriate quality assurance procedures may be found in the RCRA Facility Investigation Guidance.

Data management procedures and formats for documenting results of the investigation are included in proposed § 264.512(a)(4) to ensure that RFI data and summary results are presented in a clear and logical manner. Studies such as the RFI typically produce large amounts of data, such as laboratory analyses of numerous waste constituents from numerous samples. Effective data management and presentation will be necessary to ensure that the data can be properly interpreted.

4. *Reports of Remedial Investigations (§ 264.513).* Proposed § 264.513 would establish the Regional Administrator's authority to require periodic reports that summarize results of remedial investigations. Timing of the reports, as well as specific content requirements, would be detailed in the permit schedule of compliance. The report format may be specified by the Regional Administrator where necessary to ensure presentation of data in an orderly and easily comprehensible fashion.

The Agency considered, but is not requiring in today's proposal, specifying intervals for reports (*e.g.*, such as every 180 days). The Agency believes that there should be flexibility in the timing of submission of reports to reflect the nature of the investigations which may be required at specific facilities. For example, where extensive monitoring-well construction and sampling are necessary, months may pass before significant results are gathered. On the other hand, where limited soil sampling of a few SWMUs is required to confirm or disprove suspected contamination, meaningful results may be achieved more quickly.

Where data generated during the investigation (or which are newly available from other sources) indicate that the investigation should be modified, the Regional Administrator may require such modifications either by negotiation with the facility owner/operator, or through a modification to the schedule of compliance. Modifications could occur, for example, if the investigation revealed that contamination had migrated, or would soon migrate, off site. In such a case, additional activities may be imposed as interim measures to contain the contamination until active, longer term remediation could begin. Further, new information may indicate the need for additional investigations, or the Regional Administrator may need to modify the investigation requirements based on preliminary analytical results.

Proposed §§ 264.513(b) and 264.513(c) would require the permittee to submit a final report of the investigation to the Regional Administrator for approval, and would allow the Agency to require the permittee to add to or otherwise revise the report if it did not fully and accurately summarize the results of the remedial investigation. This authority to require revisions should ensure that adequate information (both in quality and level of detail) is presented to

support further corrective action decisions for the facility.

In addition to the final report, the permittee would be required to submit a summary of the report under proposed § 264.513(b)(2). This summary would also be subject to the approval of the Regional Administrator, and would be mailed to all individuals on the facility's mailing list by the owner/operator. (The facility mailing list, which is required under 40 CFR 124.10(c)(1)(viii), is developed and maintained by EPA as part of the permitting process.) This proposed requirement is an important element of the Agency's overall public involvement strategy for corrective action, which is described in further detail in today's preamble under section VIII. Distribution of the summary in this manner will provide notice to interested parties as to the general nature of the environmental problems at the facility, what releases have been found, and other results of investigations.

Section 264.513(e) would require that the permittee maintain all raw data (such as laboratory reports, drilling logs, and other supporting information) at the facility for the duration of the corrective action activities and any permit period unless the Regional Administrator approves maintaining this information in a different location. Although such data will often be required to be submitted along with investigation reports, this requirement will ensure that when questions do arise concerning interpretation of data or the adequacy of procedures used to obtain and analyze data, the original records will be available for inspection.

D. Determination of No Further Action (Section 264.514)

EPA anticipates that at some facilities releases or suspected releases that are identified in a RCRA Facility Assessment (RFA), and subsequently addressed as part of required remedial investigations, will be found to be non-existent, or otherwise of such a nature that they do not pose a threat to human health or the environment. EPA proposes providing a mechanism by which a permittee may request a permit modification to effectively terminate further requirements in these cases.

Section 264.514 proposes the procedures to be followed by both the permittee and the Regional Administrator when a determination of no further action for the facility is requested. The request for an Agency determination that no further action is required, and the corresponding permit modification request, must be accompanied by supporting documentation that demonstrates that there are no releases of hazardous waste (including hazardous constituents) from SWMUs at the facility which pose a threat to human health or the environment. (See proposed § 264.514(a)(2).)

Under proposed § 264.514(a) the permittee may request a modification of the facility permit to terminate the schedule of compliance for corrective action based on the findings of remedial investigations. The request would be initiated according to the procedures of a Class III permit modification. (See the September 1988 final permit modification rule.) These procedures would require the permittee to notify all persons on the facility mailing list of the proposed change and publish a newspaper notice concerning the request; both notices must announce the initiation of a 60 day comment period as well as the time, date, and location of an informational public meeting. In addition, a copy of the proposed modification and supporting documentation must be placed in a location accessible to the public in the vicinity of the permitted facility. (In the case of proposed modifications at facilities required to establish an information repository under § 270.36 of today's proposal, this location would be the information repository.) More detailed information concerning the requirements for a Class III permit modification may be found in the rule for permit modifications cited above and the preamble discussion which accompanies it.

Under proposed § 264.514(b), if the Regional Administrator, using all available information (including comments received during the comment period required for Class III modifications), determines that releases or suspected releases investigated either do not exist or do not pose a threat to human health or the environment, the Regional Administrator will grant the requested permit modification.

This determination will be straightforward where the permittee can demonstrate that no release has occurred; however, such a determination may still be supported when a release has occurred, whether the release(s) is either below or above action levels. For example, such a determination may be made when concentrations of hazardous constituents exceed action levels but the contamination is in a highly saline (Class III) aquifer, or where contamination in ground water can be shown to have originated from a source outside the facility. Such a determination would be consistent with the provision made in today's proposal at § 264.525(d)(2)(ii), which allows certain cleanup exemptions when contamination is present in ground water that is neither a current or potential source of drinking water nor potentially usable for other human purposes. Another example where a no further action determination might be made is where it can be determined that contaminant levels (and the risks posed by them) from a release from a SWMU are insignificant as compared to existing "background" levels (*e.g.*, levels that are naturally occurring, or that have resulted from releases from outside the facility). This determination would be consistent with the provision made in today's proposal at § 264.525(d)(2)(i).

A determination that no further action is required under § 264.514, and the subsequent termination of the permit schedule of compliance for corrective action, does not affect other responsibilities or authorities of the Regional Administrator. For example, responsibilities to include requirements in a permit for air emissions control and monitoring under section 3004(n) are not affected by a determination that no further action is required under § 264.514 (see preamble section VII.C.3 on relationship to section 3004(n) standards). In addition, the authority of the Regional Administrator to modify the permit under § 270.41 at a later date to require corrective action investigations or studies based on new information is not affected. Furthermore, despite a determination under § 264.514, EPA may require continuing or periodic monitoring when site-specific circumstances indicate that releases are likely to occur in the future. For example, for a particular SWMU from which releases have not occurred, it may be reasonable to conclude, based on site-specific circumstances, that releases to ground water might be expected within the next several years (*i.e.*, the term of the permit). In these situations, continued monitoring requirements could be imposed.

Where the permit schedule of compliance has been terminated and the Regional Administrator subsequently determines that a new investigation or remediation is required, the Regional Administrator will initiate a major permit modification under § 270.41 to require further action by the permittee.

E. Corrective Measure Study (Sections 264.520–264.524)

1. *Purpose of Corrective Measure Study (§ 264.520).* Proposed § 264.520 would establish the authority of the Regional Administrator to require the permittee to perform a Corrective Measure Study (CMS). The remedial

investigation should serve to focus the CMS on units which are sources of releases and the media pathways affected by such releases. The CMS is designed to identify and evaluate potential remedial alternatives for the releases that have been identified at the facility; in this respect it is analogous to the Feasibility Study (FS) conducted for CERCLA remedial actions.

2. *Trigger for Corrective Measure Study (§ 264.521)—a. Use of Action Levels.* Action levels are defined in proposed § 264.521. Under proposed § 264.520(a), the Regional Administrator may require the permittee to conduct a Corrective Measure Study whenever concentrations of hazardous constituents in an aquifer, surface water, soils, or air exceed action levels for any environmental medium.

Action levels are health- and environmental-based levels determined by the Agency to be indicators for protection of human health and the environment. The Agency proposes to set action levels for hazardous constituents, a subset of hazardous wastes. Many hazardous wastes, such as some of the wastes listed in 40 CFR 261.32, are not specific constituents at all, but rather are complex mixtures comprised of many constituents. EPA believes that it would not be feasible in most cases to set action levels for such wastes. Conversely, other hazardous wastes are individual constituents that do not appear on appendix VIII to 40 CFR part 261 or appendix IX to 40 CFR part 264. When such wastes (*e.g.*, asbestos) are of concern at a facility, an action level would be specified for that waste.

Where appropriate, action levels are based on promulgated standards (*e.g.*, maximum contaminant levels established under the Safe Drinking Water Act). In other cases, action levels are established by the Regional Administrator on the basis of general criteria (see following discussion). Appendix A provides examples of concentrations derived by EPA according to these criteria for some appendix VIII and IX constituents.

The Agency is proposing the use of action levels because active remediation may not be necessary at all facilities required to perform a remedial investigation under proposed § 264.510. For instance, a remedial investigation may indicate that a suspected release identified in the RFA had, in fact, not occurred, or may indicate that levels of contamination from a past release are unlikely to present a threat to human health and the environment. Therefore, the Agency believes it should establish a trigger that will indicate the need for a CMS, and below which a CMS would not ordinarily be required.

Action levels will, whenever possible, be incorporated in the permit. The Agency believes it is advantageous to identify action levels in the permit so that the public and the permittee will know in advance what levels will trigger the requirement to conduct a CMS. This approach also minimizes the need for permit modifications later in the process, which could delay ultimate cleanup.

In some cases there may be sufficient information on the nature and levels of contamination at the time of permit issuance to establish the need for a Corrective Measure Study. In such cases, it might not be necessary to include action levels in the permit. However, it is more often likely that remedial investigations conducted after permit issuance will yield the data needed to determine if action levels are exceeded; hence the need to generally include the action levels in the original permit.

A determination that action levels have been exceeded may occur at any point during the RFI, or may not become evident until the RFI is completed. In either case, when such data become available, the permit schedule of compliance will provide for notification of the permittee that the action levels specified in the schedule have been exceeded. The notification, as provided in proposed § 264.520(d) would specify which hazardous constituents exceed action levels, for which media, and when initiation of a CMS is required.

It is the Agency's intention that the action level "trigger" approach as outlined in this proposal serves to identify early in the process the need for initiating a Corrective Measure Study; such studies should typically not be delayed pending completion of all remedial investigations. In many instances it will be appropriate to conduct simultaneously the RFI and CMS for the facility.

Action levels should be distinguished from cleanup standards, which are determined later in the corrective action process. Contamination exceeding action levels indicates a potential threat to human health or the environment which may require further study. Action levels also inform the permittee of the levels below which the Agency is unlikely to require active remediation of releases, and provide a point of reference for suggesting and supporting alternative remedial levels.

Section 264.520 allows, but does not require, the Regional Administrator to require a CMS when contamination exceeds action levels. In some cases, the permittee may rebut the presumption that a CMS is required when action levels are exceeded. For example, the permittee may establish that the contamination is not due to releases from solid waste management units at the facility. In other instances, the permittee may demonstrate that a CMS is not required (or only a limited CMS is required) if the release is confined to a Class III aquifer meeting the criteria of § 264.525(d)(2)(ii) or to ground water other than Class III for which the actual and reasonably expected uses do not merit further action. In addition, a CMS might not be required if the CMS is triggered by a carcinogenic hazardous constituent that slightly exceeds the action level but is within the 1×10^{-4} to 1×10^{-6} risk range that is protective for the site (see preamble section VI.F.5.b for discussion of risk range). This "rebuttal" of the need for a CMS would generally be made through the process for determination of no further action, proposed in § 264.514.

Conversely, the fact that no contaminants are found to exceed action levels does not preclude the Regional Administrator from requiring a CMS. Section 264.520(b) would allow the Regional Administrator to require a CMS if concentrations below action levels may pose a threat to human health or the environment, due to site-specific exposure conditions. (See discussion in section VI.E.2.h of today's preamble, below.)

In some situations it may not be obvious from the available data whether concentrations in media truly exceed action levels. This situation would arise when some data on a hazardous constituent indicate that it is present at a concentration less than the action level, while other data indicate that it is present at a concentration greater than the action level. In such situations, the Regional Administrator may require the permittee under § 264.511(a)(7) to provide additional data or statistical analyses to aid in the determination under § 264.520 of whether action levels are exceeded. For example, a tolerance, prediction, or confidence interval procedure may be required, in which the action level is compared to the upper limit established from the distribution of the data for the concentration of the constituent.

The Agency considered the alternative of establishing a mandatory requirement to perform a statistical analysis as part of the determination under § 264.520 that action levels have been exceeded. However, the Agency believes that it is unnecessary to make this requirement mandatory, since in

many cases contamination from SWMUs will greatly exceed action levels. The Agency believes that the diversity of SWMUs and contamination scenarios calls for some discretion in the requirement to perform statistical analyses. For example, in some situations, contamination from a SWMU may be known to be extensive in size and concentration. In such situations, statistical analyses are not needed to determine that an action level has been exceeded. In other situations, a contaminant release at a SWMU may not be extensive enough (either in size or concentration) to clearly indicate contamination. In these cases, a statistical test may be required to determine if a release has actually occurred in excess of action levels. The Agency requests comment on its proposed approach of providing discretion to the Regional Administrator in requiring statistical analyses, and on the alternative of making such analyses mandatory in determining whether action levels have been exceeded.

The Agency examined but did not propose two alternatives to requiring the Corrective Measure Study which did not involve the use of action levels. Under one approach, the Agency would have required the permittee to conduct a Corrective Measure Study concurrently with the remedial investigations conducted pursuant to § 264.510. Under this option, the Agency would have used the same trigger for requiring a CMS as is used to require an RFI—the finding of an existing or likely release pursuant to an RFA. This alternative was rejected because of its potential for requiring unnecessary studies.

The second alternative considered by the Agency would have required the permittee to conduct a Corrective Measure Study only after completion of the remedial investigation conducted pursuant to proposed § 264.510 and a determination of the need to protect human health and the environment. If the Agency had adopted this approach, it would not have required the permittee to conduct a CMS until all contamination and contaminant sources at the facility were fully characterized and the need for corrective measures at the facility was established. The Agency rejected the alternative because of the delay that would be associated with conducting these phases of the investigations sequentially even in cases where early data indicate that remediation is highly likely to be required.

The Agency also examined alternative approaches for setting action levels. One alternative would have required a Corrective Measure Study whenever background levels of contaminants were exceeded. Experience in the subpart F program has demonstrated that the determination of background levels can be a lengthy, controversial process. Furthermore, background levels will often be much lower than health-based levels. Thus, this alternative was rejected, since it might delay the initiation of the CMS and ultimate cleanup, and might often require Corrective Measure Studies even where levels were significantly below health and environmental-based standards.

A second alternative would have required a CMS whenever detection limits were exceeded. This alternative was also rejected, since detection limits can be difficult to define and do not directly relate to the goal of corrective action; that is, protection of human health and the environment.

The Agency also considered but did not adopt an alternative for requiring the Corrective Measure Study that would involve the use of a range of action levels. Under this approach, the Agency would select constituent-specific action levels within the 1×10^{-4} to 1×10^{-6} risk range based on the exposure scenarios proposed under §§ 264.521 (a)(2), (b), (c)(3), and (d), depending on the likelihood that exposure would in fact occur. For example, if the Agency could be convinced that there is a minimal opportunity for human exposure through one medium or several media, an action level could be established at the 1×10^{-2} risk level. This alternative was considered because the Agency is concerned about the possibility that some SWMUs might be triggered into a CMS at the 1×10^{-6} level even though they do not pose a threat to human health and the environment due to a lack of current and low probability of future exposure. Although it is the Agency's view that the proposed regulations have enough flexibility to avoid requiring a Corrective Measure Study where it is not necessary, the Agency is requesting comment on the use of a range of action levels.

The Agency believes the approach proposed in today's rule provides it with the flexibility to require the permittee to investigate corrective measures sufficiently early (whether simultaneously with the RFI or sequentially) in the corrective action process, while minimizing the potential for unnecessary investigations. Experience in the Superfund program suggests that early consideration of potential remedies allows focused investigations and prevents delays without imposing unnecessary resource burdens on either the permittee or the Agency.

b. *Criteria for Determining Action Levels.* In several cases, EPA has promulgated health-based standards appropriate for action levels for specific media. Where these standards are available, EPA intends to use them as action levels. The most obvious of these are maximum contaminant levels (MCLs), which establish drinking water standards under the Safe Drinking Water Act (SDWA). EPA will use these standards to set action levels for ground water, and, in some cases, for surface water.

In the overwhelming majority of cases, however, promulgated standards will not be available. Nevertheless, health-based levels that have undergone extensive scientific review, but which have not been formally promulgated, are available for many chemicals. The Agency is proposing today in § 264.521(a)(2) (i)–(iv) criteria which enable the Regional Administrator to use such non-promulgated health-based levels to derive action levels.

Concentrations derived from non-promulgated health-based levels that meet the following four criteria included in today's proposal could be used for action levels. First, the concentration must be derived in a manner consistent with principles and procedures set forth in Agency guidelines for assessing the health risks of environmental pollutants, which were published in the **Federal Register** on September 24, 1986 (51 FR 33992, 34006, 34014, 34028). Second, toxicology studies used to derive action levels must be scientifically valid, conducted in accordance with the Good Laboratory Practice Standards (40 CFR part 792), or equivalent. The Good Laboratory Practice Standards prescribe good laboratory practices for conducting studies related to health effects, environmental effects, and chemical fate testing, and are intended to assure quality data of integrity. The guidelines are for ensuring scientifically valid studies, and also may be useful as guidance. In addition, the Agency guidelines for assessing the health risks of environmental pollutants (cited above) cite several publications which outline procedures for evaluating studies for scientific adequacy and statistical soundness. Third, concentrations used as action levels must (for carcinogens) be associated with a 1×10^{-6} upperbound excess cancer risk for Class A and B carcinogens, and a 1×10^{-5} upperbound excess cancer risk for Class C carcinogens. Finally, for systemic toxicants (referring to toxic chemicals

that cause effects other than cancer or mutations), the action level must be a concentration to which the human population (including sensitive subgroups) could be exposed on a daily basis that is likely to be without appreciable risk of adverse effects during a lifetime. These criteria are similar to those upon which promulgated health-based standards and criteria are based. Action levels derived according to these criteria represent valid, reasonable estimates of levels in media at or below which corrective action is unlikely to be necessary.

As mentioned previously, guidance levels are available for many chemicals. Appendix A of this preamble lists concentrations for selected hazardous constituents in water, soil, and air which the Agency believes meet these four criteria. EPA established these concentrations by an assessment process which evaluated the quality and weight-of-evidence of supporting toxicological, epidemiological, and clinical studies, and which relied on the exposure assumptions in appendix D of this preamble.

The Agency's approach to assessing the risks associated with systemic toxicity is different from that for the risks associated with carcinogenicity. This is because different mechanisms of action are thought to be involved in the two cases. In the case of carcinogens, the Agency assumes that a small number of molecular events can evoke changes in a single cell that can lead to uncontrolled cellular proliferation. This mechanism for carcinogenesis is referred to as "nonthreshold," since there is essentially no level of exposure for such a chemical that does not pose a small, but finite, possibility of generating a carcinogenic response. In the case of systemic toxicity, organic homeostatic, compensating, and adaptive mechanisms exist that must be overcome before the toxic end point is manifested. For example, there could be a large number of cells performing the same or similar function whose population must be significantly depleted before the effect is seen.

The threshold concept is important in the regulatory context. The individual threshold hypothesis holds that a range of exposures from zero to some finite value can be tolerated by the organism with essentially no chance of expression of the toxic effect. Further, it is often prudent to focus on the most sensitive members of the population; therefore, regulatory efforts are generally made to keep exposures below the population threshold, which is defined as the lowest of the thresholds of the individuals within a population.

Thus, for the chemicals on appendix A which cause systemic toxic effects, the Agency has estimated reference doses (RfDs). The RfD is an estimate of the daily exposure an individual (including sensitive individuals) can experience without appreciable risk of health effects during a lifetime, and is consistent with the threshold concept described above.

For the chemicals on appendix A which are believed to cause cancer, the Agency has estimated carcinogenic slope factors (CSFs). Since the Agency assumes that no such threshold exists for carcinogens, the issue to be resolved in health assessments of carcinogens is the probability of the occurrence of an effect. The CSF, or unit cancer risk, is an estimate of the excess lifetime risk due to a continuous constant lifetime exposure from one unit of carcinogenic concentration (*e.g.*, mg/kg/day by ingestion, ug/m^3 by inhalation). Chemicals which cause cancer and mutations also commonly evoke other toxic effects. Thus, an RfD and CSF may both be available for a single chemical. In these cases, the level which is lower (more protective) should be used as an action level. Generally, the protective level for cancer will be lower.

For carcinogens, EPA believes that action levels corresponding to a 1×10^{-6} risk level (or 1×10^{-5} for Class C carcinogens) generally are appropriate. This is at the higher protective end of the 10^{-4} to 10^{-6} risk range. (See discussion in section VI.F.5 of today's preamble.) Using a value from the high end of this range ensures that the hazardous constituents screened out at this point are those for which corrective measures are unlikely to be necessary.

In adopting the 1×10^{-4} to 1×10^{-6} risk range for this proposed rule, the Agency recognized that 1×10^{-4} risk levels of constituents may not be protective at all sites, due to multiple constituents, multiple exposure pathways, or other site-specific factors.

Thus, the alternative of establishing actions levels at the lower protective end of the risk range (*e.g.*, 1×10^{-4}) was rejected since it would be too insensitive a trigger—*i.e.*, it would fail to require a Corrective Measure Study at some sites which may pose a threat to human health and the environment. The Agency believes that the selected risk levels are reasonable points to establish action levels for carcinogens.

Section 264.521(a)(2)(iii) provides some flexibility to the Regional Administrator to consider the overall weight of evidence of carcinogenicity in setting action levels for carcinogens. EPA has explained its classification scheme for carcinogens based on the weight of evidence for carcinogenicity in its cancer guidelines (51 FR 33992). The constituent concentrations provided as example action levels in appendix A reflect this approach. In this table, known or probable human carcinogens (known as Class A and Class B carcinogens, respectively, under the Agency guidelines) are listed at a 1×10^{-6} risk level, whereas concentrations listed for constituents for which the weight of evidence of carcinogenicity is weaker (known as Class C, or possible human carcinogens under the Agency's guidelines), correspond to a 1×10^{-5} risk level. Some experts have argued that it is inappropriate to weight Class C carcinogens in this way, and that all substances classified as carcinogens should be weighted equally, whereas others argue that Class C carcinogens should be weighted more heavily (*i.e.*, more stringently) because of the greater uncertainty associated with the limited evidence of their carcinogenicity. The Agency solicits comments on how it should handle Class C carcinogens in setting action levels.

Many of the RfDs and CSFs used to derive the concentrations listed in appendix A are available through the Integrated Risk Information System (IRIS), a computer-housed, electronically communicated catalogue of Agency risk assessment and risk management information for chemical substances. IRIS is designed especially for Federal, State, and local environmental health agencies as a source of the latest information about Agency health assessments and regulatory decisions for specific chemicals. (To establish an IRIS account, call Dialcom at (202) 488-0550.) The risk assessment information (*i.e.*, RfDs and CSFs) contained in IRIS, except as specifically noted, has been reviewed and agreed upon by intra-agency review groups, and represents an Agency consensus. As EPA working groups continue to review and verify risk assessment values, additional chemicals and data components will be added to IRIS. IRIS hardcopy will be available through the National Technical Information Service (NTIS). In addition, EPA will routinely update appendix A as new data on hazardous constituents are developed.

c. *Action Levels for Ground Water.* Proposed § 264.521(a) establishes action levels for ground water in aquifers. By specifying the term "aquifer" in this context, the Agency intends to define broadly the type of ground-water

contamination situations that may require Corrective Measure Studies, while triggering such studies only in situations where actual ground-water cleanup is a reasonable remedial approach.

The Agency considered using the term "uppermost aquifer," but decided that this would limit its flexibility in addressing contamination in lower aquifers that are not hydraulically connected with the uppermost aquifer. Such a situation could arise if waste were leaked from the casing of an underground injection well. Thus, the wording of § 264.521(a) will explicitly allow the Agency to address any such unusual instances where solid waste management units have contaminated ground water that is not in an "uppermost" aquifer as defined in § 264.510.

The Agency also considered not using the term "aquifer" in § 264.521(a). This would have required Corrective Measure Studies for ground water to be performed even when the ground water is of negligible use as a resource, such as a small pocket of soil which becomes saturated only episodically. Although contamination in any saturated zone that could act as a pathway transporting contaminants to aquifers could be a concern, the Agency would intend to address those situations in the context of setting action levels for soils (see § 264.521(d)), including "deep soils" that could act as a ground-water contaminant pathway.

EPA has, under a number of statutes, promulgated standards and criteria relevant to protection of environmental media. Among the most important of these are maximum contaminant levels (MCLs) promulgated under the Safe Drinking Water Act (42 U.S.C. section 300(f) *et seq.*), which have been incorporated into this rule as action levels for ground water under § 264.521(a)(1). MCLs promulgated under the Safe Drinking Water Act are maximum concentrations of contaminants allowed in water used for drinking (see appendix B). The use of MCLs for action levels is consistent with current RCRA ground-water protection standards (40 CFR part 264, subpart F), which set the interim primary drinking water standards (MCLs) for 14 constituents (which existed at the time subpart F regulations were promulgated) as ground-water protection standards in the absence of another Agency decision. Currently there are 34 MCLs promulgated, of which six are microbiological contaminants, three are radionuclides, and 25 are organic and inorganic contaminants; the MCLs for the chemical contaminants are listed in appendix B.

Where MCLs are available for a particular constituent but the ground water at a site is not currently used for a drinking water supply, and is unsuitable for use as a drinking water supply in the future, MCLs will still ordinarily be used as action levels (*i.e.*, to require a CMS); however, cleanup to the MCL might not be required (see section VI.F.5 for discussion of media cleanup standards). The Agency is persuaded that, in cases where ground water is contaminated at levels above action levels, further study is necessary (*e.g.*, to make sure that sources of releases are controlled).

Where MCLs have not been promulgated for hazardous constituents, EPA would develop levels according to the criteria specified in proposed § 264.521(a)(2)(i)–(iv) and described in detail above in this preamble (see section VI.E.2.b). In this analysis, the Agency would use the standard exposure assumptions of two liters a day for a 70 kilogram adult over a 70 year lifetime (see appendix D), assumptions that are used extensively throughout EPA and other agencies. Appendix A lists levels that were developed for water by the Agency according to these principles and which the Agency believes would be appropriate for ground-water action levels. In addition, proposed (but not yet promulgated) MCLs would also typically meet the criteria proposed in § 264.521(a)(2)(i)–(iv) and could serve as ground-water action levels.

Where data are insufficient to develop action levels according to these criteria, the Agency would establish levels according to the procedures in proposed § 264.521(e), which are described in more detail in section VI.E.2.g of this preamble. The Agency solicits comment on the proposed approach and alternative approaches to establishing action levels for ground water.

d. *Action Levels for Air.* Proposed § 264.521(b) identifies criteria for establishing action levels for air, assuming exposure through inhalation of air contaminated with the hazardous constituent. Appendix A lists possible action levels that meet these criteria. The Agency used the following procedures to develop concentrations in air listed in appendix A:

Note: Appendix A action levels are currently taken exclusively from the IRIS data base, and developed using only procedures 1 and 4; this appendix will be modified to include other health-based numbers not currently on IRIS, derived from procedures 2 and 3. This is consistent with current Superfund practices and policy.

1. Where an Agency-verified health-based intake level for inhalation (*e.g.*, RfD) was available, that level was used to calculate the concentration in air.

2. Where an Agency-verified level (as in (1), above) was not available, a level based on a valid inhalation study was used, even if it had not yet gone through the formal intra-Agency verification process.

3. If a level based on an inhalation study (as in (1) or (2) above) was not available, a health-based intake level (*e.g.*, RfD) based on an oral study was used, with a conversion factor of one for route-to-route extrapolation to calculate the concentration in air—except where such an extrapolation factor was determined to be inappropriate. For example, it is not appropriate where a constituent that is a systemic toxicant through the oral route of exposure causes local adverse effects on the lung through the inhalation route. A constituent might also be determined to be an inappropriate candidate for route-to-route extrapolation due to significant differences in metabolism or absorption. Where the extrapolation from oral route to inhalation route of exposure is determined to be inappropriate, and a level based on an inhalation study (as in (1) or (2) above) is not available, appendix A does not list a concentration in air (see section VI.E.2.g for a discussion of how to set action levels where health- and environment-based levels are not available). While the concentrations in air listed in appendix A (and C) are being evaluated further by the Agency with regard to the appropriateness of this route-to-route extrapolation, they will be used only as an interim measure. The Agency will adopt RfDs based on actual inhalation toxicity data as soon as the data become available.

4. The standard exposure assumption for air typically used in Agency risk assessments (i.e., $20m^3$/day for a 70 kilogram adult for a 70 year lifetime) was used (see appendix D).

Under proposed § 264.521(a)(2), action levels would be measured or estimated at the facility boundary, or another location closer to the unit if necessary to protect human health and the environment.

The Agency has chosen the facility boundary as the location where air action levels are proposed to be typically measured, for several reasons. Measuring at the facility boundary will have the effect of requiring Corrective Measure Studies to be conducted whenever potentially health-threatening levels of airborne constituents that originate from waste management units

are being released to areas outside the facility property. The Agency recognizes that in some cases this could require owner/operators to study potential remedial solutions where actual remediation of air releases will not be required—under today's proposal, the requirement actually to remediate air releases is tied to actual exposure; *i.e.*, exceedence of health-based levels at the most exposed individual (see the discussion of air cleanup standards in section VI.F.7.a of today's preamble). However, under this scenario, if exposure conditions were to subsequently change and trigger the need for corrective action for air emissions, the owner/operator would be able to more expeditiously implement the remedy that had already been developed in the Corrective Measure Study. The Agency believes that measuring action levels at the facility boundary, while environmentally conservative, will not represent an undue burden on owner/operators.

Under today's proposal, the Regional Administrator could, when necessary, require action levels to be measured at one or more locations within the facility. An example would be if individuals were actually residing on the facility property, as might be the case at a Federal facility (*e.g.*, a military base). On-site worker exposure would not generally be a determining factor in establishing locations for action levels, since such exposure is regulated by the Occupational Safety and Health Administration (see further discussion in section VI.F.7.a(2) of today's preamble).

The Agency considered, but did not propose, other locations for establishing action levels for air releases. These alternative locations would have involved determining action levels at (1) the unit boundary, or (2) the most exposed individual. The alternative of determining action levels at the unit boundary was rejected as unnecessarily stringent, since it would likely have the effect of very often triggering the need for a Corrective Measure Study, where no actual or potential threat to human health and the environment existed. The option of measuring action levels at the most exposed individual was not chosen because in some cases a CMS would not be triggered based on current locations of receptors, even though future residential development close to the facility were planned and could result in exposure above action levels. The Agency specifically requests comment on the most appropriate location for measuring action levels for the air medium.

e. *Action Levels for Surface Water.* Proposed § 264.521(c) identifies action levels for surface water. Notwithstanding these action levels, some releases from solid waste management units to surface water may be subject to the National Pollutant Discharge Elimination System (NPDES) pursuant to section 402 of the Clean Water Act (CWA). The CWA prohibits the unregulated discharge of any pollutant to waters of the United States from any point source. Releases to surface waters that are nonpoint sources may be subject to the Nonpoint Source Management Program established under sections 208 and 319 of the CWA. If the Agency discovers releases from solid waste management units which are point sources, but lack an NPDES permit, CWA authorities will generally be used to address the release. It should be understood that the term surface water in this context includes wetlands, as prescribed under section 404 of the CWA. Section 404 permits are required for dredge and/or fill into wetlands.

Proposed § 264.521(c) specifies that State water quality standards established pursuant to section 303 of the CWA that are expressed as numerical values will be used as action levels, where they have been established for the surface water body in question. However, EPA anticipates that such numerical standards may, in some cases, not have been established at the time when remedial investigations are being conducted at RCRA facilities. In these cases, action levels may be established as numeric interpretations of State narrative water quality standards.

Water quality standards both establish water quality goals, and serve as a basis for establishing treatment controls, based on the use or uses which the State designates for the receiving water (*e.g.*, recreation or public water supply). The standards consist of a designated use or uses, and the water quality criteria which will protect such uses. Criteria are expressed as either numeric constituent concentration levels or narrative statements that represent a quality of water that supports a particular use.

In applying narrative standards to specific water bodies, some States have prescribed methods for calculating numeric values for the water body. Such methods vary from State to State in their complexity, the time required to establish the numeric values, and the procedures involved. Although deriving these numeric interpretations from narrative standards will often be straightforward, the Agency expects that in some situations the derivation of such values could be relatively complex and time-intensive. In such cases, the Regional Administrator could determine that the use of numeric interpretations of narrative water quality standards was not appropriate for the purpose of establishing action levels. EPA emphasizes that the use of such narrative standards must not delay the corrective action process.

Where numeric water quality standards have not been established by the State, and where numeric interpretations of narrative standards are either unavailable or inappropriate (for reasons described above), proposed § 264.521(c)(3) provides that maximum contaminant levels (MCLs) promulgated under the Safe Drinking Water Act will be used as action levels, if the surface water has been designated as a drinking water source by the State (see discussion in previous section on the use of MCLs as action levels in ground water).

In situations where a numerical water quality standard, a numeric interpretation of narrative standards, or an MCL is not available for a particular hazardous constituent in surface water designated by the State for drinking, proposed § 264.524(c)(4) specifies that the criteria under § 264.521(a)(2) (i)-(iv) be used for establishing action levels in surface water, assuming exposure through consumption of the water contaminated with the hazardous constituent. The standard exposure assumptions of two liters/day for a 70 kg adult over a 70 year lifetime in appendix D should be used, unless people also consume aquatic organisms from the surface water. In these cases, the Agency suggests that Federal Water Quality Criteria be used as action levels, since they satisfy the criteria for action levels established under § 264.521(a)(2) (i)-(iv). Federal Water Quality Criteria are concentrations of contaminants determined to be protective of human health and/or aquatic organisms. Criteria for protection of human health are based on exposure through drinking water, as well as exposure through drinking water and ingesting aquatic organisms. Criteria for protection of freshwater/estuarine and marine organisms are also available. EPA has promulgated water quality criteria for 126 pollutants under the Clean Water Act.

In situations where a numerical water quality standard is not available for a particular hazardous constituent in surface water designated by the State for uses other than drinking, proposed § 264.524(c)(5) provides the Regional

Administrator with the flexibility to consider the State-designated use of the surface water in establishing a concentration as the action level. For example, in some surface waters designated for industrial uses, the Agency believes that an MCL may be too sensitive a trigger for a CMS. In other situations, MCLs may be too insensitive a trigger for a CMS (for example, in trout streams). Federal Water Quality Criteria may provide useful guidance in setting action levels under § 264.524(c)(5).

If Federal Water Quality Criteria are used as action levels, the purposes for which such criteria were developed should be considered in determining which criteria are appropriate to use. For example, for a surface water body used for fishing and drinking, the criteria for protection of human health based on drinking water and eating aquatic organisms would be most appropriate. For Class A and Class B carcinogens, the criteria corresponding to a 10^{-6} risk level should be used, whereas for Class G carcinogens, the Agency suggests that the criteria corresponding to 10^{-5} risk level be used. (See discussion of Agency-established classes of carcinogens and relative risk levels considered appropriate in section VI.E.2.c of this preamble.)

If contaminants attributable to releases from a SWMU exceed an action level anywhere in surface water, a Corrective Measure Study may be required. Proposed § 264.521(c) does not specify where in surface waters concentrations should be measured against action levels. In determining appropriate sampling locations, the Agency will generally attempt to specify locations in the surface water where the highest concentrations of hazardous constituents released from SWMUs are expected to occur—*i.e.*, at or near the point or points where releases enter the surface water. However, in some cases, establishing the precise point(s) where releases enter the surface water may be difficult and time-consuming, such as in the case of a ground-water plume in a complex hydrogeologic setting that flows into a lake. In these cases, the Agency would not wish to delay the initiation of a Corrective Measure Study while the point of release is located, if concentrations greater than action levels could already be detected in the surface water.

EPA specifically requests comment on today's proposal for establishing action levels for surface water.

Proposed § 264.520(b), which allows the Regional Administrator to require a CMS when necessary to protect human health and the environment, even when no action levels have been exceeded, may be particularly important for surface water. For example, the Regional Administrator may determine that a threat from consumption of aquatic organisms exists at levels at or below the MCL, since the MCL does not incorporate exposure through ingestion of contaminated organisms.

A Corrective Measure Study may also be required under § 264.520(b) if the Regional Administrator determines that there is a threat to human health or the environment from contaminated sediments even though action levels for surface water have not been exceeded. The Agency believes it is important to clarify its authority to address sediments contaminated by releases from solid waste management units under sections 3004 (u) and (v) of HSWA, although today's proposal does not establish action levels specifically for sediments. The Agency is currently developing sediment criteria which, when promulgated, may be used as guidance in evaluating contaminated sediments. However, no health-based or environmental levels are currently available which are appropriate as sediment action levels. Thus, until such criteria are developed, the need for Corrective Measure Studies based on sediment contamination will be determined on a case-by-case basis. The Agency requests comment on this approach to addressing sediments.

Finally, the Regional Administrator may require a Corrective Measure Study for surface water under § 264.520(b) when a threat to aquatic health exists at levels at or below action levels. Federal Water Quality Criteria for protection of aquatic health should be used as guidance in making this determination.

f. *Action Levels for Soil.* Proposed § 264.521(d) establishes criteria for establishing action levels for soil, assuming exposure through consumption of the soil contaminated with the hazardous constituent. Action levels would be set on the basis of the exposure assumptions in appendix D, which assume a residential use pattern, with long-term direct contact and soil ingestion by children. Action levels for soil would typically be measured on the surface (generally the upper two feet of earth).

The exception to this approach, is where EPA has already established standards for the cleanup of spilled polychlorinated biphenyls (PCBs), which are regulated under the Toxic Substances Control Act (TSCA). The Agency has determined that the use of these promulgated standards, as action levels and cleanup standards for soil, is relevant to RCRA corrective action. This policy is also consistent with Superfund policy. The PCB Spill Policy under TSCA is discussed more fully in section VII.B of this preamble.

Although action levels for soils are established using direct contact assumptions most appropriate for surficial soils, it is intended that these action levels will often also be used as a presumption that a CMS may be necessary for contaminated deep soils which may pose a threat to ground water in aquifers. The Agency does not believe that generic action levels based on the potential for hazardous constituents in soil to contaminate ground water can be developed at this time, since the type of soil, distance to ground water, and other site-specific factors, as well as the properties of the hazardous constituent, influence this potential. A permittee may attempt to rebut this presumption by demonstrating that there is no threat to human health and the environment from such deep soil contamination, either through direct contact or migration to aquifers or surface water. Alternatively, § 264.520(b) may be used to require a CMS in situations where deep soils are contaminated below action levels, but pose a threat to ground water in aquifers.

Although estimates of soil intake are not as frequently used by the Agency as are estimates of air or water intake, appendix D provides recommended exposure assumptions for non-carcinogenic and carcinogenic soil contaminants given an unrestricted use scenario. A soil ingestion rate of 0.1 g/day is recommended for carcinogens, and a rate of 0.2 g/day, based on an average child's body weight of 16 kg, is recommended for non-carcinogens.

In the case of non-carcinogenic contaminants, the oral RfD would be used to calculate an action level, or threshold concentration below which adverse effects would not occur, assuming 0.2 gram per day of soil is consumed. Sixteen kilograms represents an average body weight for children aged one to six. The Agency believes these exposure assumptions are reflective of a conservative average scenario in which children ages 1–6 years (*i.e.*, the time period during which children exhibit the greatest tendency for hand-to-mouth activity) are assumed to ingest an above-average amount of soil on a daily basis. The exposure levels estimated in this manner are calculated to keep exposures well below the population "threshold" for toxic effects (see earlier preamble discussion). Since the toxic effect of concern is assumed to occur once the threshold

level is exceeded, the amount of soil ingested on a daily basis becomes of major importance in determining non-carcinogenic effects. Therefore, to account properly for the risk from elevated exposure to non-carcinogenic soil contaminants during early childhood years, it is important that the exposure not be estimated over a lifetime; to do so would "smear" out the peak exposure occurring during the above-mentioned time period of five years and result in the failure to detect an unacceptable exposure level (*i.e.*, a level which exceeds the RfD).

In the case of carcinogens, the action level would be derived by assuming consumption of 0.1 g/day averaged out over a lifetime, based on an adult body weight of 70 kilograms. Because the expression of carcinogenic effects is principally a function of cumulative dose (*i.e.*, the time course of exposure is usually secondary), the Agency believes, in general, that elevated exposures during early childhood are relatively unimportant in determining lifetime cancer risk. Therefore, total lifetime (cumulative) soil ingestion can be averaged to derive a per day value. These exposure assumptions do, however, reflect a reasonable worst-case scenario—0.1 g/day is an upper-range estimate of soil ingestion for older children and adults.

The above recommendations are based on the conservative assumptions that 100 percent of the ingested non-carcinogenic and carcinogenic soil contaminants are absorbed across the gastrointestinal tract and that ingestion occurs 365 days/year, regardless of climatic conditions or age. The Agency solicits comment on the above assumptions for soil exposure for establishing action levels.

The Agency considered the use of other generic exposure assumptions for establishing action levels for soil based on direct contact (*e.g.*, exposure through dermal contact, exposure through ingestion under a non-residential scenario), but rejected these alternatives for several reasons. First, establishing action levels based on generic assumptions for dermal exposure or exposure via ingestion of soil under a non-residential scenario would be a far less sensitive trigger, and could in effect cause a "false negative" in situations where the Agency believes corrective action would be necessary. Second, the data base for developing action levels based on dermal exposure or exposure via ingestion of soil under a non-residential exposure scenario is limited.

In addition to considering generic exposure assumptions, the Agency considered the use of site-specific, direct contact exposure factors for deriving soil action levels. However, the Agency believes that assessing site-specific exposure in setting action levels would be a resource-intensive process, and would run counter to the objective of using action levels as a simple screening mechanism. The Agency recognizes that the proposed approach is conservative. Nevertheless, the Agency believes that these levels are appropriate as action levels (as opposed to cleanup targets)—that is, they can reasonably serve as rebuttable presumptions that further study, including analysis of possible remedies, is necessary.

Soil cleanup levels are discussed in more detail in section VI.F.5 of this preamble. However, it should be recognized that facilities with soil contamination above an action level—particularly where the levels would pose no threat under current conditions of exposure—would have a wide range of remedial options open to them, including "conditional" remedies (for which the permit would specify appropriate exposure controls), or the covering of the contaminated soil with a soil cap. In this case, a Corrective Measure Study might simply be a proposal to clean up to protective levels, assuming industrial land use, and to ensure restricted access for the life of the permit. This raises the issue of "conditional" remedies, which is discussed in more detail in section VI.F.8 of this preamble.

g. *Action Levels Where Health- and Environmental-Based Levels Are Not Available.* If, for any medium, Agency-promulgated standards or criteria, or other health-based levels meeting the proposed criteria are not available or cannot be developed for use as action levels, § 264.521(e) allows the Regional Administrator to set an action level for any constituent on the basis of available data and reasonable worst-case assumptions. In most cases, partial data or data on structural analogs will allow the Regional Administrator to estimate whether the detected level of a contaminant is likely to cause a problem. In other cases, other contaminants will be present at high levels (triggering a CMS in any case), and it will be clear that the constituent is not a driving factor in determining the risk at the site, even under worst-case assumptions concerning its toxicity. In such cases it may not be necessary to specify an action level for the constituent. Finally, under proposed § 264.521(e)(2), the Regional Administrator would have the authority to set the action level at background for a hazardous constituent for which data were inadequate to set a health- or environment-based action level. This option, however, is providad primarily as a fall-back position. The Agency believes that it will very rarely be necessary to set action levels at background.

As indicated earlier, appendix A lists possible action levels for a range of hazardous constituents based on the criteria proposed in § 264.521(a)(2). EPA's Office of Solid Waste (OSW) is developing, for the purpose of guidance, health-based numbers on additional constituents. These levels would also satisfy the criteria of proposed § 264.521(a)(2). As these additional health-based levels are developed, they will be entered into tha Integrated Risk Information System (IRIS). For information on these guidance numbers, the OSW Technical Assessment Branch/Health Assessment Section should be consulted at (202) 382-4761.

h. *Authority to Require a Corrective Measure Study Where Action Level Have Not Been Exceeded.* The Agency believes it is important to provide the Regional Administrator authority to require a CMS under § 264.520(b) even when no constituents exceed action levels. For example, a CMS could be required if there are threats to certain sensitive environmental receptors at a particular facility with contamination at or below action levels. Also, a CMS could be required in situations where the risk posed by the presence of multiple contaminants may be high enough to warrant a Corrective Measure Study even if no single constituent exceeds the individual action level for the constituent. Similarly, if individuals living near the site are receiving significant exposures from sources other than SWMUs at the site, the incremental exposure due to SWMUs at the site may result in a cumulative risk large enough to warrant a CMS. In addition, there may be situations where "cross-media" risks could indicate the need for a CMS, even though action levels in a particular medium have not been exceeded. An example might be where at nearby residences releases in both the air and ground water are present at very low levels, but the cumulative risks from both pathways of exposure are sufficiant to be of concern. Although such situations are expected to be relatively rare, the Agency will examine such cross-media risks when site-specific conditions indicate the potential for such exposure factors.

A CMS may also be required if constituents pose a threat through exposure pathways other than that assumed in setting action levels. For example, constituents in surface water that do not exceed MCLs may still pose

a threat to persons who ingest fish caught from that surface water. Constituents in ground water that do not exceed MCLs may still pose a threat through ponding or basement seepage. Nevertheless, the Agency believes that, with few exceptions, proposed action levels will be adequate to identify potential threats to human health and the environment which necessitate a CMS.

3. *Scope of Corrective Measure Study (§ 264.522).* In the RCRA program, corrective action requirements will be implemented at facilities with a wide range of different types of environmental problems. Some RCRA facilities might, if evaluated according to Superfund's Hazard Ranking System (HRS), score high enough to be included on the National Priority List. On the other hand, most RCRA facilities have much less extensive environmental problems, and are maintained by viable owner/operators, who may be expected to operate at the site for an extended period of time. Recognizing the diversity of the RCRA facility universe, today's proposal has been structured to provide the Agency considerable flexibility in defining the scope and analytic approach to developing Corrective Measure Studies, consistent with the extent and nature of the environmental problems at the facility.

EPA anticipates that for most RCRA facilities, the studies needed for developing sound, environmentally protective remedies can be relatively straightforward, and may not require extensive evaluation of a number of remedial alternatives. Such "streamlined" Corrective Measure Studies can be tailored to fit the complexity and scope of the remedial situation presented by the facility. For example, if the environmental problem at a facility were limited to a small area of soils with low-level contamination, the Corrective Measure Study might be limited to a single treatment approach that is known to be effective for such types of contamination. In a different situation, such as with a large municipal-type landfill, it may be obvious that the source control element of the CMS should be focused on containment options. EPA anticipates that a streamlined or highly focused CMS will be appropriate to the following types of situations:

- "Low risk" facilities. Facilities where environmental problems are relatively small, and where releases present minimal exposure concerns.
- High quality remedy proposed by the owner/operator. Owner/operators may propose a remedy which is highly protective (*e.g.*, equivalent to a RCRA "clean closure"), and which is consistent with all other remedial objectives (reliability, *etc.*).
- Facilities with few remedial options. This would include situations where there are few practicable cleanup solutions (*e.g.*, large municipal landfills), or where anticipated future uses of the property dictate a high degree of treatment to achieve very low levels of residual contamination.
- Facilities with straightforward remedial solutions. For some contamination problems, standard engineering solutions can be applied that have proven effective in similar situations. An example might be cleanup of soils contaminated with PCBs.
- Phased remedies. At some facilities the nature of the environmental problem will dictate development of the remedy in phases, (see the discussion of phased approach under § 264.526(d)), which would focus on one aspect (*e.g.*, ground-water remediation) of the remedy, or one area of the facility that deserves immediate measures to control further environmental degradation or exposure problems. In these situations, the Corrective Measure Study would be focused on that specific element of the overall remedy, with follow-on studies as appropriate to deal with the remaining remedial needs at the facility.

EPA recognizes that, in contrast to the above situations, some facilities with very extensive or highly complex environmental problems will require Corrective Measure Studies that assess a number of alternative remedial technologies or approaches. The following are examples of situations which would likely need relatively extensive studies to be done to support sound remedy selection decisions:

- "High risk" facility with complex remedial solutions. Such facilities might have large volumes of both concentrated wastes and contaminated soils, for which several different treatment technologies could be applied to achieve varying degrees of effectiveness (*i.e.*, reduction of toxicity or volume), in conjunction with different types of containment systems for residuals.
- Contaminant problems for which several, very different approaches are practicable. There may be several, quite distinct technical approaches for remediating a problem at a facility, each of which offers varying degrees of long-term reliability, and would be implemented over different time frames, with substantially different associated cost impacts. In such cases, remedy selection decisions will necessarily involve a difficult balancing of competing goals and interests. Such decisions must be supported with adequate information.

In addition to the above examples of situations calling for either a limited, or relatively complex CMS, other studies will fall in the middle of that range. Given this "continuum" of possible approaches to structuring Corrective Measure Studies, it is the Agency's general intention to focus these studies on plausible remedies, tailoring the scope and substance of the study to fit the complexity of the situation.

The general types of analyses and information requirements that may potentially be required of the permittee in conducting a Corrective Measure Study are outlined in today's proposed § 264.522(a). Note that this provision does not prescribe that any specific types of remedies be analyzed, nor does it define a decision process by which remedial alternatives are "screened" or evaluated. It is intended to provide the decisionmaker with a range of options for structuring a study to support the ultimate remedy selection for the facility.

Proposed § 264.522(a)(1) lists items that the Regional Administrator may require in a CMS for any remedy(s) evaluated. In general, sufficient information should be provided for the Agency to determine that the remedy selected can meet the remedy standards of § 264.525(a).

Section 264.522(a)(1) would give the Regional Administrator authority to require the permittee to perform an evaluation of the performance, reliability, ease of implementation, and impacts (including safety, cross-media contaminant transfer, and control of exposures to residual contamination) associated with any potential remedy evaluated. In evaluating the performance of each remedy, the Agency would expect the permittee to evaluate the appropriateness of specific remedial technologies to the contamination problem being addressed and the ability of those technologies to achieve target cleanup concentrations (per following discussion on "target levels").

To evaluate these factors for a specific remedy, the owner/operator may be required to develop specific data. Data may be needed on general site conditions, waste characteristics, site geology, soil characteristics, ground-water characteristics, surface water characteristics, and climate. The Agency anticipates that permittees will collect much of this information during remedial investigations required under § 264.510. In some cases, important relevant information may be included in the part B application. To the extent that potential remedies are identified early in the remedial investigation process, the permittee can streamline his or her data collection efforts to include data needed for the evaluation of specific remedial alternatives.

Analysis of a remedy's performance and reliability should include an assessment of the effectiveness of a remedy in controlling the source of

release and its long-term reliability. Where treatment is planned, an assessment of treatment capability should be provided; where waste will be managed on-site, the details of the management (including a description of the units in which it is treated or disposed of) should be supplied. Potential safety impacts (*e.g.*, associated with excavation, transportation, *etc.*) of the remedy should also be considered in most cases. Further, the Agency may require information on implementability—such as capacity availability or State or local permitting requirements—to determine whether a remedy is feasible.

The Agency is particularly concerned about potential cross-media impacts (intermedia transfer of contaminants) of remedies, and therefore specifically identified them as an area that may require study. In addition, cross-media impacts will be one of the factors considered in remedy selection (see proposed § 264.525). Some remedial technologies may cause secondary impacts that must be considered in selecting remedies. For example, in some circumstances, air stripping of volatile organic compounds (VOCs) from ground water may release these VOCs to the air unless specific emission control devices are installed on the air stripper. The Corrective Measure Study should also determine whether other adverse impacts from a potential remedy will reduce its effectiveness in achieving the cleanup goal. For example, removal of contaminated sediments in large, slow-moving rivers may resuspend sediments and cause more harm than allowing the sediments to remain in place.

Proposed § 264.522(a)(2) would allow the Regional Administrator to require that the Corrective Measure Study assess the extent to which appropriate source controls could be implemented, and contaminant concentrations appropriate to the constituent(s) could be reached by the remedy. In some cases, bench- or pilot-scale studies may be required to determine the given treatment technology's performance on the particular waste at the facility. Such studies can often save both time and money in addressing environmental remediation.

It will often be appropriate for the Regional Administrator to specify, prior to or during the course of the CMS, preliminary "target" cleanup levels for contaminants which the permittee should use in evaluating the items under § 264.522(a) (1) and (2). These target concentrations would thus serve as preliminary estimates of the media cleanup standards to be established in the remedy selection process. Target levels might be specified to cover a cleanup range (*e.g.*, 10^{-4} level and a 10^{-6} level), or a specific level for a constituent that would be EPA's best estimate of the ultimate cleanup standard, based on the information available at the time.

There will be many situations where the levels of cleanup that must be achieved will dictate the kinds of cleanup technologies considered, and thus, the target levels specified in the context of the CMS process will be a critical element in shaping the study. However, there may also be many situations where it would not be necessary to specify preliminary target levels, such as where the remedy involves only removal of a specified number of drums, or construction of a tank for dewatering sludges. Other such situations might be where cleanup concentration levels do not greatly affect the actual design of the remedial technology (*e.g.*, a ground-water extraction system), or where the owner/operator proposes a remedy that will effectively achieve highly protective levels of cleanup. In any case, however, when target levels for a remedy are specified, the Agency would reserve the right to set cleanup standards different from the target levels that were identified, since those standards may often be affected by remedy factors that cannot be fully evaluated until the CMS has been completed.

Today's proposal would also allow the Regional Administrator to require an evaluation of the timing of the potential remedy (§ 264.522(a)(3)), including construction time, start-up, and completion. The timing of a remedy will be particularly important where contamination has migrated beyond the facility boundary or is nearing potential receptors. In these cases, a prompt remedy would be necessary. In other cases, timing will be important in distinguishing among remedies. Some technologies may require considerably less construction and start-up time than others, but would require more time to achieve the cleanup standard. For example, if the permittee has a large volume of waste which must be incinerated to achieve BDAT under the land disposal restriction requirements imposed in HSWA, s/he may need to build an incinerator and successfully complete the requirements for a trial burn. If, on the other hand, the wastes to be removed from a SWMU are not wastes subject to the land disposal restrictions and may be disposed in an operating hazardous waste disposal unit at the site, far less time will be required both to initiate and complete the remedy. The Agency, therefore, may require the permittee to include information on factors affecting both remedy initiation and completion.

The Regional Administrator may also require the permittee to include cost estimates for alternatives considered (§ 264.522(a)(4)). Cost information may become a factor in the remedy selection process when evaluating alternative remedies which will achieve an adequate level of protection. This information will also serve as a first estimate of the cost estimate required to determine the level of financial assurance that the permittee must demonstrate when the final remedy is selected.

Finally, § 264.522(a)(5) would provide the Regional Administrator authority to require the permittee to assess institutional requirements, such as State or local permit requirements, or other environmental or public health requirements, that may be applicable to the remedy and that may substantially affect implementation of the remedy. State and local governments may have specific requirements related to the remedial activities that could affect implementation of the remedies evaluated in the Corrective Measure Study.

In addition to the elements listed in proposed § 264.522(a), the Regional Administrator may include other requirements in the scope of the CMS as needed. Such requirements will be specified in the permit schedule of compliance.

As indicated above, proposed § 264.522(b) would allow the Regional Administrator to specify one or more potential remedies which must be evaluated in the CMS. The Agency is persuaded that this authority is necessary to ensure that delays in initiating cleanup will not result from CMS reports which evaluate only poor or inappropriate remedial solutions.

Requirements for Corrective Measure Studies in two particular circumstances contemplated under today's proposal merit special attention. When either a phased remedy (see § 264.526(d)) or a conditional remedy (see § 264.525(f)) is contemplated for the facility, the scope and timing of Corrective Measure Studies may be adjusted to fit the particular requirements for such remedies.

Proposed § 264.526(d) allows the Regional Administrator to specify (in the permit modification for remedy selection) that a remedy be implemented in phases. Such an approach is

anticipated where separable activities are being addressed at the facility and where, in many cases, imposition of further remedial requirements may be dependent on the experience and/or knowledge gained during preceding phases. In such a case, the CMS may also be divided into phases to match the remedial phases specified in the permit modification.

Conditional remedies are authorized under proposed § 264.525(f). Conditional remedies are not final remedies since they do not necessarily meet all standards for remedies included in § 264.525(a); decisions must be revisited before the permit can be terminated. If the conditional remedy is found to meet all § 264.525(a) standards, it may be declared the final remedy when the decision is revisited. If, however, further corrective action is required to satisfy requirements for a final remedy, a follow-up CMS may be necessary prior to a final remedy decision.

4. *Plans for Corrective Measure Study (§ 264.523).* This section would give the Regional Administrator authority to require the submission of a plan for conducting the Corrective Measure Study at the time s/he determines that a CMS is necessary. Specific requirements for the plan and a schedule for its submission would be included in the permit schedule of compliance.

Typically, a plan would include a description of the general approach to investigating and evaluating potential remedies, a definition of the overall objectives of the study, a schedule for the study, a description of the specific remedies which will be studied, and a description of how each potential remedy will be evaluated. Further, to guarantee an orderly presentation of study results, the Regional Administrator may require the permittee to include as part of the plan the format for presenting the results of the CMS. Discussions between the permittee and the Regional Administrator before the plan is drafted will generally be needed to ensure that appropriate remedial alternatives are considered, that appropriate target concentration levels of contaminants are used, and that the unnecessary expenditures of time or other resources for revisions which otherwise might be required are avoided.

Upon receipt of the corrective measures plan, the Regional Administrator will evaluate its adequacy. If the plan is deficient, proposed § 264.523(a) would allow the Regional Administrator to modify the plan or require the owner/operator to make the appropriate modifications. In some cases the plan will require only slight modification, and by actually making those modifications the Regional Administrator will be able to eliminate the need for further iterations of the submission and approval process. In other cases, where a submitted plan is deficient even after modifications have been made by the owner/operator, modifying the plan will allow the Regional Administrator to cut short the iterative process that has not produced an acceptable document. This provision of § 264.523(a) is analogous to the authority provided to the Regional Administrator for modifying interim status closure plans (see § 265.112). It is also similar to the process involved in obtaining complete permit applications.

Upon approval of the plan by the Regional Administrator, § 264.523(b) would require that the permittee conduct the CMS according to the approved plan, including the schedule. Both the plan and the schedule included in the plan will become an enforceable part of the permit schedule of compliance.

5. *Reports of Corrective Measure Study (§ 264.524).* As proposed, § 264.524 would provide authority for the Regional Administrator to require progress reports on the Corrective Measure Study at intervals appropriate to the site-specific study requirements. Progress reports would serve two functions—they would keep the Regional Administrator informed of the progress of the study, and would provide the basis for a periodic review to determine whether midcourse corrections to the study are needed. For example, if a pilot-scale study is conducted for a specific treatment technology and early results indicate that the technology does not consistently achieve the expected concentration level, it may be appropriate to eliminate further study of that particular remedy and to consider other approaches.

Today's proposal would require, in all cases, submission of a final report of the CMS which summarizes the results of the investigations for any remedy studied, and any pilot tests conducted. The report would evaluate each alternative in terms of its anticipated performance in achieving the standards for remedies, which are provided in today's proposal at § 264.525(a).

Proposed § 264.524(c) would give the Agency the authority, upon review of the CMS report, to require the permittee to evaluate one or more additional remedies or to develop in greater detail specific elements of one or more remedies previously studied. This provision would ensure that appropriate remedies are evaluated by the permittee in sufficient detail to allow the Agency to determine its feasibility and effectiveness. In a case where the permittee does not identify an appropriate remedy during the Corrective Measure Study, the Agency may require him or her to evaluate additional remedies as necessary to ensure that a suitable remedy, meeting the standards established under § 264.525(a), is developed.

F. Selection of Remedy (Section 264.525)

1. *General (§ 264.525).* Proposed § 264.525 outlines the general requirements for selection of remedies for RCRA facilities. As structured, it establishes four basic standards which all remedies must meet and specifies certain decision criteria which will be considered by EPA in selecting the most appropriate remedy which meets those standards for individual facilities. In addition, decision factors for setting schedules for initiating and completing remedies are outlined, and specific requirements for establishing media cleanup standards, including requirements for achieving compliance with them, are also contained in this section. The section also specifies requirements for conditional remedies.

2. *General Standards for Remedies (§ 264.525(a)).* Proposed § 264.525(a) specifies that remedies must:

- Be protective of human health and the environment;
- Attain media cleanup standards as specified pursuant to § 264.525 (d) and (e);
- Control the sources of releases so as to reduce or eliminate, to the extent practicable, further releases that may pose a threat to human health and the environment; and
- Comply with standards for management of wastes as specified in §§ 264.550–264.559.

These standards reflect the major technical components of remedies: cleanup of releases, source control, and management of wastes that are generated by remedial activities. The first standard—protection of human health and the environment—is a general mandate derived from the RCRA statute. This overarching standard requires remedies to include those measures that are needed to be protective, but are not directly related to media cleanup, source control, or management of wastes. An example would be a requirement to provide alternative drinking water supplies in order to prevent exposures to releases from an aquifer used for drinking water. Another example would be a requirement for the construction of barriers or for other controls to prevent

harm arising from direct contact with waste management units.

Remedies will be required to attain the media cleanup standards that will be specified by EPA according to the requirements outlined in subsection (d) of this section. The media cleanup standards for a remedy will often play a large role in determining the extent of and technical approaches to the remedy. In some cases, certain technical aspects of the remedy, such as the practical capabilities of remedial technologies, may influence to some degree the media cleanup standards that are established. It is because of this interplay between cleanup standards and other remedy goals and limitations that today's rule establishes media cleanup standards within the overall remedy selection structure of § 264.525.

Section 264.525(a)(3) is the source control standard for remedies. A critical objective of remedies must be to stop further environmental degradation by controlling or eliminating further releases that may pose a threat to human health and the environment. Unless source control measures are taken, efforts to clean up releases may be ineffective or, at best, will involve an essentially perpetual cleanup situation. EPA is persuaded that effective source control actions are an important part of ensuring the long-term effectiveness and protectiveness of corrective actions at RCRA facilities. The proposed source control standard is not intended to mandate a specific remedy or class of remedies. EPA encourages the examination of a wide range of remedies. This standard should not be interpreted to preclude the equal consideration of using other protective remedies to control the source, such as partial waste removal, capping, slurry walls, in-situ treatment/stabilization and consolidation. Overall, EPA expects this policy to be no more stringent than the threshold criteria used for selecting remedies under the National Contingency Plan.

Proposed § 264.525(a)(3) requires that further releases from sources of contamination be controlled to the "extent practicable." This qualifier is intended to account for the technical limitations that may in some cases be encountered in achieving effective source controls. For some very large landfills, or large areas of widespread soil contamination, engineering solutions such as treatment or capping to prevent further leaching may not be technically practicable, or completely effective in eliminating further releases above health-based contamination levels. In such cases, source controls may need to be combined with other measures, such as plume management or exposure controls, to ensure an effective and protective remedy.

The proposed remedy standard of § 264.525(a)(4) requires that remedial activities which involve management of wastes must comply with the requirements for solid waste management, as specified in §§ 264.550–264.559 in today's proposed rule. RCRA remedies will often involve treatment, storage or disposal of wastes, particularly in the context of source control actions and cleanup of releases. This standard will assure that management of wastes during remedial activities will be conducted in a protective manner.

3. *Remedy Selection Decision Factors (§ 264.525(b)).* Proposed § 264.525(b) specifies five general factors which shall be considered as appropriate by EPA in selecting a remedy that meets the four standards for remedies, and that represent an appropriate combination of technical measures and management controls for addressing the environmental problems at the facility. The five general decision factors in proposed § 264.525(b) are:

- Long-term reliability and effectiveness;
- Reduction of toxicity, mobility or volume of wastes;
- Short-term effectiveness;
- Implementability; and
- Cost.

Any remedy proposal developed under a Corrective Measure Study and presented to EPA for final remedy selection must, at a minimum, meet the four standards of § 264.525(a). The Agency will then evaluate potential remedies against the five decision factors listed in proposed § 264.525(b), as appropriate to the specific circumstances of the facility.

The order of the decision factors listed in proposed § 264.525(b) is not intended to establish an implicit ranking, nor does it suggest the relative importance each factor might have at any particular facility or across facilities in general. There are circumstances in which any one of these factors might receive particular weight.

For example, long term effectiveness may rule out alternative remedies that might achieve clean up targets in the short term, but at the expense of creating new or greater future risks that may necessitate a future corrective action. Conversely, remedies that significantly reduce actual or imminent human exposure in the short term may be preferred over alternatives that eliminate long term risks, but at the cost of lengthening the period during which exposure persists. Reductions in toxicity, mobility, or volume are especially valuable in situations where the wastes or constituents may degrade into more hazardous or toxic products, or fail to naturally attenuate. Finally, cost may be determinative when more than one alternative remedy can reach the established cleanup target. In practice, the relative weights assigned to these five factors will vary from facility to facility according the site characteristics. EPA is soliciting comment today on situations in which these tradeoffs may significantly affect the remedy in ways which would suggest that a more prescriptive weighting of the factors might be desirable.

The following is a general explanation of the five decision factors, and how they may generally be used in remedy decisions.

The Agency intends to place special emphasis in selecting remedies on the ability of any remedial approach to provide adequate protection of human health and the environment over the long term. Thus, source control technologies that involve treatment of wastes, or that otherwise do not rely on containment structures or systems to ensure against future releases, will be strongly preferred to those that offer more temporary, or less reliable, controls. Whenever practicable, RCRA corrective action remedies must be able to ensure with a high level of confidence that environmental damage from the sources of contamination at the facility will not occur in the future. EPA believes that long-term reliability of remedies is an essential element in ensuring that actions under section 3004(u) satisfy the fundamental mandate of RCRA to protect human health and the environment.

The second decision factor—reduction of toxicity, mobility or volume —is directly related to the concept of long-term reliability of remedies. As a general goal, remedies will be preferred that employ techniques, such as treatment technologies, that are capable of permanently reducing the overall degree of risk posed by the wastes and constituents at the facility. Reduction of toxicity, mobility or volume is thus a means of achieving the broader objective of long-term reliability. EPA recognizes, however, that for some situations, achieving substantial reductions in toxicity, mobility or volume may not be practicable or even desirable. Examples might include large, municipal-type landfills, or wastes such as unexploded munitions that would be

extremely dangerous to handle, and for which the short-term risks of treatment outweigh potential long-term benefits.

The third decision factor—short term effectiveness—may be particularly relevant when remedial activities will be conducted in densely populated areas, or where waste characteristics are such that risks to workers are high, and special protective measures are needed. Implementability, the fourth decision factor, will often be a determining variable in shaping remedies. Some technologies will require State or local permits prior to construction, which may increase the time needed to implement the remedy.

One of the decision factors which raises particular issues in the context of RCRA remedies is that of cost. RCRA's overriding mandate is protection of human health and the environment. However, EPA believes that relative cost is a relevant and appropriate consideration when selecting among alternative remedies that achieve the clean up range.

EPA's experience in Superfund has shown that in many cases several different technical alternatives to remediation will offer equivalent protection of human health and the environment, but may vary widely in cost. The Agency believes that it is appropriate in these situations to allow cost to be one of the several factors influencing the decision for selecting among such alternatives.

The exact emphasis placed on these decision factors, and how they will be balanced by EPA in selecting the most appropriate remedy for a facility, will necessarily depend on the types of risks posed by the facility, and the professional judgment of the decisionmakers. Comment is specifically invited on the remedy selection approach outlined in today's proposed rule and preamble.

4. *Schedule for Remedy (§ 264.525(c)).* Proposed § 264.525(c) would require the Regional Administrator to specify a schedule for initiating and completing remedial activities as a part of the selection of remedy process. Some of the factors that will be considered when setting the schedule are enumerated in proposed § 264.525(c) (1)–(5). These factors include:

- Extent and nature of contamination at the facility;
- Practical capabilities of remedial technologies as assessed against cleanup standards and other remedial objectives;
- Availability of treatment or disposal capacity for wastes to be managed as part of the remedy;
- Desirability of utilizing emerging technologies not yet widely available which may offer significant advantages over currently available technologies; and
- Potential risks to human health and the environment from exposure to contamination prior to remedy completion.

Proposed § 264.525(c)(6) would allow the Regional Administrator flexibility to consider other relevant factors in setting a schedule for remedy initiation and completion. Such factors could relate to the remedial technology to be employed or the characteristics of the particular waste or facility being addressed.

The timing of remedy implementation and completion will be determined after these and other factors are considered by the Regional Administrator, and a schedule of compliance will be included in the modified permit. The Agency wishes to emphasize, however, that expeditious initiation of remedies and rapid restoration of contaminated media is a high priority and a major goal of the RCRA corrective action program. The schedule included in the permit will be an enforceable permit condition, and the owner/operator will be obligated to seek any change in the schedule for remedy implementation and completion prior to milestones established. This approach is consistent with the Agency's application of schedules of compliance to other aspects of the corrective action program proposed today.

EPA expects that many different specific factors will influence the timing of remedies. For example, the level of technical expertise required and available to implement a particular remedial technology could be an important factor, or the amount and complexity of construction which must precede actual cleanup, or the amount of time which would routinely be needed to achieve the media cleanup standards set in remedy selection, given a specified technology. All major variables which will affect remedy timing are expected to be assessed routinely in the CMS, and will be considered by EPA in setting aggressive yet realistic schedules for remedial activities.

While the Agency's strong preference is for rapid and active restoration of contaminated media, it is recognized that there may be limited cases where a less aggressive schedule may be appropriate. For example, in situations where ground-water cleanup standards can be achieved through natural attenuation within a reasonable timeframe, and where the likelihood of exposure and potential risks to human health and the environment from exposure to contaminated ground water prior to the attainment of cleanup standards is minimal, a remedy schedule based on natural attenuation could be determined to be the most appropriate solution for a site. Thus, such factors as location, proximity to population, and likelihood for exposure may allow more extended timeframes for remediating ground waters.

Management strategies adopted in the remedy selection decision also may affect the timing of remedies. For example, proposed § 264.526(d) (discussed later in this preamble) would allow the Regional Administrator to require implementation of remedies in discrete phases or incremental segments. Such a phased approach often will affect overall timing of the final cleanup for the facility. As one or more phases of the required remedy are completed, the Regional Administrator may choose to review the results achieved by that phase prior to requiring subsequent stages. For example, if results of an initial treatment process for wastes in a SWMU are successful, the next phase of the remedy might apply that treatment technology to the remainder of the wastes at the facility. Similarly, timing of remedies often may be influenced by the need to address the most important environmental problems first. This might be the case where ground-water contamination has migrated beyond the facility boundary; the initial remedial step would be to require installation of a pump and treat system to stop further migration. (This could also be done as an interim measure prior to final remedy selection; see § 264.540.) Subsequent actions to perform source control, or other remedial action might then be phased in as dictated by their environmental priority, practicability, or other factors.

In addition to these kinds of considerations, adequate time must be allowed in the schedule of the remedy for the owner/operator to decontaminate and remove, close, or dispose of units, equipment, devices, or structures used to implement the remedy. The time needed to perform specific activities associated with this requirement necessarily will be evaluated on a site-specific basis.

5. *Media Cleanup Standards (§ 264.525(d))*— a. *General.* Section 264.525(d)(1)(i)–(iv) outlines the Agency's proposed approach for establishing media cleanup standards (MCS) through the remedy selection process.

Media cleanup standards represent constituent concentrations in ground

water, surface water, soils, and air that remedies must achieve to comply with standards for remedies under § 264.525(a)(2). Media cleanup standards are established at concentrations that ensure protection of human health and the environment, and are set for each medium during the remedy selection process.

The Agency is proposing to set media cleanup standards within the overall context of the remedy selection process. As part of the Corrective Measure Study development process, the Agency will typically provide the owner/operator with target cleanup levels for significant hazardous constituents in each medium of concern when he/she is required to perform a CMS. For carcinogens, these targets will be established within the protective risk range of 1×10^{-4} to 1×10^{-6}, based on site-specific factors, unless another level is deemed necessary to protect environmental receptors. EPA may start the analyses by establishing target cleanup levels at the action level, understanding that action levels are set under conservative assumptions and that the cleanup levels may be modified as appropriate. The remedies analyzed by the owner/operator would generally be designed to meet these targets. After reviewing the permittee's Corrective Measure Study (CMS) using the remedy selection factors given in § 264.525(b), the Agency will select a remedy and set media cleanup standards that must be achieved.

The Regional Administrator will specify media cleanup standards that the remedy must achieve, as necessary to protect human health and the environment. The Regional Administrator may set a media cleanup standard for each constituent for which an action level has been exceeded, as well as other hazardous constituents which the Regional Administrator determines to pose a threat to human health and the environment (*e.g.*, constituents considered under § 264.520(b)). Alternatively, the Regional Administrator may specify media cleanup standards for a subset of hazardous constituents present at the site which are the most toxic, mobile, persistent and difficult to remediate, considering the concentrations at which they are present at the site. This approach may be most appropriate where there are large numbers of hazardous constituents present in a medium. The Regional Administrator may determine in the remedy selection process that some cause exists for not setting a standard for certain constituents, as discussed later in this section of the preamble. Section 264.525(d)(1) describes the specific approach the Agency proposes to follow in setting these levels.

b. *Protectiveness.* A primary goal of corrective action is to achieve cleanup consistent with existing media-specific cleanup standards, or, when such standards do not exist, to achieve protection against risks to human health such that the excess lifetime risk from exposure to a carcinogenic hazardous constituent in soil, air, ground water or surface water does not exceed 10^{-6}. A variety of practical constraints, as described later, can prevent the consistent achievement of that goal. However, the risks to an individual from exposure to a hazardous constituent in contaminated media should not exceed approximately 10^{-4}.

In the corrective action program, remediation decisions must be made at hundreds of diverse sites across the country. Therefore, as a practical matter, the human health goal will typically be established by means of a two-step approach. First, EPA intends to use a lifetime excess cancer risk of 10^{-6} as a point of departure for establishing remediation goals for the risks from hazardous constituents at specific sites. This starting point is generally consistent with historical Agency practice. While it expresses EPA's preference, it is not a strict presumption that the final cleanup will attain that risk level.

The second step involves consideration of a variety of site-specific or remedy specific factors. Such factors will enter into the determination of where within the risk range of 10^{-4} to 10^{-6} the media cleanup standard for a given hazardous constituent will be established.

This means that a risk level of 10^{-6} is used as the starting point for determining the most appropriate risk level that alternatives should be designed to attain. The use of 10^{-6} expresses EPA's preference for remedial actions that result in risks at the more protective end of the risk range, but this does not reflect a presumption that the final remedy should attain such a risk level. The ultimate decision of what level of protection will be appropriate depends on the selected remedy, which is, in turn, based on the criteria listed in proposed § 264.525(b). Because of factors related to exposure, uncertainty, and technical limitations, EPA expects that the entire risk range will be available and utilized at various sites.

In the Agency's view, it is important to have an initial value to which adjustments can be made, particularly since the risk range covers two orders of magnitude. By using 10^{-6} as the point of departure, EPA intends that there be a preference for setting remediation goals at the more protective end of the range, other things being equal. EPA does not believe that this preference will be so strong as to preclude appropriate site-specific factors.

Several examples illustrate how under today's proposal EPA might adjust cleanup standards in light of potential uses. First, ground water that is not a potential source of drinking water would not require remediation to a 10^{-4} to 10^{-6} level (although cleanup to address environmental concerns or to allow other beneficial uses might be required). Second, ground water in a broadly contaminated area would typically be remediated to specific background levels as described below, except where the remediation took place as part of an area-wide cleanup. Finally, contaminated soil at an industrial site might be cleaned up to be sufficiently protective for industrial use but not residential use, as long as there is reasonable certainty that the site would remain industrial.

At the same time, in exceptional circumstances, other site-specific exposure factors may indicate the need to establish a risk goal for a particular contaminant that is more protective than the overall goal of 10^{-6}. These site-specific exposure factors may include: The cumulative effect of multiple contaminants (see following discussion); the potential for human exposure from other pathways at the facility; population sensitivities; potential impacts on environmental receptors; and cross-media impacts.

In summary, EPA has proposed an approach that allows a pragmatic and flexible evaluation of potential remedies at a site while still protecting human health and the environment. This approach emphasizes the overall goal of 10^{-6} as the point of departure (in situations where there are not existing standards, such as MCLs), while allowing site or remedy-specific factors, including reasonably foreseeable future uses, to enter into the evaluation of what is appropriate at a given site. As risks increase above 10^{-6}, they become less desirable, and the risks to individuals should not exceed approximately 10^{-4}.

Proposed § 264.525(d)(1)(iii) lists four considerations which may be used in establishing media cleanup standards. These considerations apply to setting standards for both carcinogens and non-carcinogens. The factors listed above which may be used in determining

cleanup standards for carcinogens within the risk range are intended to be included broadly within these four general considerations.

(1) *Multiple Contaminants.* The first consideration under § 264.525(d)(1)(iii)(A) is multiple contaminants in the medium. In order to ensure that individuals exposed to a medium (*e.g.*, via drinking ground water) will be protected it may be necessary to consider the risks posed by other constituents in that medium before a media cleanup standard for a single constituent can be established. In considering the risks posed by multiple contaminants, the Agency will follow the procedures and principles established in its "Guidelines for the Health Risk Assessment of Chemical Mixtures" (51 FR 34014). The cumulative risk posed by multiple contaminants should not exceed a 1×10^{-4} cancer risk. All other factors being the same, the media cleanup standard for a constituent present in a medium that is contaminated with many other constituents posing significant risks may be established at a lower concentration than if that constituent were the sole contaminant in the medium.

(2) *Environmental Receptors.* Remedies must be protective for the environment as well as human health. Section 264.525(d)(1)(iii)(B) allows the Regional Administrator to consider actual or potential exposure threats to sensitive environmental receptors in establishing media cleanup standards. Standards, criteria, and other health-based levels are often based on protection of human health, since more information is usually available on effects of contaminants on humans (or laboratory animals) than on environmental receptors. Levels set for protection of human health will frequently also be protective of the environment. However, there may be instances where adverse environmental effects may occur at or below levels that are protective of human health. Sensitive ecosystems (*e.g.*, wetlands) or threatened or endangered species or habitats that may be affected by releases of hazardous waste or constituents should be considered in establishing media cleanup standards. The Agency plans to develop guidance on evaluating ecological impacts. Until more substantial guidance is developed, the Agency intends to determine on a case-by-case basis when standards must be established at lower concentrations to protect sensitive ecosystems or environmental receptors. For releases to surface water, Federal Water Quality Criteria may be used as guidance in making this determination.

(3) *Other Exposures.* Generally, the Agency will only consider the contamination contributed by the releases subject to corrective action in setting protective cleanup levels. In unusual situations, however, it may be necessary to consider the presence of other exposures or potential exposures at the site (§ 264.525(d)(1)(iii)(C)). For example, if residents living in close proximity to a facility receive unusually high exposures to lead due to the presence of a lead smelter in their town, it may be necessary to set lower cleanup levels for lead in ground water from a SWMU than would otherwise be necessary. Remedies whose cumulative exposures (*i.e.*, mixtures of chemicals, or multiple pathways of exposure) fall within the risk range for carcinogens (1×10^{-4} to 1×10^{-6}), or meet acceptable levels for non-carcinogens, are considered protective of human health.

Chronic exposure to multiple SWMU-contaminated media, although not likely at most sites, may be considered under proposed § 264.525(d)(1)(iii)(C) in establishing media cleanup standards. An example might be where releases from solid waste management units are present in both ground water and soils (from wind blown particulates) at nearby residences. In this case, it might be appropriate to set cleanup standards for either or both releases at more conservative levels, to account for such cumulative risk concerns. The Agency will examine such cross-media effects, when appropriate, on a case-by-case basis.

(4) *Remedy-Specific Factors.* Section 264.525(d)(1)(iii)(D) allows the Regional Administrator to consider the reliability, effectiveness, practicability, and other relevant factors of the remedy in establishing media cleanup standards. These factors are related to the remedy selection decision factors specified in § 264.525(b). An example of how these factors may be considered by the Agency in establishing media cleanup standards under § 264.525(d) is the following. Suppose that one remedial alternative can theoretically treat constituents in soil to concentrations posing a 1×10^{-6} risk level, but relies on a technology that has not been successfully demonstrated under conditions analogous to those at the site in question, or may be unreliable for other reasons. In this situation, consideration of the long-term reliability and effectiveness of the remedy may result in the selection of another technology that can achieve a 1×10^{-5} risk level, but has been demonstrated to be more reliable.

A variety of exposure-related factors may be considered in establishing media cleanup standards. For example, the potential and pathways for exposure to soils may vary greatly across sites. Media cleanup standards will generally be established for soils to protect individuals from health threats resulting from direct contact to soils. In some cases, however, individual health may be threatened due to the absorption of contaminants in soils by plants and in turn by grazing animals used for human consumption. In these cases, cleanup standards might be set on the basis of protecting health from this exposure pathway.

In establishing media cleanup standards for soil based on exposure via direct contact, the Agency may use the exposure assumptions listed in Appendix D. These exposure assumptions are based on a daily intake of soil through ingestion, of particular concern for young children (see preamble section VI.E.2.f for a detailed discussion of soil exposure assumptions). However, the Agency recognizes that these exposure assumptions would be appropriate only where soil ingestion is plausible. The Agency is considering using different exposure assumptions where different exposure scenarios are likely based on current and projected future land use at/near the site. For example, for sites located in industrial areas that are likely to remain industrial in the foreseeable future, exposure assumptions more appropriate to industrial land use might be used. Thus, the exposure assumptions proposed in Appendix D would apply to sites near areas that are now residential or are reasonably projected to become residential. However, the Agency recognizes that considerable uncertainty is involved in forecasting future land use. The Agency requests comment on the general concept of using current and projected land use to develop likely exposure scenarios for different sites in developing media cleanup standards, and on specific exposure assumptions which are reasonable for these different exposure scenarios.

It should be understood that the Agency does not intend typically to establish cleanup standards per se (*i.e.*, according to § 264.525(d)(1)) for "deep" soils that do not pose a direct contact exposure threat. Such contaminated soils can, however, often be a transfer source of contaminants to other media, such as through leaching of wastes into ground water or surface water. In such

cases the contaminated soils would be dealt with as a source, rather than as a release; that is, the remedy would specify containment, removal or treatment measures for the soils in the same manner as for other sources of releases (*e.g.*, landfills). Such measures would be required as necessary to ensure that media cleanup standards for the affected media are not exceeded.

There are several means of investigating the mobility of contaminants in soil, including a descriptive approach (*i.e*, consideration of constituent and soil properties), and/or the use of mathematical models or leaching tests (for mobility to ground water). The Agency is further evaluating the use of different leach tests, and requests comments on these and other ways of estimating media transfer of soil contaminants.

The Agency recognizes that there are also technical limitations which must be considered, in addition to scientific information about the hazards to human health and the environment, in establishing media cleanup standards. For example, media cleanup standards would not be set lower than detectable levels. Consideration of reliability, effectiveness, practicability, and other factors will generally be considered on a case-by-case basis.

c. *Cleanup Levels and Other Sources of Contamination.* In some cases, solid waste management units will be located in areas contaminated from other sources. For example, a solid waste management unit may lie over an aquifer already contaminated from off-site sources or from other activities at the facility. Similarly, an area of contaminated soil resulting from waste management may lie in a broader area of high naturally occurring contamination. In such cases, section 3004(u) gives EPA authority only to require cleanup of contaminants released from on-site solid waste management units. This authority does not extend to cleanup of releases from production areas (unless the releases are "routine and systematic") or from off-site sources (unless those sources are also at a RCRA facility).

Proposed § 264.525(d)(1)(v) codifies this limitation on section 3004(u) authority by allowing the facility owner/operator to demonstrate that a specific concentration of a constituent in the vicinity of a solid waste management unit does not come from that unit, but rather is attributable to sources other than on-site solid waste management units. If the owner/operator can successfully make this demonstration, EPA would not have the authority under subpart S to require cleanup below that concentration. Proposed § 264.525(d)(1)(v) provides, however, that the Regional Administrator may determine that cleanup to levels below the background concentration is necessary for the protection of human health or the environment in connection with an area-wide cleanup under RCRA or other authorities.

The best example of this limitation on section 3004(u) is found in contaminated ground water. If a specific constituent is found in ground water downgradient of a solid waste management unit at levels exceeding action levels, a CMS would ordinarily be required. However, if the facility owner/operator can demonstrate that the constituent levels did not exceed upgradient "background" levels, and that the upgradient background levels did not come from other solid waste management units on the facility, cleanup would not be required. Similarly, even if the downgradient concentration exceeded upgradient background, cleanup could be required only to the upgradient background levels. This approach to "background" is the same as the one found in subpart F.

In the case of soil, the same principle applies. Section 3004(u) provides EPA the authority only to require owner/operators to clean up contaminated soils to the extent that the contamination derives from releases from a solid waste management unit (or that the area itself is a solid waste management unit). Therefore, cleanup of soils would not be required under subpart S below "background" levels. The best measure of background levels for soils will generally be naturally occurring soils in areas not contaminated by a facility's activities—for example, off-site soils. However, in areas broadly contaminated with constituents not subject to section 3004(u) (for example, from manufacturing or off-site air emissions), an owner/operator may be able to argue successfully that constituents found on a facility below a certain level cannot be attributed to releases from a solid waste management unit.

Today's proposal, however, does not allow RCRA facilities located in contaminated areas to ignore facility contributions to the contamination. The permittee will be required to clean up the contamination caused by his/her waste management activities, unless a determination is made under proposed section 264.525(d)(2) that remediation of the release is not required.

In reviewing the demonstration under § 264.525(d)(1)(v) that a hazardous constituent(s) at a specific concentration in a medium is naturally occurring or is from a source other than a solid waste management unit at the facility, the Regional Administrator would evaluate sampling data developed by the permittee. The Regional Administrator would assess the accuracy of these data and evaluate the statistical procedures used by the permittee to characterize these concentrations. The Regional Administrator may use the performance standards proposed on August 24, 1987, at 40 CFR 264.97 to make this assessment (52 FR 31948).

6. *Determination that Remediation of Release to a Media Cleanup Standard Is Not Required.* Proposed § 264.525(d)(2) identifies three situations in which the Regional Administrator may decide not to require cleanup of a release of hazardous waste or hazardous constituents from a SWMU to a media cleanup standard meeting the conditions of § 264.525(d)(1). These situations are limited to cases where there is no threat of exposure to releases from SWMUs; cases where cleanup to a level meeting the standards of § 264.525(d)(1) will not result in any significant reduction in risk to humans or the environment; or is technically impracticable. In situations where the Regional Administrator determines that cleanup to a level meeting the conditions of § 264.525(d)(1) is technically impracticable, the owner/operator may be required to remediate to levels which are technically practicable and which significantly reduce threats to human health and the environment.

The Agency does not believe that continued further degradation of the environment should be allowed, even in those situations where actual cleanup of releases may not be required. As provided by § 264.525(d)(3), the Regional Administrator may require source control measures to control further releases into the environment, or other measures to protect against exposure to contaminated media. If source control or other measures are not necessary (*e g.*, the source no longer exists), a determination of no further action may be made pursuant to § 264.514.

a. *Areas of Broad Contamination.* In some cases, SWMUs releasing hazardous constituents to the environment will be located in areas that already are significantly contaminated. Where the risks from releases from the SWMUs are trivial compared to the risk already present from overall area-wide contamination, or where remedial measures aimed at the SWMU would not significantly reduce risk, EPA believes that remediation of releases from the SWMU to a cleanup level meeting the standards of § 264.525(d)(1) would not be

necessary or appropriate. In these situations, proposed § 264.525(d)(2)(i) would allow the facility owner/operator to provide the Regional Administrator information demonstrating that such remediation would provide no significant reduction in risk. If the demonstration were successful, the Regional Administrator would determine that remediation to a level meeting the standards of § 264.525(d)(1) was not necessary.

For example, ground water below a leaking SWMU might be heavily contaminated from off-site sources. In this case, removal of the SWMU's contribution to the contamination might have very limited benefit, particularly if that contribution was relatively minor. Similarly, a SWMU such as a surface impoundment might be contributing relatively trivial amounts to area-wide air problems. Control of the SWMU releases might do very little, in such cases, to improve the overall situation in the area, yet (in the case of an operating unit) could be extremely burdensome to the owner/operator.

In such cases, EPA believes that it will make more sense to attack area-wide problems, where they are determined to threaten human health or the environment, on a more comprehensive basis and to focus on the primary sources of release—for example, under RCRA section 7003, CERCLA, or other environmental authorities. The Agency does not believe that it makes sense routinely to require remediation of SWMU releases where they represent only a trivial contribution to an area's problems.

Two points should be stressed here, however. First, the facility owner/operator would be required to take corrective action where it could have a significant effect on reducing risks—for example, as part of an area-wide cleanup strategy. The fact of area-wide contamination would not eliminate EPA's authority to require action in this case. It should be noted that an area-wide cleanup might not be coordinated under a single authority, or within a specific narrow time frame; rather the Regional Administrator may use a variety of authorities to address an area-wide contamination problem over time. Second, EPA in any case would have the authority under proposed § 264.525(d)(3) to require source control to prevent further releases, or to require other measures such as those necessary to protect against exposure to the affected medium.

The Agency has not attempted to define "significant reductions" in risk in this rulemaking, and believes the decision is best made on a case-by-case basis. However, the Agency seeks comment on whether a more specific definition is necessary for the purposes of this rulemaking.

b. *Ground Water.* Under proposed § 264.525(d)(2)(ii), the Regional Administrator may determine that remediation of a hazardous constituent released from a SWMU into ground water to a media cleanup standard meeting the standards of § 264.525(d)(1) is not necessary to protect human health and the environment if: (1) The ground water is not a current or potential source of drinking water; and (2) the ground water is not hydraulically connected with waters to which the hazardous constituents could migrate in concentrations which could increase contamination in the water to concentrations that exceed action levels.

In interpreting whether the aquifer is a current or potential source of drinking water, the Agency will generally use the approach outlined in the Agency's Ground-Water Protection Strategy (August 1984 and as subsequently modified) as guidance. Generally, Class III aquifers will be considered to meet the requirements specified in § 264.525(d)(2)(ii). Class III aquifers are ground waters not considered potential sources of drinking water and are considered to be of limited beneficial use. They are ground waters that are heavily saline, with total dissolved solids (TDS) levels over 10,000 mg/l, or are otherwise contaminated beyond levels that allow cleanup using methods reasonably employed in public water system treatment. These ground waters also must not migrate to Class I or II ground waters or have a discharge to surface water that could cause degradation.

A determination under § 264.525(d)(2)(ii) that remediation to a media cleanup standard is not necessary might be made in situations where a SWMU located in a heavily industrialized area has released to ground water in an aquifer that is surrounded by ground water that has been heavily contaminated from non-SWMU sources. It is not the intention of the Agency to create a ground-water "island of purity" that is unlikely to be used for drinking water or other (non-industrial) beneficial purposes due to its location in an area historically used only for industrial purposes.

Information from the State and/or local government as to the beneficial use of the ground water may also be useful if the ground water has been classified for specific uses. If the ground water is not a potential source of drinking water but has other beneficial uses (*e.g.*, agricultural), then remediation to a media cleanup standard may not be required; however, remediation of the ground water to its beneficial use would be required, as provided under § 264.525(d)(3).

If a determination under § 264.525(d)(2)(ii) is made where the ground water poses a threat to environmental receptors, or poses a threat to human health through an unusual exposure pathway (*e.g.*, ponding or basement seepage from shallow aquifers), remediation to alternative levels could likewise be required pursuant to § 264.525(d)(3). The Agency believes that health-based concerns may be secondary to environmental concerns for releases to Class III ground waters. The need to remediate Class III ground waters will be assessed on a case-by-case basis. In any case, cleanup levels for ground water that is not a potential source of drinking water would be established at other than "drinkable" levels.

In other cases, ground water may not fall into Class III, but, because of its distance from any population or other factors, is unlikely to become a source of drinking water in the foreseeable future. In these cases, remediation might be carried out over an extended period of time, and natural attentuation might play a major role in the remedy. The issue of timing of remedies is discussed in more detail in section VI.F.4 of this preamble.

To demonstrate whether the ground water is hydraulically connected with waters to which the hazardous constituents are migrating, samples of water should be taken within the discharge zone of the ground-water contamination plume. The discharge zone will have to be determined on a site-specific basis, and is dependent on the local hydrogeology. If, upon sampling in the discharge zone, the levels of the constituent of concern are not detectable, a statistical comparison of sampling data does not need to be performed. However, if the discharge levels are detectable, an appropriate statistical procedure should be used to compare the constituent concentration in the discharge zone to the constituent concentration upstream. Guidance on appropriate statistical techniques may be obtained from the proposal on statistical methods for use in the RCRA subpart F program dated August 24, 1987 (proposed as 40 CFR 264.97; see 52 FR 31948). In addition, the Agency expects to develop further guidance on appropriate statistical techniques for making these determinations.

The determination of whether the ground water is hydraulically connected with waters to which the hazardous constituents are likely to migrate in concentrations which exceed action levels will be made on a site-specific basis. The physical and chemical characteristics of the hazardous constituents in ground water, the concentrations of the hazardous constituents in ground water and surface water, and local hydrogeological characteristics should be considered in making this determination.

c. *Technical Impracticability.* Proposed § 264.525(d)(2)(iii) would allow the Regional Administrator to make a determination that remediation of a release to a media cleanup standard meeting the criteria of § 264.525(d)(1) is not required when remediation is technically impracticable. The determination of technical impracticability involves a consideration of both engineering feasibility and reliability. Such a determination may be made, for example, in some cases where the nature of the waste and the hydrogeologic setting would either prevent installation of a ground-water pump and treat system (or other effective cleanup technology), or limit the effectiveness of such a system—*e.g.*, dense, immiscible contaminants in mature Karst formations or in highly fractured bedrock. In other situations a determination under § 264.525(d)(2)(iii) may be made when remediation may be technically possible, but the scale of operations required might be of such a magnitude and complexity that the alternative would be impracticable. The Agency is persuaded that in these and other situations determined to be technically impracticable from a remedial perspective the Regional Administrator should have the authority to not require remediation to media cleanup standards.

Decisions regarding the technical impracticability of achieving media cleanup standards must be made upon careful evaluation of the technical circumstances involved. Facility owner/operators will be required to provide clear and convincing information to support any assertion that such cleanup is technically impracticable.

As suggested in the examples provided above, the Agency believes that the concept of technical impracticability may in some cases also apply to situations in which use of available remedial technologies would create unacceptable risks to workers or surrounding populations, or where cleanup would create unacceptable cross-media impacts. For example, some wastes present a high potential for explosion during excavation. The Agency expects that these types of situations which could lead to a determination of technical impracticability will be quite rare. In the case of cross-media impacts, it is expected that sound techniques and engineering controls—or other remedial alternatives—should be available to effectively minimize such cross-media transfer effects. In the absence of such controls or alternatives, however, remediation of such situations could be determined technically impracticable. The Agency is specifically soliciting comment today on the types of situations which might warrant a determination that remediation of a release to a media cleanup standard meeting the standard of § 264.525(d)(1) is technically impracticable, and would not, therefore, be required.

7. *Demonstration of Compliance With Media Cleanup Standards (§ 264.525(e)).* Section 264.525(e) outlines the Agency's proposed approach to establishing conditions the permittee must fulfill to achieve and demonstrate compliance with the media cleanup standards (or alternative cleanup levels) established during the remedy selection process. Media cleanup standards are contaminant concentration limits set on a constituent-specific basis in each environmental medium in which the permittee is required to remediate a release. (See proposed § 264.525(d).) The site-specific conditions which would be established by the Regional Administrator in the permit under § 264.525(e) include compliance points (where cleanup standards must be achieved) for each medium; sampling, analytical, and statistical methods the owner/operator must use in compliance demonstrations; and the length of time over which the data must show that the media cleanup standard (or alternative cleanup level) has not been exceeded to successfully demonstrate compliance. Each of these requirements is discussed below.

a. *Points of Compliance*—(1) *Ground Water.* Proposed § 264.525(e)(1)(i) would establish that the media cleanup standard would generally be required to be achieved throughout the area of contaminated ground water. This would require that, if the ground water were a drinking water source, the entire plume of contamination would have to be cleaned up to levels acceptable for drinking. EPA is proposing this alternative since exposure to contaminated ground water may potentially occur anywhere within an area of ground-water contamination.

Proposed § 264.525(e)(1)(i) would also provide the Regional Administrator with the discretion to establish a point of compliance for ground water at the boundary of the waste when waste is left in place. Such discretion may be necessary where it is impossible or inappropriate to install monitoring wells at certain locations. For example, in the case of a large landfill, it would usually be unwise to install monitoring wells through the landfill itself. In addition, there will be circumstances where ground water contamination is caused by releases from several distinct units or sources that are in close geographical proximity. In such cases, the most feasible and effective ground-water cleanup strategy may well be to address the problem as a whole, rather than unit by unit, and to draw the plume of contamination back to a point of compliance encompassing the sources of release. Proposed § 264.525(e)(1)(i) therefore explicitly gives the Regional Administrator the authority to set the point of compliance at a line encompassing the original sources of the release.

The Agency stresses that its general goal is to clean up the entire plume of contamination; however, it believes that for very practical reasons it must have the discretion to set an alternative point of compliance for ground water around one or more common sources of release. In determining where to draw the point of compliance in such situations, the Regional Administrator will consider such factors as the proximity of the units, the technical practicabilities of ground-water remediation at that specific site, the vulnerability of the ground water and its possible uses, exposure and likelihood of exposure, and similar considerations.

Further, in situations where there would be little likelihood of exposure due to the remoteness of the site, alternate points of compliance may be considered, provided contamination in the aquifer is controlled from further migration.

Proposed § 264.525(e)(1)(i) provides that the location of ground-water monitoring wells will be specified by the Regional Administrator. The monitoring wells will serve both to monitor the effectiveness of the ground-water remediation program, and to allow the permittee to demonstrate compliance with the media cleanup standards contained in the permit for releases to ground water. Where waste is left in place (either at facility closure or at operating waste management units),

wells will generally be located up to the boundary of the waste (*i.e.*, the unit boundary for operating waste management units).

In establishing the point of compliance for remediation of ground water for today's proposed rule, EPA considered several different alternatives. These include the following:

- Throughout the ground water;
- At the hazardous waste unit boundary;
- At the edge of the existing contamination not to exceed a "buffer" zone inside the facility boundary (*e.g.*, a line describing the point at which it would take at least five years for the contamination to reach the facility boundary if it was left unabated); and
- At the facility boundary.

The alternative considered by the Agency which would have established the point of compliance at the facility boundary would recognize that the likelihood of exposure to ground-water contamination is extremely unlikely on the property of an actively managed facility. Owners and operators of these facilities are required to identify and monitor existing contamination under existing regulations. Where existing contamination would result in exposure (or to any contamination beyond the facility boundary), owner/operators would be required to cleanup this contamination. A point of compliance at the facility boundary would reduce costs in certain cases, while providing protection from adverse exposure. However, the Agency is not proposing this alternative because it may allow the spread of contamination within the facility boundary, and provides a smaller margin of safety than a more stringent point of compliance.

Another alternative would be to set the point of compliance at the edge of the existing contamination, with a "buffer" zone inside the facility boundary. This would prohibit the continued spread of contamination and provide a margin of safety between the facility boundary and any existing contamination. The size of the "buffer" could be determined by the expected mobility of the contamination at that site. For instance, the buffer could be set so that it would take at least five years for contamination to reach the facility boundary. Once identified, contamination entering the buffer zone would be required to undergo corrective action.

EPA requests comments on its proposal and on alternatives to this approach. In any case, if the Agency adopted a point of compliance less stringent than the waste unit boundary, the Regional Administrator would have the discretion to adopt a more stringent point of compliance where warranted by site specific characteristics.

(2) *Air.* Proposed § 264.525(e)(1)(ii) would generally establish the compliance point for hazardous constituents released to air at the location of the most exposed individual. This is intended to be the point(s) where maximum long-term human exposure would occur. It is expected that the point of compliance will typically be outside the facility boundary.

In determining the location of the most exposed individual, the Agency will evaluate the risks where people spend a significant amount of their time on a daily basis rather than address temporary or transient exposures to air emissions (*e.g.*, persons driving by the facility). Thus, cleanup standards might be set at any dwelling, private, or public building, or other public or private area where exposures could occur on a regular or continuous basis if releases continue. This exposure might occur through windblown particles (*e.g.*, from contaminated soil), windblown volatile emissions, or toxic gases migrating from the subsurface into dwellings or other structures. These kinds of potential exposures are evaluated during the facility investigation, and will generally require source controls when they pose an actual or potential threat.

In establishing the location(s) of the most exposed individual(s), EPA will generally not include on-site facility workers, but would include people who live on-site, such as military personnel and families who reside at a Federal facility required to obtain a RCRA permit. Occupational exposures generally are the purview of the Occupational Safety and Health Administration (OSHA). Under OSHA Instruction CPL 2–2.37A of January 29, 1986, OSHA and EPA have agreed that OSHA has the lead role in providing for the safety and health of workers at hazardous waste sites. OSHA has established standards for such exposures in 29 CFR 1910.120. Although EPA has the authority to address occupational exposures, it will generally do so only when the Regional Administrator has cause to believe that inadequate controls are being exercised at the site.

The Agency believes that achieving compliance at the location of actual human exposure will, in most cases, be fully protective. However, the Agency recognizes that some sites may present circumstances in which a different compliance point may be necessary to protect human health and the environment, and has provided the Regional Administrator the flexibility to set a compliance point other than at the most exposed individual. This may particularly apply where exposure of environmental receptors are a concern. For example, the Regional Administrator could specify that a permittee must demonstrate compliance with the cleanup standard at the location of the most exposed environmental receptor if site conditions warranted.

The Agency considered other points of compliance for media cleanup standards for air, including the unit boundary and the facility boundary. The Agency, however, believes that requiring compliance with air cleanup standards at these locations would be unnecessarily stringent, and would provide very little, if any, real additional health or environmental protection. For example, if the point of compliance were set at the unit boundary, releases from the unit would have to be controlled to health-based levels, assuming life-time exposure at that unit. In practical terms, this would require that emissions from units such as surface impoundments would in some cases have to be controlled virtually to zero. The Agency believes that such a standard would be unrealistic. Similarly, the Agency believes that it is unnecessary to set the point of compliance as a routine matter at the facility boundary, since in many, if not most, cases the actual location of exposed populations will be some considerable distance from the site.

As discussed earlier in today's preamble (section VI.E.2.d), action levels for air are determined at the facility boundary in order to ensure that there will be a plan in place to address the contingency of receptors moving close enough to the facility to be adversely affected by air releases from SWMUs. Recognizing that residential patterns may change after a remedy has been selected and implemented, proposed § 264.560(b) would require the facility owner/operator to notify EPA and any individuals who may be exposed to the contaminated air if, at any time, air concentrations exceed the action level beyond the facility boundary. The need for interim measures or additional studies would be assessed at that time.

The approach proposed today for establishing points of compliance for air releases differs somewhat from the proposed approach for other media, such as ground water. This is due to basic differences in the behavior of contaminants in air as compared to ground water. When a release into ground water occurs, typically the resulting ground-water contamination will remain at or near the facility for an

extended period of time. Thus, if the contamination is not remediated, exposure to the contamination (*i.e.*, through drinking water wells) can occur for years thereafter. In contrast, when a release into air occurs, typically it will migrate and disperse relatively rapidly; the time when individuals who are located close to the facility could be exposed to the air toxicants would be a matter of minutes or hours. Thus, an air release that is occurring at any given time does not present a long-term exposure threat to those individuals, as would a ground-water release. Remedies for an air release problem will most often involve stopping or controlling the release itself from continuing to occur; the released chemicals will not actually be "cleaned up" per se.

Although the Agency recognizes that there can be other effects from air releases from solid waste management units (*e.g.*, formation of ozone), the general objective under subpart S is to prevent exposure of nearby individuals to harmful levels of airborne toxicants and carcinogens released from SWMUs (see section VII.C.3 of this preamble for a discussion of the relationship of subpart S to section 3004(n) standards and ozone concerns). Therefore, EPA believes that the proposed approach for setting points of compliance for air releases at the most exposed individual is sensible and realistic. Requiring compliance at the unit boundary (which would follow the approach for ground water) would, in essence, create a standard based on protecting against an implausible exposure scenario.

Proposed § 264.525(e)(1)(ii) also provides that the Regional Administrator will specify locations where air monitoring devices must be installed and what emission modeling or testing, atmospheric dispersion models, or other methods must be used to demonstrate that a permittee has achieved compliance with the media cleanup standards. Methods of demonstrating compliance with air cleanup standards will vary from site to site. At many sites, emission modeling or monitoring air close to the unit may be coupled with air dispersion modeling to estimate concentrations of hazardous constituents at the point of compliance. At other sites, monitoring of air quality at the actual point of compliance may be the most accurate and reliable method of demonstrating compliance with the media cleanup standard. In other cases, corrective measures taken to control the source of the release may eliminate the release to air altogether. In such cases, continued air monitoring or modeling would not generally be required.

(3) *Surface Water.* For surface water, the Agency is proposing the point where releases enter the surface water as the point of compliance. (See § 264.525(e)(1)(iii).) This compliance point will be used for releases to surface water that are ongoing, such as would be the case with contaminated ground water that flows into a surface water body, or non-point runoff which occurs during rainfall events. The Agency believes that achieving compliance with the media cleanup standard for such releases at the point of entry into surface water will be necessary to assure that human health and the environment are protected.

EPA recognizes, however, that in some cases releases from solid waste management units that have occurred in the past have settled and accumulated in surface water sediments. Where actual cleanup of contaminated sediments is determined to be necessary, and cleanup standards have been specified for the sediments in the context of a remedy, proposed § 264.525(e)(1)(iii) would allow the Regional Administrator to designate locations (*i.e.*, areas and depths in the sediments) where compliance with the standards would be required.

The Regional Administrator will specify the locations where surface water must be sampled to monitor the water quality. The Agency recognizes that in some cases (*e.g.*, fast moving streams) there may be some dilution of hazardous constituents before samples can be collected; however, the goal in establishing sampling locations should be to minimize such dilution effects. The Regional Administrator also may specify locations where sediment samples will be collected and analyzed to demonstrate compliance with media cleanup standards. Such considerations will be particularly important where the surface water is an important environment for aquatic life and/or fish or other organisms which are likely to be ingested by a nearby population.

(4) *Soils.* Today's proposal would establish the point of compliance for soils at any point where direct contact exposure to the soils may occur. In most cases this point will be near the surface of soils, because this is where the greatest likelihood exists of human contact.

b. *Methods.* Under § 264.525(e)(2), the Agency proposes that the Regional Administrator specify in the permit the sampling and analytical methods to be used, methods of statistical analyses, if required, and the frequency of sampling or monitoring that may be required to characterize levels of hazardous constituents in all media, and to demonstrate compliance with media cleanup standards (or alternative cleanup levels). In many cases the permittee may have proposed, in the Corrective Measure Study, sampling and other analytic methods that would be appropriate for the remedial alternative as part of an implementability or availability of needed services analysis. In such cases, the Regional Administrator may consider and adopt the proposed methods or other methods that he/she believes to be more appropriate for the environmental problem being addressed or may require the parmittee to use methods he/she believes more reliable.

c. *Timing of Demonstration of Compliance.* The Agency is also proposing under § 264.525(e)(3) that the Regional Administrator specify in the remedy the length of time during which the permittee must demonstrate that concentrations of hazardous constituents have not exceeded specified concentrations in order to achieve compliance with media cleanup standards (or alternative cleanup levels). Under the existing subpart F regulations (§ 264.100), the Agency has required that facility owner/operators remediating ground-water contamination from regulated units continue corrective action until the designated ground-water protection standard has not been exceeded for a period of three years. The Agency has found that, given the variety of hydrogeologic settings of facilities and characteristics of the hazardous constituents, it is difficult to demonstrate reliably that the ground-water protection standard has been achieved by imposing a uniform time for demonstrating compliance.

The Agency is not proposing a specific time period under the subpart S regulations for achieving compliance with cleanup standards before discontinuing corrective action. Instead, the Agency is proposing that the Regional Administrator specify the length of time required to make such a demonstration as appropriate for a given media cleanup standard. As described under proposed § 264.525(e)(3) (i)-(v), the Regional Administrator may consider five factors in setting this timing requirement: (1) The extent and concentration of the release; (2) the behavior characteristics of the hazardous constituents in the affected medium; (3) the accuracy of the monitoring techniques; (4) characteristics of the affected media; and, (5) any seasonal, meteorological, or other environmental variables that may

affect the accuracy of the monitoring results. The Agency believes that consideration of these factors will allow the Regional Administrator to set an appropriate time period for demonstrating compliance with cleanup standards rather than relying on an arbitrary time period for all facilities or all situations at the same facility.

One example of how these considerations might affect a decision on the time a cleanup standard must not be exceeded to demonstrate compliance is given here. The Agency expects that pump and treat systems will be required at many facilities where hazardous wastes or hazardous constituents have migrated to ground water from SWMUs. Experience in the RCRA subpart F program (which addresses releases of hazardous constituents to ground water from regulated units) has shown that continuous operation of a pump and treat system may interfere with the owner/operator's ability to obtain accurate sampling data on constituent concentration levels. Allowing natural restoration of chemical equilibrium in the affected ground water after the pump and treat system is turned off will be necessary to obtain accurate readings of constituent concentrations. If the concentration(s) rise to unacceptable levels after the remedial technology is disconnected, reinitiation of treatment may be required. This process would have to be repeated until acceptable concentration levels are achieved after chemical equilibrium has been reached in the ground water with the treatment system suspended. In such cases it may be necessary to extend the life of the permit until required remedial results have been achieved even when waste management operations have ceased at all active hazardous waste units at the facility.

8. *Conditional Remedies (§ 264.525(f)).* Proposed § 264.525(f) would allow EPA to select a "conditional" remedy. A conditional remedy would allow, at EPA's or the authorized State's discretion, an owner/operator to phase-in a remedy over time, as long as certain conditions are met. EPA recognizes that in some cases completing cleanup will be sufficiently complex and costly to warrant a phased approach to cleanup. Generally, a conditional remedy would allow existing contamination (sometimes at existing levels) to remain within the facility boundary, provided that certain conditions are met. These conditions would include achieving media cleanup standards for any releases that have migrated beyond the facility boundary as soon as practicable, implementing source control measures that will ensure that continued releases are effectively controlled, controlling the further migration of on-site contamination, and providing financial assurance for the ultimate completion of cleanup. The length of time that contamination could be allowed to remain within the facility boundary would be established on a site-specific basis, but could be for as long as the permit remains in effect. Nothing in this provision, of course, would prevent the transfer of property subject to a conditional remedy or other corrective action requirements. For a further discussion of the property transfer issue, see section VI.L.1. of this preamble.

This type of remedial approach may often be appropriate for RCRA facilities, for several reasons. First, permitted RCRA facilities will typically be actively managed properties, with viable owner/operators who can control and restrict access to the property. Typically, exposure at such facilities (which have permits to manage hazardous waste) will be significantly less than at sites where access is unrestricted. For example, actual drinking of ground water under the facility will not generally occur, nor would residences typically be found—as long as the site remained a RCRA permitted facility. Therefore, an appropriate remedy for such a site might be the cleanup of ground water contamination under the site to a level consistent with current exposures. Most RCRA facilities pose significantly lower environmental and human health risks than Superfund sites, and therefore the need to pursue complete cleanup at such facilities will often be less urgent. The use of conditional remedies in appropriate situations complements EPA's overall management goal of addressing the most significant and urgent environmental problems first.

The Agency anticipates that there may be a variety of facility-specific situations under which a conditional remedy would be appropriate, given the nature of the contamination problem at the facility, the capabilities of the owner/operator and other factors such as the level of risk and local public concerns. One example could be a large facility where the contaminant sources and releases are of no current threat, are relatively remote from any potential receptors and can be reliably controlled to prevent further significant degradation, and where the owner/operator can be reasonably expected to maintain an effective, long-term presence at the facility, and thus able to prevent exposure to contaminants during the conditional remedy. EPA recognizes that decisions regarding the appropriateness of conditional remedies could often have important implications for owner/operators, as well as others who may be affected by or who have interest in the long-term environmental conditions of these facilities. Such decisions must be made in careful consideration of relevant, site-specific factors. The Agency specifically requests comment regarding which factors should be considered—and how—in determining the appropriateness of conditional remedies, and whether more formal criteria should be specified in the rule for making such decisions.

Conditional remedies would not be appropriate in situations where EPA or the authorized State lacks reasonable assurance that further environmental degradation will not occur. For example, a conditional remedy would not be appropriate in the case of a fast moving plume or in circumstances where the hydrogeology of the area suggests that additional vertical migration will likely occur despite the implementation of engineered systems or devices to control plume migration. Further, conditional remedies may not be appropriate in situations where a site with ground water contamination is located in close proximity to an environmentally sensitive area. In the case of Federal facilities, conditional remedies may be frequently used because of a combination of factors, including technical limitations on the ability to achieve complete cleanup at facilities which are often extremely large and complex, and the unique financial constraints placed on Federal facilities by the nature of the federal budget process.

The media cleanup standards, source control actions, or other actions required under a conditional remedy may or may not be sufficient for a final remedy. Today's rule recognizes that in some cases, there are technical limitations to achieving complete cleanup of ground water contamination. The proposal recognizes this and allows technical practicability to be factored into the decisionmaking process at a particular site both during the selection of remediation alternatives to be considered and in the final determination of appropriate remedies.

The Agency is particularly interested in comments on this issue from the States, who will ultimately be the implementing agencies for corrective action. Comments are solicited as to whether States support this approach, and whether they believe it reasonably

addresses corrective action problems at facilities operating under State permits.

Section 264.525(f)(2) outlines the seven specific requirements—or conditions—that conditional remedies must comply with. Should any of these conditions not be met during the term of a facility's permit, EPA would either impose new or additional conditions to ensure protection, or require the owner/operator to implement a "final" remedy; *i.e.*, a remedy that fully meets the standards of § 264.525(a). In any event, such a final remedy would ultimately have to be implemented and completed at the facility before termination of the permit.

Under a conditional remedy the owner/operator would be required to achieve media cleanup standards for any releases that have migrated beyond the facility boundary as soon as practicable. In addition, the remedy would have to prevent against any further significant environmental degradation This will typically involve implementing source control measures that will ensure that continued releases (*e.g.*, leachate from a landfill to ground water) are effectively controlled. In order to achieve this standard of protection, substantial treatment of wastes or other containment measures will often be required. In addition to such source control measures, a conditional remedy would also be required to have implemented engineered systems or devices to control the further migration of on-site releases that have already occurred. For example, in the case of a plume of "on-site" contamination (*i.e.*, that had not yet reached the facility boundary), that would continue to migrate and further contaminate the aquifer if left unchecked, the owner/operator would be required to install, at a minimum, some type of ground-water interception system or barrier system that would reliably halt such continued migration.

The source control actions or other actions required under a conditional remedy to prevent further environmental degradation may or may not be sufficient for a final remedy. In some cases, further treatment of wastes or extra engineered features might be required to achieve final remedial goals, consistent with the provisions for remedies under § 264.525 (a) and (b). Likewise, the final remedy would also require compliance with standards for attaining media cleanup standards within the facility boundary, as well as outside the facility.

Under a conditional remedy, any treatment, storage or disposal of wastes required by the remedy would have to be done in accordance with the requirements for management of wastes, as specified in proposed §§ 264.550–264.559.

Today's proposal would require that financial assurance for the remedy be demonstrated. The Agency recognizes that financial assurance may often be very important in ensuring the effectiveness of a conditional remedy, as well as ensuring that final cleanup of the facility will be achieved. Comment is solicited as to the types of financial assurance requirements that should be imposed on conditional remedies.

Since a conditional remedy may allow some contaminated media to remain on the facility during the course of the remedy, a critical feature of the remedy will be ensuring adequate controls to prevent against exposure to such contamination. Controls could be engineered features, such as fences or other physical barriers to restrict access to those areas of the facility. Other non-engineered controls, such as prohibitions against use of on-site ground water for drinking water, could also be required and written into the permit.

EPA solicits comments on the overall concept of conditional remedies, and on the specific conditions and requirements that should be imposed in implementing such remedies.

G. Permit Modification for Selection of Remedy (Section 264.526)

After a preliminary selection of remedy, the Agency will need to revise the permit to incorporate the remedy. This decision (selection of remedy) is a major one in the corrective action process, and the public is entitled to review and comment on the Agency's preliminary decision concerning appropriate remedial activities at the facility. Moreover, this modification provides an opportunity for the public to comment on activities (*e.g.*, the remedial investigations and the CMS) that have led up to the identification and selection of the remedy. As a result, the Agency believes that a major modification of the permit is appropriate. Therefore, the Agency is proposing today in § 264.526(a) to require a major permit modification for the purpose of specifying the selected corrective measures and imposing a schedule of compliance for implementing the remedy.

The regulatory authority for a major permit modification is found in 40 CFR 270.41, as amended by proposed § 270.41(a)(5)(ix) of today's regulation. No changes are being proposed in today's rule for the major modification process, which requires a 45-day notice and comment period, a response to comments, and a public hearing if such a hearing is requested. (Regulations concerning standards for major modifications are located at 40 CFR 270.41; governing procedures are found in 40 CFR part 124.)

Opportunities for public involvement in the corrective action process beyond the modification for selection of remedy are discussed in Section VIII of today's preamble.

Proposed § 264.526(b) specifies seven elements that would be included in the modified permit. The proposed modification and its accompanying statement of basis would provide a framework for the facility owner/operator's and the public's understanding of the remedial activities selected for the facility. First, the proposed modification would have to include a description of the technical features of the remedy necessary to achieve standards for remedies as stated in proposed § 264.525(a). This description must be complete enough to enable a reviewer to determine that it complies with the standards for protectiveness, attainment of media cleanup standards, source control, and waste management practices imposed on all RCRA remedies under § 264.525(a). For instance, if an incinerator is to be constructed to incinerate waste at the facility, the description would generally indicate the type of incinerator proposed, the part 264 performance standards the incinerator would meet, the capacity, *etc.* The remedy description might also need to specify equipment or design features needed to address air releases from the treatment process (*e.g.*, air strippers used to remove volatile organics will generally be required to have a control device such as a carbon adsorption unit). The technical features required should be provided in sufficient detail to allow meaningful comment and to provide the facility owner/operator clear guidance in developing a remedial design. (See discussion of remedy design under section VI.H of today's preamble.) At the same time, EPA believes that many details of the remedy—for example, the operating conditions of the incinerator needed to meet the performance standards or the exact nature of emissions control devices on tanks—might not be available at this stage and would be addressed during approval of the remedy design.

Second, today's proposal would require in § 264.526(b)(2) that media cleanup standards established during remedy selection be included in the modified permit.

Third, proposed § 264.526(b)(3) would require that the modified permit describe conditions the permittee must fulfill to demonstrate compliance with the media cleanup standards established in the remedy selection process under § 264.525(e). For example, the modified permit might require the owner/operator to continue monitoring ground water over a certain period of time after a cleanup standard has been achieved to ensure that the level is not subsequently exceeded. In addition, the permit might specify where ground water would be monitored to measure compliance. Again, specific details on compliance measurements might not be available at remedy selection, but would be addressed through remedy design.

Proposed § 264.526(b)(4) would require the Regional Administrator to specify standards applicable to the management of corrective action wastes in the permit. For example, if the remedy selected specifies use of a temporary tank at the facility for the purpose of waste treatment, any design, operating or performance standard deemed applicable to the operation of the unit would be included in the modified permit by the Regional Administrator.

Fifth, any procedures the permittee must follow to remove, decontaminate, or close units or structures used during remedy implementation would be specified in the permit, as well as any post-closure care required. In the example of the temporary unit used above, the Regional Administrator would specify any closure standards that applied to the temporary unit if the unit was employed to treat hazardous waste.

Proposed § 264.526(b)(6) would require that the modified permit include a schedule for initiating and completing all major technical features and milestones of the remedy.

Finally, the modified permit must include (under § 264.526(b)(7)) any requirements for submission of program reports or other information deemed necessary by the Regional Administrator for the purpose of overseeing remedy implementation and progress. For further discussion of the remedy selection process and components of the decision-making process, see section VI.F of today's preamble.

The Agency believes that these minimum requirements—a description of the remedy's technical features, the cleanup standards that must be achieved, the standards that must be met to demonstrate compliance with the media cleanup standards, standards applicable to the management of corrective action wastes, requirements for removal, decontamination, closure, or post-closure of units or devices employed during remedy implementation, a schedule of compliance, and requirements for reporting—are the most important decisions the modified permit must reflect. Further, they are essential to inform the public fully of the Agency's preliminary decision when the draft permit modification is issued for notice and comment.

In addition to the draft permit modification itself, EPA would also be required to publish, under the permit modification requirements, a statement of basis. This statement, which would be roughly analogous to the Superfund Record of Decision (ROD), would generally describe the basis for EPA's tentative remedy selection or approval and an explanation for the cleanup levels chosen. In addition, EPA would generally make the remedial investigation and the CMS reports available to the public for review. The scope and content of the statements of basis will vary widely, of course, depending on the complexity of the site, the nature of the proposed remedy, the level of public interest, and other relevant factors. In any case, they should be sufficiently detailed for the public and the facility owner/operator to understand and comment on the Agency's tentative decision, and the studies and conclusions leading up to the decision.

The permittee, based on the remedy selected and approved in the final modified permit, will be required under proposed § 264.526(c) to demonstrate financial assurance for completing all required remedial actions specified in the modified permit. The proposed regulations for financial assurance for corrective action (FACA) (51 FR 37854), as discussed in sections IV.D and VII.C.5 of today's preamble, may be used as guidelines by owner/operators for demonstrating the required financial assurance.

Today's proposed § 264.526(c) would require the permittee to demonstrate financial assurance no later than 120 days after the modified permit becomes effective. The Agency believes that this approach is needed since the remedy proposed for the facility in the draft permit modification may be altered in response to comments, and since final detailed remedy design, construction, operation, and maintenance plans which will provide significantly improved cost estimates may not be submitted until after the modified permit is in effect. The Agency chose 120 days to promote consistency with other RCRA financial assurance provisions. Experience in implementing the financial assurance provisions under 40 CFR part 264, subpart H, has shown that 120 days is a reasonable period of time for owners or operators to obtain financial assurance mechanisms. The Agency is specifically soliciting comment on this proposed provision today, and whether 120 days after the final remedy decision is imposed is an appropriate length of time for demonstrating financial assurance.

In addition, proposed § 264.525(c)(2) would allow the Regional Administrator in certain circumstances to release the facility owner/operator's mechanisms establishing financial responsibility for closure and post-closure financial assurance at the time financial assurance for corrective action is established. This amendment is necessary to address situations where corrective action is conducted at regulated units—particularly under the subpart F requirements of § 264.100—and the corrective action schedule of compliance replaces the unit's closure plan. In these cases, it will generally be appropriate for the Regional Administrator to release the facility's financial assurance for closure and post-closure for that unit and allow the facility to apply the mechanisms to financial assurance for corrective action. In addition, at the point where the unit subject to corrective action is effectively closed in accordance with the corrective action schedule of compliance, the Regional Administrator would have the authority under today's proposal to release the owner/operator from third-party liability requirements with respect to that unit. This proposed requirement is consistent with the current provisions of subpart H, which generally provide for the release of third-party liability mechanisms at the time an owner/operator certifies final closure.

Section 264.526(d) provides for phased remedies when considered appropriate by the Regional Administrator. The concept of phased remedies is similar to the designation of "operable units" in CERCLA. Remedial actions at CERCLA sites are often managed in stages called operable units since it is often not feasible, for a variety of reasons, to clean up an entire site in one action. Operable units under CERCLA, or remedial phases under RCRA, may consist of any logically connected set of actions performed sequentially over time, or concurrently at different parts of a site.

One example of a situation where a phased remedial approach would be useful is where treatment of waste is desirable, but where a suitable

treatment technology or adequate treatment capacity is not currently available, although it is expected to be available in the foreseeable future. In such cases, remedial phases might consist initially of limited measures to stabilize the wastes, to be followed by a complete response action when an appropriate treatment technology or capacity becomes available.

Another example of a phased approach would be a requirement to install a ground-water pump and treat system to control further movement of a contaminant plume and begin the cleanup process, prior to specifying the source control measures necessary for the releasing unit(s). Conversely, source controls at a SWMU (or SWMUs) might be required prior to installing the pump and treat system. This kind of approach would be desirable, in many cases, where the disintegration of the engineered structure of the unit(s) is resulting in continued significant releases, but the concentration of the hazardous constituents in the ground water had not reached levels or locations that threaten exposure of humans or sensitive environmental receptors to hazardous constituents at harmful levels in the near term.

Any initial remedy phases should be consistent with, and complementary to, the final remedy that is selected according to § 264.525. The separation of a remedy into phases should in no way impede future cleanups; rather, this approach should often be useful in taking early action to prevent further degradation while other problems are still in a study phase

The Agency has determined that the use of phased remedies for managing corrective action at RCRA facilities is appropriate for many of the same reasons the concept is used at Superfund sites. Using remedial phases at RCRA sites will provide the Agency with more flexibility to require remedies tailored to site-specific considerations. It may be advantageous at a particular RCRA facility to address releases from an individual SWMU or group of SWMUs in stages, focusing first on those releases that pose the greatest risk to human health and the environment, while allowing releases posing less risk to be addressed later.

H. Implementation of Remedy (Sections 264.527–264.531)

1. *Remedy Design (§ 264.527).* After EPA has approved the remedy through the permit modification process, the facility owner/operator will often be required in the modified permit to develop a remedy design. Proposed § 264.527 would require the permittee to prepare detailed construction plans and specifications for implementing the remedy. The schedule for submission of the plans would be included in a schedule of compliance detailed in the permit. This proposed requirement is analogous to the Superfund program's adoption of design standards following the Record of Decision on remedy selection. The Agency would approve or modify the design and incorporate it into the schedule of compliance.

Designs required under § 264.527 must include specifications that demonstrate compliance with the applicable standards for management of hazardous and/or solid wastes during implementation of the remedy, as determined by §§ 264.550 through 264.552 of today's proposal. The information required would be similar to the information typically required about units and processes at facilities in part B applications.

The permittee would also be required under proposed § 264.527 to submit implementation and long-term operation, monitoring, and maintenance plans, a project schedule, and a program to assure quality assurance during the construction phase (if any) of remedy implementation. Such information would include specific dates for major milestones and project completion as well as other significant events.

Proposed § 264.527(b) would require the permittee to implement the remedy according to the plans and schedules approved by the Regional Administrator and in a manner consistent with the objectives specified for the corrective measures during remedy selection. Section 264.527(a) will provide that the approved schedule and specifications become an enforceable part of the permit.

Proposed § 264.527(b)(2) would require the permittee to place a copy of the approved design plans and specifications in the information repository if the facility is required by the Regional Administrator to maintain such a repository under the authority of § 270.36. All permittees would be required, under proposed § 264.527(b)(3), to provide written notice of approval of remedy design to those persons on the facility mailing list. This notice would provide individuals on the facility mailing list a notice of the location of the approved remedy design and specifications and provide information on the availability of those documents for public review.

Additionally, proposed § 264.527(b)(4) would require the permittee to amend the corrective action cost estimate and adjust the amount of financial assurance demonstrated, if necessary, after approval of the remedy construction plans and specifications. These plans will provide improved cost estimates compared to those developed during modification of the permit. Therefore, to ensure that adequate amounts of funds are available to cover corrective action costs, the amount of financial assurance demonstrated must reflect the revised cost estimate derived from the final construction plans and specifications.

2. *Progress Reports (§ 264.528).* Since implementation of remedies will often take place over extended time periods, § 264.528 of today's proposal provides that the Regional Administrator may require periodic progress reports from the permittee. These progress reports may contain information on construction, operation, and maintenance of the selected remedy. The Regional Administrator would specify the frequency and format of such reports in the permit schedule of compliance, when s/he approved the remedy design. Such reports would be designed to summarize the progress of remedy implementation, discuss changes or problems with the remedy, and provide data obtained during remedy implementation.

The timing and content of progress reports will vary from site to site. Factors that may be used by the Regional Administrator in determining what progress reports are necessary for a given site include complexity of the waste mixture, complexity of the remedy, hydrogeologic and climatic conditions, and potential for exposure. These factors are qualitative measures of the risks posed by contamination at a specific site. The Agency intends to monitor closely those sites at which the risk to human health and the environment is greatest. For example, the frequency of progress reports may be greater at sites where there are complex remedies and/or a high potential for exposure to contamination than at sites where remedies are simple and the potential for exposure is low.

Reports required by the Regional Administrator will be tailored to meet site-specific conditions. Where necessary, progress reports may be required to contain detailed information on remedy implementation. In other cases, such as where the remedy is simple, the progress reports may be less detailed.

The Agency considered several alternatives to today's proposal for allowing discretion to the Regional Administrator in requiring progress reports. These included: Not requiring progress reports from any facility; requiring submission of reports on a

routine basis from all facilities implementing remedies; and requiring development of progress reports which would be kept on file at the facility and available for inspection by EPA. The Agency has tentatively rejected these alternatives, because it believes that the variation among sites will require that reporting (including frequency of reporting) be tailored to the specific site.

All raw data and information developed or submitted during remedy implementation (including design, laboratory reports, *etc.*) must be maintained in the operating record of the facility as long as the facility operates under a RCRA permit, including any reissued permit following initiation of corrective action. This requirement is proposed in § 264.528(b) and is necessary to ensure that periodic reviews at the site will have all data available for inspection.

3. *Review of Remedy Implementation (§ 264.529).* Under the regulatory authority proposed in § 264.529, EPA would review remediation activities on a periodic basis. Such reviews will take place throughout the design, construction, operation, and maintenance of the corrective measure(s). The Agency's review of remediation activities will consist both of a review of progress reports submitted by the permittee and, where necessary, on-site inspections and oversight of remedy design, construction, operation, and maintenance. The Agency intends to focus on-site inspections on areas identified for oversight in progress reports or prior Agency reviews.

The Agency believes that the authority to perform close reviews of remediation activities is an essential element of the corrective action program. Experience in the HSWA corrective action program and the CERCLA remedial program has demonstrated that timely and close oversight of cleanup activities is essential in many cases to ensure that remedies are effectively implemented. For example, oversight of the remedy may indicate that the technology originally called for in the design plans is not in fact successfully meeting the media cleanup standards. Proposed § 264.529 provides EPA with the authority to take steps to remedy such implementation problems.

The Agency intends to work closely with permittees by overseeing remedy implementation and addressing problems in a timely manner. Where problems arise during implementation of the selected remedy, the Agency will attempt to settle such problems informally with permittees to ensure prompt completion of the remedy in a manner which adequately protects human health and the environment. In some cases, the Agency may determine that an enforcement action under section 3008(a) is necessary to compel compliance with the permit. In other cases, where no resolution of disagreements appears possible, or where the contemplated change is one that warrants additional public participation, proposed § 264.529 would allow the Regional Administrator to initiate a permit modification using the procedures laid out in 40 CFR 270.41 or those proposed today under § 270.34(c). If the Regional Administrator believes that a disagreement over a proposed provision is suited to alternative dispute resolution, she/he may seek resolution using the procedures described in section VI.L.7 of today's preamble. A more detailed discussion of circumstances which may require permit modifications may be found in section VI.L of today's preamble.

The Agency also considered, but rejected, requiring a specific number of facility inspections during remedy implementation. Because the variety of problems to be addressed under today's proposed regulation is extensive (as is the range of proven reliability of technologies which may be employed to address the problems, complexity of the site, and potential for exposure), the Agency has concluded that frequency of site reviews must be a case-by-case decision.

4. *Completion of Remedies (§ 264.530).* Proposed § 264.530 would establish criteria by which the owner/operator would demonstrate the completion of remedies.

Section 264.530 would specify that corrective measures required in the permit are complete when three conditions have been met. First, under proposed § 264.530(a)(1), the requirements for compliance with all media cleanup standards (or alternative cleanup levels) as specified in the permit would have to be met. For example, if both a ground-water and soil cleanup standard are specified in the permit, the cleanup standard must have been achieved for each medium before the facility meets the criterion of compliance with all media cleanup standards. In addition, after initially achieving the cleanup standard the permittee generally would be required to monitor the medium for an additional period of time to ensure that the remedy was in fact complete and that contaminant levels did not subsequently exceed the cleanup standards under the provisions of proposed § 264.525(e). This requirement is discussed in section VI.F.7.c of this preamble.

Second, under proposed § 264.530(a)(2), all actions required in the permit to address the source or sources of contamination must have been satisfied. This provision is designed to prevent continued contamination in the future. One type of source control which may be required is construction of a structurally sound cap on an inactive SWMU to prevent future contaminant migration to surface water which could potentially result from rainfall runoff from an uncovered SWMU.

Third, under proposed § 264.530(a)(3), the permittee would have to comply with procedures specified in the permit for removal or decontamination of units, equipment, devices, or structures required to implement the remedy. In other words, temporary structures or equipment necessary to conduct the remedy must be removed or decontaminated to complete the remedy. For example, liners or the contents of temporary waste piles would have to be disposed of according to appropriate waste management practices. Units employed during the remedial activities to manage hazardous waste will be required to meet the closure performance standards for the appropriate type of unit. (Closure would not be required, of course, if the owner/operator wished to continue use of the unit to manage waste and continued use was allowed in the permit.)

Proposed § 264.530(b) would establish procedures that permittees must follow to document that corrective measures have been completed in accordance with the requirements of § 264.530(a). Upon completion of the remedy, the permittee would be required to submit a written certification to the Regional Administrator by registered mail stating that the remedy has been completed in accordance with the requirements of the permit. The certification must be signed by the permittee and by an independent professional skilled in the appropriate technical discipline. The Agency believes that a certification by an independent professional is necessary because the permittee may lack the expertise and the incentive to judge adequately the compliance of the remedy with the applicable requirements specified in the permit.

The Agency is not proposing to specify the types of independent professionals who must certify completion of the remedy. The Agency proposes to require certification by an appropriate independent professional in recognition that different certifications

may require different skills (*e.g.*, an engineer may be appropriate in some cases whereas a hydrogeologist might be more appropriate in another).

The Agency considered, but is not proposing, a requirement that all supporting documentation be submitted along with the certificate of completion. Since, in most cases, the Regional Administrator would have required submission of periodic progress reports on remedial activities and since the supporting information must be available at the facility for inspection, the Agency believes that submission of all documentation will not be necessary.

Upon receipt of the certificate of completion, the Regional Administrator would determine whether the remedy has been completed in accordance with the requirements of proposed § 264.530. If the Regional Administrator determines that the applicable requirements for remedy completion established in the permit schedule of compliance have not been met, the Regional Administrator would generally notify the permittee of such a decision and of the steps that must be taken to complete the remedy. After such steps have been taken, the permittee should submit a new certificate of completion in accordance with the requirements of this section.

When the Regional Administrator has determined that the remedy is complete, the permittee will be released from the financial assurance requirements for corrective action under §§ 264.500(c) and 264.526(c).

The Agency is proposing, in § 264.530(c)(1), that the permit will be modified according to the Class III procedures for owner/operator-initiated modifications (§ 270.42), to terminate the permit schedule of compliance when all required corrective action is determined to be complete.

Generally, remedies required under subpart S will be considered complete only when all measures at a facility have been completed. Thus, if separate remedies are implemented for several units at a facility, all remedies must be completed before the Agency considers corrective action at the facility to be complete. For example, if a remedy for releases from two units at a facility is complete, but a different remedy for releases from three other units at the facility is incomplete, the Agency will not consider corrective action for the facility complete.

In some situations, however (*e.g.*, where essentially separate remedial activities addressing releases widely separated in location and affecting different environmental media), it may be possible for the owner/operator to demonstrate that some portion of the remediation required has been successfully completed though other required actions are still underway. This will usually be the case where the remedy chosen for a facility is a phased remedy divided under proposed § 264.526(d). In such cases, the Regional Administrator may allow submission of certifications of partial completion of remedies by the owner/operator. Certifications of partial completion will be handled in a manner analogous to certifications of partial closure and are provided today in proposed § 264.530(d), which includes a provision for partial release of the financial assurance mechanism as well. However, until all corrective action activities required in the permit are complete the owner/operator must continue to comply with all implementation and reporting requirements specified in the permit which have not been specifically satisfied to date.

5. *Determination of Technical Impracticability (§ 264.531).* This proposed section is intended to address situations where a performance requirement set for a selected remedy in the permit cannot technically be achieved after reasonable efforts to do so have been made by the permittee. An example of such a situation might be where hydrogeologic and geochemical factors that were not fully understood at the time of remedy selection prevent the attainment of a media cleanup standard for ground water

EPA will require owner/operators to put forth active efforts to achieve all requirements of the selected remedy. If the selected remedial technology proves not to be capable of attaining a media cleanup standard or other remedy requirement (such as a source control measure), EPA may require the owner/operator to examine alternative technologies that are available and that may be able to achieve the requirement. If such an alternative technology is identified, and is compatible with the overall remedial objectives (*e.g.*, would not create unacceptable cross-media impacts), the permit will be modified to require implementation of the technology. (See discussion of review of remedy implementation under § 264.529.)

EPA will examine, on a case-by-case basis, the owner/operator's efforts to achieve remedy requirements. Comments are solicited as to what objective factors may be examined in making these judgments.

If the Regional Administrator determines that attainment of a remedy requirement is not technically practicable and no practicable alternative technologies are available, it will be necessary to determine what alternative, or additional, requirements, if any, will be needed to ensure that the remedy adequately protects human health and the environment. If, for example, attainment of a cleanup standard for ground water is determined to be technically impracticable, additional measures (*e.g.*, facility access controls) to control long-term exposure to the ground water may be needed if the ground water is not drinkable. Likewise, if treatment of contaminated soils to specified levels were not technically feasible, the soils may need to be covered or disposed of in a unit with upgraded engineering controls for release prevention. In some cases, the Regional Administrator may determine that no alternative or additional requirements are necessary. For example, the total risk from the site may be acceptable, although some carcinogenic constituents may exceed the desired risk level established by the media cleanup standard.

If attainment of a media cleanup standard is determined to be technically impracticable, it is not the intention of EPA to modify the standard to a less stringent level. Media cleanup standards represent levels that are determined to be protective of human health and the environment; a finding that such standards cannot be met does not affect the desirability of achieving those levels. A determination of technical impracticability thus represents a finding that remediation to protective levels cannot be accomplished from a technical standpoint, and that the owner/operator will not be required to continue to expend resources to meet the standard.

A determination of technical impracticability does not relieve the owner/operator of his ultimate responsibility to achieve the specific remedy requirement. If such a determination is made, but subsequent advances in remedial technology or changes in site conditions make achievement of the requirement technically practicable, EPA reserves the authority to modify the permit (if the permit is still in force) or take other appropriate action to require attainment of the standard or other requirement.

I. Interim Measures (Section 264.540)

This section would establish the Agency's regulatory authority to compel permittees to conduct interim measures. As part of its overall strategy for implementing the corrective action program, EPA intends to place strong emphasis on using this interim measure

authority to expeditiously initiate cleanup actions, especially in situations where it is clear that such a measure will be a necessary component of the final remedy. The need for interim measures should be assessed early in the corrective action process, as well as in subsequent phases as more information on releases and potential remedial solutions become known.

Under proposed § 264.540(a), the Agency could require the permittee to conduct interim measures at a facility whenever the Agency determines that a release from a SWMU (or, based on site-specific circumstances, a threatened release) poses a threat to human health or the environment. Interim measures will be specified in the schedule of compliance, and will generally serve to mitigate actual threats and prevent imminent threats from being realized while a long-term comprehensive response can be developed.

Interim measures may encompass a broad range of possible actions. In some cases, such measures will involve control of the source of the release, while in other cases, control of the contaminated medium, or other exposure controls, will be necessary. For example, a permittee responsible for contamination of a public drinking water supply may be required to make available an alternate supply of drinking water as an interim measure, until the contaminated surface or ground water can be remediated. A permittee could also be required, as an interim measure, to initiate a ground-water pump and treat system to control the further migration of contamination, if it were determined that further significant degradation of the aquifer would occur while options for the ultimate remedy for the facility are being studied. Other examples of interim measures include fencing off an area of contaminated soils to prevent public access, or overpacking of drums that are in poor condition to prevent possible leakage.

The Regional Administrator will consider the immediacy and magnitude of the threat to human health or the environment as primary factors in determining whether an interim measure(s) is required. Proposed § 264.540(b)(1)–(9) lists factors which the Regional Administrator may consider in determining whether an interim measure is required. These factors include: (1) The time required to develop and implement a final remedy; (2) actual or potential exposures of nearby populations or animals to hazardous constituents; (3) actual or potential contamination of drinking water supplies or sensitive ecosystems; (4) further degradation of the medium which may occur if remedial action is not initiated expeditiously; (5) presence of hazardous wastes or hazardous constituents in drums, barrels, or other bulk storage containers that may pose a threat of release; (6) presence of high levels of hazardous constituents in soils at or near the surface which may migrate; (7) weather conditions which may cause releases of hazardous constituents or migration of existing contamination; (8) risks of fire or explosion or the potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and, finally, (9) any other situations that may pose threats to human health or the environment. For example, consideration of high levels of hazardous constituents in surficial soils at a facility located adjacent to a surface water body (see § 264.540(b)(6)) used as a drinking water source may lead the Regional Administrator to conclude that immediate excavation of the contaminated soil or other containment measures are needed to prevent a threat to the surface water which could result from runoff after a heavy rain.

Proposed § 264.540(c) would require the Regional Administrator to notify the permittee in writing of required interim measures, and would require the permittee to initiate the interim measures as soon as practicable. In some situations, such as an actual emergency situation, the Regional Administrator might require the interim measure to be initiated immediately, with little if any formal procedures. More typically, however, the Regional Administrator will initiate a permit modification under either § 270.34 or § 270.41 as appropriate, to specify the required interim measure. Section 270.41 modification might be used, for example, if installation of an extensive ground-water pump and treat system were required. This would be appropriate since such a requirement would be resource-intensive for the owner/operator, would likely serve as the basis for a final remedial action at the facility during a later decision-making process conducted by the Agency, and would indicate a serious concern for concentrations of contaminants in the ground water about which the public should receive the extensive notice and comment opportunities provided by that procedure. Conversely, if the interim measure were designed to address problems of lesser magnitude, the procedural requirements of the permit modification proposed today in § 270.34 may be sufficient.

The proposed regulations in this subsection are similar to those in the removal section of the NCP under CERCLA (see 40 CFR 300.415). In many cases, the Agency expects that needed interim measures will be undertaken voluntarily by the owner/operator without the need for permit modification. In some cases, however, the use of CERCLA removal authorities or Section 7003 of RCRA may be appropriate; as in a situation where the permittee is unwilling to respond quickly to an exposure problem that merits an immediate response; and where a permit modification to compel the response would cause unacceptable delay. For example, this would be the case if high levels of constituents had migrated from the facility and were affecting nearby drinking water supplies and the owner/operator was unwilling to voluntarily make available an alternate source of drinking water to affected populations. The Agency would first act to protect against potential exposures, then act to compel the permittee to comply with other conditions necessary to protect human health and the environment.

Section 264.540(d) indicates the Agency's intent for interim measures taken at a facility to be consistent with any further remedy that will be implemented at the facility after full characterizations of the contamination under the RFI and selection of the final remedy under proposed § 264.525.

The Agency has developed guidance for imposing interim measures under RCRA. Interim Final RCRA Corrective Action Interim Measures, OSWER Directive 9902.4, May, 1988. Contact: Tracy Back (202) 382–3122.

As the discussion above indicates, interim measures are one type of corrective measure which may be required under the authority of section 3004(u) of RCRA. In considering the statutory requirements for a demonstration of financial assurance by owner/operators for taking corrective action, the Agency evaluated several approaches to financial assurance for interim measures.

In many cases, a requirement to demonstrate financial assurance for interim measures may serve no useful purpose and may actually contribute to delays in facility cleanups. For example, where an interim measure is imposed requiring removal of barrels containing hazardous constituents (similar to a removal action under CERCLA) it would be unnecessary to require a demonstration of financial assurance, since compliance would be relatively inexpensive and could be quickly completed.

In other cases, interim measures could be relatively extensive and could be conducted over a period of several years. This could be the case, for example, where a well system must be installed to stop a plume of contamination from further migration at a highly complex site until a final remedy could be implemented, or where a soil treatment system is installed which would require several years to achieve required contaminant concentration levels. In these kinds of cases, a demonstration of financial assurance for interim measures will not substantially impact the implementation of the interim measures and would promote the Congressional intent of ensuring that adequate funds are available to complete the required actions. In such a case, requiring a demonstration of financial assurance for an interim measure within 120 days of the imposition of the interim measure may be reasonable.

Another option for addressing the question of financial assurance that was considered by the Agency, but was rejected, would have interpreted the requirement for financial assurance to apply only to final remedial actions required by the Agency. Still another possible reading of the statute might lead to the conclusion that imposition of any type of corrective action would require a full demonstration of financial assurance. The Agency has concluded that the objective of the corrective action provisions, which is to remediate environmental problems in an expeditious manner and the financial assurance objective of ensuring adequate funding for remediation, should be balanced on a case-by-case basis for interim measures. The Agency specifically solicits comments on this approach.

J. Management of Wastes (Sections 264.550–264.552)

1. *Overview.* In the course of corrective action, facility owner/operators will manage a wide range of wastes, including both wastes that meet the RCRA definition of hazardous waste and those that do not. Sections 264.550–264.552 of the proposed regulations would establish standards for the management of these wastes during corrective action. Under these sections, wastes that meet the RCRA regulatory definition of hazardous waste must be managed in accordance with the applicable standards of 40 CFR parts 262, 264, 268, and 269, with certain exceptions (see following discussion of temporary units). In addition, statutory land disposal restrictions will be triggered when restricted hazardous wastes are placed into a land disposal unit, and minimum technology requirements will apply to new or replacement units and lateral expansions of existing units. Finally, non-hazardous solid waste must be handled according to applicable subtitle D standards, except where the Regional Administrator determines that additional controls are necessary to protect human health and the environment.

In general, owner/operators will also have to comply with all other applicable Federal, state, and local regulations. The basic responsibility for complying with any applicable permits and requirements will be the owner/operator's; however, the EPA or State permit writer will consider these requirements in selecting a remedy and will take steps to ensure that remedies selected are consistent with other Federal or State standards.

2. *General Performance Standard (§ 264.550).* Section 264.550 proposes a general performance standard for management of all wastes during corrective action. Under this standard, the Regional Administrator may impose any requirements on the management of corrective action waste that s/he deems necessary to protect human health and the environment. This standard applies both to solid and to hazardous waste managed as part of RCRA corrective action requirements. This general standard derives from the statutory mandate of section 3004(u) to require corrective action; as a corollary to this authority, the Agency is authorized to ensure that actions taken to implement corrective actions do not themselves pose unacceptable threats. EPA is therefore obligated to impose controls on management of wastes, pursuant to remedial activities, as necessary to protect human health and the environment.

EPA believes this general performance standard is necessary because current regulations governing treatment, storage, and disposal of solid or hazardous wastes may not be adequate in all situations involving corrective action. In particular, many cleanup activities that do not involve treatment, storage, or disposal of hazardous waste require special care to prevent release of hazardous constituents. For example, dredging of surface impoundments or excavation of soils containing volatile organics can lead to significant releases of hazardous constituents to the air, potentially endangering workers or neighboring populations. When such situations have arisen in Superfund actions, EPA has imposed controls on cleanup activities, such as prohibiting cleanup when the wind was blowing in a certain direction or requiring air monitoring and the cessation of activity when a specific level was exceeded. Requirements to control air emissions from RCRA permitted units, when promulgated, may not be strictly applicable to certain SWMUs. Proposed § 264.550 would give EPA the authority to impose such conditions, or other controls, as part of correction action under section 3004(u).

Section 264.550 proposes general performance standards for management of all wastes during corrective action. Under proposed § 264.550(a), wastes must be managed in a way that is protective of human health and the environment and that complies with applicable Federal, State, and local regulations. Facility owner/operators will be required to comply with all applicable regulations in carrying out corrective action; proposed § 264.550(a)(2) codifies this requirement as a reminder to owner/operators that RCRA corrective action permit conditions do not absolve them of other legal responsibilities.

However, there may be cases where a State or local law stands as an obstacle to the accomplishment of Congress' purpose in enacting section 3004(u), or directly conflicts with regulations developed under section 3004(u). EPA believes that in such rare cases where State or local laws could be said to frustrate the purposes of the statute, a court might find such laws to be preempted by RCRA. See, *e.g. ENSCO, Inc.* vs. *Dumas*, 807 F.2d.745 (8th Cir. 1986). Alternatively, in the case of a State requirement that could jeopardize implementation of a remedy, it may be possible for the State to waive that requirement.

3. *Management of Hazardous Wastes (§ 264.551(a)).* In many cases, waste subject to corrective action will meet the regulatory definition of RCRA hazardous waste. A facility owner/operator would be handling hazardous waste at a SWMU, for example, if it contains listed wastes disposed of before November 19, 1980, or the wastes fail the characteristic test. Also, releases from hazardous waste management units exempted from permitting requirements, such as wastewater treatment units or 90-day accumulation tanks, may be hazardous waste even though the units in which they are managed are exempt from permitting. Similarly, soils and ground water contaminated with releases of listed hazardous waste will generally be subject to subtitle C standards. Under

current rules, a contaminated medium that exhibits any of the characteristics identified in subpart C of part 261 or contains a listed hazardous waste, including (with certain exceptions) any constituent generated by a listed waste (*e.g.*, leachate), must be managed as hazardous waste until it no longer contains any of the waste, is delisted, or for characteristic wastes, until it no longer exhibits any of the characteristics. Where wastes meeting the RCRA regulatory definition of "hazardous" are treated, stored, or disposed of during corrective action, they will be subject (with certain exceptions; see discussion below) to the standards of 40 CFR parts 262, 264, and 268 (or, in the case of air emissions, part 269 or the Clean Air Act). Proposed § 264.551(a) clarifies this point.

Proposed § 264.551(a), however, would also allow the Regional Administrator discretion to waive most procedural requirements associated with closure of hazardous waste management units (subpart G of 40 CFR part 264) for units created for the purpose of managing corrective action wastes. Procedural requirements that may be waived include submission and approval of closure plans, and specific time frames for submission and review of the plan and other activities associated with closure.

EPA believes that the process for developing and reviewing remedies as outlined in today's proposal, coupled with the procedures that will be followed in modifying permits to specify remedies, provides an equivalent and equally effective means of ensuring that the applicable closure and post-closure technical requirements are required of units that are created and operated for the purpose of implementing remedies. Were the subpart G procedural requirements to remain applicable to those units, the result would be to have two parallel, and essentially redundant (and sometimes inconsistent), processes for establishing technical requirements for remedial units. It should be understood, however, that the general performance standard for closure (see § 264 111), and the unit-specific technical closure standards could not be waived, and will be applied to new units created during the remedy.

Waiver of the subpart G procedures is at the discretion of the Regional Administrator. In some situations it would be appropriate to require the owner/operator to follow the subpart G process for closure/post-closure for a unit used in remediation activities. An example could be where a unit (such as a tank) is constructed and operated for the purpose of implementing the remedy for the facility, but the owner/operator subsequently chooses to continue to use the tank after the remedial activity is completed, for other hazardous waste management purposes. Since the tank would no longer be part of the remedy, the owner/operator would have the obligation to follow the normal administrative procedures for closure of the tank.

a. *Temporary Units (§ 264.551(b)).* EPA is concerned that some technical requirements for units prescribed in the current 40 CFR part 264 regulations may be inappropriate for management of hazardous waste during corrective action, and may in fact discourage prompt cleanup. The Superfund program has frequently found it necessary to build temporary units to store wastes for short periods of time before treatment or final disposal. In many cases, the Agency has found that full RCRA 40 CFR part 264 regulatory standards may not be necessary for such short-term storage taking place during the course of remedy implementation, and that full compliance with these standards could in fact delay cleanup. For example, for some remedies it will be necessary to excavate soils contaminated with hazardous wastes and store them in a pile for a short time (*e.g.*, a few days or weeks), prior to treatment. Under current RCRA regulations, the pile would have to comply with the part 264 requirements applicable to waste piles, such as minimum technology liner requirements, ground-water monitoring, and other operating and maintenance requirements. As another example, tanks will often be used for short-term storage of hazardous wastes in the course of a remedy; such tanks would accordingly be required to have full secondary containment. EPA believes that in many cases applying these stringent part 264 standards, which are designed to ensure adequate protection for long-term management of hazardous wastes in such units, would be unnecessary from a technical standpoint, as well as counterproductive in many cases. In the above example of the temporary pile, a single liner might be adequate, with some limited monitoring, depending on the nature of the wastes, the environmental setting, and other factors. Requiring the pile to meet full part 264 standards would result in delays in constructing the pile, and increased expense to the owner/operator which could otherwise be directed to other remedial work, without appreciably increased environmental benefits. Note that adjustments to minimum technology standards applicable to the pile would have to be done in accordance with certain statutory requirements (see following discussion).

Proposed § 264.551(b)(1) provides EPA authority to modify 40 CFR part 264 regulatory design, operating, or closure standards for temporary units, as long as alternative standards that are protective of human health and the environment and comply with statutory requirements are imposed. In the case of temporary tanks, for example, the Regional Administrator would be making a determination generally analogous to risk-based variances from secondary containment requirements for tanks in §§ 264.193(g) and 265.193(g).

The Agency believes that this approach to temporary units; that is, adjusting design and operating standards for such units on a site-specific basis, is sensible and practical within the context of the corrective action process. The process of examining and selecting corrective action remedies will involve a high degree of Agency oversight, and remedial decisions will be made in consideration of a number of site-specific factors. Since remedies can be tailored to site-specific conditions, a degree of protection of human health and the environment equivalent to the generic national standards can be achieved, while facilitating the timeliness and implementability of the remedies.

This provision for temporary units could apply to any unit used during corrective action, except incinerators and non-tank thermal treatment units (*e.g.*, pyrolysis units). EPA believes that modifications of 40 CFR part 264 design standards should not be allowed for incinerators and non-tank thermal treatment units because of the complexity of these devices and the high level of public concern about their operation. Furthermore, the Regional Administrator would be authorized to modify only technical standards for temporary units under this authority, not performance standards. For example, secondary containment for tanks might be modified in specific situations; however, basic performance standards relating to releases to the environment—such as performance standards in the 40 CFR part 269 air emissions regulations—could not be modified.

It should be understood that under this provision for temporary units, only requirements applied solely by regulation, and not directly by statute, may be modified. Statutory requirements may be modified only to the extent authorized by statute.

Two statutory requirements in particular may often be applicable to temporary units, specifically, the land disposal restriction requirements of RCRA section 3004(d)-(g) and 40 CFR part 268, and the minimum technology requirements of section 3004(o). However, the Agency expects that temporary units may often be able to meet the statutory provisions for waivers from these requirements under section 3004(g)(5) (for the land disposal restrictions), and section 3004(o)(2) (for minimum technology requirements). The major permit modification associated with the selection of remedy would provide the public notice and comment usually associated with a petition submitted by the owner/operator (a waiver of land disposal restriction requirements would, however, also be published in the **Federal Register**, as required by RCRA section 3004(i)). In addition, the statement of basis associated with the permit modification will summarize, and the supporting Administrative Record will provide, the documentation of the Agency's finding that the statutory requirements for granting the waiver have been met.

The Agency believes that waivers from these statutory requirements will often be appropriate for temporary units, and in some cases may also be essential to the prompt implementation of corrective action. For example, in many cases it will be necessary to place wastes temporarily on the land beside a hazardous waste unit when that unit is being excavated; this placement would be an interim step before incineration or other treatment. It has been EPA's experience in Superfund that full compliance with minimum technology requirements (*i.e.*, double liners, leachate collection systems, and ground-water monitoring) in such cases may often be unnecessarily restrictive and could delay cleanup. Instead, in cases of short-term storage, something less than minimum technology—for example, a single rather than double liner— could frequently be fully protective of human health and the environment. The Regional Administrator could require design standards less stringent than the full minimum technology requirements, so long as they would ensure (consistent with the waiver provision of section 3004(o)(2)) that the controls will be of an equivalent level of protection for the life of the unit.

Similarly, the application of land disposal restrictions to the temporary placement of waste could impede corrective action in some cases. If the restrictions applied it would be impossible to store wastes on the ground while they awaited treatment, because placement on the ground could not occur before the treatment. The only alternative would be to leave the waste untreated in place, or to store it in tanks or containers, which in some cases might cause a delay and add to the complexity of the remedy without serving public health or the environment. In such cases, it would be necessary to demonstrate that the petition standards for the land disposal ban have been met, so that such temporary placement on the land would be allowed.

In modifying 40 CFR part 264 and part 269 design or operating regulatory standards, and in establishing alternative standards, the Regional Administrator would be required to consider a range of factors, which are listed in proposed § 264.551(b)(2). These include the length of time the unit will be in operation, the type of unit, the potential for releases from the unit, the type of waste, hydrogeological and other conditions at the facility, and the potential for human and environmental exposure to releases if they did occur. The Regional Administrator would specify in the permit design and operating requirements that would apply to the temporary unit and the length of time it could remain in operation, and requirements associated with its closure. These conditions would be subject to public notice and comment as part of the process for approval of remedy selection.

Today's proposal specifies a time limit of 180 days for temporary units. This time period is consistent with the closure period for a hazardous waste unit and the "temporary authorization" period in the new permit modification rule. It is expected that many temporary units will be needed for much shorter periods of time; however, EPA also recognizes that in some cases a temporary unit might have to remain in service beyond the 180-day limit, due to unexpected circumstances. For example, if wastes being stored in a temporary unit were to be taken to an off-site facility, and that facility no longer had the capacity or was unwilling to accept the waste, it might be advisable to continue storing the waste in the temporary unit for a limited amount of time (*e.g.*, 30 days). In such cases, the facility owner/operator could request an extension. Requests for such extensions would typically be processed as a Class I modification, with Regional Administrator approval, under permit modification procedures of § 270.42. Such time extensions for temporary units would only be approved where it is necessary because of unforeseen, temporary, and uncontrolled circumstances, and when the owner/operator is actively seeking alternatives to continued use of the unit(s). If the owner/operator failed to move expeditiously to remove the unit, the Agency would deny further extensions and require the owner/operator to retrofit the unit to meet all applicable Subtitle C design and operating standards, or remove the waste and close the unit.

EPA considered several alternatives in specifying time limits for temporary units. One alternative would have been to not specify a generic time limit for temporary units in the rule, and allow the Regional Administrator to set permit conditions limiting the active life of a temporary unit on a case-specific basis. This approach would allow more flexibility in designating such units, recognizing that the amount of time a temporary unit could safely remain in service may vary significantly, depending on the type of unit, type of waste, unit location and other factors. Another approach could have been to specify a shorter time limit, such as 90 days, which would be consistent with the provision for on-site accumulation of wastes by generators (§ 262.34). Alternatively, a specified time period longer than 180 days (*e.g.*, one year) for temporary units might also be appropriate. EPA specifically requests comments on its approach to temporary units, including suggestions for how "temporary" should be defined.

Today's proposal (§ 264.551(b)(2)(ii)) also clarifies that off-site units (*i.e.*, that are located outside the facility property) will not be treated as "temporary units" for the purpose of managing hazardous wastes generated as part of a remedy or interim measure.

In addition, proposed § 264.551(b)(2)(iii) specifies that temporary units may only be used for treatment or storage of wastes that originate within the facility boundary. This would preclude, for example, wastes from a different facility from being brought to a temporary unit at another facility for storage or treatment. However, wastes that were released from solid waste management units at the facility, and that subsequently migrated beyond the facility property, could be recovered and managed in a temporary unit in the context of implementing a remedy. Comment is solicited on these limitations to the temporary unit concept.

b. *Corrective Action Management Units (§ 264.551(c); § 264.501).* In many cases, corrective action at RCRA

facilities will address broad areas of contamination, which may or may not themselves contain discrete waste management units. For example, soils surrounding one or more leaking surface impoundments, landfills, or tanks may be contaminated. In devising a remedy to address this situation the facility owner/operator, at the direction of EPA, could consider the contaminated area as a whole and select a remedy that best addressed the entire area of contamination. In these situations, EPA believes that the entire area of contamination can properly be considered a waste management "unit" under the RCRA regulatory structure. Consequently, proposed § 264.551(c) gives the Regional Administrator the authority to designate such areas as corrective action management units (CAMUs).

As indicated in proposed §§ 264.551(c)(1) and (2), designation of such an area as a waste management unit will have important implications for the management of hazardous waste within that area. Specifically, movement or consolidation of hazardous wastes within these areas will not automatically trigger the statutory land disposal restrictions (sections 3004(d)–(g)) or minimum technology requirements (section 3004(o)). Land disposal restrictions are triggered by placement of a restricted waste in a waste management unit (section 3004(k)); minimum technology requirements are triggered by the creation of new or replacement surface impoundments or landfills, or lateral expansions of existing surface impoundments or landfills (section 3004(o)(1)). Consequently, if an area of contamination is designated as a unit by EPA during corrective action, hazardous waste moved within the unit would not be subject to land disposal restrictions. Similarly, moving hazardous wastes around inside the unit will not constitute either creation of a new or replacement unit, or a lateral expansion of an existing unit; therefore the minimum technology standards would not apply.

EPA believes that this approach to defining "unit" in the context of corrective action is essential to the implementation of sections 3004(u) and 3008(h) of RCRA, and that it accurately reflects the realities of cleanup activities. In addressing a broad area of contamination, EPA or a facility owner/operator requires the flexibility to move hazardous waste around and consolidate it without automatically triggering minimum technology or treatment requirements at every turn. For example, a typical remedy at a corrective action sight might consist of treatment of the most highly contaminated soil at an off-site incinerator, together with on-site consolidation and capping of remaining soil containing hazardous constituents at low concentrations. Incineration or other treatment of the less contaminated soil might yield few, if any, benefits, and it might in some cases delay cleanup and increase risk; for example, risk resulting from transportation of wastes. However, in moving the soils for consolidation, a narrow application of land disposal restrictions might require incineration (or other treatment) of the soil and prohibit the most straightforward, implementable, and, in some cases, most effective remedy. Similarly, imposition of minimum technology requirements will add to the cost of cleanups and may, in some cases, cause delays in implementation, without providing any significant environmental benefit.

EPA believes that its general approach to the definition of unit makes sense not only within the context of section 3004(u) but also for other remedial action involving waste already in place—such as source control taken in the course of a final cleanup of a unit which will not receive waste in the future. Where remedial action is taking place within an area that has already been contaminated, there should be sufficient flexibility to select effective remedies that can be safely and reliably implemented. In cleaning up existing contamination problems, EPA believes that it will often be unnecessary and counterproductive to strictly apply to cleanup activities standards that were designed to prevent future risks at operating facilities that will continue to receive and manage hazardous waste.

In § 264.501, EPA is today proposing a definition of "corrective action management unit," which is intended to clarify the nature and scope of the areas which may be given this designation. The definition is as follows:

"* * * an area within a facility as designated by the Regional Administrator for the purpose of implementing corrective action requirements of this subpart, which is broadly contaminated by hazardous wastes (including hazardous constituents), and which may contain discrete, engineered land based sub-units."

This definition is intended to place several important restrictions on how CAMUs are designated, and on how hazardous wastes must be managed within CAMUs. It should first be recognized that it will be the Agency's (or State's) role to define the areal configuration of any CAMU at a facility. This decision should be made based upon careful assessment of the extent of the contamination of soils, location of existing solid waste management units, the remedial objectives for the facility, and other relevant factors. Although owner/operators may wish to propose a specific area as a CAMU, the decision as to whether designating a CAMU is necessary and appropriate to implementing a remedy, and if so, the boundaries of the unit, must rest with the Agency or the State.

In designating CAMUs, only areas where contaminated soils or concentrated wastes already exist will be included. Uncontaminated or "virgin" areas of a facility cannot be included within a CAMU. Likewise, two separate areas of contamination could not be combined into one CAMU, since they could not be considered a single unit.

In some cases, remedial solutions may involve creating new "sub-units," or enlarging existing ones within a CAMU. For example, dispersed, low-level contaminated soils might be consolidated into a smaller, discrete landfill which would then be capped. Similarly, in some cases an effective remedial approach could be to remove wastes from several small landfills within a broad area of contamination, stage them in a waste pile prior to treatment, and dispose of the residuals in a newly engineered "sub-unit." Thus, it is intended that CAMUs may include one or more land based sub-units created or expanded as part of the cleanup action, as well as pre-existing solid waste management units.

In specifying that a CAMU may contain land-based sub-units, the proposed definition is meant to clarify that non-land based units, such as a tank or an incinerator, would not be considered part of the CAMU. Thus, while a remedy might involve constructing a tank treatment system for contaminated materials within the area defined as the CAMU, the tanks would be subject to all applicable part 264 standards for tanks, and the residuals from the treatment systems would also be subject to any regulatory or statutory requirements that would apply had the CAMU not been designated.

The Agency believes that allowing the creation of land based sub-units within a CAMU is reasonable and necessary to realizing the basic objective of the CAMU concept; *i.e.*, allowing sensible cleanup solutions for existing contamination problems. In essence, a CAMU can be considered to be a large, land-based unit. Remedial actions such as treating or consolidating wastes, or creating new land-based units within

the CAMU, serve in effect to enhance the environmental performance and integrity of the unit.

In developing the concept of the CAMU as articulated in today's proposal, the Agency considered several alternative approaches. One option would have been to only allow movement of wastes into existing landfill areas within the CAMU; new land-based units would not be considered as part of the CAMU. This option could have caused land disposal ban and minimum technology requirements to be triggered relatively frequently, thus restricting decision makers' flexibility to upgrade these areas of the CAMU, and engineer more effective and protective waste management systems. In addition, the option would likely create substantial difficulties in defining what constituted new units within the area of existing contamination.

EPA also considered options that would have significantly broadened the CAMU concept. Once such option would have allowed wastes to be excavated, treated in a non land-based unit (*e.g.*, a tank) within the CAMU, and the residuals redeposited on the land without triggering the land disposal ban. A variation of this approach would also allow an incineration or other thermal treatment system to be considered as part of the CAMU. Yet another option considered would have allowed CAMUs to include land areas at the facility that were not already contaminated; such areas might thus be used as sites for locating new landfills. Although these options would have offered more flexibility in designing remedies, the Agency has chosen not to propose such broader interpretations of the CAMU concept, for several reasons. Allowing uncontaminated land to be included as part of a CAMU (and thus potentially allowing it to become contaminated) would have contradicted the overall intent of the CAMU; that is achieving reasonable cleanup solutions for existing contamination problems. In addition, allowing non land-based units to be considered part of the CAMU would, in effect, contradict the notion of the CAMU as a type of land-based unit (albeit one that is contaminated and needs to be upgraded to improve its protectiveness), and could have complicated the ability to impose the stringent part 264 standards for treatment units such as incinerators.

It should be understood that, given today's proposed definition or any of the alternative approaches described above, several fundamental requirements will apply to CAMUs. Firstly, land disposal restrictions will apply whenever hazardous waste is placed into a CAMU from outside its defined area. In addition, all waste management activities conducted within the CAMU will be protective of human health and the environment, will conform to the standards for remedies proposed in § 264.525(a), be evaluated in terms of the remedy selection factors of proposed § 264.525(b), and comply with the cleanup standards of proposed § 264.525(d). Finally, all decisions regarding the scope of CAMUs and the nature of remedial activities that will be conducted within them will be subject to public review and comment during the remedy selection and permit modification process.

EPA specifically invites comment on today's proposed approach to defining CAMUs, and any alternative approaches which may be viable in achieving the remedial goals for which it is intended.

Proposed § 264.551(c)(4) lists the factors which the Regional Administrator will consider in specifying closure requirements for CAMUs. As with other units created for the purpose of implementing corrective action remedies. EPA proposes to not apply part 264 subpart G procedural requirements for closure to CAMUs (see previous discussion on closure of remedial units), in favor of using the remedy selection and permit modification process that will serve to establish comprehensively the technical requirements for the remedy. In addition, under today's proposal, the specific technical standards for closure and post-closure (*e.g.*, type of cap, scope of post-closure ground-water monitoring) of CAMUs would be determined through the corrective action process rather than the unit-specific technical closure standards of part 264.

Technical requirements for closure and post-closure of CAMUs, therefore, will be established on a site-specific basis. The specific requirements for CAMU closure/post-closure must be designed to achieve the general performance standard of § 264.551(c)(5). This standard is essentially the same as the performance standard for closure in subpart G (see § 264.111). In addition to this general standard, the Regional Administrator will use the decision factors specified in § 264.551(c)(4) in determining the specific closure and post-closure requirements that are appropriate for the CAMU to ensure that the general performance standard is met. These decision factors will include considerations of waste and unit and environmental characteristics, as well as the potential for exposure to contaminants should future releases occur.

This approach to determining closure/post-closure requirements for CAMUs is intended to provide flexibility for the regulatory Agency in setting appropriate standards specific to the site conditions, while also ensuring that adequate long-term controls are imposed for any wastes remaining within the CAMU. This approach is also consistent with the general process for defining remedies and for management of wastes as established in proposed §§ 264.525 and 264.550–552.

EPA considered other approaches for prescribing closure/post-closure requirements for CAMUs. One approach would have been to adopt a set of more specific requirements that would be applied generically to all CAMUs. This approach would have been similar to the current RCRA regulations for closure/post-closure of conventional hazardous waste units (*e.g.*, tanks or waste piles). This approach was rejected, however, for two reasons. First, the closure requirements for hazardous waste units are designed to apply to discrete, engineered units that must also comply with specific design and operating standards under RCRA. In contrast, CAMUs will typically be broad, contaminated areas that may contain discrete or non-discrete "sub units" of varying types and configurations. It would therefore be impractical to specify generic national standards for a class of units that will be of such diversity, and within which it will make sense to apply different closure techniques to different areas or sub-units of the CAMU.

The second reason for not applying generic national standard to closure of CAMUs relates to the nature of the corrective action process. Under corrective action, the Agency has considerable control over the technical decision-making process, and cleanup problems at facilities are typically subjected to direct Agency review and oversight. In contrast, the closure process under RCRA typically involves review and approval of owner/operator plans against established regulatory standards. EPA believes that the greater control over technical decisions that is provided under corrective action allows a more site-specific tailoring of closure requirements based on a thorough knowledge of site conditions.

4. *Management of Non-Hazardous Solid Wastes (§ 264.552).* In other cases, wastes addressed under corrective action will not meet the specific RCRA definition of hazardous waste. Many

wastes that do not meet the RCRA regulatory definition of hazardous wastes contain varying concentrations of hazardous constituents that, if the waste is improperly disposed of, could be released to ground water, surface water, soil, or air. The goal of corrective action is to protect human health and the environment by removing these contaminants from the environment, and controlling the source of the release—even if the waste from which the release originated does not meet the regulatory definition of hazardous.

Proposed § 264.552 states that non-hazardous wastes handled during corrective action must be handled in accordance with any applicable subtitle D standards. The Agency is in the process of developing more comprehensive regulations under subtitle D, and will continue to examine in that context issues relating to the applicability of those regulations to the management of solid wastes undertaken as part of subtitle C corrective actions.

In addition, the proposal provides the Regional Administrator authority, under certain circumstances, to impose more stringent standards than subtitle D. For example, a specific waste might not be listed as hazardous, but it might have a high concentration of specific hazardous constituents, or it might be similar in composition to a listed waste. In such cases, the Regional Administrator could impose subtitle C standards or standards that were protective given the circumstances at the site and characteristics of the waste where necessary to protect human health and the environment even though the waste did not technically meet the definition of hazardous waste.

K. Required Notices (Section 264.560)

1. *Notification of Ground-Water Contamination.* Proposed § 264.560(a) would require the permittee to notify EPA and any persons who own or reside on land adjacent to the facility in writing within 15 days when s/he discovers that hazardous constituents originating from a SWMU at the facility have migrated beyond the facility boundary in concentrations that exceed action levels.

Action levels are defined in proposed § 264.521 of today's proposal, and are discussed in detail in section VI.E of this preamble; therefore, they are not discussed in detail here. However, the reader should note that action levels are established using conservative assumptions to protect human health and the environment. Concentrations exceeding action levels will not necessarily result in adverse effects. Short term exposures to releases above action levels may often not represent a threat to human health or the environment since action levels are derived using long-term exposure assumptions. In fact, in some cases constituents at or above action levels will not ultimately require active remediation.

This notification requirement is limited to situations in which the adjacent land can reasonably be determined to overlie the contaminated ground water given current knowledge of the direction and rate of the ground-water flow.

EPA believes that it is appropriate to require such notification in order to provide adequate awareness for persons who are, or who could potentially be exposed to the contaminated ground water. It is possible that residents near a facility could be using water from wells that have become contaminated from the facility; in such cases, prompt notice to the individual would be an essential part of the response action.

The Agency may require the permittee to initiate an interim measure to address off-site ground-water releases virtually immediately, including making available an alternative drinking water supply when drinking water supplies have become contaminated. On the other hand, the Agency may ultimately decide, based on further study, that no further action will be necessary. Such might be the case where the ground water is highly saline, and not usable for drinking. As explained earlier in this preamble, the actual response action that may be required when ground-water contamination is identified will be determined by a variety of site-specific factors. In any case, an early notification that an action level has been exceeded will alert the adjacent resident or owner to the potential problem and will allow their informed comment on further permitting actions taken at the facility if they have special concerns. EPA solicits comment as to what alternative mechanisms or approaches could or should be required to alert potential users of ground water that contamination has occurred from a facility.

2. *Notification of Air Contamination.* Proposed § 264.560(b) would require the permittee to notify, in writing, EPA and any residents or other individuals who may be exposed to air emissions from SWMUs above action levels. This proposed notification requirement would apply when there is exposure in a residential setting, or other situation where long-term exposure to the air emissions from the facility can reasonably be assumed. This is consistent with the overall approach to corrective action for air releases (as discussed in section VI.E of this preamble).

This notification requirement for air would also be triggered when residences or activities that could result in long-term exposures become established near the facility after the initial release investigations have been conducted and are within an area where air emissions have been found to exceed action levels. Permittees whose remedial investigations have confirmed substantial air emissions migrating beyond their property limits have a continuing responsibility to identify and provide notice whenever such exposure situations occur. If concentrations of hazardous constituents in air beyond the facility boundary are found to be causing actual exposure problems of concern, the Regional Administrator may require the permittee, in addition to the notice requirement, to institute an interim measure to reduce the threat. For example, s/he could require the installation of a floating cover on a surface impoundment for the purpose of reducing the surface area of the impoundment available to allow the escape of hazardous constituents to air. In many cases the release to air will be reduced or eliminated during the course of remedial activities at the facility. For example, a permittee may be required to excavate and treat wastes contained in the SWMU or to cover the SWMU with a cap.

EPA solicits comments on what alternative mechanisms or approaches could or should be required to alert persons who may be exposed by releases of hazardous constituents into the air from RCRA facilities.

3. *Notification of Residual Contamination.* Under the regulatory authority proposed in § 264.560(c), the Regional Administrator may require the permittee to provide notice whenever hazardous wastes (including hazardous constituents) are left in place in the subsurface at the facility. This requirement would apply whether hazardous wastes or hazardous constituents left in the subsurface are contained in a discrete unit or diffused throughout subsurface soils. The notice would consist of a notation in the deed to the facility property, or a notification via some other instrument used by the State if the instrument is routinely searched during the course of transferring ownership of property. When such a notice is required, the notice must clearly indicate the types, concentrations, and locations of hazardous wastes or hazardous constituents that remain at the property.

EPA believes that the Agency's authority to allow owner/operators to certify completion of their corrective action responsibilities and, in some cases, close or transfer ownership of the property while hazardous wastes remain in place in the subsurface is accompanied by a responsibility to ensure that future owners of the property do not inadvertently act in a way that could result in harmful exposures to the residual contamination. This could occur, for example, when a facility in an area where mixed land uses are common (*e.g.*, residential and light industrial uses) is closed in accordance with applicable regulations and ownership of the property is transferred several times over the course of a few years. If notice is not provided in the property deed, a new owner could be unaware of its previous use for hazardous waste management. Inadvertently, the new owner could then initiate construction or other activities in a manner or at a location where disturbance of the subsurface could result in potentially harmful exposures. For example, by digging a foundation in a certain location, the owner might unearth an old solid waste management unit, and in doing so damage any engineering controls designed to prevent releases from the unit. One of the most likely situations in which residual contamination would remain at the property is where facilities have large areas of contaminated soils deep in the subsurface.

The residual contamination notice requirement proposed today is analogous to the existing requirement contained in 40 CFR 264.119 that facility owner/operators place a notice in the deed (or other instrument normally examined in title searches) within 60 days after the first and the last hazardous waste units at the facility are certified closed in conformance with the approved closure plan, in compliance with subpart G standards. This notice is required in recognition that post-closure care may need to be instituted for some units (or, in the case of corrective action, areas of contamination) where hazardous wastes remain in place. Until the term of the final facility permit expires (*i.e.*, all closure, post-closure, and corrective action responsibilities at the facility have been fulfilled), the permit responsibilities shift to any new owner or operator who assumes control of the property. After the final permit has expired, the Agency believes that prospective purchasers of the property should be made aware of the past use of the property, legal restrictions imposed on its future use, and the location and details of any residual contamination on the property which could influence decisions of the new owner concerning allowable future uses.

In some cases it may be appropriate to require the owner/operator to place the deed notice well before expiration of the permit. For example, a selected remedy may involve capping (thus, leaving in place) units or contaminated soils in an area of the facility. This part of the remedy could be implemented well before all other corrective action requirements at the facility are completed. In this situation, it may be appropriate to require the deed notice as part of the remedy selection permit modification, thus providing notice to prospective purchasers if ownership of that portion of the facility were to be transferred at some point before the permit is terminated.

L. Permit Requirements (Sections 270.1(c)–270.60(c)(3))

1. *Requirement to Maintain a Permit (§ 270.1(c)).* Today's proposal would require an owner/operator to operate under a valid RCRA permit for the entire length of time required to comply with requirements of part 264, subpart S or F corrective action. This requirement would be established by adding to the existing language of 40 CFR 270.1(c), which defines the period during which owner/operators of RCRA treatment, storage, or disposal facilities must maintain a permit. Where corrective action is required under a permit, a permit will be necessary for the duration of the activities regardless of whether other waste management activities are continued at the facility. For example, at a storage or treatment facility not required to have a post-closure permit, the permittee may decide to cease operation prior to or at the end of the term of his/her permit and close the facility according to applicable regulations, rather than reapply for another permit term. If that owner/operator had any remaining corrective action responsibilities at the facility, today's proposal would require that the permit be maintained even after the hazardous waste units are closed, until all subpart S or F requirements have been terminated.

This provision is also likely to have important implications in situations involving transfer of property for which corrective action obligations under subpart S have not been fully discharged. An example would be a facility with a solid waste management unit causing a release to ground water that had been issued a permit with a schedule of compliance requiring the owner/operator to investigate the release and ultimately implement a remedy, where the owner/operator subsequently sold the portion of the facility property upon which the solid waste management unit was located. In this and other situations, EPA believes that transfer of corrective action responsibilities to new property owners is critical to ensuring that RCRA facility owner/operators are not able to evade cleanup requirements by simply selling the contaminated portions of their facilities. If such a transfer of ownership did not also involve a transfer of legal responsibility for complying with corrective action permit conditions, the effect could be a substantial number of new Superfund sites that could no longer be addressed under RCRA. EPA does not believe that Congress intended, in enacting section 3004(u), to create or to allow such an evasion of cleanup responsibilities. The Agency, therefore, intends to require new owners of property at which corrective action responsibilities have been identified in the permit, to obtain a permit and comply with the corrective action requirements specified in the permit. Those corrective action requirements could, alternatively, be specified and enforced through an administrative order (*e.g.*, under section 7003).

EPA specifically solicits comment on cleanup responsibilities following transfer of property. As an alternative to the approach outlined above (under which the new owner/operator becomes responsible for cleanup) EPA considered a provision that would require the former owner/operator to maintain corrective action responsibility. Under such an approach, it is likely that the former owner/operator's responsibilities would be limited to those off-site activities (*i.e.*, activities on the transferred property) that the new owner/operator allowed him to undertake. The former or new owner/operator's responsibility to undertake corrective action on transferred property may also be dependent upon the status of corrective action activities at the time of transfer. For example, a transfer of property before permit issuance would probably not implicate section 3004(u) responsibilities. Transfers occurring after the permit is issued but before remedy implementation or interim measures have begun (*e.g.*, some transfers during the RFI and CMS stages) should perhaps be subject to different rules than transfers occurring after remedial activities have begun.

After consideration of public comment on these questions, the Agency intends to develop a provision governing

corrective action responsibilities upon property transfer for the final rule.

2. *Schedules of Compliance for Corrective Action (§ 270.34).* Section 3004(u) of RCRA specifies that "Permits issued under section 3005 shall contain schedules of compliance (where such corrective action cannot be completed prior to issuance of the permit) * * *." Section 270.34 of today's proposal would codify this requirement and provides a regulatory framework for its implementation.

Schedules of compliance will be a major tool for imposing corrective action requirements because, in most cases, the complex and sequential nature of the corrective action process will not allow its completion prior to permit issuance. The provisions of today's proposed regulation, including plans and reports for remedial investigations and Corrective Measure Study and remedies, will, for the most part, be implemented through a schedule. Consequently, the quality and detail of the permit schedule of compliance are extremely important if the objectives of the corrective action program are to be achieved.

In addition to codifying a statutory requirement, proposed § 270.34(a) states that a corrective action schedule of compliance shall "* * * contain terms and conditions deemed by the Director to be necessary to protect human health and the environment." This provision is derived from the basic statutory objective of RCRA (protection of human health and the environment; see section 1003 of RCRA), and is a logical extension of statutory language found in section 3004(u) which allows cleanup to be implemented through a schedule of compliance specified in the permit where corrective action cannot be completed prior to permit issuance. The Agency believes that inclusion of this language in proposed § 270.34 is desirable to clearly assert the authority of the Region or State to include requirements in the corrective action schedule of compliance to address contingencies that arise during the corrective action process and that are not specifically contemplated by today's proposed regulation, but that must be dealt with in order to protect human health and the environment.

Proposed § 270.34(b) would require the permittee to comply with the schedule imposed in the permit, and provides a time frame for notifying the Agency when s/he finds that such compliance will not be possible. When the permittee will not be able to meet the schedule, s/he must initiate a permit modification under provisions of the recently issued permit modification rule (September 28, 1988, 53 FR 37912, discussed below). Section 270.42(f) of this rule establishes procedures for owner/operators who wish to initiate permit modifications where the desired modification has not been specifically listed as either a Class I, II, or III modification. These procedures are discussed in detail in the permit modification rule and its preamble. In addition, a brief explanation of the provisions of the proposed rule is included later in this discussion.

In § 270.34(c) the Agency proposes a specific procedure for modifying corrective action schedules of compliance for the purpose of implementing subpart S requirements. The proposed § 270.34(c) mechanism is important for two reasons. First, since permits containing corrective action schedules of compliance will often be issued before complete information has been gathered as to the extent and nature of any releases at the facility, and, therefore, the corrective action necessary to address such releases, it will generally not be possible to adequately predict (and thus specifically provide for in the schedule) all requirements and contingencies necessary to develop and implement such corrective action at the facility. Therefore, it may often be necessary for the Agency to modify the schedule of compliance to provide for new actions or to make mid-course changes to provisions specified in the original schedule. Secondly, this modification provides a mechanism to resolve disputes which may arise between the permittee and the Agency concerning the scope or meaning of conditions in the schedule of compliance when those disagreements cannot be resolved through less formal means. (The potential use of this modification procedure for dispute resolution is discussed in more detail later in this section of the preamble.)

It should be understood that the § 270.34(c) procedure will be applied only in modifying corrective action schedules of compliance; it will not be used to modify terms or conditions of the permit that are outside the scope of the schedule. Given this narrower application, a modification made according to § 270.34(c) would not constitute reissuance of the permit.

It is the Agency's objective in creating this modification process for corrective action schedules of compliance to ensure that such actions are implemented expeditiously, while preserving the permittee's due process rights, and ensuring adequate public participation.

The procedures proposed for modifying schedules of compliance using this proposed authority are found in § 270.34(c) (1)–(5); there are fewer procedural requirements for this modification than for a major modification initiated under the current authority of 40 CFR 270.41. Under proposed § 270.34(c)(1), the Director would notify the permittee in writing of the proposed permit modification. This notification would include a description of the exact change(s) to be made to the permit and an explanation of why the change is needed; it would also indicate the date by which the Director would have to receive any comments on the proposed modification. In addition, the notification would indicate whether any supporting documentation is available for review. Further, the notification would include the name of the Agency contact designated to receive comments. At the same time, the Director would publish a notice of the proposed modification in a locally distributed newspaper (§ 270.34(c)(2)), provide notification to individuals on the facility mailing list, and place a notice in the information repository being maintained for the facility, if the permit required that a repository be established. Each of these notifications would contain all of the information included in the notice to the permittee. The comment period provided would extend for no fewer than twenty days after publication of the newspaper notice (or, for the permittee, twenty days after receiving the written notification if the notice were received later than the date of the newspaper notice publication).

If the Director does not receive written comments on the proposed modification, the modification will become effective five days after the close of the comment period. S/he will then notify the permittee and individuals on the facility mailing list that the modified permit is in effect, and will place a copy of the modified permit in the facility's information repository where such a repository is maintained.

If written comments on the proposed modification are received, as provided in § 270.34(c)(4), the Director will make a final determination as to what, if any, changes should be made to the modification. This determination should generally be made within 30 days after the end of the comment period. In some cases, however, it may not be practicable for the Director to make the determination within that time frame; this would not affect the legal validity of the modification. When the determination has been made, the Director will provide notice to the permittee in writing and to the public through a notice in a local newspaper, of

the final decision on the modification. The notice will include an explanation of how comments received were considered in the final decision, an indication of the effective date of the modification (no later than fifteen days following the notification), and a copy of the final modification. EPA believes that the abbreviated § 270.34(c) modification procedures will strike an appropriate balance in most cases between the public and government's interest in ensuring expeditious remediation of harmful situations, and the permittee's due process rights.

It should be understood that the procedure outlined above is a minimum process, and does not preclude providing additional steps or opportunities for review and comment. For example, the Director could conduct a public meeting during the comment period, if it was determined to be appropriate in addressing concerns of the permittee or the public, or both. In other cases, the comment period might be extended for some period to allow for more thorough review or comment. Moreover, as noted later, the burden imposed by some changes may warrant the more extensive process provided for in § 270.41.

Section 270.34(c)(5), as proposed, does not provide for administrative appeals of modifications to corrective action schedules of compliance that are made under the procedures of § 270.34. The administrative appeal process can be quite lengthy; experience with RCRA permit appeals has been that appeal decisions may often take one year or more. If an owner/operator's appeal is denied, s/he then has some recourse through judicial appeal proceedings. Thus, the proposed § 270.34(c) modification process may be advantageous in situations where disputes between the Agency and the owner/operator will be most effectively resolved by reaching a final Agency action expeditiously (see discussion below on dispute resolution). The absence of an administrative appeal procedure will not affect the owner/operator's right to judicial appeal of modification decisions.

When initiating modifications to corrective action schedules of compliance, the Director will decide on a case-by-case basis which modification procedure—§ 270.34(c), or a major modification under § 270.41—is appropriate. A number of factors may influence this decision. Since the § 270.34(c) procedure is less complex administratively and should take substantially less time to make modifications effective, it is anticipated that the process will be used for modifications that are relatively routine and do not include very large additions or changes to the requirements already specified in the schedule. An example might be a requirement to increase the frequency or methods used for groundwater sampling. On the other hand, some Director-initiated modifications, because of the nature, scope, or anticipated resource burden of complying with the new requirement, may be more appropriately handled as a major modification under § 270.41. One example of such a situation is the permit modification for specifying the remedy (see proposed § 264.526); the rule explicitly requires the major modification under § 270.41 in these situations.

In addition to the relative magnitude of the requirement(s) being imposed through a modification, other factors such as timing and public participation considerations may affect decisions as to which type of permit modification should be used. For time-critical actions, such as might be the case for one of several types of interim measures, the § 270.34(c) modification would likely be most appropriate, since the § 270.41 process can take a number of months before the modification requirements are effective. Likewise, for imposing requirements that are especially sensitive or controversial from the community's perspective, major modification procedures, which allow maximum public input into the substance of the permit modification, could be most fitting.

The two types of modifications discussed above also have different legal conclusions, which will also be a factor in the decision as to which one may be more appropriate The proposed modification under § 270.41 is subject to administrative appeal. It is subject to judicial review only after the appeal process has been completed. (Permit appeal procedures are described in 40 CFR part 124.) As discussed earlier, the § 270.34(c) modification would not be subject to administrative appeal. When it is apparent that a disagreement between the permittee and the Agency over corrective action requirements cannot be resolved outside the judicial process (such as might be the case in dealing with a recalcitrant owner/operator), this type of modification would likely be the most direct and timely means of reaching such resolution.

The need for flexibility in procedural requirements for initiation of modifications to corrective action schedules of compliance is supported by an analysis completed for owner/operator initiated permit modifications. EPA issued a rule on September 28, 1988, concerning owner/operator-initiated permit modifications, which was the result of a regulatory negotiation effort involving EPA, industry, States, and public interest groups (see § 270.34 schedules of compliance for corrective action). In this rule, the Agency recognized that situations in which permittees request permit modifications represent a continuum of potential impacts on the permittee, the public, and the environment, which, in turn, warrant a continuum of procedural requirements. The rule does not alter major permit modifications under § 270.41. However, for permittee-requested permit modifications (under a new § 270.42), the rule establishes a permit modification classification system, with each modification defined as either Class I, II, or III. Proposed Class III permit modification procedures are similar to the existing procedural requirements for a major modification initiated by the Director under § 270.41 (additional public meetings are required in the Class III procedures). Class II procedures are somewhat less extensive; and Class I modifications, which are of a limited nature, generally do not require formal Agency approval.

Today's proposal in § 270.34(c) for modifying corrective action schedules of compliance reflects a balance between reasonable public participation and the Agency's need for flexibility in procedural requirements for permit modifications similar to that afforded owner/operators in the recent permit modification rule. The relatively streamlined process associated with proposed § 270.34(c) will not only reduce the administrative requirements imposed on the Agency, but will also minimize delays in implementation of necessary corrective action requirements in appropriate circumstances.

It is important to note that for the purposes of this provision (as well as all other provisions of the regulation proposed today), any plan submitted by the permittee pursuant to a schedule of compliance and approved by the Director becomes an enforceable part of the schedule. Accordingly, modifications to such plans will be required to follow the appropriate procedures of § 270.41, 270.42, or 270.34(c). In addition, such plans are subject to enforcement under RCRA section 3008(a).

As indicated earlier in this discussion, the Agency believes that the proposed § 270.34(c) modification procedure will

be used in the case of disputes which may arise between the permittee and the Agency. In practice, the Agency presumes that the permittee and the Director will be able to resolve most issues that arise during the course of corrective action without resorting to the procedures of § 270.34(c). For example, disputes may arise over the scope of a remedial investigation and how many monitoring wells may need to be installed, or the appropriate soil sampling procedure. The permit modification proposed in § 270.34(c) might be used in this case, although generally such issues can be resolved informally by technical staff from both sides, or through the use of an alternate dispute resolution process (described in section VI.L of this preamble). However, in recognition that cases may arise in which no agreement is possible, the Agency is persuaded that it needs the regulatory authority to modify the permit, as necessary, to specify requirements the permittee must fulfill, and to offer both the public and the permittee an opportunity for formal comment on the proposed changes.

Where situations identified by the Director are determined by him/her to require immediate action to protect human health and the environment, there may be insufficient time to undertake a permit modification even under the relatively streamlined procedures proposed in § 270.34(c). In such cases, the Director may take action under the removal authority provided in CERCLA section 104 or require action under CERCLA section 106 or RCRA section 7003.

3. *Conditions Applicable to All Permits (§ 270.30(l)(12)).* Under §§ 270.30(l) (1)–(11) of 40 CFR part 270, subpart C, the Agency has promulgated regulations that specify reporting requirements applicable to all RCRA permittees. These permit conditions fall into two broad categories. The first category covers those situations in which a permittee must give notice to the Director of changes affecting the permit conditions (*e.g.*, planned physical alterations or additions to a permitted facility). The second includes those reports typically required of all permittees (*e.g.*, manifest discrepancy reports, biennial reports, etc.). Reporting requirements contained in § 270.30 may be incorporated into the permit either expressly or by reference.

Today, EPA is proposing to add a new reporting requirement under § 270.30(l) relevant to the submittal of information pertinent to subpart S corrective action requirements. Specifically, proposed § 270.30(l)(12)(i) would require the permittee to submit information on any additional solid waste management unit(s) (SWMU) discovered at any time during the term of the permit within 30 days of the discovery of this unit. Further, it would require the permittee to submit information on newly discovered releases of hazardous wastes or hazardous constituents from previously identified or newly discovered SWMUs at the facility within 20 days of discovery of the release(s).

Currently, EPA or an authorized State identifies all SWMUs at RCRA facilities during the RCRA Facility Assessment (RFA) prior to permit issuance. In addition, § 270.14(d) requires the owner/operator to identify SWMUs as part of the facility's part B application. The Agency realizes, however, that additional SWMUs and releases may be discovered at any time following permit issuance. Therefore, today's proposal requires the facility owner/operator to provide new data relating to SWMUs and releases from SWMUs during the life of the permit.

Under § 270.30(l)(12)(i)(A), the permittee would be required to submit the following information on each newly identified SWMU within 30 days of identifying the SWMU: (1) Location; (2) type (*e.g.*, landfill, storage tank); (3) general dimensions; (4) operating history; (5) specification of all hazardous and/or solid wastes that have been managed in the unit (if available); and (6) all available data pertaining to any release of hazardous waste (including hazardous constituents) to any media from the unit. The location of the unit may be indicated on the topographic map submitted by the facility on its part B permit application in accordance with § 270.14(b)(19) of 40 CFR, or may be submitted on a topographic map of comparable scale that clearly indicates the location of the unit in relation to other SWMUs at the facility. These data are the same as those now required in the part B application under 40 CFR 270.14(d). (See Second Codification Rule of December 1, 1987, 52 FR 45788.)

Based on the information supplied by the permittee under § 270.30(l)(12)(i)(A), EPA would require, as necessary (under proposed § 270.30(l)(12)(i)(B)) sampling and analysis data for the purpose of determining whether releases warranting further investigations have occurred. Further investigations or corrective measures as necessary would be imposed by amending the existing schedule of compliance or by initiating a permit modification as provided in § 270.34, depending upon the extent of the change needed to cover necessary corrective action.

Proposed § 270.30(l)(12)(i)(C) would require the permittee to identify newly discovered releases from newly discovered SWMUs or from SWMUs where no release had occurred at the time of permit issuance. Information submitted would include the following: (1) The type of unit and its location, clearly identified on a facility map; and (2) available data pertaining to the release, including potential exposure pathways, controls already imposed to address the release, and action planned for further cleanup. The permittee would be required to submit this information within 20 days of discovery.

EPA is persuaded that these requirements are necessary to ensure that both the statutory requirements of section 3004(u) and Congressional intent are satisfied. (See *e.g.*, S. Rep. No. 98–284, 98th Cong. 1st Sess., 32 (1983).) The requirement for corrective action is a continuing one, applying not just to releases that have occurred prior to permit issuance, but also to any releases that occur after permit issuance. Without such requirements, the Agency might have to wait until the time of permit review or reissuance (in some cases as long as ten years) before newly discovered units or releases could be addressed in the permit. Including these requirements in today's proposal will allow the Director to learn of a release requiring remediation in a timely manner.

4. *Information Repository (§ 270.36).* Proposed § 270.36 would provide the Director authority to require in the permit that the permittee establish an information repository. The repository would allow interested parties access to reports, findings and other informative material relevant to ongoing corrective action activities at the facility. A repository would generally be required where the RCRA site is similar to sites listed on the NPL under CERCLA in terms of the magnitude of contamination and potential for exposure to hazardous wastes.

As provided by § 270.36(b), the information repository would contain all public information that the Director determines to be relevant to public understanding of corrective action activities at the facility (*i.e.*, material determined to be confidential business information would not be included). For example, copies of RFI plans and reports and CMS plans and reports would generally be included in the repository. Background material that would also typically be maintained in the repository would include copies of relevant RCRA regulations and press releases.

The repository would be located at a local public library, town hall, public health office, EPA Regional or State office, or another public location within reasonable distance of the facility. In instances where this is not feasible due to the remote location of the facility, for example, the Director would require that the repository be established and maintained at the facility. Regardless of the location, however, interested persons must be allowed reasonable access to the repository. For example, it may be appropriate to require a facility to provide additional hours of access (*e.g.*, beyond normal business hours), depending, among other things, on the degree of public interest in corrective action activities at the facility and the timing of public meetings or hearings. The Agency solicits comment on where and when the information repository should be required.

The Director would specify requirements that the permittee must satisfy in informing the public of the existence of the information repository in the permit schedule of compliance. (See proposed § 270.36(d).) At a minimum, the Director would require the facility owner/operator to notify individuals on the mailing list of the repository's establishment. S/he might also be required to provide public notice in a local newspaper. An EPA contact person to whom comments can be submitted will be identified.

The information repository proposed today is similar to the repository established at CERCLA sites. Experience under CERCLA has shown that the public is frequently concerned about nearby remedial activities and that this interest is effectively served by a repository. Without such a repository, the burden would be on citizens to locate and contact the appropriate officials knowledgeable about the site in Regional EPA or State offices.

There are two major differences between the information repositories in today's proposal and the repositories included in the CERCLA program. First, information repositories are required for all CERCLA sites whereas they will be required for RCRA sites only as determined to be appropriate by the Director. In making such a determination, the Director would consider the extent of contamination, the scope and complexity of the remedial action, and the degree of public interest. Second, designated information repositories under CERCLA generally house the administrative record for CERCLA actions. Under the RCRA permitting program, administrative records, which provide documentation for the basis of EPA's decisions and other parts of the record, are maintained by EPA Regional offices (or authorized States) at the location of the Regional office. Because the RCRA record is kept elsewhere, where it is available for public inspection, the Agency does not believe it is necessary to duplicate the entire administrative record for RCRA sites at information repositories.

5. *Major Permit Modifications (§ 270.41(a)(5)(ix).* Section 270.41(a)(5)(ix) of today's proposal would add a new provision to the major permit modification requirements allowing the Agency to reopen a permit for good cause to modify a permit for reasons arising from corrective action requirements under subpart S of 40 CFR part 264. The Agency would use this authority to modify permits after a remedy has been selected under proposed § 264.525, or to recommence corrective action after a no-action decision had been made under § 264.514. In addition, the Agency might use this authority to begin corrective action after notification of a new SWMU or a new release under § 270.30(1)(12). The Agency believes that it already has the authority to modify permits in this situation under § 270.41(a)(2), which allows it to modify permits when new information justifies the application of different permit conditions. However, the Agency is proposing to amend these regulations to clarify its authority.

Modifications under proposed § 270.41(a)(5)(ix) would undergo the full permit modification procedures of 40 CFR part 124—that is, there would be public notice, a 45-day comment period, and a public hearing, if requested. In addition, the modification could be appealed through EPA's administrative appeal procedures.

The introductory paragraph of § 270.41 has also been amended to make it clear that EPA-initiated modifications may be made pursuant to § 270.34(c), as well as § 270.41. This paragraph has been reprinted in full for purposes of clarity. EPA is seeking to change, and is seeking comments only, on those references to new § 270.34(c) and the balance of the paragraph.

6. *Conforming Changes to Requirements for Permits-by-Rule (§ 270.60(b)(3); § 270.60(c)(3)(viii)).* The subpart S regulations also apply to RCRA "permits-by-rule" for Class I hazardous waste injection wells, and publicly owned treatment works (POTWs) that receive hazardous waste by truck, rail or dedicated pipeline (see 40 CFR 270.60 and conforming changes in today's proposal). Today's proposal provides conforming changes to § 270.60 to reflect the deletion of § 264.101 from the current subpart F requirements. The current "permit-by-rule" requirements for Class I hazardous waste injection wells (§ 270.60(b)(3)) and POTWs that have a National Pollutant Discharge Elimination System (NPDES) permit and that receive hazardous waste by truck, rail or dedicated pipeline (§ 270.60(c)(3)(vii)) stipulate that owners and operators of these facilities must comply with the § 264.101 requirements in order to obtain a RCRA "permit-by-rule". The references to § 264.101 in these two sections have been replaced with references to the requirements of today's proposed subpart S, reflecting that these facilities will be subject to all requirements in this new subpart. Further information on how EPA plans to implement corrective action at these types of permit-by-rule facilities can be found in the preamble to the December 1, 1987, Codification Rule (52 FR 45788) for underground injection control (UIC) wells and in "Guidance for Implementing RCRA Permit-by-Rule Requirements at POTWs." issued on July 21, 1987 (contact Permits Division, Office of Water Enforcement and Permits, at (202) 475–9545).

7. *Alternative Dispute Resolution.* During the process of investigating releases and studying remedies for RCRA facilities, EPA anticipates that some disagreements between the Agency and the owner/operator may arise regarding various technical or procedural issues. For example, in defining the technical scope of a work plan for remedial investigations, the Agency's technical judgment as to the numbers or placement of ground-water monitoring wells may differ from the permittee's.

In most cases, the Agency anticipates that such disagreements can and will be resolved through continuing communications between the owner/operator and the Agency. However, EPA recognizes that there will inevitably be some disagreements which cannot be resolved by such means. In these cases, there are several options the Agency may employ to resolve the dispute and prevent unacceptable delays in implementation of corrective action requirements. Such options include the use of a more formal type of dispute resolution process; enforcement action under RCRA section 3008(a); or a modification of the permit. The choice of options will depend on the specific issues under dispute and the circumstances at the facility. For situations where the requirements at issue are clearly defined in the permit

schedule of compliance, but where the permittee refuses, or otherwise demonstrates an unwillingness to comply with the requirements, EPA would intend to utilize enforcement options (*e.g.*, section 3008(a)) to compel appropriate action by the permittee. Alternatively, a modification to the permit schedule of compliance (such as the process defined in today's proposed § 270.34(c)) may often be chosen as the appropriate mechanism for resolving disputes in situations where the requirement at issue is less specifically defined and when the Agency and the permittee are unable to negotiate an acceptable agreement.

The use of enforcement authorities for corrective action, and the permit modification process proposed today at § 270.34(c) are discussed elsewhere in today's preamble. The remainder of this discussion focuses, therefore, on the potential use of alternative dispute resolution techniques to resolve disagreements.

On August 14, 1987, EPA's "Final Guidance on Use of Alternative Dispute Resolution (ADR) Techniques in Enforcement Actions" discussing multiple ADR techniques was issued. In this guidance document, the Agency articulated its intention of encouraging the use of alternative dispute resolution techniques where there is reason to believe that one or more of the techniques discussed in the guidance may lead to expeditious final compliance agreements. The Agency believes that some of the techniques discussed in this guidance may be useful in resolving disputes which arise in the corrective action process under RCRA permits. A copy of this guidance is included in the docket established for today's rulemaking.

In particular, EPA is examining the use of a neutral, third-party mediator in the context of a time-limited, non-binding negotiation process to resolve corrective action disputes. The Agency is not prescribing the use of such a process as a provision of today's proposed regulation, however, or any other process. Given the Agency's limited experience with ADR to date it is premature to include any specific ADR technique within a RCRA regulatory framework. EPA intends to encourage, when appropriate, the use of ADR in certain situations as the RCRA corrective action program evolves. The Agency is specifically seeking comment today on several issues associated with alternative dispute resolution in the context of corrective action. These issues are: (1) For what types of corrective action issues and disputes would ADR techniques be most useful? (2) What techniques (*e.g.*, mediation, fact-finding, mini-trials) are most suitable for this purpose? and (3) Who should bear the cost (*e.g.*, of third-party mediators) of alternative dispute resolution?

M. Conforming Changes to Closure Regulations (Section 264.113, 265.112 and 265.113)

1. *General.* As discussed further in section VII.C. of today's preamble, corrective actions undertaken at a facility may affect closure of regulated units under applicable standards of 40 CFR parts 264 and 265, subpart G. For example, closure requirements for regulated units contain certain deadlines that may be impractical if corrective action is required at the facility and the closing unit is being used to receive corrective action wastes. EPA today is proposing to amend the closure regulations in §§ 264.113, 265.112, and 265.113 to simplify extension of these deadlines when doing so would assist in implementing corrective action. The Agency is also proposing to expand part 265 closure plan information requirements to include information on SWMUs.

It is important to note that the part 264 and part 265 subpart G closure regulations apply only to hazardous waste management units. Today's proposed changes to closure regulations are designed to address potential effects of subpart S or F corrective action on the closure of such hazardous waste management units. Corrective action at SWMUs that are not used for the management of hazardous waste is not subject to subpart G regulations.

In addition, as discussed earlier in this preamble, § 264.551(a) provides the Regional Administrator with the authority to waive subpart G requirements (except for § 264.111) for units created for the purpose of managing corrective action waste.

The reader should note that the proposed changes are for both permitted hazardous waste units (part 264 standards) and interim status hazardous waste units (part 265 standards). Although today's rule primarily addresses corrective action at permitted facilities, interim status facilities which close without an operating permit are potentially subject to corrective action under orders issued pursuant to Section 3008(h) of RCRA, or they may wish to conduct corrective action voluntarily. Therefore, conforming changes are being proposed for both permitted and interim status units.

2. *Clarifications.* The following discussion clarifies several points relating to corrective action and the closure of hazardous waste management units, and explains how existing regulations and authorities can be used to address potential conflicting interests.

a. *Extension of Closure Deadlines*—(1) *Notification of Closure.* Under current regulations, when a unit ceases to receive hazardous waste, the owner/operator is generally required to notify the Agency and initiate closure of the unit (§ 264.112(d) or § 265.112(d)). In order to perform needed corrective action without posing unnecessary implementation problems, the Regional Administrator may find it necessary to require suspension of the acceptance of wastes at the unit temporarily. For example, it may be necessary to drain liquids from a surface impoundment to allow reinforcement or repair of a berm to prevent migration to a nearby surface water body. However, closure of the unit may not be desirable at that time since available capacity in the unit, once it is repaired, could be beneficially used for the disposal of wastes generated in the course of corrective action. The Agency believes that the current requirements at §§ 264.112(d) and 265.112(d) provide sufficient flexibility to accommodate temporary suspension of waste receipts to facilitate corrective action without triggering the notice and closure initiation requirements. These regulations allow the Regional Administrator to grant an extension to the deadline for beginning partial or final closure if the acceptance of waste is suspended only temporarily and additional hazardous waste capacity remains in the unit. Thus, the Director may allow an extension of time for the initiation of closure activities when capacity in the unit could be beneficial for disposal of corrective action wastes from other SWMUs at the facility.

(2) *Time Allowed for Closure.* For hazardous waste management units that will be required to close, but where corrective action is required prior to or in conjunction with closure, the owner/operator may find it difficult to comply with the timing requirements of § 264.113 or § 265.113. These provisions currently require that within 90 days after receiving the final volume of hazardous waste at a unit, the owner or operator must treat, remove, or dispose of the waste off-site, and that closure of the unit be completed within 180 days after receiving the final volume of hazardous waste. However, extensions to these deadlines may be necessary because corrective action may interfere with the owner or operator's ability to comply with the deadlines for completing closure. Sections 264.113 and

265.113 currently contain provisions for extending closure deadlines under certain circumstances. EPA believes that the need to take corrective action at the unit, or to receive wastes from other SWMUs, is already included within the existing criteria for granting these extensions. However, to clarify this point, EPA is proposing today to amend §§ 264.113 and 265.113 explicitly to include corrective action among the criteria for granting an extension to the deadline for completing closure activities.

b. *Modification of Closure Plans.* Corrective actions may bring about changes in unit and facility design and operation that will require a resulting modification to the closure plan and closure cost estimate for a hazardous waste management unit. For example, a unit may be expanded to accept waste generated during corrective action at other SWMUs as part of the remedy for a facility. Under § 264.112(c) and § 265.112(c), amendments to closure plans are required when changes in operating plans or facility design affect the closure plan. When interim measures or the final remedy selected affect the closure plan for a hazardous waste management unit, both the plan and the associated cost estimate must be amended according to requirements of subparts G and H. For permitted units, the closure plan and cost estimate amendments may be included in the permit modification for remedy selection or in a separate permit modification, but both must be submitted at least 60 days prior to the proposed change in facility design or operation. For interim status facilities, amendments to the closure plan also must be made at least 60 days prior to the proposed change in facility design brought about by the corrective action, or within thirty days if the change occurs during closure.

3. *Closure Plan Information Requirements.* The Agency is also proposing to add § 265.112(b)(8) in this rulemaking to require owners and operators to include information about SWMUs at interim status facilities when they submit an interim status closure plan. This addition is consistent with the second HSWA Codification Rule. This codification rule added § 270.14(d) to require owners and operators to submit information about all SWMUs at a facility as part of the Part B permit application (December 1, 1987, 52 FR 45788). Today's proposed change would address the need to coordinate corrective action and closure activities at closing interim status units and facilities. Since the facility owner/operator is not required to automatically submit a part B application for a unit closing under interim status, the Agency will need a mechanism for obtaining information to assess the need for corrective action at the facility. Today's proposed addition to interim status closure plan information requirements is intended to provide that mechanism.

N. Conforming Change to Section 264.1(g)

As a conforming change, today's proposal includes an amendment to § 264.1(g) that specifies certain explicit exemptions from the requirements of part 264. However, certain units that are exempted under § 264.1(g) are, nevertheless, considered to be solid waste management units according to the definition proposed in § 264.501. Such units would include on-site accumulation tanks and container units, recycling units, totally enclosed treatment units, elementary neutralization units, wastewater treatment units, and transfer units. Thus, today's proposed amendment clarifies that subpart S requirements of part 264 would apply to these units, although the exemption would continue to apply to all other part 264 requirements.

VII. Relationship to Other Programs

A. Superfund

1. *General.* One of the Agency's primary objectives in development of the RCRA corrective action regulations is to achieve substantive consistency with the policies and procedures of the remedial action program under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986. The fund, which may be used for certain cleanup actions under CERCLA, is called the Hazardous Substances Trust Fund, but is commonly known and referred to as Superfund. Sections 104 and 106 of CERCLA authorize EPA to take response actions, including removal or remedial measures, when a release or threat of a release of a hazardous substance which may threaten human health or the environment is discovered Generally, these authorities are used in situations where contamination has occurred at sites that are not under the active control of a RCRA owner or operator. Where contamination is related to activities at hazardous waste management facilities that are currently operating or have conducted treatment, storage or disposal of hazardous waste at any time since November 19, 1980, both RCRA and CERCLA potentially apply.

Because the most comprehensive set of standards applicable to remediation of hazardous waste sites under the control of private owners and operators will, when promulgated, be the Section 3004(u) regulation, RCRA corrective action standards will be an important potentially applicable or relevant and appropriate requirement for the CERCLA program. As such, a primary goal in development of the RCRA regulations will be to establish a consistent approach between the RCRA and CERCLA programs. Consistency will help to ensure that the regulated industry can gain no advantage by proceeding under one program rather than the other, since the Agency anticipates that similar remedies would be selected under both.

The corrective action process under RCRA will parallel the process established for CERCLA remedial actions. This process includes preliminary assessments and site investigations to evaluate the need for remediation at specific sites, selection of remedies where needed to protect human health and the environment, remedial design and implementation of remedial action, and operation and maintenance to ensure continued effectiveness of the remedy. Procedurally, the activities under the two statutes may differ somewhat, since the permittee implements corrective action under RCRA, whereas the regulatory Agency, for the most part, does so under CERCLA. (In some cases CERCLA cleanups are conducted by responsible parties according to the terms of an order or consent decree and with Agency oversight.) Nonetheless, EPA anticipates that the two programs will arrive at similar solutions to similar environmental problems, and that actions undertaken by one program will be adopted by the other program in cases where the programmatic responsibility for a site shifts from one to the other. Specifically, the Agency anticipates that there may be a number of facilities at which substantial CERCLA remedial studies and/or actual remediation will have been already conducted at the time a RCRA permit is issued (thereby triggering the Subpart S corrective action requirements). This situation is likely to be most common at Federal facilities. In such cases, if the remedial work has been conducted according to the CERCLA NCP, EPA would consider that work to be consistent with the requirements of subpart S, and therefore additional or different studies or cleanup requirements would be unnecessary. If, however, the remedial activities

conducted pursuant to the NCP at a RCRA facility addressed only a portion of the units or releases at the facility requiring remediation, the permit would address any such remaining corrective action requirements pursuant to subpart S.

2. *Listing RCRA Sites on the National Priorities List (NPL).* EPA is emphasizing coordinated implementation of the RCRA and CERCLA programs. Of particular importance is the Agency's policy for listing RCRA facilities on the National Priorities List (NPL). Section 105(a)(8)(B) of CERCLA requires EPA to establish the NPL list to set national priorities among sites with known or threatened releases where action under CERCLA may be warranted. A site must be listed on the NPL before a remedial action can be financed by the Hazardous Substances Trust Fund established under CERCLA.

The Agency's policy regarding the listing of RCRA facilities on the NPL was outlined in a November 23, 1985, Federal Register notice (50 FR 47912). The policy states that sites that can be addressed by RCRA subtitle C corrective action authorities generally will be deferred from placement unless they fall within certain exceptions. For a more detailed discussion of these exceptions, see 54 FR 41004–6 (October 4, 1989).

The proposed RCRA listing policy, however, does not apply to Federal facilities. These are listed on the NPL, as required under CERCA § 120, as amended under SARA (52 FR 17991, May 13, 1987).

3. *Use of CERCLA to Supplement RCRA Authorities.* EPA intends to clean up hazardous waste sites by selecting the most appropriate response and/or enforcement authorities from among all of those available. Accordingly, several CERCLA authorities may be used at RCRA facilities. For example, fund-financed removal actions under CERCLA section 104 can be taken at RCRA sites when necessary to respond promptly to a release. Although removals may be conducted whether or not the site is listed on the NPL, such actions must be undertaken in response to a release or substantial threat of a release and must be consistent with the criteria outlined in the National Contingency Plan and CERCLA. EPA may seek reimbursement of costs of these actions from generators, transporters, or owner/operators of treatment, storage, or disposal facilities pursuant to CERCLA section 107.

Where an "imminent and substantial endangerment" may be posed by a release at a RCRA facility, the Agency may employ either a CERCLA section 106 or RCRA section 7003 order. As noted earlier, these authorities will be particularly useful in addressing contamination from SWMUs that requires prompt action.

The Agency may also use CERCLA or joint efforts with States in conjunction with RCRA to address situations of "area-wide" contamination. Preliminary investigations have shown that at some RCRA facilities substantial portions of on-site contamination is contributed by adjacent facilities not under RCRA jurisdiction. Corrective action at a single RCRA facility alone, therefore, might do little to restore overall environmental quality. In these cases, it may be appropriate to apply both RCRA and CERCLA authorities or other Agency authorities in a comprehensive program to address all sources of the release and provide complete remediation of the area. This would allow a comprehensive cleanup of an area (CERCLA trust funds would be used only where the site scored 28.5 or higher under the HRS) that has become contaminated as a result of activities at multiple facilities, including both operating and abandoned facilities.

In situations where CERCLA section 104 or section 106 remedial activities have been initiated, and where a RCRA permit is to be issued to the facility, the Agency may choose to continue these remedial actions under CERCLA authority. In such cases, the CERCLA cleanup would be referenced in the RCRA permit, and the Agency would take steps to ensure that further cleanup under RCRA section 3004(u) would not be required at the affected portion of the facility. At the same time, RCRA may be used to address other cleanup needs at the facility that are not addressed by the CERCLA action underway. Alternatively, the cleanup may be shifted to RCRA and the selected remedy incorporated into the permit through a permit modification.

B. PCB Spill Policy Under TSCA

EPA regulations under the Toxic Substances Control Act (TSCA) controlling the disposal of PCBs, published in the Federal Register of February 17, 1978 (43 FR 7150) and May 31, 1979 (44 FR 31574), define the term disposal to encompass accidental as well as intentional releases to the environment. When PCBs in concentrations of 50 parts per million (ppm) or greater are improperly disposed (or when material at less than 50 ppm got that way through dilution), EPA has the authority under section 17 of TSCA to compel persons to take actions to rectify damage or clean up contamination resulting from the spill. Before May 4, 1987, standards for the cleanup of spilled PCBs were set by EPA Regions on a case-by-case basis.

However, EPA believed that uniform, predictable, nationwide requirements for the majority of spills would reduce risks to PCB spill sites by encouraging rapid and effective cleanup and restoration of the sites; accordingly, EPA established a nationwide policy for PCB spill cleanup. On April 2, 1987, EPA published the TSCA policy for the cleanup of spills resulting from the release of materials containing PCBs at concentrations of 50 ppm or greater. (See 52 FR 10688.)

The policy requires cleanup of PCBs to different levels depending on spill location, the potential for exposure to residual PCBs remaining after cleanup, the concentration of the PCBs initially spilled, and the nature and size of the population potentially at risk of exposure. The policy imposes the most stringent requirements on areas where there is the greatest potential of direct human exposures, and less stringent requirements where there is little potential for any direct human exposure.

While the policy is expected to apply to the majority of spill situations, the policy does provide for exceptional situations that may require additional cleanup or less cleanup at the direction of the EPA Regional offices. Further, some spills are outside the scope of the policy. Such spills include: Spills directly into surface water, drinking water, sewers, grazing lands, and vegetable gardens. Final cleanup standards for these types of spills are established by the EPA Regional offices on a site-specific basis.

RCRA corrective action authority under section 3004(u) applies to PCBs because PCBs are listed as an Appendix VIII constituent in 40 CFR part 261. PCB releases from solid waste management units at permitted RCRA facilities are addressed in accordance with TSCA PCB spill cleanup policy. These solid waste management units would often technically be considered "old spills" under the spill policy. It is the Agency's belief that the cleanup levels and practices discussed in the policy will be appropriate in many situations, and that when necessary, site-by-site evaluations should still be required.

C. Other Elements of RCRA Subtitle C Program

1. *Relationship to Subpart F Ground-Water Corrective Action.* Existing RCRA regulations for ground-water corrective action (40 CFR Part 264, subpart F) prescribe a specific approach

for detection, characterization, and cleanup of contaminated ground water from regulated land disposal units which received waste after July 26, 1982. Subpart F is a "prospective" program requiring that monitoring be established to detect contamination, and that if detected, contaminated ground water be removed or treated in place if or when a ground-water protection standard has been exceeded. There is additional discussion of current Subpart F corrective action in section IV of today's preamble.

Achieving a coordinated, facility-wide approach to cleanup of releases from both regulated units and other solid waste management units is a basic objective of the Agency. However, the universe of units and contamination being addressed by subpart S corrective action regulation is somewhat broader in scope.

To ensure consistency in implementing corrective action at both regulated units (a subset of SWMUs) and other solid waste management units, and to achieve environmental results as rapidly and effectively as possible, the Agency is developing a proposal that would restructure the current subpart F regulations to make them consistent with the key features of subpart S. These proposed revisions to subpart F are expected to be issued relatively soon. It is expected that these revisions will reference a number of specific sections of today's subpart S proposed regulations; likewise, for the sake of clarity and consistency, the final subpart S rule may also contain cross-references (that do not appear in today's proposal) to certain subpart F provisions.

2. *Land Disposal Restrictions Program.* As enacted on November 8, 1984, the Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA) impose restrictions on the land disposal of hazardous wastes. In HSWA, Congress specified dates when particular groups of hazardous wastes not meeting treatment standards are prohibited from land disposal unless it can be demonstrated that "no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous" will occur (RCRA section 3004(d)(1), (e)(1), and (g)(5)). The dates specified by Congress for triggering the land disposal restrictions are listed below:

- Solvents and dioxins by November 8, 1986;
- California list wastes by July 8, 1987; and
- Scheduled wastes by August 8, 1988 (First Third), June 8, 1989 (Second Third), and May 8, 1990 (Third Third).

Note: A separate schedule was established for hazardous wastes disposed of by deep well underground injection.

HSWA required the Agency to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1)). To date, EPA has developed treatment standards based on the performance of best demonstrated available technologies (BDAT) in a series of five rulemakings. After the appropriate effective date, wastes for which treatment standards have been promulgated must meet those standards before the wastes may be land disposed.

Where adequate treatment capacity was not immediately available on the statutory effective date, the Agency granted a national capacity variance. This established an alternative prohibition effective date for the waste of up to two years. During a variance, wastes not treated in compliance with applicable treatment standards may be disposed of in surface impoundments or landfills only if they meet the minimum technological requirements (RCRA section 3004(o)). Furthermore, wastes granted this variance must be in compliance with the California list prohibitions if they are applicable, and are subject to the paperwork requirements of 40 CFR 268.7.

The rules promulgated to date are summarized below:

- *Solvents and Dioxins.* On November 7, 1986, regulations were promulgated establishing the implementation framework of the LDR program (51 FR 40572). In this rulemaking, EPA promulgated treatment standards and effective dates for spent solvents and dioxin-containing hazardous wastes identified as EPA Hazardous Waste numbers F001–F005, F021–F023, and F026–F028 (40 CFR 268.30 and 268.31).
- *California List Wastes.* On July 8, 1987, regulations were promulgated restricting land disposal of the California list hazardous wastes (52 FR 25760). Treatment standards were established for liquid and nonliquid hazardous waste containing halogenated organic compounds (HOCs), and for liquid hazardous wastes containing polychlorinated biphenyls (PCBs). The statutory prohibitions on land disposal of corrosive wastes and liquid wastes containing certain metals were codified and became effective immediately.
- *The Scheduled Wastes.* On August 8, 1988, the Agency promulgated regulations for certain scheduled wastes (40 CFR 268.10), referred to as First Third wastes. Treatment standards were established for most of the wastes identified by EPA Hazardous Waste numbers "F" and "K." Wastes scheduled in the First Third for which treatment standards were not set were subject to the "soft hammer" provisions of § 268.8. On June 8, 1989, the Agency promulgated regulations for the Second Third of the scheduled wastes (40 CFR 268.11). In the Second Third final rule, the Agency also set standards for certain First Third soft hammer wastes, Third Third wastes, and newly listed wastes. This rule also set effective dates for underground injected wastes. On May 8, 1990, the Agency promulgated treatment standards and effective dates for the remaining soft hammer wastes, wastes listed in the Third Third of the scheduled wastes (40 CFR 268.12), wastes that were rescheduled to the Third Third, and five newly listed wastes.

Separate rulemakings for the underground injection control (UIC) program established hazardous waste disposal injection restrictions and requirements and set effective dates for underground injected solvents, dioxins, California list wastes, and First Third scheduled wastes (40 CFR parts 124, 144, 146, and 148).

Corrective action taken under today's rule must comply with the land disposal restriction requirements of 40 CFR part 268. The prohibitions do not apply to hazardous wastes placed into land disposal prior to the effective date of an applicable land disposal restriction, if such wastes do not have to be removed or exhumed for treatment. Furthermore, as explained in the preamble to the NCP revisions (published on March 8, 1990), the Agency has determined that placement, and thus land disposal, of hazardous wastes does not occur when waste is moved or treated in-situ within a unit. This is particularly important for RCRA corrective action since many remedial actions are likely to involve treatment, consolidation, and capping of wastes within existing units. Wastes moved or treated within such units would not be subject to the land disposal restrictions. Placement does occur, and the land disposal restrictions apply, when waste is removed from the unit for treatment or other purposes and the waste or residuals are returned to the unit, or to a different unit.

3. *Relationship to section 3004(n) Standards.* RCRA section 3004(n) requires the Agency to promulgate standards for the control and monitoring of air emissions from hazardous waste management units subject to permitting standards other than subpart S at treatment, storage, and disposal facilities (TSDFs). The goal of these standards is to protect human health and the environment as necessary from air emissions associated with

management of hazardous wastes. Currently, the Agency is developing standards under section 3004(n) that will apply to certain hazardous waste management units covered by today's proposal under section 3004(u). Section 3004(n) standards for air emissions associated with equipment leaks and certain process vents at TSDFs were proposed in February 5, 1987 (52 FR 3748) and are expected to be finalized in June, 1990; standards for volatile organic emissions from certain other TSDF emission sources will be proposed at a later date.

The standards being developed under section 3004(n) will require engineering controls at units that manage hazardous waste. Air emissions will be controlled through, among other things, some combination of covers and add-on control technologies which capture the air emissions for recovery or destruction.

Although standards developed under section 3004(n) will only address air emissions from hazardous waste management units at TSDFs (a subset of all SWMUs), they are expected to provide valuable guidance for addressing air emissions from other SWMUs used for management of non-hazardous solid waste. In addition to the standards being developed under section 3004(n) of RCRA, the Agency is examining technical approaches and policy options for regulating, under the Clean Air Act, air emissions from SWMUs in which non-hazardous solid wastes are managed.

The Agency is today proposing a specific approach to imposing corrective action requirements on certain air releases from SWMUs in today's proposal. The proposed approach is designed to be flexible enough to be used in conjunction with the section 3004(n) standards being developed. When the section 3004(u) standards are developed, EPA will make any adjustments to the subpart S standards necessary to ensure a consistent and complementary approach.

4. *Administrative Orders Under RCRA section 3008(h).* The section 3008(h) authority for interim status corrective action orders provides a sister authority to section 3004(u) for requiring corrective action at non-permitted RCRA facilities.

Corrective action may be required under section 3008(h) whether the facility is operating (prior to receiving a permit) under interim status, is closing or is closed under interim status, has lost interim status, or failed to properly obtain interim status. Corrective action orders under section 3008(h) may be issued unilaterally by the Agency or they may be issued as consent agreements between the owner/operator and the Agency.

In many cases, the entire corrective action process for a facility will be implemented under a section 3008(h) order. However, in some cases a facility that has been issued a section 3008(h) order will be issued a permit prior to completion of the activities specified in the order. In such cases, the Agency may require the owner/operator to continue all or some of the activities under the order, or may incorporate the requirements of the order into the RCRA permit.

In any case, EPA intends that equivalent environmental results will be achieved whether corrective action requirements are imposed in an order under section 3008(h) or a permit. Accordingly, EPA expects that orders issued under section 3008(h) generally should follow the substantive requirements of today's proposal (*e.g.*, remedy selection factors to be considered), as well as procedural elements (*e.g.*, triggers for moving from one phase of corrective action to the next). There will, however, be some procedural differences between orders and permits in implementing corrective action. On April 13, 1988, EPA promulgated rules for administrative procedures for issuing orders under section 3008(h). (See 53 FR 12256.)

The section 3008(h) enforcement authority will not be delegated to States. States which desire enforcement authorities equivalent to section 3008(h) and do not already have such authorities in existing legislation will need to enact parallel statutory enforcement authorities. While procedural aspects of issuance of section 3008(h) orders do not duplicate the procedural aspects of today's proposed rule for corrective action under permits, the procedures for both are designed to ensure equivalent results and to provide adequate participation in the process for all interested parties.

5. *Financial Assurance for Corrective Action.* As discussed in section IV of this preamble, EPA proposed financial assurance requirements for corrective action (FACA) on October 24, 1986 (51 FR 37854). The fourteen commenters on the FACA proposal generally supported the flexibility of the Agency's approach. The procedures presented in FACA and today's regulatory changes to these procedures are summarized below.

a. *Timing.* In today's rule, EPA is proposing specific language that will clarify when financial assurance for corrective action must be demonstrated. Section 264.526(c) requires that, after selection of the remedy, the Director shall modify the facility permit and schedule of compliance to require a demonstration of financial assurance within 120 days of the effective date of the permit modification. This requirement, which is a clarification of the requirement proposed in the 1986 FACA proposal, is discussed further in sections VI.F and VI.G of today's preamble.

In addition to this approach, EPA requested comment in the FACA proposal on a second, more complicated, approach. In this approach, the facility would be required to demonstrate financial assurance once corrective action is determined to be necessary, but before the corrective action measures and cost estimate are specified in the permit. Adjustments to the amount of financial assurance would be required after specification of the corrective measures and cost estimate in the permit.

Most commenters on the FACA proposal supported the proposed approach. However, some commenters argued that financial responsibility demonstrations should be made not at the time the cost estimate is completed, but rather prior to permitting. The Agency disagrees, since unnecessarily early demonstration of financial assurance may increase the number of bankruptcies, increase the amount of unfunded corrective actions, and thus result in less environmental protection.

b. *Cost Estimation.* The 1986 FACA proposal required facility owners or operators to submit a cost estimate for corrective action, consisting of two parts: (1) A year-by-year current cost estimate of required corrective action in undiscounted current dollars; and (2) the sum of these year-by-year estimates of corrective action costs. The Agency proposed that third-party costs, rather than first-party costs, be used to estimate yearly and total corrective action costs (*i.e.*, costs of contractor labor rather than the owner's or operator's own labor). The corrective action cost estimate must be revised if changes in corrective measures alter the cost or expected duration of corrective action. The proposal also would require the owner or operator to adjust the cost estimate annually to account for inflation, using either recalculations in current dollars or an inflation factor derived from the most recent annual Implicit Price Deflator for the Gross National Product published by the Department of Commerce.

In addition to the annual inflation adjustment required under the FACA proposal, EPA is today proposing in

§ 264.527(c) to require that cost estimates be revised, if necessary, upon approval of the remedy design. The financial assurance mechanisms must be adjusted to reflect any changes in the cost estimate. This requirement is discussed further in section VI.H of today's preamble.

c. *Allowable Mechanisms.* Under the October 24, 1986, FACA proposal, owners or operators who are responsible for performing corrective action would be required to demonstrate financial assurance through one or more of the following mechanisms: trust fund, surety bond guaranteeing performance, letter of credit, financial test, or corporate guarantee. A letter of credit and a trust fund may be combined to demonstrate financial responsibility and a single mechanism may be used to demonstrate financial responsibility for multiple facilities. The rationale for authorizing the use of these mechanisms and for the regulatory framework for financial assurance for corrective action is similar to that for the financial assurance requirements for closure and post-closure care under part 264, subpart H (47 FR 15032, April 7, 1982). The key differences between the FACA proposal and Subpart H are that insurance and surety bonds guaranteeing payment into a standby trust fund were not deemed appropriate mechanisms for corrective action situations and are not allowed. Additionally, the proposed fund includes a pay-in period and pay-in formula which accounts for the costs of corrective action (see 51 FR 37854 *et seq.*).

Commenters on the FACA proposal generally supported the range of allowable mechanisms, but offered specific suggestions for altering the requirements of particular mechanisms (*e.g.*, shorten the pay-in period for the trust fund). The Agency will address the commenters suggestions when the final FACA requirements are promulgated. In the interim, EPA intends to rely on the FACA proposal as a guide. The Agency expects that in most cases financial assurance will be demonstrated by use of instruments that are consistent with the proposed regulatory language of FACA. However, other instruments may be permissible if the owner or operator demonstrates, to the satisfaction of the Agency, that such instruments provide an acceptable level of financial assurance.

The fundamental criteria the Agency will use in evaluating the acceptability of other instruments are: (1) the certainty of the availability of funds, and (2) the amount of funds assured. The certainty of the availability of funds from alternate mechanisms should be equivalent to the certainty provided by existing financial assurance mechanisms under 40 CFR part 264, subparts G and H. For example, the alternative mechanisms should provide that the Regional Administrator or State Director has the sole authority to direct the payment or use of funds or must provide for prompt notification of intent to cancel the mechanism. To be deemed equivalent in terms of the amount of funds, the alternative mechanisms should meet several criteria, such as providing that the funds cannot be used for other purposes, and providing that the amount of funds are equal to the current cost estimate.

D. RCRA Subtitle D: Solid Waste Disposal

Today's proposal is for corrective action at facilities subject to RCRA permits issued under the authority of section 3005 of RCRA (*i.e.*, those which treat, store, or dispose of hazardous waste as defined under RCRA). The disposal of non-hazardous solid waste falls under the authority of subtitle D of RCRA. EPA has two major roles under subtitle D. The first is to establish minimum national performance standards (under the authority of section 4004) for the protection of human health and the environment from solid waste disposal facilities. The second is to help the States make appropriate solid waste management decisions by offering up-to-date technical assistance.

Some of the subtitle D standards for protection of human health and the environment from solid waste disposal facilities could apply or be relevant to subtitle C facilities. For example, §§ 257.3–257.8 provides safety limits for the concentration of explosive gases generated by a facility (defined under § 257.2 as any land and appurtenances thereto used for the disposal of solid wastes). It may be appropriate to apply this requirement to subtitle C facilities with solid waste management units that could generate methane (*e.g.*, landfills used for disposal of municipal-type wastes). Thus, the Agency could require compliance with the part 257 requirements for explosive gases if such situations were encountered at a subtitle C facility undergoing corrective action according to subpart S.

Passage of HSWA added section 4010(c) to subtitle D. Section 4010(c) required EPA to revise criteria promulgated under section 4004(a) for facilities that may receive household hazardous wastes or small quantity generator hazardous wastes. The statute indicated that these criteria must include, at a minimum, ground-water monitoring necessary to detect contamination, location standards, and corrective action, as appropriate. The statute also indicated that the criteria should take into account the practicable capability of such facilities.

On August 30, 1988, EPA proposed these revised criteria for municipal solid waste landfills (see 53 FR 33313). The criteria for subtitle D municipal solid waste landfills most relevant to today's proposal are the criteria proposed for ground-water monitoring and corrective action under subpart G of 40 CFR part 258.

The part 258 subpart G proposal would require the owner/operator of a municipal solid waste landfill to establish a two-phase ground-water monitoring program. If parameters established for Phase I monitoring are detected at a statistically significant level above background, the owner/operator must initiate a phase II monitoring program which includes an initial test for all constituents listed in appendix IX of 40 CFR part 264. If the concentration of any appendix IX constituent exceeds the established trigger lever, as discussed below, then the owner/operator must initiate an assessment of the nature and extent of the contamination.

Like the subpart F program under subtitle C, the corrective action program proposed in 40 CFR part 258, subpart G, for municipal solid waste landfills would be limited to releases to ground water. The corrective action program, as described in subpart G, would have to be designed to delineate the areal extent of the plume of contamination and to clean up to maximum allowable constituent concentrations throughout the plume. Ground-water protection standards would be set using the same health and environmental based criteria as those employed in today's proposal for subtitle C corrective action for solid waste management units. The requirements for ground-water cleanup in the corrective action program described in the revised subtitle D criteria are thus very similar to those described in today's subtitle C corrective action proposal. The subtitle D revised criteria will not, however, address procedural requirements; procedures for implementing the criteria will be established by the States.

E. RCRA Subtitle I: Underground Storage Tanks

Section 9003 of subtitle I of the Resource Conservation and Recovery Act (RCRA) directs EPA to promulgate regulations applicable to owners and operators of underground storage tank

(UST) systems to protect human health and the environment. Section 9003(c) specifically requires EPA to promulgate regulations applicable to owner/operators of UST systems which require corrective action in response to releases from USTs and, further, requires the owner/operator to report the actions taken.

Section 9003(h) was added to RCRA by section 205 of the Superfund Amendments and Reauthorization Act (SARA) of 1986, which established a Leaking Underground Storage Tank trust fund that can be used by EPA to clean up releases of petroleum from UST systems. Alternatively, EPA can order UST owners and operators to undertake such cleanup. Under the corrective action requirements of section 9003(c), all petroleum UST cleanups will have to be conducted in accordance with the requirements in the regulations. The approach to UST corrective action adopts the same basic steps as the NCP requirements for CERCLA actions and those contained within today's proposed RCRA section 3004 regulation: control the release source, determine the extent of the contamination, determine the extent of the remediation required, and take the necessary cleanup actions. Specific differences in the programs reflect the different scope and nature of implementation under the different programs.

EPA issued final technical standards governing petroleum and CERCLA hazardous substance UST systems on September 23, 1988 (---- FR -------). Approximately two million USTs will be affected by the regulations, and a wide variety of release situations and hydrogeologic settings are expected. These standards would require owners and operators of leaking UST systems to take certain actions upon confirmation of a release. Owners and operators must report confirmed releases to the appropriate regulatory authority and begin immediate cleanup steps. Immediate measures required under the proposed standards include mitigation of safety and fire hazards; initiation of free product recovery, if applicable; and assembling of information on the nature and quantity of the release and site characteristics. The owner/operator must submit, to the implementing agency, reports describing these immediate steps, as well as the design and implementation of free product recovery systems. A corrective action plan would be required for longer-term cleanups addressing soil and ground-water contamination. Cleanup levels would be established on a site-by-site basis as approved by the implementing agency (typically the State) that would oversee the cleanup by the owner or operator.

The first stage of the UST corrective action process requires immediate steps to abate imminent safety and health hazards whenever a release from a petroleum UST is confirmed The owners and operators must investigate the presence of free product and, if present, begin free product recovery. The owner/operator must also submit information characterizing the site and the nature of the release. If, after reviewing this preliminary information, the implementing agency determines that the product may have reached ground water or that contaminated soil is in contact with ground water, the owner/operator must characterize the extent and location of soil and ground-water contamination. The implementing agency will use this information as the basis for determining, through a site-specific risk assessment, whether the owners and operators will be required to undertake a longer-term correction action.

This second stage of the corrective action process addresses soil and ground-water cleanup. The site-specific analysis is the basis for prescribing the extent and timing of cleanup that would be required for longer-term corrective action. The assessment would be based on analysis of site-specific conditions and problems posed by the release. Factors to be considered include: the quantity of material released; the mobility, persistence. and toxicity of the material; the exposure pathways; its relationship to present and potential ground-water well locations and uses; and any relevant standards. Technology-based cleanup requirements would also be possible under this approach if: (1) The cleanup level set during the UST corrective action process is found to be unattainable with current technology; (2) it is shown that the remaining contamination does not pose a substantial present or potential hazard to human health and the environment; and (3) monitoring procedures are instituted to ensure that the conditions remain stable or improve.

EPA's approach to corrective action at underground storage tanks is largely shaped by the enormous size of the regulated universe. These factors, as well as the absence of permitting requirements for USTs, explain the procedural differences between corrective action for USTs and today's proposal.

EPA estimates that there are approximately two million petroleum USTs at about 700,000 facilities as well as 50,000 hazardous substance USTs at 30,000 facilities potentially subject to subtitle I. Because of the size of this universe, EPA believes that the program is best implemented at the State and local level, and that it should be, to the extent possible, self-implementing. Thus, the UST rule would require that certain automatic actions be taken at the determination of a release: mitigation of fire and safety hazards, recovery of free product, and repair of the leak or removal of the tank. These are all straightforward actions particularly relevant to the UST universe and are amenable to self-implementing standards. At RCRA permitted facilities, contingency plans and tank standards would require comparable action for hazardous waste units. However, the Agency did not adopt comparable self-implementing provisions—beyond the regular facility subtitle C standards—in today's rule because of the much wider variety of units that would be subject to subtitle C corrective action and the close Federal or State oversight afforded by the permit process.

The UST rule would also require long-term remedial action for ground-water and soil contamination, based upon a site-specific assessment, after immediate action had been taken. Because of the large size of the regulated universe, the absence of a national permitting system under which to carry out cleanup, and the necessity of local implementation, EPA believes a procedurally less prescriptive approach to selecting cleanup strategies and cleanup levels is necessary for USTs.

Some USTs are potentially subject to corrective action requirements under both subtitle I and today's rule. Specifically, releases from an UST containing solid wastes at a RCRA permitted facility may be subject to corrective action requirements under both programs. In order to avoid confusion and because USTs located at RCRA facilities will be subject to the oversight provided by a site-specific permitting process, today's regulations, when promulgated, will be the applicable corrective action requirements for USTs subject to section 3004(u). The final UST rules also clarify the applicability of the subtitle I corrective action requirements to USTs located at RCRA permitted facilities by excluding them from coverage under subtitle I.

F. Federal Facilities

Many Federal agencies have facilities which require RCRA permits. Some of these agencies have developed remedial programs which apply at their facilities

in addition to EPA programs under the RCRA and CERCLA statutes. Regardless of any self-imposed remedial programs, federally-owned or operated facilities must comply with all RCRA and CERCLA requirements (with certain limited exceptions) in the same manner and to the same extent as most non-governmental entities. The objective of the RCRA corrective action program at Federal facilities, as at all RCRA facilities, is to ensure protection of human health and the environment.

Section 6001 of RCRA requires any agency of the Federal Government engaged in the management or disposal of hazardous waste to comply with both substantive and procedural requirements under RCRA as well as with any other applicable requirements for the management of hazardous waste, including Federal, State, interstate and local requirements. CERCLA section 120(a) makes Federal facilities subject to CERCLA in the same manner and to the same extent as private facilities. Section 120(i) also makes it clear that the special provisions for Federal facilities in Section 120 do not impair any obligations they have to comply with RCRA requirements, including corrective action. In accordance with section 120 (c) and (d), EPA has established a comprehensive Federal agency hazardous waste compliance docket and will list Federal facilities on the CERCLA National Priorities List (NPL) if they meet the NPL listing criteria.

Many Federal facilities at which hazardous wastes are managed will be subject to both CERCLA remedial action and RCRA corrective action authorities In many such cases, EPA intends to coordinate the application of RCRA and CERCLA authorities through the use of interagency agreements (IAGs), as provided under the authority of section 120(e) of CERCLA. The IAG will provide the vehicle for explicitly defining the procedural and technical requirements for corrective action, in satisfaction of the statutory and regulatory authorities of both RCRA and CERCLA.

While it is the responsibility of Federal facilities to comply with the requirements of both the RCRA and CERCLA programs, the Agency plans to continue its efforts to coordinate the activities required under both programs with those under already-established Federal facility remedial programs. For example, the Department of Defense (DOD) has developed the Installation Restoration Program (IRP) to identify and cleanup contamination resulting from past waste management practices at DOD facilities. IRP conducted activities will often serve to satisfy RCRA and CERCLA requirements. Furthermore, the Agency is aware that in some cases an Environmental Impact Study (EIS) will be conducted at a Federal facility during the same time frame as the RCRA Corrective Action investigations and studies are undertaken. To the extent that the information generated by the EIS is deemed relevant by EPA to the needs of Corrective Action, EPA would not intend to require duplicative information to be generated to satisfy corrective action requirements. In fact, it may be possible in some cases to merge the two studies into one integrated document. EPA intends, however, to oversee and, if necessary, direct the scope and substance of investigations and cleanup activities at DOD and other Federal facilities. In addition, EPA anticipates that many States will exercise oversight authority under State laws to review and participate in corrective action decisions at Federal facilities.

VIII. Public Involvement

Effective public involvement efforts within the corrective action program will enable the interested public to receive accurate and timely information about remedial plans and progress and to comment on proposed actions at significant decision points. The statutory public involvement requirements for permitting contained in RCRA section 7004 are elaborated in regulatory requirements at 40 CFR parts 124 and 270. Today's proposal includes additional requirements intended to promote active and effective communication between the interested public, the regulatory agency responsible for implementation of the corrective action program, and the permittee.

The first required public involvement occurs before a draft RCRA permit is developed. At the time the permit application is submitted, a mailing list must be assembled by EPA or the State for the community in which the facility is located. (See 40 CFR 124.10(c)(1)(viii).) The list serves as an important communications tool to allow the regulatory agency to reach interested members of the public with announcements of meetings, hearings, events, and available reports and documents. Guidance on developing a comprehensive mailing list is available in the January 1986 Guidance on Public Involvement in the RCRA Permitting Program.

After developing a draft permit, the regulatory agency is required to provide public notice that a draft permit has been prepared and is available for public review. (See 40 CFR 124.6.) The notice must be published in a major newspaper and broadcast over local radio stations. A 45-day public comment period on the draft permit must follow the public notice. If a written request is received, EPA or the State is required to hold an informal public hearing. A 30-day advance notice containing the time and place of the hearing is required. In addition, a fact sheet is developed to accompany every draft permit. It includes the significant factual and legal bases used in preparing the draft permit. The comment period for the draft permit will provide the public an opportunity to comment on corrective action conditions contained in the permit. In most cases, requirements for the RCRA Facility Investigation (where necessary) will be included in the schedule of compliance in the draft permit.

When a final decision is reached on whether to issue or deny a permit, EPA regulations require that a notice of the decision be sent to each person who submitted written comments on the draft decision or who requested such a notice. In addition, a response to all significant comments must be issued by the Agency or the State. The response to comments must include a summary of substantive comments received and an explanation of either how they were incorporated or addressed in the final permit condition or why they were rejected.

In addition to the established public involvement activities required during the permitting process, today's regulation proposes in § 270.36 to provide the Director with the authority to require an additional effort to keep the interested public informed of activities at the site. Proposed § 270.36 would allow the Director to require the establishment of an information repository that would house documents pertinent to the corrective action activities near the facility. The details of the proposed repository are discussed in section VI.L of today's preamble. In addition, today's proposal would require the permittee to mail a summary of the final report of the RCRA Facility Investigation to all individuals on the facility's mailing list to keep interested persons informed of findings at the site.

Today's proposal would also require a major permit modification to incorporate remedy selection. The modification would provide an additional opportunity for public involvement. This modification would follow established public participation procedures under part 124 for major modifications. In addition, today's proposal provides that additional permit modifications initiated by the Agency or the permittee will be

classified on the basis of their potential effect on the permittee, the affected public, and the environmental impact of proposed changes. Those that are classified as major modifications will follow the existing procedures for major modifications as described above. Those that have less significant impacts will follow the procedures described under today's proposed § 270.34(c) or those issued on September 28, 1988 (53 FR 37912) for owner/operator initiated modifications. In all cases there will be an opportunity for public review and comment. Section VI.L of today's preamble discusses the classification of permit modifications for corrective action and their related procedural requirements more fully.

There may be some actions taken during the course of a permit that are not reflected in the initial permit and are not the subject of a permit modification. For example, many of the detailed activities taken by the permittee in implementing the RFI or in designing the CMS plan may not be specified in the initial permit. In some cases, EPA and the permittee may reach a mutual agreement about the exact nature of the required activities (within the general scope of the permit), and the specifics of these activities may not be reflected in a permit modification. In such cases, the specific activities agreed to will be documented on the permit record and the public will have an opportunity to comment on them when the permit is modified at the time of remedy selection. This approach would be limited to activities that would not constitute a major change that might otherwise warrant application of the public participation requirements specified in § 7004 of RCRA.

EPA believes that the approach outlined above provides an appropriate balance between the need to involve the public in the remedial process and the need to proceed expeditiously to remedy releases to the environment. The public will have a full opportunity to comment on all remedial activities undertaken during the term of the permit, and not otherwise subject to public scrutiny, at the time of remedy selection. To the extent that public comment takes legitimate issue with such activities, EPA may need to revisit some of these activities or modify its decision regarding the remedy. Accordingly, EPA will be very sensitive to possible public reaction in specifying activities to be undertaken during the course of the permit without public involvement.

Public involvement activities required in the permitting process and proposed today for the corrective action program are similar, though not identical, to those established under the Superfund Community Relations Program. Activities proposed today are in addition to public involvement activities conducted at RCRA facilities targeted by the Agency for expanded public involvement because of the high potential for exposure to the population or because of a high level of interest in the community. Public involvement efforts at RCRA sites listed on the National Priorities List and/or facilities which will accept Superfund wastes should be integrated with concurrent Superfund community relations efforts to the extent possible.

EPA and State offices, as a matter of policy, jointly issue permits. Where States are authorized to implement only some portions of the hazardous waste program, the State and EPA may also conduct public involvement activities jointly.

IX. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility under section 7002.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g)(1) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA requirements apply in authorized States in the interim.

B. Effect on State Authorizations

1. *Schedule and Requirements for Authorization.* Today's rule is proposed pursuant to section 3004(u), section 3004(v), and section 3005(c)(3) of RCRA, provisions added by HSWA. Therefore, the Agency is proposing to add the requirements to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in this section of the preamble.

EPA will implement today's rule in authorized States until (1) they modify their programs to adopt these rules and received final authorization for the modification or (2) they receive interim authorization as described below. Because this rule is proposed pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or section 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire automatically on January 1, 1993 (see 40 CFR 271.24(c)); EPA invites comment on whether this deadline should be extended for cause.

EPA invites comment on an expedited process for granting interim authorization for today's rule, pursuant to RCRA section 3006(g)(2), to States already authorized for HSWA corrective action pursuant to the initial codification of section 3004(u) at 40 CFR 264.101 (50 FR 28747, July 15, 1985). An expedited process is needed if such States are to avoid losing their authority to issue corrective action permits upon the effective date of today's rule. This expedited process would not involve a detailed review of the State regulations. Rather, when determining whether the State's regulations are substantially equivalent to today's rules, EPA would consider the State's statutory authorities to impose similar corrective action requirements. Because today's rules clarify the scope of and are consistent

with, the July 15, 1985, codification rule for which some States are authorized, these authorized States already should have statutory authority to implement today's rules.

To ensure that today's rules are uniformly applied by a State granted interim authorization under this approach, a State applying for interim authorization would be required to commit, in the State-EPA Memorandum of Agreement, to implementing its corrective action authorities according to the subpart S requirements. In particular, permits issued by the State must reflect subpart S requirements even prior to adoption by the State of regulations equivalent to and no less stringent than the subpart S requirements. The State interim authorization application under this approach, then, would consist of the revised Memorandum of Agreement (MOA), and a revised Attorney General's (AG) statement certifying that the State has the authority to enter into the Memorandum of Agreement and that permits issued with the conditions agreed to in the MOA would be enforceable under State law. EPA specifically invites comment on whether State law allows the State to make this MOA commitment.

EPA believes this expedited process will minimize disruptions to the State permit process. A State already authorized for corrective action which applies for interim authorization for today's rule shortly after its publication as a final rule should be able to receive interim authorization prior to the effective date and thus avoid the need for EPA to resume responsibility for issuing permits containing corrective action conditions in that State.

Although requirements imposed pursuant to section 3006(g)(1) of HSWA take effect in authorized States at the same time as in unauthorized States, EPA believes that this requirement applies only to the promulgation of the regulations identified in § 271.1(j) and only to the extent that these requirements put the HSWA program in place. In passing section 3006(g)(1), Congress was concerned that no delay occur before these requirements, once in place in the Federal program, became effective in authorized States. However, Congress clearly did not intend for the authorized State program's authority to return, in part, to EPA every time EPA were to promulgate a subsequent, more stringent modification or addition to these requirements promulgated under HSWA. Thus, once the basic framework for the HSWA provisions has been promulgated and is essentially complete, subsequent regulations promulgated by EPA will be adopted by States according to the timelines for non-HSWA regulations in 40 CFR 271.21(e). In regard to today's rule, EPA is soliciting comment on whether the HSWA corrective action requirements should be considered essentially complete with the adoption of these requirements.

40 CFR 271.21(e)(2) requires that authorized States must modify their programs to reflect Federal program changes, and must subsequently submit the modifications to EPA for approval. The deadlines by which a State must modify its program to adopt this proposed regulation will be determined by the date of promulgation of the final rule, in accordance with 40 CFR 271.21(e). These deadlines can be extended in certain cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become subtitle C RCRA requirements.

A State that submits its official application for final authorization less than 12 months after the effective date of these standards is not required to include standards equivalent to these standards in its application. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their applications. 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

In addition to meeting the requirements in 40 CFR part 271, a State seeking authorization for today's rules must demonstrate the ability to capably implement the base RCRA program as well as the additional HSWA elements. EPA's assessment of a State's capability will reflect an evaluation of the State's entire authorized program. The assessment will examine not only whether a State is effectively implementing the base program, but also how that State may implement additional program areas.

2. *States with Existing Corrective Action Programs.* States that are authorized for RCRA, but not for corrective action may already have requirements under State law similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

Additionally, some States have received authorization for HSWA corrective action pursuant to the initial codification of section 3004(u) at 40 CFR 264.101 (50 FR 28747, July 15, 1985). The July 15, 1985, Codification Rule explains at 50 FR 28730 that a State's authorization status may change in response to further implementation of HSWA, *i.e.*, when EPA publishes regulations that further define initially codified rules. A State that was authorized for corrective action under the July 15, 1985, Codification Rule will no longer be authorized when today's rules are promulgated unless the State applies for and receives interim or final authorization before the effective date of the final promulgation of today's rules. However, if such States have not obtained interim or final authorization by the effective date, cooperative agreements can be used so as to avoid interruption of ongoing State corrective action activities. See the above discussion of an expedited process for interim authorization of such States.

C. Corrective Action and Mixed Waste Authorization

On July 3, 1986, EPA published a notice that, to obtain and maintain authorization to administer and enforce a hazardous waste program pursuant to subtitle C of RCRA, States must have authority to regulate the hazardous component of radioactive mixed wastes (51 FR 24504). Radioactive mixed wastes are wastes that contain hazardous wastes subject to RCRA and radioactive wastes subject to the Atomic Energy Act (AEA). Radioactive mixed wastes (except for the component subject to AEA) are considered to be a "solid waste" for purposes of corrective action at solid waste management units. Therefore, in order to obtain authorization for corrective action, States must have previously obtained or must simultaneously obtain authorization for their definition of solid waste, which must not exclude the non-AEA components of radioactive mixed waste. This is because States must be able to apply their corrective action authorities to mixed waste units.

X. Regulatory Impact Analysis

A. Executive Order No. 12291. Regulatory Impact Analysis

1. *Background.* In conjunction with the development of today's proposed rule, EPA performed a regulatory impact analysis (RIA), as mandated by Executive Order 12291. These analyses are required for "major" regulations, defined as those likely to result in annual effects on the economy of $ 100 million or more; a major increase in costs or prices for consumers or individual industries; or significant adverse effects on competition, employment, investment, productivity, innovation, or international trade. The results of the RIA prepared for today's rulemaking demonstrate that the rule is a "major" regulation.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Agency is also required to assess the impact of a proposed or final rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The results of this assessment, which was conducted as part of the RIA, are presented below in section X.B.

The complete regulatory impact analysis document is available in the docket established for this proposed rule. The following is a summary of the analytical methodology used in conducting the RIA, and the results of the analysis.

2. *Summary and Major Conclusions.* The analysis conducted by the Agency indicates that the corrective action rule may result in a wide range of costs, depending on the nature of the remedies selected in site-specific decisionmaking. Given the large, national scope of this rule, and the flexibility provided by the provisions outlined in this proposal, these uncertainties are expressed in the following discussion.

Overall, the analysis found that about 31 percent of facilities are projected to require corrective action for releases to ground water from solid waste management units (Media other than ground water were not analyzed due to data and modeling limitations.) The average annualized per facility costs for non-Federal facilities under today's proposed rule are estimated to range between $1.8 million to $0.4 million. The total present value national cost of the proposed rule, as an increment over the pre-HSWA corrective action program, is likely to range between $7 billion and $42 billion. The costs of cleaning up Federal facilities, presented separately, are much more uncertain and could range between $3 billion to $18 billion.

The above results reflect two of four regulatory alternatives that were analyzed which the Agency believes reflect the flexibility inherent in the proposed rule. These alternatives provide an upper and lower bound to the costs of the proposed rule and reflect the Agency's uncertainty about several of the data and assumptions used in estimating costs, such as the types of remedial measures that will be ultimately implemented. While both regulatory alternatives would require cleanup to health-based levels, the key distinction between them is in the choice of allowable corrective action remedies. The analysis assumed that the lower bound option would be more flexible than the upper bound (*e.g.*, by allowing use of exposure controls in cases where certain remedies were technically infeasible or prohibitively expensive).

3. *Scope and Analytical Approach.* In developing the RIA for today's proposed rule, the Agency analyzed both qualitatively and quantitatively several basic alternatives which could have been adopted in structuring the corrective action rule The alternatives studied cover a range, from a highly conservative "cleanup to background" approach with very little flexibility in adjusting remedies for site-specific conditions, to alternatives which trigger cleanup of releases in only limited circumstances, and would allow, in many cases, contamination to remain within a facility's property and beyond. The analysis indicates that these alternatives have quite different environmental results, as well as impacts on the regulated community.

In developing the RIA, EPA assembled data to estimate the potential scope of the RCRA corrective action program. The data used in generating these estimates was primarily obtained from the Agency's existing database on RCRA facilities (the "Hazardous Waste Data Management System," or HWDMS), and an analysis conducted for the RIA which examined a sample set of 65 RCRA Facility Assessment (RFA) reports. These reports are typically prepared by EPA or the States prior to issuance of RCRA permits, and provide preliminary findings as to what releases have or may have occurred, and what investigations should be conducted to verify and/or characterize the releases. These preliminary RFA findings were extrapolated to provide estimates of the numbers and types of facilities that may require corrective action. Certain data from the reports were also used to support modeling for the quantitative analysis of the RIA. A summary of the RIA estimates as to the size and distribution of RCRA facilities that may need corrective action are presented in the following section of this discussion.

4. *Potential Scope of the Corrective Action Program.* EPA estimates that there are approximately 5,700 facilities regulated under RCRA subtitle C that are potentially subject to the corrective action authorities of sections 3004(u) and 3008(h). Based on preliminary survey results from RFA reports, it is estimated that roughly 60,000 solid waste management units exist at these facilities; this number includes some 3,000 land-based hazardous waste management units (*e.g.*, hazardous waste landfills and surface impoundments) that were subject to corrective action prior to the 1984 HSWA amendments. The number of solid waste management units at individual facilities varies widely, up to as many as 1,300. Federal facilities, because of their large size, typically contain many more solid waste management units—an average of 55 per facility, according to the RFA survey results. The survey indicated that there are an average of 12 solid waste management units (including hazardous waste management units) at non-Federal facilities.

The types of solid waste management units found at facilities are diverse. More than one-third (36 percent) are tanks used for storage or treatment of wastes. Landfills comprise 16 percent, and surface impoundments 15 percent. The remainder are units such as container storage areas, piles, land treatment units, incinerators and other miscellaneous units. The survey also found a wide diversity within unit categories in terms of size, age, general condition, types of wastes managed, and other factors.

The survey revealed that, on average, 62 percent of all facilities have indications of possible releases, based on RFA findings, sufficient to require follow-up remedial investigations (*i.e.*, RFIs). Typically, facilities that have subtitle C land disposal units and incinerators are more likely to require follow-up investigations than are treatment/storage facilities (74 percent, 70 percent and 56 percent, respectively). The Agency's experience with the corrective action program to date (as confirmed by the RFAsurvey results) indicates that one-half of these facilities (or one-third of the total universe) will require some type of remedial action, based on the confirmation of a release in the RFI.

Potential releases of concern most often noted in RFA findings are releases

to ground water and soil; of all facilities, 30 percent have actual or suspected releases to ground water, 34 percent to soil. Facilities with confirmed or suspected releases to surface water and air are less common—17 percent and 7 percent respectively, based on the RFAs surveyed.

Based on the results of the models used in the quantitative analysis conducted for the RIA, approximately 31 percent (1,700 RCRA facilities) will have ground-water contamination requiring remediation.

5. *Qualitative Analysis.* EPA considered three strategies for implementing corrective action under the HSWA mandate that permits for all treatment, storage, or disposal facilities (TSDFs) address releases from SWMUs to all environmental media. The following is a summary of each alternative strategy.

Strategy 1—Cleanup to background levels as soon as practicable for all facilities. This strategy represented the most stringent and environmentally conservative option of the three. Regulations modeled after this approach would require complete restoration of all contamination back to the unit boundary, as quickly as could be practicably achieved. In order to ensure that solid waste management units would continue to meet what would amount to a "zero release" standard, extensive source controls would be required, perhaps often involving treatment or destruction of all wastes that could cause future contamination.

This strategy would, if implemented, at least theoretically achieve the highest degree of protection to human health and the environment. Realistically, however, current technologies cannot consistently achieve such a cleanup standard. In addition, the economic impacts of such a regulatory approach would obviously be much greater than the other options, and could be expected to cause substantially more owner/operators to become insolvent, thereby placing additional demands on other funding sources, such as State or Federal cleanup funds.

Strategy 2—Cleanup to health-based levels, with flexibility in timing. In broad terms, this strategy would require cleanup of releases to the unit boundary to concentration levels safe for lifetime human exposure. The timing for achieving these levels would vary depending on a number of site-specific factors, such as the extent and nature of the contamination, exposure potential, availability of technologies, and other factors. Source controls would be required in order to prevent further releases above health-based levels.

This strategy would also achieve a conservative level of protection. The economic impacts of this strategy, although substantial, would be considerably smaller than for Strategy 1.

Strategy 3—Cleanup to health-based standards only where actual or imminent exposure exists. Under Strategy 3, corrective actions would be required only if there was evidence of actual or imminent exposure to contaminated media (*e.g.*, contaminated drinking water wells), above health-based standards. The extent of cleanup would be tied to alleviating that exposure; cleanup to the unit boundary would not be required unless exposure were actually of concern at that point. Required source control measures would be less extensive than under Strategy 1 or 2. Protection against future exposure to contamination would rely heavily on institutional controls.

This regulatory approach would achieve a minimum level of protection, as compared to the other two strategies. By allowing contaminated media to remain contaminated based on current exposure patterns, protection against future exposure could not be guaranteed. Thus, Strategy 3 is the least protective strategy. This strategy would, however, be substantially less costly to owner/operators, relative to Strategies 1 and 2.

Today's proposed rule adopts the Strategy 2 approach. The Agency believes that this regulatory strategy provides an optimum balance in ensuring a high degree of protection of human health and the environment, while not placing unnecessary burdens on facility owner/operators.

It should be understood that crafting a comprehensive rulemaking within the broad confines of any of the three alternatives listed above would, of necessity, require addressing a large number of specific policy questions. Thus, a variety of specific regulatory blueprints could be created under any one alternative. In this regard, as noted below, we have developed two alternatives for the purpose of quantitative analysis that we believe reflect the bounds of flexibility of implementation afforded by this rule This is reflected in the rule proposed today, which is generally patterned after Strategy 2, but also contains certain regulatory requirements that could be considered in line with Strategies 1 and 3.

6. *Description of Options Analyzed Quantitatively.* In developing the quantitative analysis for the RIA, a similar range of regulatory options were assessed as in the qualitative analysis. For comparison purposes, however, the analysis also examined a "baseline" option—in effect, the pre-HSWA corrective action program. In addition, the Agency developed four regulatory options, two of which were generally believed to reflect the flexibility inherent in the proposed rule. It should also be noted that in structuring the modeling logic for this analysis, it was necessary to make certain assumptions and use decision rules that vary slightly from those used in the qualitative analysis; however, the broad regulatory alternatives examined in the qualitative and quantitative analyses are generally the same.

The quantitative analysis examined each of the five regulatory options in terms of the following criteria: cost, protection of human health and the environment, flexibility in implementation, and technical practicability. This analysis evaluates the effects of each alternative only as it would address contamination of ground water.

Detailed information on the data used in this analysis, and how the models were constructed, are presented in the RIA document. The following is a summary of the options modeled, and the general assumptions used in constructing each.

Option 1: Baseline (Pre-HSWA). This option represents requirements under RCRA prior to enactment of the 1984 HSWA corrective action requirements and is used as the basis for comparison of costs and benefits of other options. Only land disposal units that received hazardous waste after July 26, 1982, and thus were regulated under part 264, subpart F, were examined. The corrective action trigger and target concentrations are the same, either the background concentration or a maximum contaminant level. (For modeling purposes, the baseline scenario assumed that cleanup targets would not be established at "alternate concentration limits" under subpart F.) Only onsite cleanup within the facility boundary is addressed. Ground-water removal and treatment, or capping, are the only corrective action remedies considered.

Option 2: Immediate Cleanup to Background. This option is the strictest of those evaluated. All SWMUs, in addition to regulated subtitle C land disposal units, were addressed. Any detectable release to ground water in excess of background levels would trigger corrective action, and both on-site and off-site contamination must be cleaned up to background levels as soon as practical. For purposes of this analysis, we assumed that background

contamination did not exist and, therefore, assumed that cleanup to background was equivalent to cleanup to detection limits. Source controls are required with a bias toward excavation

Option 3: Immediate Cleanup to Health-Based Standards. This option is similar to the previous one in that all SWMUs are addressed, source control remedies such as excavation are required, and off-site contamination must be addressed as soon as detected. However, corrective action would be triggered only if concentrations were detected above a health-based standard, rather than above background concentrations. This option involves a strong preference towards source control remedies and towards cleanup of contamination as quickly as possible. Use of technical infeasibility waivers is very limited, even if remedies cannot reasonably be expected to achieve the target. In addition, unlike the previous option, cleanup of on-site contamination could be deferred until facility closure, at which point cleanup to health-based levels would be required.

Option 4: Flexible Cleanup to Health-Based Standards. This option also addresses SWMUs, and health-based standards are used as both trigger and target levels. As in the previous option, owners and operators may defer cleanup of on-site releases until facility closure. However, in this alternative owners and operators have considerable flexibility in identifying corrective action remedies. Here, remedies less costly than source control can be chosen if they achieve target within a reasonable time frame. As a decision rule to reflect the fact that the problems of scale and other technical difficulties will preclude certain remedies at complex sites, remedies that failed to achieve cleanup in a reasonable period of time (assumed to be about 130 years for this analysis) or that would be extraordinarily expensive (*i.e.*, over $150 million) were rejected as "impracticable." Instead. exposure controls would be relied on to prevent risk in these cases. It is important to note that this approach is not intended to imply that remedies of this scope would never be undertaken, or to define the limits of technical practicability.

Option 5: Flexible Cleanup Based on Actual Exposure. This option is the least stringent of the five. It is similar to Option 4, except that cleanup of off-site exposure could be deferred if there is no actual human exposure to the release. If there is an off-site exposure, corrective action must address the exposure. Again, under this option, there is a flexible approach towards remedy selection.

The Agency believes that options 3 and 4 provide an upper and lower bound on the range of outcomes that may result during implementation of the proposed rule. This range results from the flexible nature of the proposed rule and the uncertainty about the choice of remediation measures in the field and the performance of the remedies that are selected. EPA expects that the real effects of the rule are likely to lie somewhere between these two options.

7. Results of Quantitative Analysis. The analysis estimated that approximately 31 percent of all RCRA facilities will trigger corrective action in all the post-HSWA options analyzed, as compared to 14 percent that would trigger under the baseline pre-HSWA scenario. This reflects the requirement that all SWMUs, not just land disposal units, are subject to corrective action under post-HSWA options. Note that even in the post-HSWA options, approximately two-thirds of the facilities will not trigger corrective action for ground water.

It is important to note that differences in trigger levels did not result in significant differences in the number of facilities triggering corrective actions. However, differences in target levels for the various regulatory options made a significant difference in how many corrective actions were "successful" in achieving cleanup levels, as is discussed later in this section. In examining the potential benefits of the proposal (Options 3 and 4) as compared to other options, the Agency developed an "effectiveness" test which measures the degree to which a particular option is successful in achieving its cleanup level The results of the test demonstrate that Options 3 and 4 are the most successful in achieving the cleanup target. This analysis supports the Agency's selection of Options 3 and 4 for the proposed rule. The effectiveness test should not, however, be viewed as a measure of all the potential benefits of remediation of contaminated ground water.

The point when corrective action is triggered was also analyzed. The analysis demonstrates that, for Option 2, in which corrective action must begin immediately, approximately 26 percent of all existing RCRA facilities would initiate corrective action in the first year of the program. In Options 3, 4, and 5, in which on-site corrective action can be deferred, only about 12 percent of all facilities would initiate corrective action in the first year. The ability of a facility to defer on-site corrective actions results in lower economic impacts.

For those facilities that trigger corrective action, the analysis estimated the length of time required for a corrective action to reduce contaminant concentrations below the target levels at all wells within 1,500 meters of the release. Under options requiring cleanup to health-based levels (*i e.*, options 3, 4, and 5), about 51 to 56 percent of the facilities reach cleanup targets at all well distances within 75 years of the initiation of corrective action. In contrast, under the two options requiring cleanup to background, only about 34 percent of facilities triggering corrective action are projected to achieve targets within 75 years. This further confirms the presumption that achieving cleanup to background concentrations may be difficult or impossible to achieve technically.

As part of the quantitative analysis, the Agency developed estimates of the costs of corrective action under different regulatory options on a per-facility basis, as well as on a national basis. Typical facility corrective action costs vary significantly depending upon the specific regulatory option. The cost analysis demonstrates that the most stringent post-HSWA regulatory option, (*i.e.*, Option 2, or "Immediate Cleanup to Background") is by far the most costly option, with a mean present value cost of over $281 million per facility, and an annualized per facility cost of about $19 million (at a 3 percent discount rate).

The upper bound proposed rule option, "Immediate Cleanup to Health-Based Standards" option (*i.e.*, Option 3), was estimated to have a mean present value per facility cost of $26.9 million, and annualized per facility costs of $1.8 million. The lower bound regulatory option (*i.e.*, Option 4, or "Flexible Cleanup to Health-Based Standards") was estimated to have a mean present value cost per facility of $6.3 million, and annualized per facility costs of $0.4 million.

The baseline per-facility cost is the lowest of all the options at a mean present value cost of $3.8 million, and an annualized per-facility cost of $0.3 million. The "Flexible Cleanup Based on Actual Exposure" option (*i.e.*, Option 5) was estimated to have a mean present value cost of $4.8 million and annualized per facility costs of $0.3 million.

The total national cost for EPA's corrective action program is influenced by three parameters: The average cost of each action, the number of facilities required to undertake corrective action, and the cost to facility owners and operators of undertaking required investigations. National costs discussed below are presented in incremental

terms (*i.e.*, after subtracting the costs of the baseline scenario).

The "Immediate Cleanup to Background" option is the most expensive, with an incremental total cost above the baseline pre-HSWA scenario of $490 billion. This option was estimated to have an annualized cost of $32.9 billion.

Among the other regulatory options, the differences in costs are primarily a result of differences in timing of cleanup and in the flexibility afforded in terms of choosing corrective action remedies. Option 3 (*i. e.*, "Immediate Cleanup to Health-Based Standards") was estimated at a total cost of $41.8 billion, with an annualized cost of $2.8 billion. This option is relatively costly, due in part to modeling assumptions as to the types of remedial technologies that would be employed to meet these standards.

Option 4 (*i.e.*, "Flexible Cleanup to Health-Based Standards") was among the least costly, with a total cost of $7.4 billion, and an annualized cost of $0.5 billion. The costs are lower because, in general, less expensive technologies are assumed and, for many facilities, final cleanup of contaminated ground water would be deferred for a number of years, thus reducing the present value costs.

Option 5 (*i.e.*, "Flexible Cleanup Based on Actual Exposure"), where both on-site and off-site cleanup of contamination could be deferred until closure if there was no actual exposure, was somewhat less expensive than the above option. This option had a total cost of $5.0 billion, an annualized cost of $0.3 billion.

Today's proposed regulation is most similar to Option 3 (*i.e.*, "Immediate Cleanup to Health-Based Levels") and Option 4 (*i.e.*, "Flexible Cleanup to Health-Based Standards"). These results illustrate that the total national costs of this rule are likely to range between $7 and $42 billion. The relatively wide range reflects the uncertainty in a number of areas, such as the timing of corrective action, the types of remedial measures that will be considered, and the nature and difficulty of remedial measures that are selected. Overall, the Agency believes that this range represents a reasonable bound of the potential effects of the rule, and that in all likelihood, the actual effects will fall somewhere within this range.

The Agency is committed to trying to refine these costs estimates before promulgation of the final rule. To help in this effort, the Agency requests that commenters provide any data or information relevant to the analysis described in the preamble or in the accompanying Regulatory Impact Analysis.

8. *Economic Impacts.* With the cost information developed from the quantitative analysis, the RIA estimated the financial impacts of the proposed rule on affected firms. The results are expressed in terms of predictions of total costs that facility owners and operators would not be able to cover due to insolvency. The results provide an indication of the magnitude of costs that could ultimately be faced by entities other than the immediate owner or operator of the facility. Alternate funding sources might include the Superfund (provided that the facility would be eligible for Superfund funding), State remedial action funds, corporate parents of facility owners and operators, or, through price increases, the customers of the firm owning or operating the facility. The results of this analysis are presented in "undiscounted" numbers, since Superfund monies are generally described in undiscounted terms. For scenarios other than baseline, costs are presented on an incremental basis relative to the baseline.

Under the baseline scenario, it was estimated that 9 percent of all firms owning RCRA facilities would be adversely affected, creating total unfunded costs of $97 million (undiscounted) over the next 50 years.

The "Immediate Cleanup to Background" scenario generated by far the highest level of unfunded costs, totaling $74 billion over the next 50 years. The "Immediate Cleanup to Health-Based Standards" option results in unfunded costs of over $5.1 billion over the next 50 years. The "Flexible Cleanup to Health-Based Standards" option results in unfunded costs of over $0.5 billion over the next 50 years. The "Flexible Cleanup Based on Actual Exposure" option resulted in a total of $0.2 billion unfunded costs, undiscounted, over the next 50 years.

Based on the RIA analysis, EPA anticipates that the ability to fund corrective action costs will vary between industries. Industries that may have a relatively low ability to pay for corrective actions include sanitary services; coating, engraving, and allied services; and miscellaneous wood products. These industries have relatively low net income levels. Industries that show a particularly high ability to pay include petroleum refining, motor vehicles and motor vehicle equipment, and aircraft and aircraft parts.

9. *Federal Facilities.* The RIA discusses Federal facilities as a separate entity because, although they only constitute 6 percent of the total RCRA facility universe, they contain many more SWMUs per facility (on average, 55 per site) and therefore, may incur higher corrective action costs. These costs must be funded by public money.

Based on the RIA analysis, it is estimated that of the 352 Federal RCRA facilities, between 61 percent and 100 percent are likely to require ground-water corrective action under the proposed rule, compared to between 17 percent and 23 percent under the baseline A rough approximation of the costs for these corrective actions, per facility, ranges from $17 million for the baseline scenario to $1.3 billion for the "Immediate Cleanup to Background" option. For the options most similar to the proposed rule (*i.e.*, "Immediate Cleanup to Health-Based Standards" and "Flexible Cleanup to Health-Based Standards") the mean per facility cost is estimated to range from $123 to $29 million, or in annualized costs, from about $8 to $2 million per facility.

The total Federal facility costs, incremental to the baseline, for the options most similar to the proposal range from $3 to $18 billion; the annualized costs range from $0.2 to $1.1 billion. Again, this range reflects the likely bounds on the ways in which the RCRA corrective action program will ultimately be implemented for Federal facilities. Incremental Federal facility costs for other regulatory approaches could be $208 billion for the "Immediate Cleanup to Background" option, or $2 billion for the "Flexible Cleanup Based on Actual Exposure" option. Baseline costs are estimated to be $1 billion.

This analysis thus concludes that, although Federal facilities only comprise 6 percent of the population affected by the corrective action program, they could incur roughly 30 percent of the total cost of the rule.

10. *Further Regulatory Impact Analyses.* Given the scope and potential impacts of this rulemaking, EPA recognizes the need to continue to refine its estimates of the costs and benefits of the rule. The Agency intends to collect additional data and will conduct substantial new analyses prior to finalizing today's rule. In conducting these studies, the Agency believes that it will be of particular value to examine the experience gained in recent years in remediating Federal facilities. Large volumes of information and extensive technical experience have been accumulated specifically by the Department of Defense and the Department of Energy. EPA intends to form an interagency working group to

develop and conduct these further Regulatory Impact Analyses.

The new analyses will be conducted in accordance with the existing Agency guidance on Regulatory Impact Analysis and the draft Regulatory Impact Analysis Guidance published in the 1988 Regulatory Program of the United States. The analyses will explicitly examine the costs, health and environmental benefits, and technological limitations for the key regulatory requirements contained in the proposal—especially for the several alternative approaches to ground water remediation outlined in the proposed rule. This analysis will also estimate the aggregate impacts, identified above, for sites eligible for remediation under this rule and for those sites which are listed on the NPL, and will, therefore, look to this rule as an ARAR, under the provisions of CERCLA. Upon completion of the revised analyses, EPA will solicit comment on the results of the analyses and the methodology used to derive them. The Agency will then assess these comments, along with comments which will have been received previously on the proposed rule. Through these actions EPA will ensure that the net social benefits (including environmental and health benefits) of the rule proposed today are maximized, taking into account costs, technological limitations, risks, and realistic assessments of both actual and reasonably expected uses of each site. If the revised RIA, together with the comments received, demonstrate that the rule proposed today does not achieve this outcome, the Agency will make appropriate modifications to the final rule, or if necessary, will repropose the rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires Federal agencies to fully analyze the economic effects of regulations on small entities. The Agency analyzed the economic impacts for the regulatory options that are most similar to today's proposed rule (*i.e.*, "Immediate Cleanup to Health-Based Standards" and "Flexible Cleanup to Health-Based Standards").

The RIA assumes that a small business is significantly impacted if its excess of cash flow over ten percent of its total liabilities is insufficient to meet corrective action costs, or if its net income is insufficient to meet its corrective action costs.

For the alternative analyzed, it was found that small firms encounter more severe impacts from the corrective action requirements than large firms. The options most similar to the proposed rule result in incremental impacts (*i.e.*, relative to the baseline) on approximately 9 to 11 percent of small businesses owning RCRA facilities.

Based on the Agency's guidelines for implementing the Regulatory Feasibility Act, the results of the analysis as summarized above, suggest that the proposed rule does not impose significant impacts on small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Reporting and recordkeeping burden on the public for this collection is estimated at 42,497 hours for the 674 respondents, with an average of 1.151 hours per response. (Burden estimates should include all aspects of the collection effort and may include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information. *etc.*)

If you wish to submit comments regarding any aspect of the collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR #1451), contact Rick Westlund, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202-382-2745); and Tim Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 264, 265, 270, and 271

Administrative practice and procedure, Corrective action, Hazardous waste; Insurance, Reporting and recordkeeping requirements.

Dated: July 5, 1990.

William Reilly,

Administrator.

XI. Supplementary Documents

APPENDIX A.—EXAMPLES OF CONCENTRATIONS MEETING CRITERIA FOR ACTION LEVELS

[Section 264.521(a)(2)(i-iv)]

Constituent name	Class	Air(ug/m^3)	Water (mg/L)	Soils (mg/kg)
Acetone	D		4E−00	8E+03
Acetonitrile	D		2E−01	5E+02
Acetophenone	D	2E−01	4E−00	8E+03
Acrylamide	B2	8E−04	8E−06	2E−01
Acrylonitrile	B1	1E−02	6E−05	1E−00
Aldicarb	D		5E−02	1E+02
Aldrin	B2	2E−04	2E−06	4E−02
Allyl alcohol	D		2E−01	4E+02
Aluminum phosphide	D		1E−02	3E+01
Aniline	B2		6E−03	1E+02
Antimony	D		1E−02	3E+01
Arsenic	A	7E−05	(1)	8E+01
Asbestos (2)	A	2E−02		
Barium cyanide	D		2E−00	6E+03
Barium, ionic	D	4E−01	(1)	4E+03
Benzidine	A	2E−05	2E−07	3E−03
Beryllium	B2	4E−04	8E−06	2E−01
Bis(2-ethylhexyl)phthlate	B2		3E−03	5E+01
Bis(chloroethyl)ether	B2	3E−03	3E−05	6E-01
Bromodichloromethane (3)	B2		3E−05	5E−01
Bromoform (3)	D		7E−01	2E+03
Bromomethane	D	3E+01	5E−02	1E+02
Butyl benzyl phthalate	C		7E−00	2E+04

APPENDIX A.—EXAMPLES OF CONCENTRATIONS MEETING CRITERIA FOR ACTION LEVELS—Continued

[Section 264.521(a)(2)(i-iv)]

Constituent name	Class	Air(ug/m^3)	Water (mg/L)	Soils (mg/kg)
Cadmium	B1	6E−04	(1)	4E+01
Calcium cyanide	D		1E−00	3E+03
Carbon disulfide	D		4E−00	8E+03
Carbon tetrachloride	B2	3E−02	3E−04	5E−00
Chloral	D		7E−02	2E+02
Chlordane	B2	3E−03	3E−05	5E−01
Chlorine cyanide	D		2E−00	4E+03
Chlorobenzene	D	2E+01	7E−01	2E+03
Chloroform (3)	B2	4E−02	6E−03	1E+02
2-Chlorophenol	D		2E−01	4E+02
Chromium (VI)	A	9E−05	(1)	4E+02
Copper cyanide	D		2E−01	4E+02
m-Cresol	D		2E−00	4E+03
o-Cresol	D		2E−00	4E+03
p-Cresol	D		2E−00	40+03
Cyanide	D		7E−01	2E+03
Cyanogen	D		1E−00	3E+03
Cyanogen bromide	D		3E−00	7E+03
DDD	B2		1E−04	3E−00
DDE	B2		1E−04	2E−00
DDT	B2	1E−02	1E−04	2E−00
Dibutyl phthalate	D		4E−00	8E+03
Dibutylnitrosamine	B2	6E−04	6E−06	1E−01
3,3'-Dichlorobenzidine	B2		8E−05	2E−00
Dichlorodifluoromethane	D	2E+02	7E−00	2E+04
1,2-Dichloroethane	B2	4E−02	(1)	8E−00
1,1-Dichloroethylene	C	3E−02	(1)	1E+01
2,4-Dichlorophenol	D		1E−01	2E+02
2,4-Dichlorophenoxyacetic acid	D		4E−01	8E+02
1,3-Dichloropropene	B2		1E−02	2E+01
Dieldrin	B2	2E−04	2E−06	4E−02
Diethyl phthalate	D		3E+01	6E+04
Diethylnitrosamine	B2	2E−05	2E−07	5E−03
Dimethoate	D		7E−01	2E+03
Dimethylnitrosamine	B2	7E−05	7E−07	1E−02
m-Dinitrobenzene	D		4E−03	8E−00
2,4-Dinitrophenol	D		7E−02	2E+02
2,3-Dinitrotoluene (and 2,6-, mixture)	B2		5E−05	1E-00
1,4-Dioxane	B2		3E−03	6E+01
Diphenylamine	D		9E−01	2E+03
1,2-Diphenylhydrazine	B2	4E−03	4E−05	9E−01
Disulfoton	D		1E−03	3E−00
Endosulfan	D		2E−03	4E−00
Endothall	D		7E−01	2E+03
Endrin	D		(1)	2E+01
Epichlorohydrin	B2	8E−01	4E−03	7E+01
Ethylbenzene	D		4E-00	8E+03
Ethylene dibromide	B2	5E−03	4E−07	8E−03
Formaldehyde	B1	8E−02		
Formic acid	D		7E+01	2E+05
Glycidyaldehyde	D		1E−02	3E+01
Heptachlor	B2	8E−04	8E−06	2E−01
Heptachlor epoxide	B2	4E−04	4E−06	8E−02
Hexachlordibenzo-p-dioxin	B2	6E−07	1E−08	1E−04
Hexachlorobutadiene	C	4E−01	4E−03	9E+01
alpha-Hexachlorocyclohexane	B2	6E−04	6E−06	1E−01
beta-Hexachlorocyclohexane	C	2E−02	2E−04	4E−00
Hexachlorocyclopentadiene	D	7E−02	2E−01	6E+02
Hexachloroethane	C	3E−00	3E−02	8E+01
Hexachlorophene	D		1E−02	2E+01
Hydrazine	B2	2E−04	1E−05	2E−01
Hydrogen cyanide	D		7E−01	2E+03
Hydrogen sulfite	D		1E−01	2E+02
Isobutyl alcohol	D		1E+01	2E+04
Isophorone	C		9E−02	2E+03
Lead	B2		(1)	
Lindane (gamma-hexachlorocyclohexane)	B2/C		(1)	5E−01
m-Phenylenediamine	D		2E−01	5E+02
Maleic anhydride	D		4E−00	8E+03
Maleic hydrazide	D		2E+01	4E+04
Mercury (inorganic)	D		(1)	2E+01
Methacrylonitrile	D	7E−01	4E−03	8E-00
Methomyl	D		9E−01	2E+03
Methyl chlorocarbonate	D			
Methyl ethyl ketone	D	3E+02	2E−00	4E+03
Methyl isobutyl ketone	D	7E+01	2E−00	4E+03
Methyl parathion	D		9E−03	2E+01

APPENDIX A.—EXAMPLES OF CONCENTRATIONS MEETING CRITERIA FOR ACTION LEVELS—Continued

[Section 264.521(a)(2)(i-iv)]

Constituent name	Class	Air(ug/m^3)	Water (mg/L)	Soils (mg/kg)
Methylene chloride	B	3E−01	5E−03	9E+01
n-Nitroso-di-n-butylamine	B2	6E−04	6E−06	1E−01
n-Nitroso-n-ethylurea	B			
n-Nitroso-n-methylethylamine	B2		2E−06	3E−02
n-Nitrosodi-n-propylamine	B2		5E−06	1E−01
n-Nitrosodiethanolamine	B2		1E−05	3E−01
n-Nitrosodiphenylamine	B2		7E−03	1E+02
n-Nitrosopyrrolidine	B2	2E−03	2E−05	3E−01
Nickel	D		7E−01	2E+03
Nickel refinery dust	A	4E−03		
Nitric oxide	D		4E−00	8E+03
Nitrobenzene	D	2E−00	2E−02	4E+01
Nitrogen dioxide	D		4E+01	8E+04
Osmium tetroxide	D		4E−04	8E−01
Parathion	C		2E−01	5E+02
Pentachlorobenzene	D		3E−02	6E+01
Pentachloronitrobenzene	C	1E−01	1E−01	2E+02
Pentachlorophenol	D		1E−00	2E+03
Phenol	D		2E+01	5E+04
Phenyl mercuric acetate	D		3E−03	6E−00
Phosphine	D		1E−02	2E+01
Phthalic anhydride	D		7E+01	2E+05
Polychlorinated biphenyls	B2		5E−06	9E−02
Potassium cyanide	D		2E−00	4E+03
Potassium silver cyanide	D		7E−00	2E+04
Pronamide	D		3E−00	6E+03
Pyridine	D		4E−02	8E+01
Selenious acid	D		1E−01	2E+02
Selenourea	D		2E−01	4E+02
Silver	D		(1)	2E+02
Silver cyanide	D		4E−00	8E+03
Sodium cyanide	D		1E−00	3E+03
Strychnine	D		1E−02	2E+01
Styrene	C		7E−00	2E+04
1,1,1,2-Tetrachlorethane	C	1E−00	1E−02	3E+02
1,2,4,5-Tetrachlorobenzene	D		1E−02	2E+01
1,1,1,2-Tetrachloroethane	C	1E−00	1E−02	3E+02
1,1,2,2-Tetrachloroethane	C	2E−01	2E−03	4E+01
Tetrachloroethylene	B2	1E−00	7E−04	1E+01
2,3,4,6-Tetrachlorophenol	D		1E−00	2E+03
Tetraethyl lead	D		4E−06	8E−03
Tetraethyldithiopyrophosphate	D		2E−02	4E+01
Thallic oxide	D		2E−03	6E−00
Thallium acetate	D		3E−03	7E−00
Thallium carbonate	D		3E−03	6E−00
Thallium chloride	D		3E−03	6E−00
Thallium nitrate	D		3E−03	7E−00
Thallium sulfate	D		3E−03	6E−00
Thiosemicarbazide	D		2E−01	5E+02
Thiram	D		2E−01	4E+02
Toluene	D	7E+03	1E+01	2E+04
Toxaphene	B2	3E−03	(1)	6E−01
1,2,4-Trichlorobenzene	D	1E+01	7E−01	2E+03
1,1,1-Trichloroethane	D	1E+03	3E−00	7E+03
1,1,2-Trichloroethane	C	6E−01	6E−03	1E+02
Trichloroethylene	B2		(1)	6E+01
Trichloromonofluoromethane	D	7E+02	1E+01	2E+04
2,4,5-Trichlorophenol	D		4E−00	8E+03
2,4,6-Trichlorophenol	B2	2E−01	2E−03	4E+01
2,4,5-Trichlorophenoxyacetic acid	D		(1)	8E+02
1,2,3-Trichloropropane	D		2E−01	5E+02
Vanadium pentoxide	D		3E−01	7E+02
Xylenes	D	1E+03	7E+01	2E+05
Zinc cyanide	D		2E−00	4E+03
Zinc phosphide	D		1E−02	2E+01

(1) MCL available; see appendix B.

(2) The air action level for asbestos is measured in units of fibers/milliliters.

(3) There is an MCL for total trihalomethanes, which includes four constituents: bromoform, bromodichloromethane, chloroform, and dibromochloromethane. Concentration derived using exposure assumptions in appendix D and reference doses for systemic toxicants and verified risk-specific doses at 10−6 for Class A and B carcinogens and 10−5 for Class C carcinogens (see section VI.F.2.6 for further discussion).

A, B and C represents class A, B and C carcinogens, respectively; D represents a systemic toxicant.

APPENDIX B—MAXIMUM CONTAMINANT LEVELS

Constituent	MCL (ppm)
Arsenic	0.05
Barium	1
Benzene	0.005
Cadmium	0.010
Carbon tetrachloride	0.005
Chromium VI	0.05
p-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007

APPENDIX B—MAXIMUM CONTAMINANT LEVELS—Continued

Constituent	MCL (ppm)
2,4-D	0.1
2,4,5-TP Silvex	0.01
Endrin	0.0002
Fluoride	4.0
Lead	0.05
Lindane	0.004
Mercury	0.002
Methoxychlor	0.1
Nitrate	10

APPENDIX B—MAXIMUM CONTAMINANT LEVELS—Continued

Constituent	MCL (ppm)
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloroethane	0.2
Trichloroethylene	0.005
Trihalomethanes, total [1]	0.10
Vinyl chloride	0.002

[1] Including chloroform, bromoform, bromodichloromethane, and dibromochloromethane

APPENDIX C—RANGE OF CONCENTRATIONS FOR ESTABLISHING MEDIA PROTECTION STANDARDS FOR CARCINOGENS

Constituent name	Class	MaxAir (ug/m 3)	MinAir (ug/m 3)	Max-Water (mg/L)	MinWater (mg/L)	MaxSoil (mg/kg)	MinSoil (mg/kg)
Acetone	D						
Acetonitrile	D						
Acetophenone	D						
Acrylamide	B2	8E-02	8E-04	8E-04	8E-06	2E+01	2E-01
Acrylonitrile	B1	1E-00	1E-02	6E-03	6E-05	1E+02	1E-00
Aldicarb	D						
Aldrin	B2	2E-02	2E-04	2E-04	2E-06	4E-00	4E-02
Allyl alcohol	D						
Aluminum phosphide	D						
Aniline	B2			6E-01	6E-03	1E+04	1E+02
Antimony	D						
Arsenic	A	7E-03	7E-05				
Asbestos (2)	A	2E-00	2E-02				
Barium cyanide	D						
Barium, Ionic	D						
Benzidine	A	2E-03	2E-05	2E-05	2E-07	3E-01	3E-03
Beryllium	B2	4E-02	4E-04	8E-04	8E-06	2E+01	2E-01
Bis(2-ethylhexyl)phthlate	B2			3E-01	3E-03	5E+03	5E+01
Bis(chloroethyl)ether	B2	3E-01	3E-03	3E-03	3E-05	6E+01	6E-01
Bromodichloromethane	B2			3E-03	3E-05	5E+01	5E-01
Bromoform	D						
Bromomethane	D						
Butyl benzyl phthalate	C						
Cadmium	B1	6E-02	6E-04				
Calcium cyanide	D						
Carbon disulfide	D						
Carbon tetrachloride	B2	3E-00	3E-02	3E-02	3E-04	5E+02	5E-00
Chloral	D						
Chlordane	B2	3E-01	3E-03	3E-03	3E-05	5E+01	5E-01
Chlorine cyanide	D						
Chlorobenzene	D						
Chloroform	B2	4E-00	4E-02	6E-01	6E-03	1E+04	1E+02
2-Chlorophenol	D						
Chromium (VI)	A	9E-03	9E-05				
Copper cyanide	D						
m-Cresol	D						
o-Cresol	D						
p-Cresol	D						
Cyanide	D						
Cyanogen	D						
Cyanogen bromide	D						
DDD	B2			1E-02	1E-04	3E+02	3E-00
DDE	B2			1E-02	1E-04	2E+02	2E-00
DDT	B2	1E-00	1E-02	1E-02	1E-04	2E+02	2E-00
Dibutyl phthalate	D						
Dibutylnitrosamine	B2	6E-02	6E-04	6E-04	6E-06	1E+01	1E-01
3,3'-Dichlorobenzidine	B2			8E-03	8E-05	2E+02	2E-00
Dichlorodifluormethane	D						
1,2-Dichloroethane	B2	4E-00	4E-02	4E-02	4E-04	8E+02	8E-00
1,1-Dichlorothylene	C	3E-01	3E-03	6E-03	6E-05	1E+02	1E-00
2,4-Dichlorophenol	D						
2,4-Dichlorophenoxyacetic acid	D						
1,3-Dichloropropene	B2						
Dieldrin	B2	2E-02	2E-04	2E-04	2E-06	4E-00	4E-02
Diethyl phthalate	D						

APPENDIX C—RANGE OF CONCENTRATIONS FOR ESTABLISHING MEDIA PROTECTION STANDARDS FOR CARCINOGENS—Continued

Constituent name	Class	MaxAir (ug/m 3)	MinAir (ug/m 3)	Max-Water (mg/L)	MinWater (mg/L)	MaxSoil (mg/kg)	MinSoil (mg/kg)
Diethylnitrosamine	B2	2E-03	2E-05	2E-05	2E-07	5E-01	5E-03
Dimethoate	D						
Dimethylnitrosamine	B2	7E-03	7E-05	7E-05	7E-07	1E-00	1E-02
m-Dinitrobenzene	D						
2,4-Dinitrophenol	D						
2,3-Dinitrotoluene (and 2,6-, mixture)	B2			5E-03	5E-05	1E+02	1E-00
1,4-Dioxane	B2			3E-01	3E-03	6E+03	6E+01
Diphenylamine	D						
1,2-Diphenylhydrazine	B2	4E-01	4E-03	4E-03	4E-05	9E+01	9E-01
Disulfoton	D						
Endosulfan	D						
Endothall	D						
Endrin	D						
Epichlorohydrin	B2	8E+01	8E-01	4E-01	4E-03	7E+03	7E+01
Ethylbenzene	D						
Ethylene dibromide	B2	5E-01	5E-03	4E-05	4E-07	8E-01	8E-03
Formaldehyde	B1	8E-00	8E-02				
Formic acid	D						
Glycidyaldehyde	D						
Heptachlor	B2	8E-02	8E-04	8E-04	8E-06	2E+01	2E-01
Heptachlor epoxide	B2	4E-02	4E-04	4E-04	4E-06	6E-00	8E-02
Hexachlordibenzo-p-dioxin	B2	6E-05	6E-07	6E-07	1E-08	1E-02	1E-04
Hexachlorobutadiene	C	4E-00	4E-02	4E-02	4E-04	9E+02	9E-00
alpha-Hexachlorocyclohexane	B2	6E-02	6E-04	6E-04	6E+06	1E-01	1E-01
beta-Hexachlorocyclohexane	C	2E-01	2E-03	2E-03	2E-05	4E+01	4E-01
Hexachlorocyclopentadiene	D						
Hexachloroethane	C	3E+01	3E-01	3E-01	3E-03	5E+03	5E+01
Hexachlorophene	D						
Hydrazine	B2	2E-02	2E-04	1E-03	1E-05	2E+01	2E-01
Hydrogen cyanide	D						
Hydrogen sulfite	D						
Isobutyl alcohol	D						
Isophorone	C			9E-01	9E-03	2E+04	2E+02
Lead	B2						
Lindane (gamma-hexachlorocyclohexane)	B2/C			3E-03	3E-05	5E+01	5E-01
m-Phenylenediamine	D						
Maleic anhydride	D						
Maleic hydrazide	D						
Mercury (inorganic)	D						
Methacrylonitrile	D						
Methomyl	D						
Methyl chlorocarbonate	D						
Methyl ethyl ketone	D						
Methyl isobutyl ketone	D						
Methyl parathion	D						
Methylene chloride	B	3E+01	3E-01	5E-01	5E-03	9E+03	9E+01
n-Nitroso-di-n-butylamine	B2	6E-02	6E-04	6E-04	6E+06	1E-01	1E-01
n-Nitroso-n-ethylurea	B						
n-Nitroso-n-methylethylamine	B2			2E-04	2E-06	3E-00	3E-02
n-Nitrosodi-n-propylamine	B2			5E-04	5E-06	1E+01	1E-01
n-Nitrosodiethanolamine	B2			1E-03	1E-05	3E+01	3E-01
n-Nitrosodiphenylamine	B2			7E-01	7E-03	1E+04	1E+02
n-Nitrosopyrrolidine	B2	2E-01	2E-03	2E-03	2E-05	3E+01	3E-01
Nickel	D						
Nickel refinery dust	A	4E-01	4E-03				
Nitric oxide	D						
Nitrobenzene	D						
Nitrogen dioxide	D						
Osmium tetroxide	D						
Parathion	C						
Pentachlorobenzene	D						
Pentachloronitrobenzene	C	1E-00	1E-02				
Pentachlorophenol	D						
Phenol	D						
Phenyl mercuric acetate	D						
Phosphine	D						
Phthalic anhydride	D						
Polychlorinated biphenyls	B2			5E-04	5E-06	9E-00	9E-02
Potassium cyanide	D						
Potassium silver cyanide	D						
Pronamide	D						
Pyridine	D						
Selenious acid	D						
Selenourea	D						
Silver	D						
Silver cyanide	D						
Sodium cyanide	D						
Strychnine	D						

APPENDIX C—RANGE OF CONCENTRATIONS FOR ESTABLISHING MEDIA PROTECTION STANDARDS FOR CARCINOGENS—Continued

Constituent name	Class	MaxAir (ug/m 3)	MinAir (ug/m 3)	Max-Water (mg/L)	MinWater (mg/L)	MaxSoil (mg/kg)	MinSoil (mg/kg)
Styrene	C						
1,1,1,2-Tetrachlorethane	C	1E+01	1E-01	1E-01	3E+03	3E+03	3E+01
1,2,4,5-Tetrachlorobenzene	D						
1,1,1,2-Tetrachloroethane	C	1E+01	1E-01	1E-01	1E-03	3E+03	3E+01
1,1,2,2-Tetrachloroethane	C	2E-00	2E-02	2E-02	2E-04	4E+02	4E-00
Tetrachloroethylene	B2	1E+02	1E-00	7E-02	7E-04	1E+03	1E+01
2,3,4,6-Tetrachlorophenol	D						
Tetraethyl lead	D						
Tetraethyldithiopyrophosphate	D						
Thallic oxide	D						
Thallium acetate	D						
Thallium carbonate	D						
Thallium chloride	D						
Thallium nitrate	D						
Thallium sulfate	D						
Thiosemicarbazide	D						
Thiram	D						
Toluene	D						
Toxaphene	B2	3E-01	3E-03	3E-03	3E-05	6E+01	6E-01
1,2,4-Trichlorobenzene	D						
1,1,1,Trichloroethane	D						
1,1,2-Trichloroethane	C	6E-00	6E-02	6E-02	6E-04	1E+03	1E+01
Trichloroethylene	B2			3E-01	3E-03	6E+03	6E+01
Trichloromonofluoromethane	D						
2,4,5-Trichlorophenol	D						
2,4,6-Trichlorophenol	B2	2E+01	2E-01	2E-01	2E-03	4E+03	4E+01
2,4,5-Trichlorophenoxyacetic acid	D						
1,2,3-Trichloropropane	D						
Vanadium pentoxide	D						
Xylenes	D						
Zinc cyanide	D						
Zinc phosphide	D						

Appendix D: Recommended Exposusre Assumptions for Use in Deriving Action Levels

(Sections 264.521 (a)(2); (b); (c)(3); and (d))

1. In deriving action levels for hazardous constituents in ground-water, assume a water intake of 2 liters/day for 70 kg adult/70 year lifetime exposure period.

2. In deriving action levels for hazardous constituents in air, assume air intake of 20 cubic meters/day for 70 kg adult/70 year lifetime exposure period.

3. In deriving action levels for hazardous constituents in soil, which are known or suspected to be carcinogens, assume soil intake of 0.1 gram/day for 70 kg adult/70 year lifetime exposure period.

4. In deriving action levels for hazardous constituents in soil, other than those which are known or suspected to be carcinogens, assume soil intake of 0.2 gram/day for 16 kg child/5 year exposure period (age 1–6).*

5. In deriving action levels for hazardous constituents in surface water designated by the State for use as a drinking water source, assume a water intake of 2 liters/day for 70 kg adult/70 year lifetime exposure period, unless intake of aquatic organisms is also of concern.

*Not to be averaged over a 70-year lifetime.

Appendix E: Examples of Calculations of Action Levels

I. Governing Equations for Calculating Action Levels

A. *Systemic Toxicants*

$C_m = [RfD*W]/[I*A]$

where:

C_m = action level in medium (units are medium-dependent);

RfD = reference dose (mg/kg/day);

W = body weight (kg);

I = intake assumption (units are medium-dependent); and

A = absorption factor [1] (dimensionless).

B. *Carcinogenic Constituents*

$C_m = [R*W*LT]/[CSF*I*A*ED]$

where:

C_m = action level in medium (units are medium-dependent);

R = assumed risk level (dimensionless) (10^{-6} for class A & B; 10^{-5} for class C carcinogens);

W = body weight (kg);

LT = assumed lifetime (years);

CSF = carcinogenic slope factor $(mg/kg/day)^{-1}$;

I = intake assumption (units are medium-dependent);

A = absorption factor (dimensionless); and

ED = exposure duration (years).

[1] Assumed to be 1 for this appendix, based upon the assumption that the human absorption rate will be the same as the rate in the study upon which the RfD or CPF was developed.

II. Example Calculations for Hazardous Constituents in Air

A. *Systemic Toxicants*

Example calculation for 2,4-dinitrophenol:

$C_a = [0.002\ (mg/kg/d)*1000\ (\mu g/mg)*70(kg)]/[20\ (m^3/d)*1] = 7.0\ \mu g/m^3$

where:

C_a = action level in air ($\mu g/m^3$)

RfD = 0.002 mg/kg/day

W = 70 kg adult

I = 20 m^3/day

A = 1

B. *Carcinogenic Constituents*

Example calculation for 1,1.2,2-tetrachloroethane:

$C_a = [10^{-5}*1000\ (\mu g/mg)*70\ (yrs)*70\ (kg)]/[0.20\ (mg/kg/day)^{-1}*20\ (m^3/day)*1*70\ (yrs)] = .175\ \mu g/m$

where:

C_a = action level in air ($\mu g/m^3$)

R = 10^{-5} (1,1,2,2-Tetrachloroethane is a Class C carcinogen)

W = 70 kg adult

LT = 70 year lifetime

CSF = 0.20 $(mg/kg/day)^{-1}$

I = 20 m^3/day

A = 1

ED = 70 year exposure duration

III. Sample Calculation for Hazardous Constituents in Water

A. *Systemic Toxicants*

Sample calculation for toluene:

$C_w = [0.30\ (mg/kg/day)*70\ (kg)]/[2\ (L/day)*1] = 10.5\ mg/L$

where:

C_w = action level in water (mg/L)

RfD=0.30 mg/kg/day for toluene
W=70 kg adult
I=2 L/day
A=1

B. *Carcinogenic Constituents*

Sample calculation for 1,1,2,2,-tetrachloroethane:

$C_w=[10^{-5}*70\ (kg)*70\ (yr)]/[0.20\ (mg/kg/day)^{-1}*2\ (L/day)*1*70\ (yr)]=1.75E-03\ mg/L$

where:
C_w=action level in water (mg/L)
$R=10^{-5}$ (1,1,2,2-Tetrachloroethane is a Class C carcinogen)
W=70 kg adult
LT=70 year lifetime
$CSF=0.20\ (mg/kg/day)^{-1}$
I=2 L/day
A=1
ED=70 year exposure duration

IV. Sample Calculations for Hazardous Constituents in Soils

A. *Systemic Toxicants*

Example calculations for toluene:

$C_s=[0.30\ (mg/kg/day)*16\ (kg)]/[0.2\ (g/day)*1*0.001\ (kg/g]=24{,}000\ mg/kg$

where:
C_s=action level in soil (mg/kg)
RfD=0.30 mg/kg/day for toluene
W=16 kg (5 year old child)
I=0.2 g/day
A=1

B. *Carcinogenic Constituents*

Sample calculation for 1,1,2,2,-tetrachloroethane:

$C_s=[10^{-5}*70\ (kg)*70\ (yrs)]/[0.20\ (mg/kg/day)^{-1}*0.1\ (g/day)*0.001\ (kg/g)*1*70\ (yrs)]=35.0\ mg/kg$

where:
C_s=action level in soil (mg/kg)
$R=10^{-5}$ (1,1,2,2-tetrachloroethane is a Class C carcinogen)
W=70 kg adult
LT=70 year lifetime
$CSF=0.20\ (mg/kg/day)^{-1}$
I=0.1 g/day
A=1
ED=70 year exposure duration

APPENDIX F—LIST OF CONSTITUENTS SHOWING ACTION LEVEL SOURCE DATA

Constituent name	Class	Noncarcinogenic effects		Carcinogenic effects	
		Oral RFD (mg/kg/d)	Inhalation RFD (mg/kg/d)	Oral slope factor (mg/kg/d)-1	Inhalation slope factor (mg/kg/d) [1]
Acetone	D	1.0E−01			
Acetonitrile	D	6.0E−03			
Acetophenone	D	1.0E−01	5.0E−05		
Acrylamide	B2	2.0E−04		4.5E−00	4.5E−00
Acrylonitrile	B1			5.4E−01	2.4E−01
Aldicarb	D	1.3E−03			
Aldrin	B2	3.0E−05		1.7E+01	1.7E+01
Allyl alcohol	D	5.0E−03			
Aluminum phosphide	D	4.0E−04			
Aniline	B2			5.7E−03	
Antimony	D	4.0E−04			
Arsenic	A	1.0E−03			5.0E+01
Asbestos (2)	A				2.3E−01
Barium cyanide	D	7.0E−02			
Barium, ionic	D	5.0E−02	1.0E−04		
Benzidine	A	3.0E−03		2.3E+02	2.3E+02
Beryllium	B2	5.0E−03		4.3E−00	8.4E−00
Bis(2-ethylhexyl)phthlate	B2	2.0E−02		1.4E−02	
Bis(chloroethyl)ether	B2			1.1E−00	1.1E−00
Bromodichloromethane	B2	2.0E−02		1.3E−00	
Bromoform	D	2.0E−02			
Bromomethane	D	1.4E−03	8.0E−03		
Butyl benzyl phthalate	C	2.0E−01			
Cadmium	B1	5.0E−04			6.1E−00
Calcium cyanide	D	4.0E−02			
Carbon disulfide	D	1.0E−01			
Carbon tetrachloride	B2	7.0E−04		1.3E−01	1.3E−01
Chloral	D	2.0E−03			
Chlordane	B2	6.0E−05		1.3E−00	1.3E−00
Chlorine cyanide	D	5.0E−02			
Chlorobenzene	D	2.0E−02	5.0E−03		
Chloroform	B2	1.0E−02		6.1E−03	8.1E−02
2-Chlorophenol	D	5.0E−03			
Chromium (VI)	A	5.0E−03			4.1E+01
Copper cyanide	D	5.0E−03			
m-Cresol	D	5.0E−02			
o-Cresol	D	5.0E−02			
p-Cresol	D	5.0E−02			
Cyanide	D	2.0E−02			
Cyanogen	D	4.0E−02			
Cyanogen bromide	D	9.0E−02			
DDD	B2			2.4E−01	
DDE	B2			3.4E−01	
DDT	B2	5.0E−04		3.4E−01	3.4E−01
Dibutyl phthalate	D	1.0E−01			
Dibutylnitrosamine	B2			5.4E−00	5.4E−00
3,3'-Dichlorobenzidine	B2			4.5E−01	
Dichlorodifluoromethane	D	2.0E−01	5.0E−02		
1,2-Dichloroethane	B2			9.1E−02	9.1E−02
1,1-Dichloroethylene	C	9.0E−03		6.0E−01	1.2E−00
2,4-Dichlorophenol	D	3.0E−03			
2,4-Dichlorophenoxyacetic acid	D	1.0E−02			
1,3-Dichloropropene	B2	3.0E−04			
Dieldrin	B2	5.0E−05		1.6E+01	1.6E+01
Diethyl phthalate	D	8.0E−01			
Diethylnitrosamine	B2			1.5E+02	1.5E+02

APPENDIX F—LIST OF CONSTITUENTS SHOWING ACTION LEVEL SOURCE DATA—Continued

Constituent name	Class	Noncarcinogenic effects		Carcinogenic effects	
		Oral RFD (mg/kg/d)	Inhalation RFD (mg/kg/d)	Oral slope factor (mg/kg/d)-1	Inhalation slope factor (mg/kg/d) [3]
Dimethoate	D	2.0E−02			
Dimethylnitrosamine	B2			5.1E+01	5.1E+01
m-Dinitrobenzene	D	1.0E−04			
2,4-Dinitrophenol	D	2.0E−03			
2,3-Dinitrotoluene (and 2,6-, mixture)	B2			6.8E−01	
1,4-Dioxane	B2			1.1E−02	
Diphenylamine	D	2.5E−02			
1,2-Diphenylhydrazine	B2			8.0E−01	8.0E−01
Disulfoton	D	4.0E−05			
Endosulfan	D	5.0E−05			
Endothall	D	2.0E−02			
Endrin	D	3.0E−04			
Epichlorohydrin	B2	2.0E−03		9.9E−03	4.2E−03
Ethylbenzene	D	1.0E−01			
Ethylene dibromide	B2			8.5E+01	7.6E−01
Formaldehyde	B1				4.5E−02
Formic acid	D	2.0E−00			
Glycidyaldehyde	D	4.0E−04			
Heptachlor	B2	5.0E−04		4.5E−00	4.5E−00
Heptachlor epoxide	B2	1.3E−05		9.1E−00	9.1E−00
Hexachlordibenzo-p-dioxin	B2			6.2E+03	6.2E+03
Hexachlorobutadiene	C	2.0E−03		7.8E−02	7.8E−02
alpha-Hexachlorocyclohexane	B2			6.3E−00	6.3E−00
beta-Hexachlorocyclohexane	C			1.8E−00	1.8E−00
Hexachlorocyclopentadiene	D	7.0E−03	2.0E−05		
Hexachloroethane	C	1.0E−03		1.4E−02	1.4E−02
Hexachlorophene	D	3.0E−04			
Hydrazine	B2			3.0E−00	1.7E+01
Hydrogen cyanide	D	2.0E−02			
Hydrogen sulfite	D	3.0E−03			
Isobutyl alcohol	D	3.0E−01			
Isophorone	C	2.0E−01		4.1E−03	
Lead	B2				
Lindane (gamma-hexachlorocyclohexane)	B2/C	3.0E−04		1.3E−00	
m-Phenylenediamine	D	6.0E−03			
Maleic anhydride	D	1.0E−01			
Maleic hydrazide	D	5.0E−01			
Mercury (inorganic)	D	3.0E−04			
Methacrylonitrile	D	1.0E−04	2.0E−04		
Methomyl	D	2.5E−02			
Methyl chlorocarbonate	D				
Methyl ethyl ketone	D	5.0E−02	9.0E−02		
Methyl isobutyl ketone	D	5.0E−02	2.0E−02		
Methyl parathion	D	2.5E−04			
Methylene chloride	B	6.0E−02		7.5E−03	1.4E−02
n-Nitroso-di-n-butylamine	B2			5.4E−00	5.4E−00
n-Nitroso-n-ethylurea	B				
n-Nitroso-n-methylethylamine	B2			2.2E+01	
n-Nitrosodi-n-propylamine	B2			7.0E−00	
n-Nitrosodiethanolamine	B2			2.8E−00	
n-Nitrosodienylamine	B2			4.9E−03	
n-Nitrosopyrrolidine	B2			2.1E−00	2.1E−00
Nickel	D	2.0E−02			
Nickel refinery dust	A				8.4E−01
Nitric oxide	D	1.0E−01			
Nitrobenzene	D	5.0E−04	60E−04		
Nitrogen dioxide	D	1.0E−00			
Osmium tetroxide	D	1.0E−05			
Parathion	C	6.0E−03			
Pentachlorobenzene	D	8.0E−04			
Pentachloronitrobenzene	C	3.0E−03			2.5E−01
Pentachlorophenol	D	3.0E−02			
Phenol	D	6.0E−01			
Phenyl mercuric acetate	D	8.0E−05			
Phosphine	D	3.0E−04			
Phthalic anhydride	D	2.0E−00			
Polychlorinated biphenyls	B2			7.7E−00	
Potassium cyanide	D	5.0E−02			
Potassium silver cyanide	D	2.0E−01			
Pronamide	D	7.5E−02			
Pyridine	D	1.0E−03			
Selenious acid	D	3.0E−03			
Selenourea	D	5.0E−03			
Silver	D	3.0E−03			
Silver cyanide	D	1.0E−01			
Sodium cyanide	D	4.0E−02			

APPENDIX F—LIST OF CONSTITUENTS SHOWING ACTION LEVEL SOURCE DATA—Continued

Constituent name	Class	Noncarcinogenic effects		Carcinogenic effects	
		Oral RFD (mg/kg/d)	Inhalation RFD (mg/kg/d)	Oral slope factor (mg/kg/d)-1	Inhalation slope factor (mg/kg/d) [1]
Strychnine	D	3.0E−04			
Styrene	C	2.0E−01			
1,1,1,2-Tetrachlorethane	C	3.0E−02		2.6E−02	2.6E−02
1,2,4,5-Tetrachlorobenzene	D	3.0E−04			
1,1,1,2-Tetrachloroethane	C	3.0E−02		2.6E−02	2.6E−02
1,1,2,2-Tetrachloroethane	C			2.0E−01	2.0E−01
Tetrachloroethylene	B2	1.0E−02		5.1E−02	3.3E−03
2,3,4,6-Tetrachlorophenol	D	3.0E−02			
Tetraethyl lead	D	1.0E−07			
Tetraethyldithiopyrophosphate	D	5.0E−04			
Thallic oxide	D	7.0E−05			
Thallium acetate	D	9.0E−05			
Thallium carbonate	D	8.0E−05			
Thallium chloride	D	8.0E−05			
Thallium nitrate	D	9.0E−05			
Thallium sulfate	D	8.0E−05			
Thiosemicarbazide	D	6.0E−03			
Thiram	D	5.0E−03			
Toluene	D	3.0E−01	2.0E−00		
Toxaphene	B2			1.1E−00	1.1E−00
1,2,4-Trichlorobenzene	D	2.0E−02	3.0E−03		
1,1,1-Trichloroethane	D	9.0E−02	3.0E−01		
1,1,2-Trichloroethane	C	4.0E−03		5.7E−02	5.7E−02
Trichloroethylene	B2			1.1E−02	
Trichloromonofluoromethane	D	3.0E−01	2.0E−01		
2,4,5-Trichlorophenol	D	1.0E−01			
2,4,6-Trichlorophenol	B2			2.0E−02	2.0E−02
2,4,5-Trichlorophenoxyacetic acid	D	1.0E−02			
1,2,3-Trichloropropane	D	6.0E−03			
Vanadium pentoxide	D	9.0E−03			
Xylenes	D	2.0E−00	3.0E−01		
Zinc cyanide	D	5.0E−02			
Zinc phosphide	D	3.0E−04			

For the reasons set out in the preamble, 40 CFR parts 264, 265, 270. and 271 are proposed to be amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a). 6924, and 6925.

2. Section 264.1 is amended by revising paragraphs (d) and (g) introductory text to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(d) The requirements of this part apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by § 144.14 of this chapter and to the extent they are included in a RCRA permit by rule granted to such a person under part 270 of this chapter.

* * * * *

(g) Except as required under subpart S of this part governing releases from solid waste management units, the requirements of this part do not apply to:

* * * * *

§ 264.101 [Removed]

3. In 40 CFR part 264, subpart F, it is proposed to remove § 264.101.

4. In 40 CFR part 264, subpart G, it is proposed to amend § 264.113 by redesignating paragraphs (a)(1)(ii) as (a)(1)(iii) and (b)(1)(ii) as (b)(1)(iii), and by adding new paragraphs (a)(1)(ii) and (b)(1)(ii) to read as follows:

§ 264.113 Closure time allowed for closure.

* * * * *

(a) * * *

(1) * * *

(ii) Corrective action required at the unit or the facility under subpart S will delay the completion of partial or final closure; or

* * * * *

(b) * * *

(1) * * *

(ii) Corrective action required at the unit or the facility under subpart S will delay the completion of partial or final closure; or

* * * * *

5. 40 CFR part 264 is amended by adding subpart S to read as follows:

Subpart S—Corrective Action for Solid Waste Management Units

264.500 Purpose and applicability.
264.501 Definitions.
264.502–264.509 [Reserved].
264.510 Requirement to perform remedial investigations.
264.511 Scope of remedial investigations.
264.512 Plans for remedial investigations.
264.513 Reports of remedial investigations.
264.514 Determination of no further action.
264.515–264.519 [Reserved]
264.520 Requirement to perform corrective measure study.
264.521 Action levels.
264.522 Scope of corrective measure studies.
264.523 Plans for corrective measure studies.
264.524 Reports of corrective measure studies.
264.525 Selection of remedy
264.526 Permit modification for remedy.
264.527 Remedy design.
264.528 Progress reports.
264.529 Review of remedy implementation.
264.530 Completion of remedies.

264.531 Determination of technical impracticability.
264.532–264.539 [Reserved]
264.540 Interim measures.
264.541–264.549 [Reserved]
264.550 Management of wastes.
264.551 Management of hazardous wastes.
264.552 Management of non-hazardous solid wastes.
264.553–264.559 [Reserved]
264.560 Required notices.

Subpart S—Corrective Action for Solid Waste Management Units

§ 264.500 Purpose and applicability.

(a) The provisions of this subpart establish requirements for investigation and corrective action for releases of hazardous waste, including hazardous constituents, from solid waste management units.

(b) The owner or operator of a facility seeking a permit under subtitle C of RCRA must institute investigations and/or corrective action, as necessary to protect human health and the environment, for all releases of hazardous waste, including hazardous constituents, from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(c) Requirements for investigations and/or corrective action will be specified in the permit. The permit will contain schedules of compliance for such investigations and/or corrective action (where such cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(d) The owner or operator must implement corrective actions beyond the facility property boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the Regional Administrator that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner or operator is not relieved of responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for completing such corrective action must be provided.

(e) For protection of ground water from landfills, surface impoundments, land treatment units, and waste piles that received listed or identified hazardous waste after July 26, 1982, the provisions of this subpart apply only as specifically provided herein.

(f) The provisions of this subpart do not apply to:

(1) Permits for land treatment demonstrations using field test or laboratory analyses (see § 270.63).

(2) Emergency permits (see § 270.61).

(3) Permits by rule for ocean disposal barges or vessels (see § 270.60(a)).

(4) Research, development, and demonstration permits (see § 270.65).

§ 264.501 Definitions.

For the purpose of complying with the requirements of this subpart, the following definitions apply:

Corrective Action Management Unit means a contiguous area within a facility as designated by the Regional Administrator for the purpose of implementing corrective action requirements of this subpart, which is contaminated by hazardous wastes (including hazardous constituents), and which may contain discrete, engineered land-based sub-units.

Facility means all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA.

Hazardous Constituent means any constituent identified in appendix VIII of 40 CFR part 261, or any constituent identified in appendix IX of 40 CFR part 264.

Hazardous Waste means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical chemical, or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. The term hazardous waste includes hazardous constituent as defined above.

Release means any spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of hazardous wastes (including hazardous constituents) into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous wastes or hazardous constituents).

Solid Waste Management Unit means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at a facility at which solid wastes have been routinely and systematically released.

§§ 264.502–264.509 [Reserved]

§ 264.510 Requirement to perform remedial investigations.

If the Regional Administrator determines that hazardous waste (including hazardous constituents) have been, are likely to have been, or, based on site-specific circumstances, are likely to be released into the environment from a solid waste management unit at the facility, the Regional Administrator may specify in the permit schedule of compliance that the permittee investigate and characterize solid waste management units and releases from solid waste management units at the facility.

§ 264.511 Scope of remedial investigations.

(a) Investigations required under § 264.510 shall characterize the nature, extent, direction, rate, movement and concentration of releases, as required by the Regional Administrator. In addition, such investigations may include, but are not limited to, the following:

(1) Characterizations of the environmental setting at the facility, including:

(i) Hydrogeological conditions;

(ii) Climatological conditions;

(iii) Soil characteristics;

(iv) Surface water and sediment quality and other characteristics; or

(v) Air quality and meteorological conditions.

(2) Characterization of solid waste management units from which releases have been or may be occurring, including unit and waste characteristics.

(3) Descriptions of humans and environmental systems which are, may have been, or, based on site-specific circumstances, may be exposed to release(s).

(4) Information that will assist the Regional Administrator in assessing risks to human health and the environment from releases from solid waste management units.

(5) Extrapolations of future movement, degradation and fate of contaminants.

(6) Laboratory, bench-scale or pilot-scale tests or studies to determine the feasibility or effectiveness of treatment technologies or other technologies that may be appropriate in implementing remedies at the facility.

(7) Statistical analyses to aid in the interpretation of data required under § 264.510, in accordance with statistical methods approved by the Regional Administrator.

(b) Samples of ground water, surface water, soils, or air which are collected as part of remedial investigations

required under § 264.510 shall be analyzed for those constituents and parameters determined to be necessary by the Regional Administrator to accurately and adequately characterize the presence of hazardous wastes (including hazardous constituents) in the samples.

§ 264.512 Plans for remedial investigations.

(a) The Regional Administrator may require the permittee to develop and submit a plan(s) for conducting any remedial investigations required under § 264.510 of this subpart. Such plans shall be subject to review and approval or modification by the Regional Administrator, and shall be developed and submitted according to a schedule specified in the schedule of compliance. Such plans may include, but are not limited to, the following:

(1) Overall approach, including objectives, schedules, and qualifications of personnel conducting investigations.

(2) Technical and analytical approach and methods for investigations.

(3) Quality assurance procedures, including:

(i) Data collection strategy;

(ii) Sampling, chain of custody procedures; and

(iii) Methods of sample analysis.

(4) Data management procedures, including formats for documenting analytical results and tracking sample custody, and other results of investigations.

(b) Upon approval or modification of the plan by the Regional Administrator, the plan shall be incorporated expressly or by reference as a part of the permit schedule of compliance. The permittee shall conduct the studies and investigations in accordance with the plan and any other requirements specified in the permit schedule of compliance.

§ 264.513 Reports of remedial investigations.

(a) The Regional Administrator may require periodic reports to be submitted by the permittee during remedial investigations required under § 264.510, and may, based on information from the investigations, or other information, require new or modified investigations. Such modifications will, if necessary, be specified by modifying the permit schedule of compliance.

(b) Upon conclusion of the remedial investigations, the permittee shall submit to the Regional Administrator for approval:

(1) A final report describing the procedures, methods, and results of the remedial investigations, in such format and containing such information as specified by the Regional Administrator; and

(2) A summary of the report.

(c) If, upon receipt of the final report and summary, the Regional Administrator determines that the final report and summary do not fully satisfy the requirements for the report and summary specified in the permit schedule of compliance, or otherwise do not provide a full and accurate summary and description of the remedial investigations, the Regional Administrator may require the permittee to submit a revised report.

(d) Upon approval of the summary, the permittee shall mail it to all individuals on the facility mailing list (required under § 124.10(c)(1)(viii)).

(e) All raw data, such as laboratory reports, drilling logs and other supporting information generated from investigations required under § 264.510 shall be maintained at the facility (or other location approved by the Regional Administrator) during the term of the permit, including any reissued permit.

§ 264.514 Determination of no further action.

(a)(1) Based on the results of investigations required under § 264.510 or other relevant information the permittee may submit an application to the Regional Administrator for a permit modification to terminate the schedule of compliance for corrective action, according to the procedures for Class III permit modifications under § 270.42.

(2) The permit modification application must contain information demonstrating that there are no releases of hazardous waste (including hazardous constituents) from solid waste management units at the facility that may pose a threat to human health or the environment.

(b) If the Regional Administrator, upon review of the request for a permit modification, reports submitted under § 264.513, or other information, determines that there is no such threat to human health and the environment from releases from solid waste management units at the facility. The Regional Administrator shall grant the permit modification according to the procedures of § 270.42.

(c) Any determination made pursuant to § 264.514(b) will not affect the authority or responsibility of the Regional Administrator to:

(1) Modify the permit at a later date to require the permittee to perform such investigations and studies as may be necessary to comply with the requirements of this Subpart, if new information or subsequent analysis indicates that there are, or are likely to be, releases from solid waste management units at the facility that may pose a threat to human health or the environment; or

(2) Require continued or periodic monitoring under the terms of the permit if the Regional Administrator determines, based on site-specific circumstances, that releases are likely to occur.

§§ 264.515–264.519 [Reserved]

§ 264.520 Requirement to perform corrective measure study.

(a) If at any time the Regional Administrator determines that concentrations of hazardous constituents in ground water in an aquifer, surface water, soils, or air exceed an action level (as defined under § 264.521), and there is reason to believe that such hazardous constituents have been released from a solid waste management unit at the facility, the Regional Administrator shall require as part of the permit schedule of compliance that the permittee perform a corrective measure study, according to the requirements of §§ 264.522–264.524, except as otherwise provided under § 264.520(c).

(b) If the Regional Administrator determines that a constituent(s) present in a concentration below an action level (as defined under § 264.521) may pose a threat to human health or the environment, given site-specific exposure conditions, and there is reason to believe that the constituent(s) has been released from a solid waste management unit at the facility, the Regional Administrator may require a corrective measure study according to the requirements of §§ 264.522–264.524.

(c) If an action level has been exceeded (as provided under § 264.520(a), but the Regional Administrator determines that the release(s) may nevertheless not pose a threat to human health and the environment, the Regional Administrator may allow the permittee to apply for a determination of no further action, according to § 264.514.

(d) The Regional Administrator shall notify the permittee in writing of the requirement to conduct a corrective measure study. This notice shall identify the hazardous constituent(s) which exceed action levels defined under § 264.521, as well as any hazardous constituent(s) identified pursuant to § 264.520(b).

(e) For purposes of §§ 264.520, 264.521, 264.525 (d) and (e), the term "constituent" refers to hazardous

constituents, as defined in § 264.501, as well as other hazardous wastes (as defined in § 264.501) that are single chemical constituents.

§ 264.521 Action levels.

Action levels are defined as follows:

(a) Action levels for constituents in ground water in an aquifer which the Regional Administrator has reason to believe may have been released from a solid waste management unit at the facility shall be concentration levels specified as:

(1) Maximum contaminant levels (MCLs) promulgated under § 141.2 of the Safe Drinking Water Act (40 CFR part 141 subpart B); or

(2) For constituents for which MCLs have not been promulgated, a concentration which satisfies the following criteria, assuming exposure through consumption of the water contaminated with the constituent:

(i) Is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028); and

(ii) Is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act (TSCA) Good Laboratory Practice Standards (40 CFR part 792), or equivalent; and

(iii) For carcinogens, represents a concentration associated with an excess upper bound lifetime cancer risk of $1x10-^{6}$ due to continuous constant lifetime exposure, and considers the overall weight of evidence for carcinogenicity; and

(iv) For systemic toxicants, represents a concentration to which the human population (including sensitive subgroups) could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime.

(b) Action levels for constituents in air which the Regional Administrator has reason to believe may have been released from a solid waste management unit at the facility shall be defined as concentrations which meet the criteria specified in § 264.521(a)(2)(i)–(iv), assuming exposure through inhalation of the air contaminated with the constituent, as measured or estimated at the facility boundary, or another location closer to the unit if necessary to protect human health and the environment.

(c) Action levels for constituents in surface water which the Regional Administrator has reason to believe may have been released from a solid waste management unit at the facility shall be specified as:

(1) Water Quality Standards established pursuant to section 303(c) of the Clean Water Act (40 CFR part 131) by the State in which the facility is located, where such standards are expressed as numeric values; or

(2) Numeric interpretations of State narrative water quality standards, if appropriate, where water quality standards expressed as numeric values have not been established by the State; or

(3) MCLs promulgated under the Safe Drinking Water Act for constituents in surface waters designated by the State for drinking water supply, where numeric values or numeric interpretations, described in paragraphs (1) and (2), are not available; or

(4) For constituents in surface waters designated by the State for drinking water supply for which numeric values, numeric interpretations, or MCLs (as described in paragraphs 1–3 above) are not available, a concentration which meets the criteria specified in § 264.521(a)(2)(i)–(iv), assuming exposure through consumption of the water contaminated with the constituent; or

(5) For constituents in surface waters designated for a use or uses other than drinking water supply and for which numeric values or numeric interpretations (as described in paragraphs (1) and (2) above) have not been established, a concentration established by the Regional Administrator which meets the criteria specified in § 264.521(a)(2)(i)–(iv), considering the use or uses of the receiving waters.

(d) Action levels for constituents in soils that the Regional Administrator has reason to believe may have been released from a solid waste management unit at the facility shall be defined as concentrations which meet the criteria specified in § 264.521(a)(2)(i)–(iv), assuming exposure through consumption of the soil contaminated with the constituent.

(e) If, for a constituent(s) detected in ground water in an aquifer, air, surface water or soils, a concentration level that meets the criteria of § 264.521(a)–(d) is not available, the Regional Administrator may establish an action level for the constituent as:

(1) A level that is an indicator for protection of human health and the environment, using the exposure assumptions for the medium specified under § 264.521(a)–(d); or

(2) The background concentration of the constituent.

§ 264.522 Scope of corrective measure studies.

(a) As determined by the Regional Administrator, corrective measure studies required under § 264.520 may include, but are not limited to, the following:

(1) Evaluation of performance, reliability, ease of implementation, and potential impacts of the remedy, including safety impacts, cross media impacts, and control of exposure to any residual contamination.

(2) Assessment of the effectiveness of potential remedies in achieving adequate control of sources and cleanup of the hazardous waste (including hazardous constituents) released from solid waste management units.

(3) Assessment of the time required to begin and complete the remedy.

(4) Estimation of the costs of remedy implementation.

(5) Assessment of institutional requirements, such as State or local permit requirements, or other environmental or public health requirements which may substantially affect implementation of the remedy(s).

(b) The Regional Administrator may require the permittee to evaluate as part of the corrective measure study one or more specific potential remedies. These remedies may include a specific technology or combination of technologies that, in the Regional Administrator's judgment, achieves or may achieve the standards for remedies specified in § 264.525(a) given appropriate consideration of the factors specified in § 264.525(b).

§ 264.523 Plans for corrective measure studies.

(a) The Regional Administrator may require the permittee to develop and submit a plan(s) for conducting a corrective measure study required under § 264.520. The plan shall be subject to review and approval or modification by the Regional Administrator, and shall be developed and submitted according to a schedule specified in the permit schedule of compliance. Such plans may include, but are not limited to, the following:

(1) Description of the general approach to investigating and evaluating potential remedies;

(2) Definition of the overall objectives of the study;

(3) Description of the specific remedy(s) which will be studied;

(4) Plans for evaluating remedies to ensure compliance with the standards for remedies specified in § 264.525(a);

(5) Schedules for conducting the study; and

(6) Proposed format for information presentation.

(b) Upon approval or modification of the corrective measure study plan by the Regional Administrator, the plan shall be incorporated expressly or by reference as part of the permit schedule of compliance. The permittee shall conduct the studies and investigations in accordance with the plan and any other requirements as specified in the permit schedule of compliance.

§ 264.524 Reports of corrective measure studies.

(a) The Regional Administrator may require periodic reports during the conduct of the corrective measure study, and may, based on information from these reports or other information, require the permittee to modify the corrective measure study. Such modifications will, if necessary, be specified by modifying the permit schedule of compliance.

(b) Upon completion of the corrective measure study, the permittee shall submit a report summarizing the results of the study. This report must include a detailed description of the remedies assessed pursuant to § 264.522 or § 264.524(a). The report shall describe how any proposed remedy(s) meets the standards for remedies as specified in § 264.525(a).

(c) Upon review of the corrective measure study report, the Regional Administrator may require the permittee to evaluate further, and report upon, one or more additional remedies, or develop particular elements of one or more proposed remedies. Such further requirements will, if necessary, be specified by modifying the permit schedule of compliance.

§ 264.525 Selection of remedy.

Based on the results of the corrective measure study, and any further evaluations conducted under § 264.524(c), the Regional Administrator shall, except as otherwise provided under paragraph (f) of this section, select a remedy that, at a minimum, meets the standards listed in paragraph (a) of this section.

(a) *Standards for remedies.* Remedies must:

(1) Be protective of human health and the environment;

(2) Attain media cleanup standards as specified pursuant to paragraphs (d) and (e) of this section;

(3) Control the source(s) of releases so as to reduce or eliminate, to the extent practicable, further releases of hazardous wastes (including hazardous constituents) that may pose a threat to human health and the environment; and

(4) Comply with standards for management of wastes as specified in §§ 264.550–264.559 of this subpart.

(b) *Remedy selection factors.* In selecting a remedy which meets the standards of § 264.525(a), the Regional Administrator shall consider the following evaluation factors as appropriate:

(1) *Long-term reliability and effectiveness.* Any potential remedy(s) may be assessed for the long-term reliability and effectiveness it affords, along with the degree of certainty that the remedy will prove successful. Factors that shall be considered in this evaluation include:

(i) Magnitude of residual risks in terms of amounts and concentrations of waste remaining following implementation of a remedy, considering the persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous wastes (including hazardous constituents);

(ii) The type and degree of long-term management required, including monitoring and operation and maintenance;

(iii) Potential for exposure of humans and environmental receptors to remaining wastes;

(iv) Long-term reliability of the engineering and institutional controls, including uncertainties associated with land disposal of untreated wastes and residuals; and

(v) Potential need for replacement of the remedy.

(2) *Reduction of toxicity, mobility or volume.* A potential remedy(s) may be assessed as to the degree to which it employs treatment that reduces toxicity, mobility or volume of hazardous wastes (including hazardous constituents). Factors that shall be considered in such assessments include:

(i) The treatment processes the remedy(s) employs and materials it would treat;

(ii) The amount of hazardous wastes (including hazardous constituents) that would be destroyed or treated;

(iii) The degree to which the treatment is irreversible;

(iv) The residuals that will remain following treatment, considering the persistence, toxicity, mobility and propensity to bioaccumulate of such hazardous wastes (including hazardous constituents).

(3) The short-term effectiveness of a potential remedy(s) may be assessed considering the following:

(i) Magnitude of reduction of existing risks;

(ii) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;

(iii) Time until full protection is achieved.

(4) *Implementability.* The ease or difficulty of implementing a potential remedy(s) may be assessed by considering the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists;

(v) Available capacity and location of needed treatment, storage and disposal services.

(5) *Cost.* The types of costs that may be assessed include the following:

(i) Capital costs;

(ii) Operation and maintenance costs;

(iii) Net present value of capital and operation and maintenance costs;

(iv) Potential future remedial action costs.

(c) *Schedule for remedy.* The Regional Administrator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. The Regional Administrator will consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination.

(2) Practical capabilities of remedial technologies in achieving compliance with media cleanup standards, and other objectives of the remedy.

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy.

(4) Desirability of utilizing technologies which are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives.

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy.

(6) Other relevant factors.

(d) *Media Cleanup Standards.* Except as otherwise provided by § 264.525(d)(2), the Regional Administrator shall specify in the selected remedy requirements for remediation of contaminated media as follows:

(1) Regional Administrator shall specify concentration levels of hazardous constituents in ground water, surface water, air or soils that the remedy must achieve, as necessary to protect human health and the environment. Such media cleanup standards will be established by the Regional Administrator as follows:

(i) The cleanup standard(s) shall be concentration levels in the affected media which protect human health and the environment.

(ii) Unless a lower concentration level is deemed necessary to protect environmental receptors, cleanup standards shall be established as follows:

(A) For known or suspected carcinogens, cleanup standards shall be established at concentration levels which represent an excess upperbound lifetime risk to an individual of between 1×10^{-4} and 1×10^{-6}. The Regional Administrator shall use the 1×10^{-6}. risk level as the point of departure in establishing such concentration levels.

(B) For systemic toxicants, cleanup standards shall represent concentration levels to which the human population (including sensitive subgroups) could be exposed on a daily basis without appreciable risk of deleterious effect during a lifetime.

(iii) In establishing media cleanup standards which meet the requirements of § 264.525(d)(1) (i) and (ii), above, the Regional Administrator may consider the following:

(A) Multiple contaminants in the medium;

(B) Exposure threats to sensitive environmental receptors;

(C) Other site-specific exposure or potential exposure to contaminated media;

(D) The reliability, effectiveness, practicability, or other relevant features of the remedy.

(iv) For ground water and surface water that is a current or potential source of drinking water, the Regional Administrator shall consider maximum contaminant 1evels promulgated under section 141.2 of the Safe Drinking Water Act (40 CFR part 141 subpart B) in establishing media cleanup standards.

(v) If the permittee can demonstrate to the satisfaction of the Regional Administrator that a specific concentration of a constituent in a medium at the facility is naturally occurring or from a source other than a solid waste management unit at the facility, the cleanup level established under this Subpart for the constituent in the medium shall not be below that specific concentration, unless the Regional Administrator establishes that:

(A) Remediation to levels below that specified concentration is necessary to protect human health and the environment; and

(B) Such remediation is in connection with an areawide cleanup under RCRA or other authorities.

(2) The Regional Administrator may determine that remediation of a release of a constituent from a solid waste management unit to a media cleanup standard established pursuant to § 264.525(d)(1) is not necessary if the permittee demonstrates to the Regional Administrator's satisfaction that:

(i) The affected medium is also contaminated by substances that are naturally occurring or have originated from a source other than a solid waste managment unit at the facility, and those substances are present in concentrations such that remediation of the release from the solid waste management unit would provide no significant reduction in risks to actual or potential receptors; or

(ii) The constituent(s) is present in ground water that:

(A) Is not a current or potential source of drinking water, and

(B) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) greater than an action level(s) specified according to § 264.522; or

(iii) Remediation of the release(s) to media cleanup standards is technically impracticable.

(3) If a determination is made pursuant to paragraph (d)(2) of this section the Regional Administrator may require any alternative measure(s) or standards he or she determines are necessary to protect human health and the environment, including the control of further releases.

(e) *Compliance with media cleanup standards.* The Regional Administrator shall specify in the remedy requirements for achieving compliance with the media cleanup standards established under § 264 525(d) (or alternative levels under § 264.525(d)(1)(v) or (d)(3)), as follows:

(1) The Regional Administrator shall specify where compliance with such standards or levels must be achieved, as follows:

(i) For ground water, the cleanup standard(s) or levels shall be achieved throughout the contaminated ground water, or, at the Regional Administrator's discretion, when waste is left in place, up to the boundary of a waste management area encompassing the original source(s) of release.

The Regional Administrator shall specify the locations at which ground-water monitoring wells must be located for purposes of:

(A) Monitoring the effectiveness of the ground-water remediation program; and

(B) Demonstrating compliance with the ground-water cleanup standard(s) or leve1(s).

(ii) For air, the cleanup standard(s) or level(s) shall be achieved at the location of the most exposed individual, or other specified point(s) of exposure closer to the source of the release, if determined by the Regional Administrator to be necessary to protect human health and the environment. The Regional Administrator shall specify locations where air monitoring devices must be installed, or what emission modeling or testing, atmospheric dispersion models, or other methods must be used to demonstrate that compliance with any air cleanup standard(s) or level(s) has been achieved at the point(s) of exposure.

(iii) For surface water, the cleanup standard(s) or level(s) shall be achieved at the point where the release(s) enters the surface water. For releases that have accumulated in surface water sediments, the Regional Administrator may, as necessary to protect human health and the environment, require that a cleanup standard(s) or level(s) be achieved at designated locations in the sediments. The Regional Administrator will specify the locations where surface water or sediment samples must be taken to monitor surface water quality, and demonstrate that compliance with any surface water cleanup standard(s) or leve1(s) has been achieved.

(iv) For soils, the cleanup standard(s) shall be achieved at any point where direct contact exposure to the soils may occur. The Regional Administrator will specify the locations, or methods for determining appropriate locations, where soil samples must be taken to demonstrate compliance with the soil cleanup standard(s) or level(s).

(v) If the owner/operator is unable to obtain the necessary permission to undertake corrective action beyond the facility boundary, and can demonstrate to the satisfaction of the Regional Administration that despite the owner/operator's best efforts. she is as a result unable to achieve media cleanup standards or levels beyond the facility boundary, then media cleanup standards or levels must be achieved to the extent practicable, as specified by the Regional Administrator.

(2) The Regional Administrator will specify in the remedy the sampling and analytical methods, any statistical analyses that may be required. and the frequency(s) of sampling or monitoring

that may be required to characterize levels of hazardous constituents in ground water, surface water, air or soils.

(3) The Regional Administrator will specify in the remedy the length of time during which the permittee must, in order to achieve compliance with a media cleanup standard or level, demonstrate that concentrations of hazardous constituents have not exceeded the standard(s). Factors that may be considered by the Regional Administrator in determining these timing requirements include:

(i) Extent and concentration of the release(s);

(ii) Behavior characteristics of the hazardous constituents in the affected medium;

(iii) Accuracy of monitoring or modeling techniques;

(iv) Characteristics of the affected media; and

(v) Seasonal, meteorological, or other environmental variabilities which may affect the accuracy of monitoring or modeling results

(f) Conditional remedies. (1) If the criteria of § 264.525(f)(2) are met, the Regional Administrator may select a conditional remedy that protects human health and the environment under plausible exposure conditions during the term of the permit.

(2) A conditional remedy must:

(i) Protect human health and the environment; and

(ii) Achieve all media cleanup standards or levels as specified pursuant to paragraphs (d) and (e) of this section beyond the facility boundary as soon as practicable; and

(iii) Prevent further significant environmental degration by implementing, as soon as practicable:

(A) treatment or other necessary engineering controls to control any source(s) of releases; and

(B) engineered measures as necessary to prevent further significant migration of releases within the facility boundary.

(iv) Institute effective institutional or other controls to prevent any significant exposure to hazardous wastes at the facility; and

(v) Continue the monitoring of releases so as to determine whether further significant environmental degradation occurs; and

(vi) Include assurances of financial responsibility for the remedy; and

(vii) Comply with standards for management of wastes as specified in §§ 264.550–264.559 of this subpart.

(3) If at any time during the term of the permit, any condition of paragraph (f)(2) of this section is violated, the Regional Administrator shall modify the permit to:

(i) Require the permittee to perform additional studies or actions, or implement additional controls to achieve compliance with the requirements of paragraph (f)(2) of this section; or

(ii) Require additional studies, actions, or controls as necessary to implement a remedy which meets the standards of § 264.525(a).

(4) The permit shall not be terminated until a remedy which meets the standards of § 264.525(a) has been implemented and certified complete according to § 264.530.

§ 264.526 Permit modification for remedy.

(a) The Regional Administrator shall modify the permit to specify the remedy selected according to § 264.525, according to the procedures for major permit modifications under § 270.41.

(b) The permit modification shall include, at a minimum, the following:

(1) Description of the technical features of the remedy that are necessary for achieving the standards for remedies specified in § 264.525(a) and/or (f).

(2) All media cleanup standards established pursuant to § 264.525(d).

(3) Requirements for achieving compliance with media cleanup standards, pursuant to § 264.525(e).

(4) Requirements for complying with the standards for management of wastes, pursuant to §§ 264.550–264.559.

(5) Requirements for removal, decontamination, closure, or post-closure of units, equipment, devices or structures that will be used to implement the remedy.

(6) A schedule for initiating and completing the major technical features and milestones of the remedy.

(7) Requirements for submission of reports and other information.

(c)(1) The schedule of compliance specified in the permit modification shall include a schedule for the permittee to demonstrate financial assurance for completing the remedy specified according to § 264.526(b). The schedule shall require the demonstration no later than 120 days after the effective date of the permit modification.

(2) If the remedy requires closure of a hazardous waste management unit, and the schedule of compliance for the remedy supplants or modifies the unit's closure or post-closure plan, the Regional Administrator may partially or fully release existing financial assurance for closure, post.closure, and third party liability required under §§ 264.143, 264.145, and 264.147. Such releases shall not be effective until the financial assurance requirements at § 264.526(c)(1) are satisfied.

(d) A remedy specified in a permit modification may be separated into phases. A remedy phase may consist of any set of actions performed over time, or any actions that are concurrent but located at different areas, provided that the actions are consistent with the final remedy.

§ 264.527 Remedy design.

(a) The Regional Administrator may require the permittee, upon modification of the permit according to § 264.526, to prepare detailed construction plans and specifications to implement the approved remedy at the facility, unless such plans and specifications have already been specified in the permit modification. Such plans shall be subject to review and approval or modification by the Regional Administrator, and shall be developed and submitted in accordance with the permit schedule of compliance. Upon approval by the Regional Administrator, the plan shall be incorporated expressly or by reference into part of the permit schedule of compliance. The plans and specifications must include, but are not limited to, the following:

(1) Designs and specifications for units in which hazardous wastes and non-hazardous solid wastes will be managed, as specified in the approved remedy.

(2) Implementation and long-term maintenance plans.

(3) Project schedule.

(4) Construction quality assurance program.

(b) Upon approval of the plans and specifications for the remedy, the permittee shall—

(1) Implement the remedy in accordance with the plans and specifications, and consistent with the objectives of the remedy specified in the permit;

(2) Place the plans and specifications in the information repository, if required under § 270.36;

(3) Provide written notice of the availability for inspection of the approved plans and specifications for the remedy to all individuals on the facility mailing list. If an information repository has not been required pursuant to § 270.36, the notice shall specify where the plans and specifications are available for inspection; and

(4) Revise the cost estimate used to demonstrate financial assurance under § 264.526(c), if necessary.

§ 264.528 Progress reports.

(a) The permittee may be required by the Regional Administrator to provide

progress reports during the design, construction, operation and maintenance of any remedy. Frequency and format of reports shall be determined by the Regional Administrator and specified in the permit schedule of compliance. Such reports may include, but are not limited to:

(1) Summaries of progress of remedy implementation, including results of monitoring and sampling activities, progress in meeting media cleanup standards, and description of other remediation activities.

(2) Problems encountered during the reporting period, and actions taken or proposed to resolve the problems

(3) Changes in personnel conducting or managing the remedial effort.

(4) Project work for next reporting period.

(5) Copies of laboratory reports and field sampling reports.

(b) All raw data, such as laboratory reports, drilling logs and other supporting information generated from the remedial activities shall be maintained at the facility (or other location approved by the Regional Administrator) during the life of the permit, including the term of any reissued permits.

§ 264.529 Review of remedy implementation.

The Regional Administrator shall periodically review the progress of the remedy. Based on such review, the Regional Administrator may modify the permit schedule of compliance to require additional remedial measures to ensure prompt completion, safety, effectiveness, protectiveness, or reliability of the remedy.

§ 264.530 Completion of remedies.

(a) Remedies specified pursuant to § 264.526 shall be considered complete when the Regional Administrator determines that:

(1) Compliance with all media cleanup standards (or alternate levels) as specified in the permit have been achieved, according to the requirements of § 264.525(e); and

(2) All actions required to control the source(s) of contamination have been satisfied; and

(3) Procedures specified for removal, decontamination, closure, or post-closure care of units, equipment, devices or structures required to implement the remedy have been complied with.

(b) Upon completion of the remedy, the permittee shall submit to the Regional Administrator, by registered mail, a request for termination of the corrective action schedule of compliance according to the procedures for Class III modifications in § 270.42. The request shall include a certification that the remedy has been completed in accordance with the requirements of § 264.530(a), and that all other terms and conditions specified in the permit pursuant to Subpart S have been satisfied. The certification must be signed by the permittee and by an independent professional(s) skilled in the appropriate technical discipline(s).

(c) When, upon receipt of the certification, and in consideration of public comments and any other relevant information, the Regional Administrator determines that the corrective measure remedy has been completed in accordance with the terms and conditions of the permit and the requirements for remedy completion under § 264.530(a), the Regional Administrator shall:

(1) Modify the permit to terminate the corrective action schedule of compliance, according to the Class III procedures of § 270.42.

(2) Upon modification of the permit, release the permittee from the requirements for financial assurance for corrective action under § 264.500(c) and § 264.90.

(d) If a remedy includes one or more identified phases, the Regional Administrator may:

(1) Require separate certification that the remedy phase has been completed as specified in the permit, to be signed by the permittee and an independent professional(s) skilled in the appropriate technical discipline(s); and

(2) Release the permittee from the requirements for financial assurance for that remedy phase, if the Regional Administrator determines that the remedy phase has been successfully completed.

§ 264.531 Determination of technical impracticability.

(a) The Regional Administrator may determine, based on information developed by the permittee or other information, that compliance with a requirement(s) for the remedy is not technically practicable. In making such determinations, the Regional Administrator shall consider:

(1) The permittee's efforts to achieve compliance with the requirement(s); and

(2) Whether other currently available or new and innovative methods or technologies could practicably achieve compliance with the requirements.

(b) If the Regional Administrator determines that compliance with a remedy requirement is not technically practicable, the Regional Administrator shall modify the permit schedule of compliance to specify as necessary and appropriate:

(1) Further measures that may be required of the permittee to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(2) Alternate levels or measures for cleaning up contaminated media, controlling the source(s) of contamination, or for removal or decontamination of equipment, units, devices, or structures required to implement the remedy which:

(i) Are technically practicable; and

(ii) Are consistent with the overall objectives of the remedy

§§ 264.532-264.539 [Reserved]

§ 264.540 Interim measures.

(a) If, at any time the Regional Administrator determines, based on consideration of the factors specified in § 264.540(b), that a release or, based on site-specific circumstances, a threatened release from a solid waste management unit(s) at the facility poses a threat to human health or the environment, the Regional Administrator may specify in the permit interim measures required of the permittee to abate, minimize, stabilize, mitigate, or eliminate the release(s) or threat of release(s).

(b) The following factors may be considered by the Regional Administrator in determining whether an interim measure(s) is required:

(1) Time required to develop and implement a final remedy;

(2) Actual or potential exposure of nearby populations or environmental receptors to hazardous wastes (including hazardous constituents);

(3) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(4) Further degradation of the medium which may occur if remedial action is not initiated expeditiously;

(5) Presence of hazardous wastes (including hazardous constituents) in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

(6) Presence of high levels of hazardous wastes (including hazardous constituents) in soils largely at or near the surface, that may migrate;

(7) Weather conditions that may cause hazardous wastes (including hazardous constituents) to migrate or be released;

(8) Risks of fire or explosion, or potential for exposure to hazardous wastes (including hazardous constituents) as a result of an accident

or failure of a container or handling system;

(9) Other situations that may pose threats to human health and the environment.

(c) If the Regional Administrator determines that an interim measure is necessary pursuant to § 264.540(a), the Regional Administrator shall notify the permittee of the necessary actions required. Such actions shall be implemented as soon as practicable, in accordance with a schedule as specified by the Regional Administrator. The Regional Administrator shall modify the permit schedule of compliance, if necessary, to require implementation of an interim measure, in accordance with the procedures of § 270.34 or § 270.41, as appropriate.

(d) Interim measures should, to the extent practicable, be consistent with the objectives of, and contribute to the performance of any remedy which may be required pursuant to § 264.525.

§§ 264.541-549 [Reserved]

§ 264.550 Management of wastes.

(a) All solid wastes which are managed pursuant to a remedy required under § 264.525, or an interim measure required under § 264.540, shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable Federal, State and local requirements.

(b) The Regional Administrator shall specify in the permit requirements for units in which wastes will be managed, and other waste managament activities, as determined by the Regional Administrator to be necessary for protection of human health and the environment.

§ 264.551 Management of hazardous wastes.

(a) Except as Provided herein and in paragraphs (b) and (c) of this section any treatment, storage or disposal of listed or identified hazardous waste necessary to implement a remedy or an interim measure shall be in accordance with the applicable standards of 40 CFR parts 262, 264, 268 and 269. Requirements for closure contained in subpart G of 40 CFR part 264, except for § 264.111, may be waived by the Regional Administrator for units created for the purpose of managing corrective action wastes.

(b)(1) For temporary units (except for incinerators and other non-tank thermal treatment units) in which hazardous wastes will be stored or treated, the Regional Administrator may determine that a design, operating, or closure standard(s) applicable to such unit(s) solely by regulation may be replaced by alternative requirements which are protective of human health and the environment.

(2) Any temporary unit to which alernative requirements are applied according to paragraph (b)(1) of this section shall:

(i) Be operated for a period not exceeding 180 calendar days, unless the period is extended under § 264.551(b)(3) below; and

(ii) Be located at the facility; and

(iii) Be used only for treatment or storage of hazardous wastes (including hazardous constituents), or other solid wastes that have originated within the boundary of the facility.

(3) The Regional Administrator may grant an extension to the 180-day period of a temporary unit if hazardous wastes must remain in the unit due to unforeseen, temporary, and uncontrollable circumstances. The owner/operator must request this extension as a Class I modification, with Director approval, under the procedures of § 270.42.

(4) In establishing standards to be applied to temporary units, the Regional Administrator shall consider the following factors:

(i) The length of time such unit(s) will be in operation.

(ii) Type of unit, and volumes of wastes to be managed.

(iii) Potential for releases from the unit(s).

(iv) Physical and chemical characteristics of the wastes to be managed in the unit(s).

(v) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential releases.

(vi) Potential for exposure of humans and environmental receptors if releases were to occur from the unit(s).

(5) The Regional Administrator shall specify in the permit the length of time that such units will be allowed to operate, and specific design, operating, and closure requirements for the unit(s).

(c) For the purposes of implementing remedies under this subpart, the Regional Administrator may designate an area of contamination as a corrective action management unit.

(1) Movement or consolidation of wastes within a corrective action management unit will not constitute placement of hazardous wastes in a hazardous waste management unit.

(2) Consolidation of wastes within the corrective action management unit will not constitute creation of a new, replacement, or lateral expansion of a hazardous waste management unit.

(3) In making determinations as to whether a corrective action management unit is appropriate for implementing a remedy at a facility, and/or the nature and configuration of a corrective action management unit at a facility, the Regional Administrator may consider the following:

(i) The nature, extent and location of surficial contamination at the facility;

(ii) The potential benefits of a corrective action management unit in achieving remedial objectives for the facility, including (but not limited to):

(A) Expediting the timing of remedy implementation; and

(B) Enhancing the effectiveness, cost-effectiveness, reliability or protectiveness of a remedy;

(iii) The practicability of alternative remedial approaches; or

(iv) Other relevant factors.

(4) The requirements of subpart G of 40 CFR part 264 will not apply to corrective action management units. The Regional Administrator will specify in the permit closure requirements for any corrective action management unit, in consideration of the following factors:

(i) Unit characteristics;

(ii) Volume of wastes which will remain after closure;

(iii) Potential for releases from the unit;

(iv) Physical and chemical characteristics of the wastes;

(v) Hydrological and other relevant environmental conditions at the facility which may influence the migration of any potential releases; and

(vi) Potential for exposure of humans and environmental receptors if releases were to occur from the unit.

(5) Closure requirements specified for corrective action management units under paragraph (c)(3) of this section shall:

(i) Minimize the need for further maintenance; and

(ii) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated runoff, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere.

(6) The Regional Administrator will specify in the permit post-closure requirements for any corrective action management unit, as necessary to protect human health and the environment, including monitoring and maintenance activities and the frequency with which they will be performed to ensure the integrity of the

cap, final cover, or other containment system.

§ 264.552 Management of non-hazardous solid wastes.

(a) Treatment, storage and disposal of non-hazardous solid wastes pursuant to a remedy or interim measure required under this subpart shall be in accordance with applicable technical standards for solid waste management as specified in regulations promulgated pursuant to RCRA subtitle D.

(b) For any unit in which non-hazardous solid wastes will be managed pursuant to a remedy or interim measure, the Regional Administrator may specify additional design and operating standards for the unit(s), as necessary to protect human health and the environment. In determining appropriate design and operating requirements for such units, the Regional Administrator shall consider the factors specified under § 264.551(b)(2).

§§ 264.553–264.559 [Reserved]

§ 264.560 Required notices.

(a) *Notification of ground-water contamination.* If at any time the permitted discovers that hazardous constituents in ground water that may have been released from a solid waste management unit at the facility have migrated beyond the facility boundary in concentrations that exceed action levels (as defined under § 264.521), the permittee shall, within fifteen days of discovery, provide written notice to the Regional Administrator and any person who owns or resides on the land which overlies the contaminated ground water.

(b) *Notification of air contamination.* If at any time the permittee discovers that hazardous constituents in air that may have been released from a solid waste management unit at the facility have or are migrating to areas beyond the facility boundary in concentrations that exceed action levels (as defined under § 264.521), and that residences or other places at which continuous, long-term exposure to such constituents might occur are located within such areas, the permittee shall, within fifteen days of such discovery:

(1) Provide written notification to the Regional Administrator; and

(2) Initiate any actions that may be necessary to provide notice to all individuals who have or may have been subject to such exposure.

(c) Notification of residual contamination. If hazardous wastes or hazardous constituents in solid waste management units, or which have been released from solid waste management units, will remain in or on the land after the term of the permit has expired, the Regional Administrator may require the permittee to record, in accordance with State law, a notation in the deed to the facility property or in some other instrument which is normally examined during title search that will, in perpetuity, notify any potential purchaser of the property of the types, concentrations and locations of such hazardous wastes or hazardous constituents.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

6. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6924, and 6925.

7. In 40 CFR part 265, subpart G, it is proposed to amend § 265.112(b) by adding new paragraph (b)(8), and to amend § 265.113 by redesignating paragraphs (a)(1)(ii) as (a)(1)(iii) and (b)(1)(ii) as (b)(1)(iii), and by adding new paragraphs (a)(1)(ii) and (b)(1)(ii) to read as follows:

§ 265.112 Closure plan, amendment of plan.

* * * * *

(b) * * *

(8) Information which complies with the requirements of 40 CFR 270.14(d) for all solid waste management units at the facility.

* * * * *

§ 265.113 Closure, time allowed for closure.

* * * * *

(a) * * *

(1) * * *

(ii) Corrective action required at the unit or the facility under subpart S will delay the completion of partial or final closure; or

* * * * *

(b) * * *

(1) * * *

(ii) Corrective action required at the unit or the facility under subpart S will delay the completion of partial or final closure: or

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

8. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, and 6974

9. It is proposed to amend paragraph (c) of § 270.1 by adding the following introductory text immediately before the sentence which begins "The denial of a permit for the active life * * *," as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * * Owners and operators must also have permits covering any period necessary to comply with the requirements of subpart S of part 264.* * *

* * * * *

10. It is proposed to amend § 270.30(l) by adding new paragraph (l)(12) to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(l) * * *

(12) *Information pertinent to corrective action requirements.* (i) If the permittee discovers additional solid waste management units or learns of releases of hazardous wastes (including hazardous constituents) from previously identified or newly discovered solid waste management units at the facility, the permittee shall submit the following information to the Director:

(A) *Identification of additional solid waste management unit(s).* Within thirty days of the receipt of information about a previously unknown and unreported solid waste management unit at the facility (as defined in 40 CFR 264.501), the permittee shall submit the following information to the Director:

(*1*) The location of the unit on the topographic map submitted as part of the part B application in accordance with 40 CFR 270.14(b)(19) or a topographic map of comparable scale which clearly indicates the location of the unit in relation to other solid waste management units at the facility.

(*2*) Designation of type of unit.

(*3*) General dimensions of the unit.

(*4*) When the unit was operated.

(*5*) Specification of all wastes that have been managed in the unit, if available.

(*6*) All available information pertaining to any release of hazardous wastes (including hazardous constituents) from the unit.

(B) Sampling and analysis data. The Director may require the permittee to perform sampling and analysis of ground water (which may involve the installation of wells), soils, surface water, or air, as necessary to determine whether a release(s) from such unit(s)

has occurred, is likely to have occurred, or will likely occur.

(C) *Releases of hazardous waste.* If the permittee discovers a release of hazardous wastes (including hazardous constituents) from a solid waste management unit at the facility that may pose a threat to human health and the environment, the permittee shall, within twenty days of the discovery, submit the following information to the Director:

(*1*) Identification of the solid waste management unit(s) from which the release has occurred, to include the type of unit, and location of the unit clearly indicated on a facility map; and

(*2*) Any other information currently available concerning the release, including potential exposure pathways, controls already imposed to address the release, and any action planned for further cleanup.

(ii) Based upon information supplied under (A), (B), or (C) above the Director may, as necessary, require further investigations or corrective measures in accordance with the standards for corrective action specified in 40 CFR subpart S. Such additional activities shall, if necessary, be specified by modifying an existing schedule of compliance according to § 270.34(c), or by initiating a permit modification according to § 270.41.

* * * * *

11. Section 270.33 is amended by adding the following sentence at the end of paragraph (a) to read as follows:

§ 270.33 Schedules of Compliance

(a) * * * Schedules of compliance for corrective action are governed solely by § 270.34.

* * * * *

12.* * * It is proposed to amend 40 CFR part 270, subpart C, by adding new § 270.34 to read as follows:

§ 270.34 Schedules of compliances for corrective action.

Schedules of compliance for corrective action are governed by this section and not § 270.33.

(a) The Director may include a schedule of compliance in the permit for purposes of specifying the terms and conditions necessary for the permittee to comply with the requirements of subpart S of part 264. Permit schedules of compliance issued under this section shall contain terms and conditions deemed by the Director to be necessary to protect human health and the environment.

(b) The permittee shall adhere to the schedules specified in the permit. If at any time the permittee determines that schedules cannot be met, the permittee shall, within 15 days of such determination, notify the Director and submit a request for a permit modification under § 270.42, with an explanation of why the current schedule cannot be met.

(c) The Director may modify the permit to include conditions in the schedule of compliance as necessary to comply with the requirements of subpart S of part 264. The following procedures will be followed unless the Director determines instead that it is appropriate to modify the permit pursuant to § 270.41(a)(5)(ix):

(1) The Director will notify the permittee in writing of the proposed modification. Such notice will:

(i) Describe the exact change(s) to be made to the permit conditions;

(ii) Provide an explanation of why the modification is needed; and

(iii) Provide notification of the date by which comments on the proposed modification must be received. Such date will not be less than twenty days from the date the notice of proposed modification is received by the permittee, or after the public notice is published under § 270.34(c)(2);

(iv) Provide notification that supporting documentation or data may be available for inspection at the Regional or State office; and

(v) Include the name and address of an Agency contact to whom comments may be sent.

(2) The Director shall:

(i) Publish a notice of the proposed modification in a newspaper distributed in the locality of the facility, which includes notice of items (1)(i)–(v);

(ii) Mail a notice of the proposed modification to all persons on the facility mailing list maintained according to 40 CFR 124.10(c)(1)(viii). Such notice will include items (1)(i)–(v), and shall be mailed concurrently with notice to the permittee;

(iii) For facilities which have established an information repository pursuant to § 270.36, the Director shall place a notification of the proposed modification, including items (1)(i)–(v), in the information repository concurrently with actions taken under (i)–(ii).

(3) If the Director receives no written comment on the proposed modification, the modification will become effective five days after the close of the comment period; the Director will promptly notify the permittee and individuals on the facility mailing list in writing that the modification has become effective, and will place a copy of the modified permit in the information repository if a repository is maintained for the facility.

(4) If the Director receives written comment on the proposed modification, the Director shall make a final determination concerning the modification within thirty days after the end of the comment period if practicable. The Director shall then:

(i) Notify the permittee in writing of the final decision. Such notification shall:

(A) Indicate the effective date of the modification, which shall be no later than fifteen days after the date of notification of the final modification decision,

(B) Include an explanation of how comments were considered in developing the final modification, and

(C) Provide a copy of the final modification;

(ii) Provide notice of the final modification decision, including paragraphs (c)(4)(i)(A) and (i)(B) of this section, in a newspaper of local distribution in the vicinity of the facility; and

(iii) Place a copy of items (i)(A)–(i)(C) in the information repository for the facility if such a repository is maintained.

(5) Modifications initiated and finalized by the Director using procedures in § 270.34(c) are not subject to administrative appeal.

* * * * *

B. It is proposed to amend 40 CFR part 270, subpart C, by adding new

§ 270.36 Information repository.

(a) At any time during conduct of investigations or other activities required under part 264, subpart S, the Director may require the permittee to establish and maintain an information repository for the purpose of making accessible to interested parties documents, reports and other public information developed pursuant to investigations and activities required under part 264, subpart S.

(b) The information repository shall contain all documents, reports, data and other information which the Director deems relevant to public understanding of the activities, findings and plans for such corrective action initiatives.

(c) The information repository shall, when feasible, be located within reasonable distance of the facility, or if not feasible, at the facility. The repository shall be accessible to the public during reasonable hours, as required by the Director.

(d) In the permit schedule of compliance, the Director shall specify requirements for informing the public about the information repository. At a minimum, written notice about the information repository shall be given to

all individuals on the facility mailing list.

(e) Information regarding procedures for submission of comments shall be made available at the repository.

* * * * *

14. It is proposed to amend § 270.41 by revising the introductory text and by adding new paragraph (a)(5)(ix) to read as follows:

§ 270.41 Modification or revocation and reissuance of permits.

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 270.30), receives a request for modification or revocation and reissuance under § 124.5, or conducts a review of the permit file) he or she may determine whether one or more of the causes listed in paragraphs (a) and (b) of this section for modification, or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. (See 40 CFR 124.5(c)(2).) If cause does not exist under this section, the Director shall not modify or revoke and reissue the permit, except on request of the permittee or in accordance with § 270.34(c). If a permit modification is requested by the permittee, the Director shall approve or deny the request according to the procedures of 40 CFR 270.42. The Director may also modify the permit schedule of compliance for corrective action under the procedures of § 270.34(c). Otherwise, a draft permit must be prepared and other procedures in part 124 (or procedures of an approved State program) followed.

(a) * * *

(5) * * *

(ix) The Director determines good cause exists for modification of the permit for the purposes of compliance with subpart S of part 264.

* * * * *

15. It is proposed to revise paragraphs (b)(3)(i) and (c)(3)(vii) of § 270.60 as follows:

§ 270.60 Permits by rule.

* * * * *

(b) * * *

(3) * * *

(i) Complies with 40 CFR subpart S; and

* * * * *

(c) * * *

(3) * * *

(vii) for NPDES permits issued after November 8, 1984, 40 CFR subpart S.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

16. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

17. It is proposed to amend § 271.1(j) by adding the following entry in Table 1 in chronological order by date of publication:

§ 271.1 [Amended]

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of Regulation
* *	* * *
July 27, 1990	Corrective Action for Solid Waste Management Units.
* *	* * *

[FR Doc. 90-16737 Filed 7-26-90; 8:45 am]

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Friday
July 27, 1990

Part III

Department of Transportation

Coast Guard

46 CFR Part 16

Random Chemical Drug Testing Programs for Commercial Vessel Personnel; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[CGD 90-014]

RIN 2115-AC45

Random Chemical Drug Testing Programs for Commercial Vessel Personnel

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish random chemical drug testing requirements for all crewmembers who serve in positions which affect the safe navigation or operation of a vessel. The Coast Guard believes that random chemical testing for dangerous drugs is necessary for the overall effectiveness of any program to discourage drug use by commercial vessel personnel and thereby enhance the safety of the marine transportation industry. The proposal also removes certain drilling industry personnel from coverage under the maritime industry drug testing program.

DATES: Comments must be received on or before September 10, 1990.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3314) [CGD 90-014], U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection or copying at Room 3314 at the above address, between 8 a.m. and 3 p.m. Monday through Friday except Federal Holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Captain Gerard Barton, U.S. Coast Guard Headquarters, Office of Marine Safety, Security and Environmental Protection (G-MMI), telephone (202) 267-1430.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 1988, the Coast Guard issued a Final Rule requiring pre-employment, periodic, random, post-accident and reasonable cause testing for commercial vessel personnel. (53 FR 47064) On November 29, 1988 the Transportation Institute and the Seafarers International Union, as well as other individual plaintiffs, filed a lawsuit against the U.S. Coast Guard and James H. Burnley, IV, then Secretary of Transportation (Civil Action No. 88-3429), in the United States District Court for the District of Columbia. The lawsuit sought declaratory and injunctive relief against the Coast Guard's Final Rule which required private citizens employed aboard commercial vessels to be subject to government-compelled drug testing even if those individuals were not suspected of drug use.

On December 18, 1989, the District Court enjoined the Coast Guard from implementing that part of the drug testing rules which required employers to initiate programs for random drug testing of all crewmembers as described in the November 21, 1988 Final Rule. The Final Rule had required, with limited exceptions, that all crewmembers serving aboard a vessel be subject to random drug testing. The rule was based on the concept that random testing was warranted not only for those crewmembers whose ordinary duties directly affected the safe navigation and operation of a vessel but also for other crewmembers who, in an emergency, were assigned tasks critical to the safety of the vessel and its passengers. In his opinion, District Court Judge Thomas F. Hogan approved the concept of random drug testing but held that the random drug testing regulations as written in the November 21, 1988 Final Rule could not be sustained under the Fourth Amendment because no clear, direct nexus between the nature of an employee's duty and an irreversible and calamitous consequence had been demonstrated. The Court was not convinced of the immediacy or gravity of the potential safety threat sufficient to mandate random drug testing for all employees currently covered in the Coast Guard's regulations. However, Judge Hogan acknowledged "that some crewmembers within the currently drawn regulations perform duties so directly tied to safety, that they could constitutionally be required to undergo random testing." Judge Hogan's decision left the Coast Guard free to promulgate new random drug testing regulations applicable only to crewmembers whose duties have a clear and direct nexus to the safety concerns of the government. In response to Judge Hogan's decision, on December 26, 1989, the Coast Guard published a Final Rule that amended 46 CFR 16.205(a) to delay implementation of random drug testing by marine employees until further notice. (54 FR 52943)

The Coast Guard interprets the Court's opinion as supporting random drug testing of those crewmembers whose ordinary duties directly affect the safe navigation and operation of the vessel. However, the opinion holds that most persons having safety-related duties only as a result of an accident or other action that created an emergency should be excluded from random testing. Based on that interpretation, the Coast Guard conducted a thorough review of the categories of maritime personnel who, in accordance with the Court's decision, could be covered under the random drug testing rules. To identify these individuals, the Coast Guard reviewed its manning, licensing, certification and inspection regulations. We now propose to revise the regulations to require random drug testing only for those crewmembers who perform ordinary duties directly affecting the safe operation and navigation of the vessel and, on vessels carrying passengers, who are assigned emergency duties making them directly responsible for the safety of passengers.

Personnel on Inspected Vessels

Vessels inspected by the Coast Guard under 46 U.S.C. 3301 are issued a Certificate of Inspection (COI) that specifies the minimum number of both licensed and unlicensed personnel necessary for the safe navigation and operation of the vessel. In setting these minimum levels, the Coast Guard considers critical maintenance requirements, necessary operational evolutions such as mooring anchoring, and launching of life saving equipment, and the maintenance of an orderly and continuous watch. The Coast Guard reviewed these manning requirements for inspected vessels to identify the crewmembers who should be subject to random drug testing.

Licensed personnel normally required by COIs include the master, deck watch officers, pilots, engineers, radio officers; and, on Mobile Offshore Drilling Units (MODUs), the offshore installation manager, ballast control operator and the barge supervisor. These persons all have duties that directly affect the day-to-day safe operation and navigation of the vessel. Masters, and deck watch officers are responsible for directing or effecting the movements of a vessel. Masters and deck watch officers direct the vessel along a desired trackline, generally keeping account of the vessel's progress through the water, ordering or executing changes in course, rudder position or engine speed, and ensuring adequate separation from other vessel traffic. While pilots perform the same duties as masters and deck watch officers, they also contribute knowledge of local port conditions. Improper actions by a master, deck watch officer or pilot in navigating a vessel can result in collision, grounding, foundering, capsizing, or other serious accident involving loss of the vessel, loss of life,

or pollution. Engineers control, monitor and maintain a vessel's main or auxiliary propulsion system, electric power generators, bilge, ballast and cargo pumps, deck machinery and steering gear. Improper actions by an engineer can result in explosion, flooding, pollution, or loss of propulsion endangering the vessel and lives. Radio officers are responsible for the maintenance and operation of the vessel's radios and communications equipment. They maintain the vital communication link to shore facilities and other vessels and monitor weather and maritime advisories such as broadcasts to mariners. Failure to perform their duties properly could result in the vessel's inability to send and receive messages relating to changing navigating and operating conditions which could endanger the vessel.

There are also three licensed officers with service restricted to MODUs. The offshore installation manager (OIM) is equivalent to a conventionally licensed master and is the person designated by the owner or operator to be in complete and ultimate command of the unit. The ballast control officer (BCO) has duties involved in the operation of the complex ballast system found on many MODUs and is the equivalent of a conventionally licensed mate. The barge supervisory (BS) supports the OIM in marine related matters including, but not limited to, maintaining watertight integrity, inspecting and maintaining mooring and towing components, and the maintenance of emergency and other marine related equipment. The BS is the equivalent of a conventionally licensed mate. On MODUs, improper actions by these individuals could result in explosion, capsizing, flooding, or other serious accident causing loss of life, loss of the MODU or pollution. It is our preliminary view that all of these individuals must be subject to random drug testing to ensure that their safety-critical performance is not impaired by drug use.

A COI may also require minimum staffing levels of unlicensed personnel who perform ordinary duties which directly affect the safe navigation and operation of the vessel. Deck hands and able seamen often act as lookouts, watching for other vessels and uncharted obstructions in the water, particularly in times of poor visibility, and as helmsmen, steering the vessel under the master's guidance. Qualified members of the engine department (QMEDs) and wipers assist the watch engineer in ensuring ship propulsion and steering systems function properly. Improper actions by QMEDs and wipers can result in explosion, flooding, pollution, or loss of propulsion endangering a vessel and lives. Tankermen transfer cargo, including explosive and hazardous cargoes such as chemicals, petroleum products and liquified natural gas. Improper actions by tankermen can result in fire, explosion and pollution. Lifeboatmen are responsible for operating and maintaining lifesaving equipment. They perform required periodic readiness tests which include preparation, launching and retrieval of lifeboats. Improper actions by lifeboatmen can result in damage to equipment or failure of equipment when actually needed in an emergency. Each of these crewmembers perform duties which directly affect the safe operation and navigation of a vessel and should be subject to random drug testing.

On passenger vessels, unlicensed individuals may be directly responsible for assisting passenger in life-threatening situations, such as medical emergencies, fires, and abandoning the vessel. Although the crewmembers may not perform any of the types of duties discussed above, the Coast Guard believes that any crewmember assigned direct responsibility for passenger safety should be subject to random testing.

Therefore, having reviewed the manning requirements of 46 CFR part 15, the Coast Guard believes that no position or function listed on a vessel's COI should be excluded from random drug testing. Further, any crewmember, whether or not actually filling a position required by the COI, who performs duties and functions similar to or identical with those of an individual or position required by the COI, or is directly responsible for safety of passengers, should also be subject to random drug testing.

Testing of Personnel on Uninspected Vessels

The Coast Guard also reviewed the manning requirements for uninspected vessels to identify crewmembers who fall within the Court's criteria and therefore should be subject to random drug testing. First, we looked at individuals serving aboard uninspected commercial vessels who are required to hold a license under 46 CFR part 15. These include operators of uninspected passenger vessels, operators of uninspected towing vessels, and individuals authorized to engage in assistance towing. These individuals hold safety-sensitive positions because they are directly responsible for the safe navigation of the vessel, and any improper action on their part could cause a collision, foundering, capsizing, grounding, pollution, or other serious accidents having immediate and calamitous results.

Moreover, based on our review, unlicensed individuals on uninspected vessels who perform duties which directly affect the safety of the navigation or operations of the vessel include unlicensed mates standing bridge watches; deck hands standing helm watches; assisting in mooring or unmooring of the vessel or assisting in the making up or shifting of tows; and unlicensed engineers responsible for the vessel's main propulsion and auxiliary machinery. These crewmembers, like those required on an inspected vessel's COI, have duties that directly affect the day-to-day safe operation and navigation of the vessel. Improper actions can result in collision, grounding, foundering, capsizing, or other serious accident involving loss of the vessel, loss of life, or pollution. It appears that all of these crewmembers should also be subject to random drug testing.

As indicated previously, the Coast Guard recognizes that not all individuals on board commercial vessels have ordinary or routine duties directly tied to the safe navigation and operation of the vessel. Based on the Court's holding, crewmembers who perform *no* duties directly affecting the safe operation or navigation of the vessel should not be subject to random drug testing. In many cases, these individuals include cooks, messmen, hotel service personnel, concession operators, pursers, bartenders, waiters, entertainers, and port assistants, port engineers and port captains not directly involved in vessel operations, and non-navigating staff officers on passenger vessels. Many of these individuals were not excluded from drug testing by 46 CFR 16.105(b)(3) as published in the original November 21, 1988 Final Rule.

In order to ensure that, regardless of their title or the ordinary and routine duties assigned, persons assigned critical safety-related emergency functions were not inadvertently excluded from random drug testing, the Coast Guard also reviewed watch quarter and station bills to determine if these documents would identify crewmembers in addition to those discussed above whose emergency duties were so safety-sensitive that they should be subject to random drug testing. A watch quarter and station bill assigns some crewmembers specific duties in emergency situations and directs other crewmembers simply to muster at a specified place where their

duties would be assigned depending on the nature of the emergency. We believe crewmembers assigned specific duties such as manning firehoses, securing air and ventilation boundaries and electrical power, energizing emergency lighting and fire pumps, or manning emergency communications equipment should be subject to random drug testing. These crewmembers are, for the most part, the same ones whose ordinary shipboard duties have already been determined to be necessary to the safe operation or navigation of the vessel and who would be subject to random testing based on their ordinary or routine duties. The Coast Guard's position is that crewmembers who are assigned emergency duties which are clearly critical to the safety of life of passengers also should be subject to random testing. These duties are preparing and launching lifeboats and assisting passengers in emergencies. Therefore, crewmembers assigned to perform these emergency duties should be subject to random drug testing, even if their routine shipboard duties do not affect the safe operation and navigation of the vessel. The Coast Guard proposes that these emergency duties be included as "ordinary" duties necessary to the safe navigation and operation of the vessel.

As the foregoing indicates, a commercial vessel's safety is dependent upon proper performance of critical navigation and operation functions. Therefore, the proposed rule adds definitions of "Vessel Navigation" and "Vessel Operation" to describe the activities necessary to conduct a vessel on its voyage safely and to maintain a continuous, 24-hours-per-day, watch while underway. The Coast Guard specifically seeks comment on whether these definitions have omitted some function which should be covered by the random drug testing requirements.

The random drug testing requirements in the proposed rule have been narrowed to apply only to crewmembers who perform ordinary duties directly affecting the safe operation and navigation of the vessel and, on vessels carrying passengers, to crewmembers who are assigned emergency duties making them directly responsible for the safety of passengers. This proposed revision to the random testing requirements does not disturb the coverage of or requirements for pre-employment, periodic, reasonable cause, and post-casualty chemical drug and alcohol testing as published in the November 21, 1988 Final Rule.

All persons on board a MODU who are directly involved in the safe navigation and operation of the vessel, as defined in this proposal, should be subject to the five types of chemical drug testing. These crewmembers would include all individuals required by the COI, any other individual who performs functions similar to a position required by the COI, and those persons who are responsible for insuring that the MODU is maintained in a seaworthy condition and ready for getting underway under the MODU's own propulsion or by towing. There are, however, a category of personnel aboard MODUs who do not perform duties relating to the operation or navigation of the vessel. The Coast Guard proposes to exclude these "industrial personnel" from the definition of crewmember in § 16.105 for the purpose of the drug testing regulations.

Industrial personnel perform duties related solely to the drilling functions on the MODU and have no duties related to navigation or operations of the MODU as a vessel. The work performed by these individuals is analogous to the work performed by scientific personnel on oceanographic research vessels or fish processing personnel aboard fishing vessels in that they perform jobs similar to shore-based jobs, but in a marine environment. Examples of industrial personnel who would not be subject to any required chemical drug testing under this proposal are roughnecks, roustabouts, crane-operators, welders and mudmen. This proposal is consistent with the Coast Guard's existing regulatory schemes for documentation and licensing of MODU personnel and for MODU manning requirements.

Effective Date:

The Coast Guard proposes to make the Final Rule effective 30 days after publication in the **Federal Register**. This effective date will require large companies, described in 46 CFR 16.205(a), i.e., employers with more than 50 employees, to begin their random testing programs 30 days from the publication of the Final Rule. Because these companies should have been ready to start their random testing program on December 21, 1989, had Judge Hogan not enjoined the random testing regulations, the Coast Guard believes that 30 days from publication of the Final Rule is adequate notice. All other entities would be required to start their random drug testing program on December 21, 1990, as originally required by the November 21, 1988 Final Rule. The Coast Guard proposes to revise § 16.205(a) to reflect the implementation date for large companies. The Coast Guard specifically seeks comments on any implementation problems associated with the above time frames.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291. However, they are considered to be significant under the DOT regulatory policies and procedures (44 FR 11304; February 26, 1979) because of controversy surrounding random testing, substantial public interest and litigation. The proposed revision to 46 CFR Part 16 serves to re-establish random drug testing requirements for those crewmembers aboard commercial vessels whose duties directly affect the safe navigation or operations of the vessel. A regulatory analysis of the economic impact of drug testing accompanied the November 21, 1988 Final Rule (53 FR 47064). Although this proposed revisions would reduce somewhat the recurring annual cost of implementation of drug testing by decreasing the number of individuals subject to drug testing, there will be no appreciable decrease in the administrative costs to employers to conduct the overall program. The crewmembers who will be excluded by this revision perform only duties that are not considered safety sensitive. The Coast Guard believes their exclusion will decrease the cost of the random testing program but will not significantly decrease the benefits of random testing because these crewmembers have little impact on the safe navigation or operation of the vessel.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires review of proposed rules to assess their impact on small business. The Coast Guard concluded that the November 21, 1988 Final Rule could have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis was placed in the docket (CGD 86-067) for the Final Rule (53 FR 47064). As discussed above, this proposed revision would decrease the economic impact imposed by the original Final Rule (53 FR 47064) by reducing somewhat the number of tests required to be conducted. However, the savings would be minimal because the proposed change would not eliminate other required tests or the need to have a drug testing program for personnel covered by the rule.

Paperwork Reduction Act

This proposed revision contains no additional information collection

requirements. The paperwork associated with this rule has been approved by the Office of Management and Budget under number 2115–0574.

Federalism Implications

This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.1. of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 46 CFR Part 16

Seamen, Marine Safety, Navigation (water), Alcohol and alcoholic beverages, Drugs.

In consideration of the foregoing, the Coast Guard proposes to amend part 16 of title 46, Code of Federal Regulations as set forth below:

PART 16—CHEMICAL TESTING

1. The authority citation for part 16 continues to read as follows:

Authority: 46 U.S.C. 2103, 3306, 7101, 7301, and 7701; 49 CFR 1.46.

2. In § 16.105, the definition of "crewmember" is amended by revising paragraph (b), and by adding two new definitions to read as follows:

§ 16.105 Definitions of terms used in this part

* * * * *

Crewmember means an individual who is:

* * * * *

(b) Engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a license, certificate of registry, or merchant mariner's document issued under this subchapter, except the following:

(1) Individuals primarily employed in the preparation of fish or fish products, or in a support position not related to navigation on a fish processing vessels;

(2) Scientific personnel on an oceanographic research vessel;

(3) Individuals engaged in industrial activities not directly affecting the safe navigation or operation of mobile offshore drilling units; and

(4) Individuals not required under part 15 of this subchapter who have no duties which directly affect the safety of the vessel's navigation or operation.

* * * * *

Vessel Navigation means to steer, direct, manage or sail a vessel. It includes the determination of the vessel's position by any means, piloting, directing the vessel along a desired trackline, generally keeping account of the vessel's progress through the water, ordering or executing changes in course, rudder position, or engine speed, and maintaining a lookout.

Vessel Operations means the control, monitoring and maintenance of the vessel's main or auxiliary propulsion system, electric power generators, bilge, ballast and cargo pumps, deck machinery including winches, windlasses and lifting equipment; maintenance, operation and periodic testing of the vessel's steering gear, life saving equipment and appliances and fire fighting systems and equipment; loading or discharge of cargo or fuel; assembling or disassembling of tows; mooring, anchoring, and line handling; maintenance of the vessel's watertight integrity and stability; operation and maintenance of communications equipment; and providing for the safety of passengers on board.

* * * * *

3. Section 16.205 is amended by revising paragraph (a) to read as follows:

§ 16.205 Implementation of Chemical Testing Programs.

(a) Each employer who employs more than 50 employees required to be tested under this part shall implement the preemployment testing program required in § 16.210 not later than July 21, 1989. All other employer testing programs required by this part, except the random testing program, shall be implemented not later than December 21, 1989. The random testing program required by this part shall be implemented not later than August 27, 1990.

* * * * *

4. Section 16.230 is amended by revising paragraphs (a) and (d) to read as follows:

§ 16.230 Random testing requirements.

(a) Marine employers shall establish programs for the chemical testing for dangerous drugs on a random basis of crewmembers performing vessel navigation or vessel operation duties as defined in this part. Random selection of individual crewmembers means that every member of a given population has a substantially equal chance of selection on a statistically valid basis. The testing frequency and selection process shall be such that an employee's chance of selection continues to exist throughout his or her employment. Random selection may be accomplished by periodically selecting one or more vessels and testing all crewmembers covered by this section, provided each vessel subject to the marine employer's test program remains equally subject to selection.

* * * * *

(d) An individual may not be engaged or employed, including self employment, on a vessel in a position as master, operator, or person in charge for which a license or merchant mariner's document is required by law or regulation unless all crewmembers covered by this section are subject to the random drug testing requirements of this section.

Dated: July 19, 1990.

J. W. Kime,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 90–17528 Filed 7–26–90; 8:45 am]

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Friday
July 27, 1990

Part IV

Department of Transportation

Federal Railroad Administration

49 CFR Part 228

Guidelines for Clean, Safe and Sanitary Railroad Camp Cars; Issuance of Interpretive Guidelines; Statement of Policy

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 228

[FRA Docket No. RSOR-7]

Guidelines for Clean, Safe, and Sanitary Railroad Camp Cars

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Issuance of interpretive guideline; statement of policy.

SUMMARY: FRA is issuing guidelines to interpret the terms "clean," "safe," and "sanitary" with respect to camp cars provided by railroads for the use of employees covered by the Hours of Service Act (the Act). FRA establishes suggested criteria for clean, safe, and sanitary conditions for railroad camp cars modeled on standards established by the Occupational Safety and Health Administration, so as to permit "an opportunity for rest" for railroad employees covered by the statute.

EFFECTIVE DATE: July 27, 1990.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, (202-426-9178), or David H. Kasminoff, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590, (202-366-0635).

SUPPLEMENTARY INFORMATION:

Statement of Agency Policy and Interpretation on Section 2(a)(3) of the Hours of Service Act—as Applied to Railroad-Provided Camp Cars

Introduction

The Hours of Service Act ("Act"), 45 U.S.C.A. 61 *et seq.*, which is administered by the Federal Railroad Administration (FRA), was amended by the Federal Railroad Safety Authorization Act of 1976, Public Law 94-348, 90 Stat. 818 (45 U.S.C.A. 62(a)(3) (1976)), and by the Rail Safety Improvement Act of 1988, Public Law 100-342, section 19, 102 Stat. 638 (45 U.S.C.A. 62(e) (1989), to address the subject of employee sleeping quarters. Section 2(a)(3) was added in 1976 to make it unlawful for a railroad, including its officers or agents, to provide employees with sleeping quarters "which do not afford such employees an opportunity for rest, free from interruptions caused by noise under the control of the railroad, in clean, safe, and sanitary quarters." 45 U.S.C.A. 62(a)(3). Section 2(e) was added in 1988 to expand the definition of the term "employee" for purposes of section 2(a)(3) only, to include "an individual employed for the purpose of maintaining the right-of-way of any railroad." 45 U.S.C.A. 62(e).

On July 18, 1978, FRA issued an interpretive guideline and statement of policy concerning the phrase "free from interruptions caused by noise under control of the railroad" in section 2(a)(3). Appendix A to 49 CFR part 228, 43 FR 30,803 (1978). The purpose of this document is to set forth FRA's statement of interpretation and policy concerning the remainder of section 2(a)(3), *i.e.*, "to provide sleeping quarters for employees (including crew quarters, camp or bunk cars, and trailers) which do not afford such employees an opportunity for rest * * * in clean, safe, and sanitary quarters," as it applies to railroad employees on railroad-provided camp cars. FRA's existing Statement of Agency Policy and Interpretation, appendix A to part 228, merely restates the statutory language on this subject. As it indicated it would do at the time that statement was published, FRA has administered this provision on a case-by-case basis for a number of years, generally by ensuring that local housing, sanitation, health, and electrical codes are met at railroad-provided sleeping quarters in fixed facilities.

I. Railroad-Provided Camp Cars

FRA believes that camp cars, either because of express limitations of local codes, or by virtue of their physical mobility, are generally not subject to state or local housing, sanitation, health, electrical or fire codes. Therefore, FRA is unable to rely upon state or local authorities to ensure that persons covered by the Act who reside in camp cars are afforded an opportunity for rest in "clean, safe, and sanitary" conditions. Accordingly, FRA must determine what adverse conditions might reasonably be expected to interfere with the ordinary person's ability to rest, so as to enunciate policy guidelines to be applied by FRA in enforcing the words "clean," "safe," and "sanitary" for purposes of the Act.

FRA believes that the only purpose to be served by section 2(a)(3) is the protection of employees from conditions under control of the railroad that could reasonably be expected to interfere with the ordinary person's ability to rest. The Act's stated purpose is to "promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon." 45 U.S.C. 61. In furtherance of this general purpose, section 2(a)(3) is intended to ensure that employees staying in railroad-provided sleeping quarters have an "opportunity for rest." Section 2(a)(3) was not intended to protect employees from all threats of harm that might conceivably arise during their stay at railroad-provided quarters, or to ensure any levels of comfort or convenience other than the minima needed to permit rest.

II. Enforcement Policy

The interpretive statement and guidelines that FRA is issuing are intended to promote compliance with section 2(a)(3) as it applies to railroad-provided camp cars. The statement and guidelines should give the railroads a sufficient idea of the type of conditions FRA will consider in determining whether conditions at railroad-provided camp cars are in compliance with the Act.

However, this particular provision of law is marked by its inherent vagueness and failure to confer on FRA authority to issue legislative rules setting detailed and comprehensive standards. Because of these aspects, FRA emphasizes that it does not intend to penalize every conceivable deviation from the guidelines, especially where no interruption of employee rest has been detected. For instance, if FRA observes vermin at a facility on a given day, but the evidence indicates that the employees' rest has not been interrupted by infestations of vermin, FRA will insist that the problem be properly addressed, lest it cause such interruption, but will not likely seek civil penalties.

Furthermore, in accord with the statute, FRA does not intend to penalize a railroad for conditions not within its control, even if those conditions do interfere with rest. Quite simply, it would not serve the purposes of the statute for FRA to penalize a railroad for conditions beyond its control (*e.g.*, vandalism to furnishings, temporary disruption of plumbing due to external causes) even if those conditions interfere with rest. For example, if lightning strikes an air conditioning unit, resulting in uncomfortably high temperatures in the quarters, FRA will not take enforcement action unless the railroad has failed to arrange for repair of the unit with reasonable promptness. This simply amounts to an extension of the principles of section 5(d), which establishes a limited defense to claims brought under other sections of the Act for unforeseen and unforeseeable events, to section 2(a)(3). Nor does FRA intend to assess penalties for conditions within the railroad's control that would not interfere with the rest of an ordinary

person. For instance, if an employee has difficulty resting in temperatures that are comfortable to the ordinary person, FRA will not find a violation to exist. On the other hand, FRA will use civil penalties and/or the other enforcement options available to it where it finds a pattern of deviations from these guidelines, and a resultant interference with rest.

In exercising its authority to provide for the occupational safety and health of railroad employees covered by the Act who are housed in railroad-provided camp cars, FRA is modeling its guidelines on standards established by the Occupational Safety and Health Administration at 29 CFR 1910.141 and 1910.142, modified as appropriate for the railroad environment.

III. Miscellaneous Issues

Finally, FRA is amending its current interpretive statement in Appendix A to reflect amendments to the Act concerning civil penalties for sleeping quarters violations and calculation of the statutory limitations period. Section 5(a)(l) of the Act was amended by the Federal Railroad Safety Authorization Act of 1980, Public Law 96–423, section 12, 94 Stat. 1818 (45 U.S.C.A. 64a (1982)), and by the Rail Safety Improvement Act of 1988, Public Law 100–342, section 16(6), 102 Stat. 635 (45 U.S.C.A. 64a (1989)), to expressly provide that each day a facility is in noncompliance with section 2(a)(3) or (a)(4) shall constitute a separate offense. The Federal Railroad Safety Authorization Act of 1980 also amended section 5(a)(2) to permit FRA to bring an action to recover penalties for violations of the Act within the five-year general statute of limitations as long as administrative notification of the violations occurs within two years of the violations.

FRA also notes that section 19(b) of the Rail Safety Improvement Act of 1988 amended section 2 of the Hours of Service Act to extend the Act's limitation on noise under the control of the railroad to sleeping quarters for maintenance-of-way workers. However, Congress delayed the effect of that provision by six months to permit evaluation of the result of applying FRA's noise guidelines provided in Appendix A of part 228. The Conference Report stated that some railroads had argued that imposition of the FRA standard would result in the elimination of camp cars in maintenance-of-way operations. H. Rep. No. 100–637, 100th Cong. 2d Sess., at 29. The conferees stated that Congress did not intend that result and that if the railroads could present persuasive evidence that the existing guideline would have this unintended effect FRA would be expected to review the noise standard for camp cars. Following enactment, both FRA and the Association of American Railroads conducted noise measurements in many locations, some under adverse conditions. Almost without exception, noise levels at camp cars were within the existing FRA guideline. In the few instances of noncompliance, the differential was quite small; minor adjustments to ventilation systems, windows, or air conditioning should be sufficient. Relatively few camp cars should need such attention. FRA concludes that no amendment to its guideline is necessary.

List of Subjects in 7 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 228 is amended as follows:

PART 228—[AMENDED]

1. The authority citation for 49 CFR part 228 continues to read as follows:

Authority: 45 U.S.C. 61–64, as amended; 45 U.S.C. 437 and 438, as amended; Pub. L. 100–342; 49 App. U.S.C. 1655(e), as amended; 49 CFR 1.49 (d) and (m).

2. Appendix A is amended to read as follows:

A. Immediately after the existing second paragraph of the section headed "Sleeping Quarters" (under the major heading of "General Provisions") the following new text is added.

FRA recognizes that camp cars, either because of express limitations of local codes or by virtue of their physical mobility, cannot, for practical purposes, be subject to state or local housing, sanitation, health, electrical, or fire codes. Therefore, FRA is unable to rely upon state or local authorities to ensure that persons covered by the Act who reside in railroad-provided camp cars are afforded an opportunity for rest in "clean, safe, and sanitary" conditions. Accordingly, the guidelines in Appendix C to this part 228 will be considered by FRA as factors to be used in applying the concepts of "clean," "safe," and "sanitary" to camp cars provided by railroads for the use of employees covered by section 2(a)(3) of the Act. Failure to adhere to these guidelines might interfere with the ordinary person's ability to rest.

B. At the end of the existing paragraphs designated "Penalty," the following new text is added:

In the case of a violation of section 2(a)(3) or (a)(4) of the Act, each day a facility is in noncompliance constitutes a separate offense and subjects the railroad to a penalty of up to $1,000.

C. The period at the end of the existing paragraph designated "Statute of Limitations" is removed and the following new text is added:

* * * unless administrative notification of the violation has been provided to the person to be charged within that two year period. In no event may a suit be brought after expiration of the period specified in 28 U.S.C. 2462.

3. A new Appendix C is added to read as follows:

Appendix C—Guidelines for Clean, Safe, and Sanitary Railroad Provided Camp Cars

1. *Definitions applicable to these Guidelines.*

(a) *Camp Cars* mean trailers and on-track vehicles, including outfit, camp, or bunk cars or modular homes mounted on flat cars, used to house or accommodate railroad employees. Wreck trains are not included.

(b) *Employee* means any worker whose service is covered by the Hours of Service Act or who is defined as an employee for purposes of section 2(a)(3) of that Act.

(c) *Lavatory* means a basin or similar vessel used primarily for washing of the hands, arms, face, and head.

(d) *Nonwater carriage toilet facility* means a toilet facility not connected to a sewer.

(e) *Number of employees* means the number of employees assigned to occupy the camp cars.

(f) *Personal service room* means a room used for activities not directly connected with the production or service function performed by the carrier establishment. Such activities include, but are not limited to, first-aid, medical services, dressing, showering, toilet use, washing, and eating.

(g) *Potable water* means water that meets the quality standards prescribed in the U.S. Public Health Service Drinking Water Standards, published at 42 CFR part 72, or is approved for drinking purposes by the State or local authority having jurisdiction.

(h) *Toilet facility* means a fixture maintained within a toilet room for the purpose of defecation or urination, or both.

(i) *Toilet room* means a room maintained within or on the premises containing toilet facilities for use by employees.

(j) *Toxic material* means a material in concentration or amount of such toxicity as to constitute a recognized hazard that is causing or is likely to cause death or serious physical harm.

(k) *Urinal* means a toilet facility maintained within a toilet room for the sole purpose of urination.

(l) *Water closet* means a toilet facility maintained within a toilet room for the purpose of both defecation and urination and which is flushed with water.

(m) *Leq* (8) means the equivalent steady sound level which in 8 hours would contain the same acoustic energy as the time-varying sound level during the same time period.

2. *Housekeeping.*

(a) All camp cars should be kept clean to the extent that the nature of the work allows.

(b) To facilitate cleaning, every floor, working place, and passageway should be kept free from protruding nails, splinters, loose boards, and unnecessary holes and openings.

3. *Waste Disposal.*

(a) Any exterior receptacle used for putrescible solid or liquid waste or refuse should be so constructed that it does not leak and may be thoroughly cleaned and maintained in a sanitary condition. Such a receptacle should be equipped with a solid tight-fitting cover, unless it can be maintained in a sanitary condition without a cover. This requirement does not prohibit the use of receptacles designed to permit the maintenance of a sanitary condition without regard to the aforementioned requirements.

(b) All sweepings, solid or liquid wastes, refuse, and garbage should be removed in such a manner as to avoid creating a menace to health and as often as necessary or appropriate to maintain a sanitary condition.

4. *Vermin Control.*

(a) Camp cars should be so constructed, equipped, and maintained, so far as reasonably practicable, as to prevent the entrance or harborage of rodents, insects, or other vermin. A continuing and effective extermination program should be instituted where their presence is detected.

5. *Water Supply.*

(a) Potable water. (1) Potable water should be adequately and conveniently provided to all employees in camp cars for drinking, washing of the person, cooking, washing of foods, washing of cooking or eating utensils, washing of food preparation or processing premises, and personal service rooms where such facilities are provided.

(2) Potable drinking water dispensers should be designed, constructed, and serviced so that sanitary conditions are maintained, should be capable of being closed, and should be equipped with a tap.

(3) Open containers such as barrels, pails, or tanks for drinking water from which the water must be dipped or poured, whether or not they are fitted with a cover, should not be used.

(4) A common drinking cup and other common utensils should not be used.

(b) The distribution lines should be capable of supplying water at sufficient operating pressures to all taps for normal simultaneous operation.

6. *Toilet facilities.*

(a) Toilet facilities. (1) Toilet facilities adequate for the number of employees housed in the camp car should be provided in convenient and safe location(s), and separate toilet rooms for each sex should be provided in accordance with table 1 of this paragraph. The number of facilities to be provided for each sex should be based on the number of employees of that sex for whom the facilities are furnished. Where toilet rooms will be occupied by no more than one person at a time, can be locked from the inside, and contain at least one water closet or nonwater carriage toilet facility, separate toilet rooms for each sex need not be provided. Where such single-occupancy rooms have more than one toilet facility, only one such facility in each toilet room should be counted for the purpose of table 1.

TABLE 1

No. of employees	Minimum No. of toilet facilities [1]
1 to 10	1
11 to 25	2
26 to 49	3
50 to 100	5
Over 100	[2]

[1] Where toilet facilities will not be used by women, urinals may be provided instead of water closets or nonwater carriage toilet facilities, except that the number of water closets or facilities in such cases should not be reduced to less than ⅔ of the minimum specified.

[2] One additional fixture for each additional 25 employees.

(2) When toilet facilities are provided in separate cars, toilet rooms should have a window space of not less than 6 square feet in area opening directly to the outside area or otherwise be satisfactorily ventilated. All outside openings should be screened with material that is equivalent to or better than 16-mesh. No fixture, water closet, nonwater carriage toilet facility or urinal should be located in a compartment used for other than toilet purposes.

(3) The sewage disposal method should not endanger the health of employees.

(b) *Construction of toilet rooms.* (1) Each water closet should occupy a separate compartment with a door and walls or partitions between fixtures sufficiently high to assure privacy.

(2) Nonwater carriage toilet facilities should be located within 50 feet, but as far as practical on the same side of the track on which camp cars are sited.

(3) Each toilet facility should be lighted naturally, or artificially by a safe type of lighting available at all hours of the day and night. Flashlights can be substituted by the railroad when nonwater carriage toilet facilities are used.

(4) An adequate supply of toilet paper should be provided in each water closet, or nonwater carriage toilet facility, unless provided to the employees individually.

(5) Toilet facilities should be kept in a clean and sanitary condition. They should be cleaned regularly when occupied. In the case of nonwater carriage toilet facilities, they should be cleaned and changed regularly.

7. *Lavatories.*

(a) Lavatories should be made available to all rail employees housed in camp cars.

(b) Each lavatory should be provided with either hot and cold running water or tepid running water.

(c) Unless otherwise provided by agreement, hand soap or similar cleansing agents should be provided.

(d) Unless otherwise provided by agreement, individual hand towels or sections thereof, of cloth or paper, warm air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories, should be provided.

(e) One lavatory basin per six employees should be provided in shared facilities.

8. *Showering facilities.*

(a) Showering facilities should be provided in the following ratio: one shower should be provided for each 10 employees of each sex, or numerical fraction thereof, who are required to shower during the same shift.

(b) Shower floors should be constructed of non-slippery materials. Floor drains should be provided in all shower baths and shower rooms to remove waste water and facilitate cleaning. All junctions of the curbing and the floor should be sealed. The walls and partitions of shower rooms should be smooth and impervious to the height of splash.

(c) An adequate supply of hot and cold running water should be provided for showering purposes. Facilities for heating water should be provided.

(d) Showers. 1. Unless otherwise provided by agreement, body soap or other appropriate cleansing agent convenient to the showers should be provided.

2. Showers should be provided with hot and cold water feeding a common discharge line.

3. Unless otherwise provided by agreement, employees who use showers should be provided with individual clean towels.

9. *Kitchens, dining hall and feeding facilities.*

(a) In all camp cars where central dining operations are provided, the food handling facilities should be clean and sanitary.

(b) When separate kitchen and dining hall cars are provided, there should be a closable door between the living or sleeping quarters into a kitchen or dining hall car.

10. *Consumption of food and beverages on the premises.*

(a) *Application.* This paragraph should apply only where employees are permitted to consume food or beverages, or both, on the premises.

(b) *Eating and drinking areas.* No employee should be allowed to consume food or beverages in a toilet room or in any area exposed to a toxic material.

(c) *Sewage disposal facilities.* All sewer lines and floor drains from camp cars should be connected to public sewers where available and practical, unless the cars are equipped with holding tanks that are emptied in a sanitary manner.

(d) *Waste disposal containers provided for the interior of camp cars.* An adequate number of receptacles constructed of smooth, corrosion resistant, easily cleanable, or disposable materials, should be provided and used for the disposal of waste food. Receptacles should be provided with a solid tightfitting cover unless sanitary conditions can be maintained without use of a cover. The number, size and location of such receptacles should encourage their use and not result in overfilling. They should be emptied regularly and maintained in a clean and sanitary condition.

(e) *Sanitary storage.* No food or beverages should be stored in toilet rooms or in an area exposed to a toxic material.

(f) *Food handling.* (1) All employee food service facilities and operations should be carried out in accordance with sound hygienic principles. In all places of employment where all or part of the food service is provided, the food dispensed should be wholesome, free from spoilage, and should be processed, prepared, handled, and

stored in such a manner as to be protected against contamination.

(2) No person with any disease communicable through contact with food or food preparation items should be employed or permitted to work in the preparation, cooking, serving, or other handling of food, foodstuffs, or materials used therein, in a kitchen or dining facility operated in or in connection with camp cars.

11. *Lighting.* Each habitable room in a camp car should be provided with adequate lighting.

12. *First Aid.* Adequate first aid kits should be maintained and made available for railway employees housed in camp cars for the emergency treatment of injured persons.

13. *Shelter.*

(a) Every camp car should be constructed in a manner that will provide protection against the elements.

(b) All steps, entry ways, passageways and corridors providing normal entry to or between camp cars should be constructed of durable weather resistant material and properly maintained. Any broken or unsafe fixtures or components in need of repair should be repaired or replaced promptly.

(c) Each camp car used for sleeping purposes should contain at least 48 square feet of floor space for each occupant. At least a 7-foot ceiling measured at the entrance to the car should be provided.

(d) Beds, cots, or bunks and suitable storage facilities such as wall lockers or space for foot lockers for clothing and personal articles should be provided in every room used for sleeping purposes. Except where partitions are provided, such beds or similar facilities should be spaced not closer than 36 inches laterally (except in modular units which cannot be spaced closer than 30 inches) and 30 inches end to end, and should be elevated at least 12 inches from the floor. If double-deck bunks are used, they should be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk should be not less than 27 inches. Triple-deck bunks should not be used.

(e) Floors should be of smooth and tight construction and should be kept in good repair.

(f) All living quarters should be provided with windows the total of which should be not less than 10 percent of the floor area. At least one-half of each window designed to be opened should be so constructed that it can be opened for purposes of ventilation. Durable opaque window coverings should be provided to reduce the entrance of light during sleeping hours.

(g) All exterior openings should be effectively screened with 16-mesh material. All screen doors should be equipped with self-closing devices.

(h) In a facility where workers cook, live, and sleep, a minimum of 90 square feet per person should be provided. Sanitary facilities should be provided for storing and preparing food.

(i) In camp cars where meals are provided, adequate facilities to feed employees within a 60-minute period should be provided.

(j) All heating, cooking, ventilation, air conditioning and water heating equipment should be installed in accordance with applicable local regulations governing such installations.

(k) Every camp car should be provided with equipment capable of maintaining a temperature of at least 68 degrees F. during normal cold weather and no greater than 78 degrees F., or 20 degrees below ambient, whichever is warmer, during normal hot weather.

(l) Existing camp cars may be grandfathered so as to only be subject to subparagraphs (c), (d), (f), (h), and (k), in accordance with the following as recommended maximums:

13 (c), (d), and (h)—by January 1, 1994.
13(f)—Indefinitely insofar as the ten percent (10%) requirement for window spacing is concerned.
13(k)—by January 1, 1992.

14. *Location.* Camp cars occupied exclusively by individuals employed for the purpose of maintaining the right-of-way of a railroad should be located as far as practical from where "switching or humping operations" of "placarded cars" occur, as defined in 49 CFR 228.101 (c)(3) and (c)(4), respectively. Every reasonable effort should be made to locate these camp cars at least one-half mile (2,640 feet) from where such switching or humping occurs. In the event employees housed in camp cars located closer than one-half mile (2,640 feet) from where such switching or humping of cars takes place are exposed to an unusual hazard at such location, the employees involved should be housed in other suitable accommodations. An unusual hazard means an unsafe condition created by an occurrence other than normal switching or humping.

15. *General provisions.* (a) Sleeping quarters are not considered to be "free of interruptions caused by noise under the control of the railroad" if noise levels attributable to noise sources under the control of the railroad exceed an Leq (8) value of 55 dB(A), with windows closed and exclusive of cooling, heating, and ventilating equipment.

(b) A railroad should, within 48 hours after notice of noncompliance with these recommendations, fix the deficient condition(s). Where holidays or weekends intervene, the railroad should fix the condition within 8 hours after the employees return to work. In the event such condition(s) affects the safety or health of the employees, such as water, cooling, heating or eating facilities, the railroad should provide alternative arrangements for housing and eating until the noncomplying condition is fixed.

Issued in Washington, DC on July 23, 1990.

Gilbert E. Carmichael,

Administrator.

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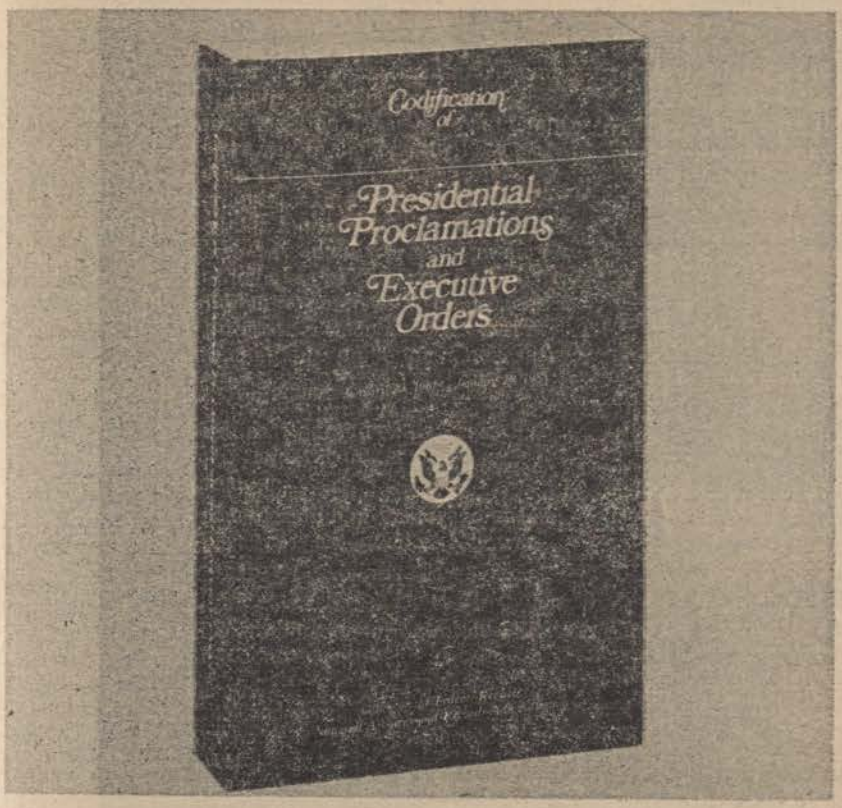

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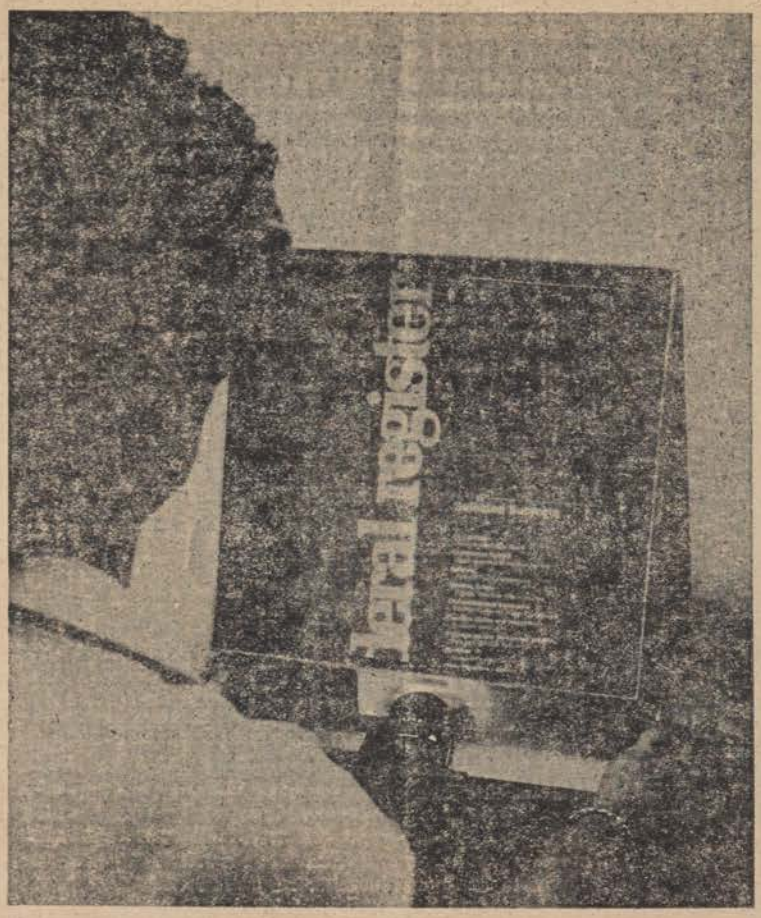

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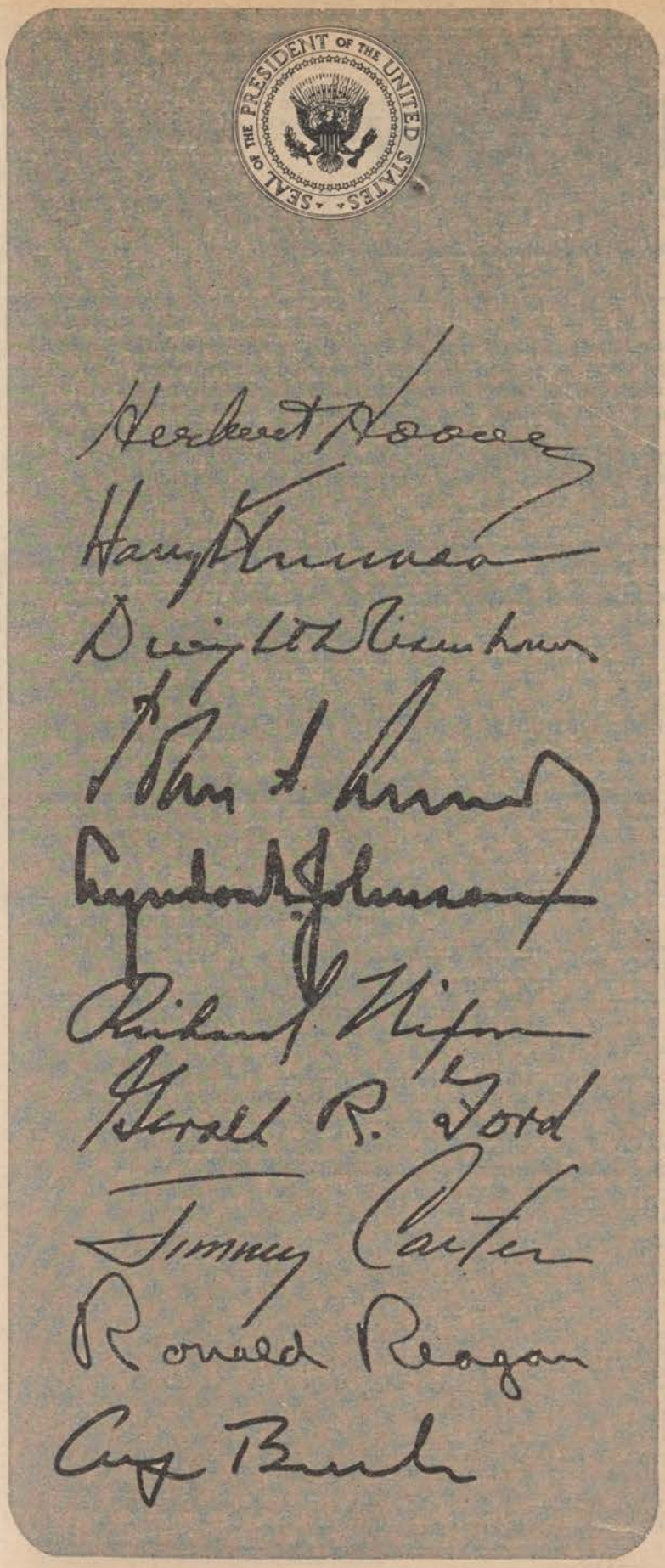

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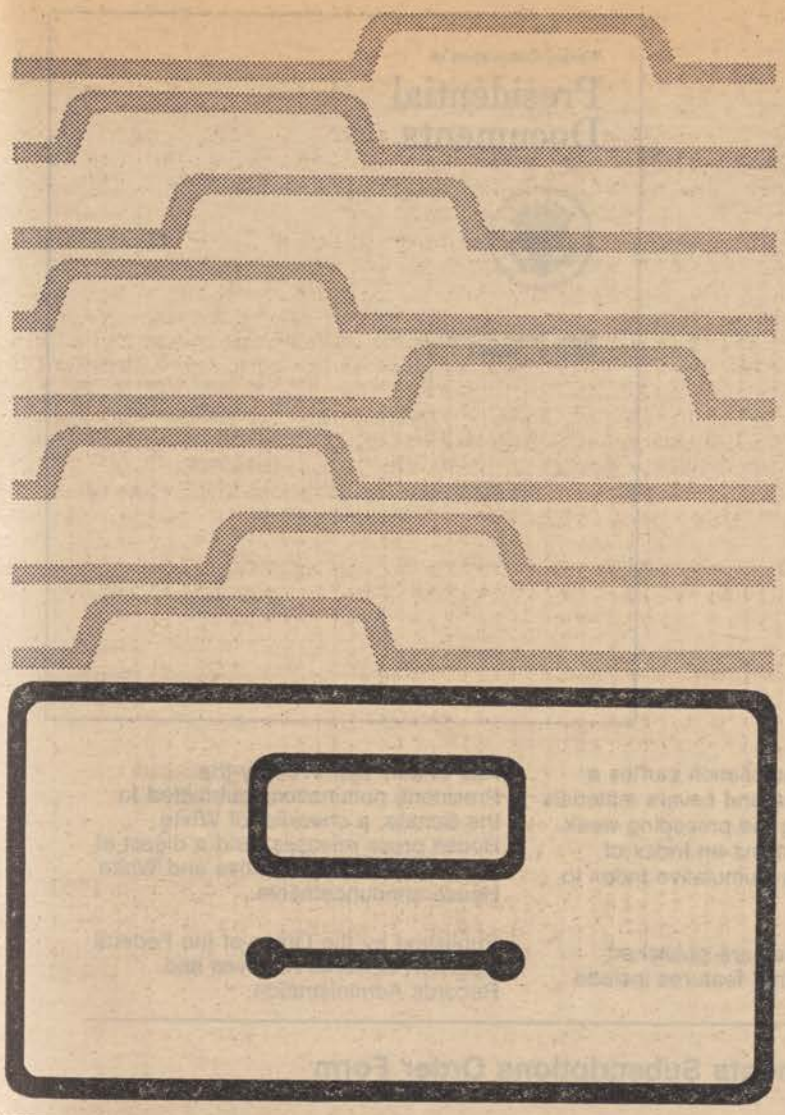

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